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April 18, 2011

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 New Pneumatic Off-the-Road Tires from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2008-2009 First Administrative Review of the Antidumping Duty Order

SUMMARY:
We have analyzed the case briefs, rebuttal briefs, and wage rate comments submitted by Bridgestone, Starbright and Titan in the 2008-2009 first administrative review of the antidumping duty order on OTR tires from the PRC. As a result of our analysis, we have made changes to the *Preliminary Results*.

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 antidumping duty administrative review for which we received comments. Included at the back of this document is an Appendix containing an "Antidumping/Countervailing Duty Proceeding Federal Register Cite Table" wherein all cites are listed alphabetically by short cite.

Case Issues:
Comment 1: Whether to Treat Certain Inputs as Manufacturing Overhead or FOPs
Comment 2: Treatment of Warehousing-Related Expenses
Comment 3: Calculation of ISE Ratio
Comment 4: Whether to Make Certain Data Changes Based on Verification Findings
Comment 5: Treatment of Supervisory and Quality Control Labor
Comment 6: Calculation of Starbright's Electricity Consumption
Comment 7: Correction of Alleged Ministerial Errors
Comment 8: Valuation of Wage Rate
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Comment 10: Valuation of RSOFT
Comment 11: Selection and Calculation of Financial Ratios
Comment 12: Whether to Grant MOE Treatment
Comment 13: Double Remedies

Comment 14: Zeroing

List Of Abbreviations And Acronyms Used In This Memorandum:

Acronym/Abbreviation	**Full Name**
Act or Statute	Tariff Act of 1930, as amended
AD	Antidumping
AD/CVD	Antidumping and Countervailing Duty
AD Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
AFA	Facts Available with Adverse inference, or Adverse Facts Available
AR	Administrative Review
AUV(s)	Average Unit Value(s)
Bridgestone	Bridgestone Americas, Inc. and Bridgstone Americas Tire Operations, LLC
CAFC	Court of Appeals for the Federal Circuit
CEA	Central Electric Authority of India
CEP	Constructed Export Price
CFR	Code of Federal Regulations
CIT or Court	U.S. Court of International Trade
COM	Cost of Manufacture
CPI	Consumer Price Index
Customs or CBP	U.S. Customs and Border Protection
CVD	Countervailing Duty
Department	Department of Commerce
DTC	Dynamic Tire Corporation
EP	Export Price
FA	Facts Available
FOP(s)	Factor(s) of Production
GAO	U.S. Government Accountability Office
GNI	Gross National Income
Goodyear	Goodyear India Limited
GPX	GPX International Tire Corporation
GTA	Global Trade Atlas® Online
HTS	Harmonized Tariff System
IDM	Issues and Decision Memorandum
ILO	International Labor Organization
ISE	Indirect Selling Expense
ISIC	International Standard Classification
ITC	U.S. International Trade Commission
ME	Market Economy
MEPs	Market Economy Purchases
ML&E	Materials, Labor and Energy
MOE	Market-Oriented Enterprise
MOI	Market-Oriented Industry
MT	Metric Ton
NME	Non-Market Economy

List Of Abbreviations And Acronyms Used In This Memorandum:

Acronym/Abbreviation	Full Name
NSR	New Shipper Review
NV	Normal Value
OTR	Off-The-Road
POR	Period of Review
PRC	People's Republic of China
PUDD	Potential Uncollected Dumping Duties
RSOFT	Rubber Softener
SAA	Statement of Administrative Action
SG&A	Selling, General, and Administrative Expenses
Starbright	Hebei Starbright Tire Co., Ltd.
SV(s)	Surrogate Value(s)
Titan	Titan Tire Corporation
TVS	TVS Srichakra Limited
USGS	United States Geological Survey
VAT	Value Added Tax
WPI	Wholesale Price Index
WTA	World Trade Atlas® Online
WTO	World Trade Organization

Background:
The merchandise covered by the order is OTR tires, as described in the "Scope of the Order" section of the *Preliminary Results*. The POR is February 20, 2008, through August 31, 2009. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our *Preliminary Results*. Titan submitted a brief and a rebuttal brief on February 7, 2011, and February 14, 2011, respectively. Bridgestone and Starbright submitted briefs and rebuttal briefs on February 8, 2011, and February 15, 2011, respectively. On February 7, 2011, the Department published a notice extending the deadline for the final results of the 2008-2009 administrative duty order of the review to March 18, 2011. *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 6603 (February 7, 2011). On March 18, 2011, the Department published a notice extending the deadline for the final results of the administrative review an additional thirty days to April 18, 2011. *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 14906 (March 18, 2011).

DISCUSSION OF THE ISSUES

Comment 1: Whether to Treat Certain Inputs as Manufacturing Overhead or FOPs

- Titan argues that Starbright failed to fully and appropriately respond to the Department's repeated questions regarding indirect and overhead materials. As such, Titan believes the Department should apply facts available by either 1) applying the highest unit value for

reported materials to materials Starbright chose not to include in its FOP database, or 2) increasing Starbright's overhead by a multiple of the surrogate overhead ratio.[1]

- Bridgestone agrees that Starbright did not provide repeatedly requested information regarding overhead and indirect materials in a timely and cooperative manner. Bridgestone avers that the Department should apply partial adverse facts available using one of Titan's proposed methodologies. Furthermore, Bridgestone argues that the three forms of anti-tack material used in Starbright's production should be treated as direct FOPs, as Starbright has acknowledged they are physically incorporated into its finished tires.[2]

- Starbright rebuts that it fully complied with all Department requests for information regarding overhead and indirect materials, and that its treatment of overhead and indirect materials was verified and used in the original investigation. Therefore, Starbright argues the Department should maintain its treatment of Starbright's overhead and indirect materials as is, and not resort to the use of partial AFA.[3]

- With respect to anti-tack material in particular, Starbright states that it is a machinery consumable, and should, therefore, not be treated as an FOP, but, rather, as overhead. Starbright cites the Department's four criteria in determining what is an FOP and not overhead, and argues that anti-tack material does not meet any of the four.[4]

- Titan avers that the Department should treat anti-tacking materials as FOPs.[5]

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[1] Titan cites to the following in support of its argument: Starbright Sec D Resp (April 6, 2010) at D-1, D-2; Starbright Supp Sec D Resp (August 17, 2010) at 1-2, exhibit SD-1, SD-5; Starbright Supp Sec ACD Resp (September 13, 2010) at 4SD-1, 4SD-3, 4SD-4; Starbright Supp Sec A Resp (June 29, 2010) at 11, exhibit SI-4; *Bridgestone Remand (CIT 2009)* at 3-4; Petitioner's 20-Day FOP Submission at Attachment 3; Starbright Supp Sec D Resp (November 3, 2010) at 6-7; *Preliminary Results* at 64266; *Bridgestone Redetermination (CIT 2010)* at 25-26; *Gallant Ocean (Thailand) (Fed. Cir. 2010)* at 1319, 1323; *Bulk Aspirin/PRC (May 25, 2000)* and accompanying IDM at Comment 4*; Bulk Aspirin/PRC (June 27, 2000)*; *Rhodia (CIT 2001)* at 1348-1349*; Rhodia (CIT 2002)* at 1249-1251.

[2] Bridgestone cites to the following in support of its argument: Starbright Sec D Resp (April 6, 2010) at Question I.A., D-2, D-4, exhibit D-5; Starbright Supp Sec D Resp (August 17, 2010) at Question 1, at 2, 11 at exhibit SD-5; Starbright Supp Sec ACD Resp (September 13, 2010) at exhibit 4SD-3; Starbright Supp Sec D Resp (November 3, 2010) at 6-8, exhibit PPD-11; Petitioner's 20-Day FOP Submission at exhibit 3; Original Questionnaire at D-1; Bridgestone's Supp Pre-Prelim Comments at 7; Domestics' Pre-Prelim Comments at 7-9; Petitioner's Case Brief at Section I; *Bridgestone Sustained (CIT 2010)* at 1363-1364; *Paper Clips/PRC (October 7, 1994);* Bridgestone's Post-Prelim SV Sub at Attachment 4.

[3] Starbright cites to the following in support of its rebuttal: Bridgestone's Case Brief at Argument II; Petitioner's Case Brief at Argument I; Investigation SV Memo at Attachment I; Starbright's Supp Sec D Resp (August 17, 2010) at 1; Starbright's Case Brief at Argument III; *Persulfates/PRC (February 2, 2005)* and accompanying IDM at Comment 4; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 27; *Glycine/PRC (January 31, 2001)* and accompanying IDM at Comment 3; Bridgestone's Case Brief at 7.

[4] Starbright cites to the following in support of its argument: Starbright's Supp Sec D Resp (August 17, 2010) at 11; *Persulfates/PRC (February 2, 2005)* and accompanying IDM at Comment 4; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 27; *Glycine/PRC (January 31, 2001)* and accompanying IDM at Comment 3; *OCTG/PRC (April 19, 2010)* and accompanying IDM at Comment 18; Bridgestone's Case Brief at Argument III; Petitioner's Case Brief at Argument I; Starbright's Case Brief at Argument III; Starbright's Supp Sec D Resp (August 17, 2010) at 11.

[5] Titan cites to the following in support of its argument: Starbright's Case Brief at 13; Petitioner's Case Brief at 2-8; Bridgestone's Case Brief at 9-10; Bridgestone's Rebuttal.

- Bridgestone rebuts that it is the Department's practice to treat materials as FOPs when they are consumed during production of subject merchandise, regardless of whether the producer treats those materials as overhead in its accounting records or whether the materials are physically incorporated into the finished product.[6]

Department's Position: While we agree with Titan and Bridgestone that Starbright was not as forthcoming as it could have been in responding to the Department's requests for information, we find that there is no evidence on the record to suggest that Starbright did not accurately report its FOPs. In the original questionnaire, the Department requested that Starbright provide a list of all materials that Starbright considered to be factory overhead to allow the Department to determine whether these materials should be reported as direct FOPs.[7] Starbright did not provide a list of the materials it considered to be overhead, and in its supplemental Section D questionnaire, the Department requested the following:

> At D-2, you state that in Exhibit D-5 you 'have categorized each of these materials according to raw material, overhead, energy, and fuel, byproduct, and packing…' Please indicate in which Exhibit D-5 worksheet and on which page(s) we may find such categorization.[8]

In response to this question Starbright answered, "We provide a material list in Exhibit SD-3 which categorizes each of the materials according to raw material, energy, and by-product…"[9] In this exhibit, Starbright did not provide a list of materials it considered to be overhead. However, in Exhibit SD-5 of the same submission, it did provide an untranslated list of materials it determined to be "ancillary."

In reviewing the full record of this proceeding, we note that Starbright reported the same FOPs in the instant review as it reported and the Department verified and accepted in the less-than-fair-value investigation.[10] Further, nothing on the record indicates that Starbright's production process has changed since that time. Thus, we have no reason to believe that Starbright did not accurately report all of its direct material inputs in this review, and we find no reason to apply partial FA or AFA.

Regarding anti-tack materials, both Starbright and Bridgestone cite to four of the Department's non-comprehensive criteria in determining if a raw material should be treated as a direct or indirect material: 1) whether the material is physically incorporated into the product; 2) the material's contribution to the production process and finished product; 3) the relative cost of the input and the frequency of use; and 4) classification by the company and/or industry as an

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[6] Bridgestone cites to the following in support of its rebuttal: Starbright's Case Brief at 13-15; *WBF/PRC (August 20, 2008)* and accompanying IDM at Comment 16; *Hangers/PRC (August 14, 2008)* and accompanying IDM at Comment 2; *Nails/PRC (June 16, 2008)* and accompanying IDM at Comment 20E; *Diamond Sawblades/PRC (May 22, 2006)* and accompanying IDM at Comment 2; *LWS/PRC (June 24, 2008)* and accompanying IDM at Comment 1; *Electrolytic Manganese/PRC (August 18, 2008)* and accompanying IDM at Comment 8.

[7] *See* Starbright's Sec D Resp (April 6, 2010) at D-2.

[8] *See* Starbright's Supp D Resp (August 17, 2010) at 1.

[9] *Id.* at 2.

[10] *See* Starbright Sec D Resp (April 6, 2010) at exhibit SD-1; Bridgestone's Factual Info Sub at exhibit 2.

overhead expense or direct input.[11] Bridgestone notes that this list of criteria is not exhaustive,[12] and Starbright notes that no one criterion in this list is dispositive.[13]

Following this criteria, as well as recent Department practice, we find that Starbright's three anti-tack materials should continue to be treated as overhead for the final results. Bridgestone cites to numerous cases in which the Department has found consumables to be direct, rather than indirect materials.[14] However, it is the Department's practice to analyze the record of each case individually.[15] The record of the instant case demonstrates that although the anti-tack materials are essential to the production process of Starbright's subject merchandise, any portion remaining on or in the finished product is unintentional. In other words, its physical incorporation is neither necessary nor standard, as dictated by the bills of material. Moreover, Starbright's description indicates that any anti-tack capsule remaining on the product does not permeate the tire, but rather adheres to the inside of the tire in its last stages of production; anti-tack and anti-tack powder is largely volatilized or shaken off from the rubber sheets once the sheets enter the next production stage.[16] This description differs significantly from that cited to by Bridgestone and provided in *Paper Clips/PRC (October 7, 1994)*, in which chemicals are "physically incorporated" into the finished product. Also, in the case of Starbright, anti-tack materials are used in relatively miniscule quantities, and the company classifies anti-tack materials in its accounting system as overhead.[17] This is consistent with the Department's findings regarding these materials in the investigation, where the Department used the same set of criteria regarding another respondent's raw materials also used "to prevent mixed rubber from sticking to itself."[18] We also note that anti-tack materials compose a very small percentage of normal value. Accordingly, we have made no modifications to Starbright's FOPs, and we have not valued anti-tack materials as direct inputs.

Comment 2: Treatment of Warehousing-Related Expenses

- Titan asserts that the Department should ensure that expenses related to U.S. warehouse shutdowns and Tanggu warehousing are properly accounted for in Starbright's margin calculation.[19]

- Bridgestone cites to Titan's case brief, agreeing with Titan's assertion regarding warehousing expenses.[20]

- Starbright rebuts that the Department's methodology for capturing Tanggu warehousing expenses properly captures all related costs and is consistent with the original investigation. Also, Starbright asserts that Titan has not cited evidence that suggests warehouse shutdowns

[11] *See* Starbright's Case Brief at 14; Bridgestone's Case Brief at 10.
[12] *See* Bridgestone's Case Brief at 10.
[13] *See* Starbright's Case Brief at 14.
[14] *See* Bridgestone's Rebuttal at 9-10.
[15] *See OCTG/PRC (April 19, 2010)* and accompanying IDM at Comment 18.
[16] *See* Starbright's Case Brief at 13-15.
[17] *See id.*
[18] *See OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 27.
[19] Titan cites to the following in support of its argument: Verification Report at 5; Prelim SV Memo at Attachment IX.
[20] Bridgestone cites to the following in support of its argument: Petitioner's Case Brief at Section III.

should be included in the Department's direct selling expense calculation.[21] Therefore, Starbright states the Department should not modify its treatment of warehouse expenses.[22]

Department's Position: During verification of Starbright's CEP transactions, the Department reviewed GPX's trial balance for 2008 and found an expense account related to the shutting down of several warehouses in the United States in anticipation of impending tariff increases.[23] The Department was unaware of this account prior to verification and the issuance of the *Preliminary Results,* and, therefore, it was not included in Starbright's ISE calculation or in any other CEP adjustments in the *Preliminary Results*. It is the Department's practice to include as ISE all expenses incurred in the U.S. market that are not treated as direct expenses.[24] While Starbright avers that this expense has not been proven to be related to the sale of subject merchandise, the record demonstrates that it is clearly related to the closure of the company's warehousing operations for sales in the United States and Starbright has made no effort to demonstrate otherwise on the record or provided any rationale for why it should not be included in the Department's ISE calculation. Ergo, because the Department considers the restructuring expense to be an indirect selling expense, we have included this account in the final ISE ratio calculation for Starbright.[25]

During verification, the Department also found an expense account used by GPX to record Tanggu warehouse expenses.[26] Titan's assertion that the Department should ensure the account is included in the calculation of Tanggu warehousing costs ignores the Department's methodology for calculating such costs.[27] As stated in the Verification Report, the account consists of GPX's payments to East Star Global (Tianjin) Inc., a GPX subsidiary responsible for Tanggu's operations, for its logistical services, including rent payments for the Tanggu warehouse. Because this is a Chinese warehouse, and all transactions involving this warehouse occur in an NME country (*i.e.*, the service is provided by an NME supplier), under the Department's NME methodology, such transactions are valued using a surrogate from an economically comparable market-economy country that is a significant producer of comparable merchandise. Accordingly, in the original investigation as well as the *Preliminary Results*, consistent with Department practice, the Department utilized a surrogate value (in this case from the Board of Trustees of Jawaharlal Nehru Port) to calculate an adjustment representative of Tanggu warehousing costs.[28] As such, the Department has made no modification to its Tanggu warehouse calculation.

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[21] While Starbright argues this, Titan's brief did not suggest the proper categorization of this expense, but simply requested that the Department capture it in the margin calculation.

[22] Starbright cites the following in support of its rebuttal: Petitioner's Case Brief at Argument III; Investigation Analysis Memo at 3; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 57; Prelim SV Memo at 7; Verification Exhibits at exhibit 9.

[23] *See* Verification Report at 5.

[24] *See, e.g., PET Film/PRC (February 22, 2011)* and accompanying IDM at Comment 9.

[25] *See* Final Analysis Memo at 3 and Attachment 5.

[26] *See* Verification Report at 5.

[27] *See* Petitioner's Rebuttal at 19.

[28] *See* section 773(c)(1)(B) of the Act; *Preliminary Results* at 64264; OTR *Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 57.

Comment 3: Calculation of ISE Ratio

- Bridgestone avers that the Department should revise its ISE ratio calculation to more fully include ISEs related to GPX's Canada operations involved in sales to the United States.[29]

- Starbright rebuts that the Department correctly treated GPX's Canada operations in its ISE ratio calculation, and, therefore, should not revise the calculation for the final results. Starbright further emphasizes that the Department's ISE calculation methodology is consistent with the one used in the original investigation.[30]

- Starbright also argues that various non-operating expense accounts included in the Department's ISE ratio calculation for the Preliminary Results should not be included in the Department's ISE ratio calculation for the final results, as there is no evidence on record specifically tying the non-operating expenses to the sale of subject merchandise.[31]

- Titan rebuts that Starbright has not provided adequate justification for its assertions that the expense accounts in question should be excluded from the ISE ratio calculation. As such, Titan argues the Department should continue to include the expense accounts in its ISE calculation.[32]

- Bridgestone rebuts that Starbright's argument is not founded on the Department's past practice. Accordingly, Bridgestone argues, there is only one account in question that should remain excluded from the ISE calculation as was done for the Preliminary Results.[33]

Department's Position: The Department agrees with Bridgestone and Titan, and has revised GPX's ISE calculation to include additional ISEs related to GPX USA's support of its Canadian operations for purposes of the final results of this review.[34] In the *Preliminary Results*, the Department accounted for ISEs incurred by GPX USA that were attributable to its own sales of subject merchandise. We also accounted for ISEs incurred by DTC, GPX's Canadian subsidiary, which were attributable to DTC's sales of subject merchandise. However, the Department did not account for the fact that GPX USA, as GPX's global headquarters, supports all GPX subsidiaries and incurs ISEs in supporting them, including DTC.[35] Therefore, to more comprehensively account for all GPX ISEs attributable to all sales of subject merchandise, the

[29] Bridgestone cites to the following in support of its argument: Prelim Analysis Memo at 7, Attachment VI; Starbright Supp Sec C Resp (August 2, 2010) at 47.

[30] Starbright cites to the following in support of its rebuttal: Bridgestone's Case Brief at Argument I; Starbright's Pre-Prelim Comments at 4; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 71.

[31] Starbright cites to the following in support of its argument: Starbright Supp Sec C Resp (November 5, 2010); Verification Report at 17, exhibit 8.

[32] Titan cites to the following in support of its argument: Starbright's Case Brief at 1, 4-11; *Preliminary Results* at 64263; Starbright Supp Sec C Resp (November 5, 2010) at 2-5; Bridgestone's Factual Info Sub at exhibit 16; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 72; Investigation Analysis Memo at 7-8.

[33] Bridgestone cites to the following in support of its rebuttal: Prelim Analysis Memo at 4, 7; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 72; *Light-Walled Pipe/PRC (September 13, 2010)* and accompanying IDM at Comment 1; Starbright's Case Brief at 4-5, 8; Starbright Supp Sec C Resp (November 5, 2010) at exhibit 1; Bridgestone's Factual Info Sub at exhibit 16; Verification Report at 17; *Aramide (CIT 1995).*

[34] *See* Final Analysis Memo at 3 and Attachment 5.

[35] *See* Prelim Analysis Memo at 7 and Attachment VI.

Department has modified its ISE ratio calculation to include the additional ISEs incurred by GPX USA in support of DTC's sales of subject merchandise.

Regarding the various non-operating ISE accounts Starbright asserts the Department should exclude from its ISE calculation, the Department disagrees with respect to most of the accounts. Unlike Starbright's assertion, it is not the Department's practice to require evidence that ties a specific account to sales of subject merchandise in order to include it as an ISE. On the contrary, "{i}t is our practice to base U.S. ISEs on all the expenses incurred in the U.S. market that respondents have not reported as direct expenses. Therefore, it is reasonable to include certain non-operating expenses incurred in the U.S. market, because, all expenses incurred by a company in the {United States} support its sales."[36] As such, and consistent with the original investigation and the *Preliminary Results*, we have made no modifications to the list of accounts included in our ISE ratio calculation except one. Please see the Final Analysis Memo[37] for a proprietary discussion of the additional account included and certain accounts that continue to be excluded from the ISE ratio.

Comment 4: Whether to Make Certain Calculation Changes Based on Verification Findings

- Bridgestone argues that the Department should rely on verified interest rates and days in inventory figures calculated during the Department's verification of GPX's reported credit expenses and inventory carrying costs.[38]

- Starbright avers that the Department should no longer apply the partial adverse facts available used in the preliminary valuation of the rebate adjustment for the final results. Specifically, Starbright cites the Department's verification report in stating that the Department now has the verified data it needs to apply rebate adjustments according to information on the record.[39]

- Titan rebuts that the Department should not accept Starbright's verified rebate data as timely submitted information, and, therefore, should continue to apply partial AFA as used in its preliminary rebate adjustment calculation. Titan cites Starbright's non-cooperation prior to the Department's CEP verification, and states that the Department should regard verification merely as an opportunity to determine whether Starbright was, indeed, cooperative prior to the issuance of its *Preliminary Results*.[40]

- Bridgestone rebuts that the Department should continue to apply partial AFA in determining Starbright's rebate adjustment, as Starbright did not provide the Department with the

[36] *See OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 72.

[37] *See* Final Analysis Memo at 4-5.

[38] Bridgestone cites to the following in support of its argument: Verification Report at 16-17; Verification Exhibits at exhibit 1.

[39] Starbright cites the following in support of its argument: Starbright's Supp Sec C Resp (September 13, 2010) at 2, exhibit 2SC-15; Prelim Analysis Memo at 4; Verification Exhibits at exhibit 1; Verification Report at 13-14, exhibits 1 and 7.

[40] Titan cites to the following in support of its argument: *Preliminary Results* at 64260, 64266-64267; Starbright's Case Brief at 1, 12-13; Verification Agenda at 2; *National Candle Association (CIT 2005)* at 1321.

requisite data until its CEP verification. Bridgestone further emphasizes that verification is strictly to be used for confirmation that previous submissions were comprehensive and correct.[41]

Department's Position: During the Department's CEP verification of GPX, the Department and company officials found various discrepancies in Starbright's originally reported days in inventory amounts[42] and interest rates for GPX.[43] Due to these discrepancies, the average days in inventory figure used to calculate GPX's inventory carrying costs was revised, as was the average interest rate used to calculate GPX's credit expense.[44] Accordingly, for Starbright's final margin calculation, we have relied on the revised and verified amounts to calculate these two adjustments.[45]

Regarding the rebate adjustment for which the Department applied partial AFA in the *Preliminary Results*,[46] the Department finds it is appropriate to use the verified data acquired during its CEP verification for the final results rather than the partial AFA previously used. Prior to the *Preliminary Results*, Starbright reported a 2009 rebate program for a consortium of GPX customers, but stated that it was unable to identify the specific customers or the specific sales to which the rebate applied.[47] In order to account for the rebate in the *Preliminary Results*, as AFA the Department applied the rebate percentage to all 2009 U.S. sales for which no other rebate had been reported.[48] On the first day of the CEP verification, GPX provided, as a minor correction, the names of the consortium customers who received the 2009 rebate. Department officials reviewed the information provided and requested substantiation related to the company's efforts to obtain the consortium customer names.[49] After reviewing the evidence of the company's efforts to obtain the information, the Department accepted the new information as a minor correction and verified it.

Titan and Bridgestone aver that the Department should consider the consortium customer names as new information that was untimely submitted, and continue to apply AFA in the final calculation.[50] Titan cites to the Department's standard wording in its Verification Agenda, which states that new information will only be accepted when "(1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record."[51] As an initial matter, the Department agrees with Titan and Bridgestone that the purpose of verification is to verify the accuracy of information previously submitted to the record by the respondent, not to collect new, previously unreported information. In making the

[41] Bridgestone cites to the following in support of its rebuttal: Starbright's Case Brief at 12-13; Verification Agenda at 2; Deadline Extension Memo; *Lined Paper Products/PRC (September 8, 2006)* and accompanying IDM at Comment 8.
[42] *See* Verification Exhibits at exhibit 6.
[43] *Id* at exhibit 11.
[44] *See* Verification Report at 16-17.
[45] *See* Final Analysis Memo at 3.
[46] *See Preliminary Results* at 64266-64267; Prelim Analysis Memo at 3-5.
[47] *See* Starbright's Supp Sec C Resp (September 13, 2010) at 2, exhibit 2SC-15.
[48] *See* Prelim Analysis Memo at 4.
[49] *See* Verification Report at 13-14; Verification Exhibits at exhibit 1.
[50] *See* Petitioner's Rebuttal at 10-11; Bridgestone Rebuttal at 7-8.
[51] *See* Petitioner's Rebuttal at 10.

determination to examine the customer information at verification, the Department took into account the nature of the information; the unusual circumstances surrounding GPX's bankruptcy; and the resulting difficulties GPX faced in obtaining documents and other forms of information throughout the relevant period. First, GPX had previously provided information regarding the existence and terms of the rebate program, thus the information provided at verification regarding the specific customers was not wholesale new information, but rather clarified information about the rebate program that GPX had already reported to the Department. Second, as a result of the bankruptcy proceeding, GPX no longer had unfettered access or control over the relevant documentation and had to obtain the documentation from a third party. As GPX explained at verification, the documents are maintained in a warehouse that GPX has to be granted access to by this third party. Moreover, it appears that the files are not well organized and many of the boxes are mis-labeled, thus, locating specific information often took multiple attempts and the help of former employees. Third, GPX was able to substantiate its continued attempts throughout the review to gain access to the relevant information. Based on this unique set of facts, the Department determined it appropriate to review the information at verification when presented as a minor correction.[52]

Titan and Bridgestone both cite to cases in which items presented by the respondent as minor corrections at verification were not accepted as such by the Department. However, in both cases, the new information was not minor, but rather constituted significant changes with sizeable impact to each respondent's respective margin. In *Lined Paper Products/PRC (September 8, 2006)*, unreported U.S. sales were discovered by the Department at verification, and the respondent only provided all requested information regarding these transactions after the Department uncovered the unreported sales.[53] In other words, the respondent had failed to disclose entire sales transactions. In *National Candle Association (CIT 2005)*, the "minor correction" increased total production quantity by approximately twenty-five percent. In that case, because the respondent had significantly under-reported its production levels, the Department did not consider the information to be a minor correction.[54] In the instant case, information presented as a minor correction is limited in scope, and Starbright disclosed the existence of the underlying rebate program and other information relevant to it prior to verification. Accordingly, the Department finds that AFA is not warranted for the final results. Therefore, the Department has incorporated the minor correction to GPX's rebate adjustment into Starbright's final margin calculation.[55]

Comment 5: Treatment of Supervisory and Quality Control Labor

- Starbright argues that, since it classifies supervisory and quality control labor as manufacturing overhead and not a cost of production (where other indirect labor is classified), the Department should also consider supervisory and quality control labor to be manufacturing overhead; it should not be included with other indirect labor in the margin calculations.

[52] *See* Verification Report at 13-14; Verification Exhibits at exhibit 1.
[53] *See Lined Paper Products/PRC (September 8, 2006)* and accompanying IDM at 36-38.
[54] *See National Candle Association (CIT 2005)* at 1321.
[55] *See* Final Analysis Memo at 2-3.

- Bridgestone rebuts that supervisory and quality control labor is not one of the categories of labor services recognized by the Department as being captured in the surrogate overhead ratios. Furthermore, Bridgestone argues that during the investigation, the Department encountered the identical situation, and in that proceeding, the Department classified Starbright's supervisory and quality control labor as indirect labor.[56]

- Titan rebuts that it is irrelevant whether Starbright records supervisory and quality control labor costs as overhead; furthermore, Titan contends that the same situation was encountered in a previous case as well as in the original investigation and that the Department rejected the respondents' arguments in both cases.[57]

Department's Position: We agree with Titan and Bridgestone, and, consistent with Department practice and our treatment of this issue in the LTFV investigation, we have treated Starbright's supervisory and quality control labor as part of indirect labor.[58] The Department's practice is to include all labor "indirectly related to the production of subject merchandise, such as quality control" and supervisory labor as indirect labor for "the factors of production calculation."[59] While Starbright contends that we should consider its supervisory and quality control labor as manufacturing overhead because that is how it is treated in Starbright's books and records, it has not provided any explanation as to why the Department should depart from its practice of treating these expenses as indirect labor for purposes of the margin calculation. Accordingly, we are not persuaded by Starbright's suggestion and have continued to treat these items as indirect labor, consistent with established Department practice.

Comment 6: Calculation of Starbright's Electricity Consumption

- Starbright asserts that the Department should not include its electricity usage for the energy department and the supporting department in Starbright's total electricity consumption. Starbright contends that it considers these expenses to be overhead costs; treating them as direct manufacturing expenses would lead to them being double counted, since they are already accounted for in the surrogate financial ratios.[60]

- Bridgestone rebuts that there is no record evidence to support Starbright's assertions as to precisely what the electricity is used for (*e.g.,* administrative offices and testing areas) and that since Starbright's assertion is new factual information, it should be considered untimely and should be rejected by the Department. Furthermore, Bridgestone asserts that Starbright did not submit any additional evidence that would justify changes to the Department's treatment of electricity in the *Preliminary Results*.

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[56] Bridgestone cites the following in support of its argument: *Seamless Pipe/PRC (October 1, 2010)* and accompanying IDM at Comment 17; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 64.

[57] Titan cites the following in support of its argument: *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 64; *Manganese Metal/PRC (November 6, 1995)* and accompanying IDM at Comment 9.

[58] *See* OTR *Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 64.

[59] *See Persulfates/PRC (December 13, 1999)* and accompanying IDM at Comment 10. *See also e.g., Seamless Pipe/PRC (October 1, 2010)* and accompanying IDM at Comment 17.

[60] Starbright cites the following in support of its argument: *Silicon Metal/PRC (January 12, 2010)* and accompanying IDM at Comment 13.

- Titan rebuts that it is irrelevant how Starbright records its electricity consumption because the Department uses financial statements of surrogate producers to calculate overhead and other financial ratios. Additionally, Titan asserts that Starbright's claim (that the overhead electricity is used for lighting for administrative offices and testing areas) lacks record support and would thus be considered new information—and as such should be stricken from the record. Moreover, even if Starbright's description of the uses of electricity is admissible to the record, Titan contends that Starbright's definition of "manufacturing expenses" is overly narrow and without citations supporting its definition.

Department's Position: We have excluded electricity usage for the energy department and the supporting department from Starbright's total electricity consumption. With respect to Titan and Bridgestone's arguments that Starbright's case brief contained new factual information regarding its electricity usage, Starbright clarified where in the record it had previously stated the uses of electricity from the energy and supporting departments.[61]

Section 773(c)(1)(B) of the Act directs the Department to base its calculation of costs on the FOPs actually "utilized in producing the merchandise." Section 773(c)(3)(C) of the Act directs that this will include the amount of electricity and other utilities consumed. Accordingly, it is Department practice not to include "non-production" energy as an FOP.[62]

As outlined above, it is the Department's standard practice to exclude from the FOPs electricity which was shown not to be used in production of subject merchandise. Based on the record, electricity that Starbright reported for the energy department and the supporting department is used for such things as repairs, storage and transport, quality testing, and other supporting departments.[63] While Titan argues that Starbright's description of the uses of this electricity appears to be based on a "narrow construction of what constitutes 'manufacturing expenses,'" we find that Starbright has adequately demonstrated that this electricity in particular is not directly used in the production of subject merchandise.[64] Thus, for the final results we have not included electricity for the energy and supporting departments in Starbright's electricity consumption, consistent with our practice.[65]

Comment 7: Correction of Alleged Ministerial Errors

- Starbright argues that the Department made two ministerial errors that need correction: 1) WPI inflator amounts used to adjust several surrogate values were incorrectly copied from the WPI, and 2) the "Purchases of Finished Goods" and "Retirement Gratuities" line item

[61] *See* Starbright's Response to Allegations of New Factual Information and Starbright Supp Sec D Resp (August 17, 2010) at Exhibit SD-14.

[62] *See, e.g., Silicon Metal/PRC (January 19, 2011)* and accompanying IDM at Comment 3; *Silicon Metal/PRC (January 12, 2010)* and accompanying IDM at Comment 13; *Frontseating Service Valves/PRC (March 13, 2009)* and accompanying IDM at Comment 12g*; Activated Carbon (March 2, 2007)* and accompanying IDM at Comment 6; *Honey/PRC (October 4, 2001)* and accompanying IDM at Comment 16; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 18.H .

[63] *See* Starbright Supp Sec D Resp (August 17, 2010) at Exhibit SD-14.

[64] *Id.*

[65] *See Silicon Metal/PRC (January 19, 2011)* and accompanying IDM at Comment 3; *Silicon Metal/PRC (January 12, 2010)* and accompanying IDM at Comment 13.

amounts in the Goodyear's financial ratio calculations do not match the amounts in the corresponding income statement.[66]

Department's Position: We reviewed the monthly WPI inflators used to calculate the surrogate values for pine oil and brokerage and handling[67] in the *Preliminary Results* and found that the inflators for March 2008 through June 2009 were incorrectly copied from the Indian Wholesale Price Index; the WPI inflators used for March 2008 through June 2009 correspond with the Indian Wholesale Price Indices for May 2008 through August 2009. The WPI inflators used for July and August 2009 are correct.[68]

We also reviewed Goodyear's financial ratios worksheet and found that the values used in the Department's calculation for "Purchases of Finished Goods" and "Retirement Gratuities" were incorrect in that they do not match the amounts reported in Goodyear's income statements.[69]

Therefore, we have amended 1) the WPI inflators for March 2008 through June 2009 so that they match the Indian Wholesale Price Indices of the corresponding months, and 2) the amounts for "Purchases of Finished Goods" and "Retirement Gratuities" used to calculate Goodyear's financial ratios so that they match the amounts reported in Goodyear's income statements.

Comment 8: Valuation of Wage Rate

- Titan argues that the Department's new methodology for valuing wage rates is flawed because: 1) the new method is limited to a simple comparison of relative GNI resulting in a low standard in the selection of eligible countries that are economically comparable; 2) the Department's criteria for selecting "significant producers" of merchandise could include countries with very small exports, re-exports (*i.e.*, not producing countries), or only exports under special circumstances; 3) the Department changed its standards from using earnings only to both earnings and wages; 4) the Department used an arbitrary range of countries (*i.e.*, bookends) it would consider in the surrogate wage calculation.[70]

- Titan and Bridgestone argue that the Department should use a surrogate labor rate calculated from the financial statements of the surrogate producers which the Department has already found to be appropriate for calculating financial ratios. Alternatively, if the Department rejects this suggestion, Titan and Bridgestone argue that the Department should then choose

[66] Starbright cites to the following in support of its argument: Prelim SV Memo at Attachment II, Attachment VI.

[67] Pursuant to Comment 9 of this IDM, we are not deflating brokerage and handling in the final margin calculation.

[68] *See* Prelim SV Memo at Attachment II.

[69] *See* Prelim SV Memo at Attachment VI.

[70] Titan cites the following cases in support of its argument: *Coated Paper/PRC (September 27, 2010)* IDM at 30; Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); *Antidumping Methodologies (October 19, 2006).*

more appropriate "bookends" to use when selecting countries considered comparable to China in terms of GNI.[71]

- Starbright contends that Titan and Bridgestone's proposed methodology for calculating wage rates from financial statements is inconsistent with Department practice and should be rejected. Moreover, if the Department agrees with Titan that the wage rate should be revised, Starbright asserts that the Department should then use the Indian wage rate data from its regression model[72]

Department's Position: We continue to find the industry-specific ILO labor data (using Sub-Classification 25 data) from multiple countries to be the best source for determining the labor surrogate value in this case, as explained below.

In *Dorbest (Fed. Cir. 2010),* the 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 and is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For the final results of this review, we continue to calculate an hourly wage rate by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC reported under ILO ISIC-Rev.3 Sub-Classification 25 for Manufacture of rubber and plastics products.[73]

Section 773(c)(4) of 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.[74]

In analyzing economic comparability, the Department acts in accordance with 19 CFR 351.408 by placing primary emphasis on GNI in determining economically comparable surrogate countries.[75] In the *Preliminary Results*, the Department selected six countries for consideration

[71] Titan and Bridgestone cite the following in support of their argument: *Silicon Metal/Russia (February 11, 2003)* IDM at 7; *Citric Acid/PRC (April 13, 2009)* and accompanying IDM at Comment 5A; *WBF/PRC (July 29, 2010)* and accompanying IDM at Comment 4.

[72] Starbright cites the following in support of its argument: *Honey/PRC (November 3, 2003)* and accompanying IDM at Comment 4 (citing *Yantai (CIT 2002)*); *Garlic/PRC (December 4, 2002)* and accompanying IDM at Comment 6; *Honey/PRC (October 31, 2003)* and accompanying IDM at Comment 2; *Replacement Glass Windshield/PRC (February 12, 2002)* and accompanying IDM at Comment 7; section 773 (c)(4); *Dorbest (Fed. Cir. 2010)* at 1371-72.

[73] *See Preliminary Results* at 64264-64265.

[74] *See* Surrogate Country Letter.

[75] The Department notes that 19 CFR 408(b) specifies that the "Department places primary emphasis on per capita 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 (March 21, 2007)* at footnote 2.

as the primary surrogate country for this review based on the Surrogate Country Memo.[76] From the list of countries contained in the Surrogate Country Memo, the Department for the purpose of valuing labor used the country with the highest GNI (*i.e.,* Peru) 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 2008 that fell between the "bookends." This resulted in 43 countries, ranging from India (with USD 1,040 GNI) to Peru (with USD 3,990 GNI), that the Department considers economically comparable to the PRC.[77]

Notwithstanding Bridgestone and Titan's argument that the Department should expand the bookends, either by using an absolute or relative range of GNIs of countries relative to the PRC, we have determined to not revise the bookend countries for the final results in this review. As we stated in *Coated Paper/PRC (September 27, 2010)*,[78] the Department finds that the selection of the range of economically comparable countries based on GNIs is reasonable and consistent with the statute. As a preliminary matter, neither Bridgestone nor Titan provides a legal basis for the argument that the Department should use relative GNI ranges when determining economically comparable countries for purposes of determining wage rates. The Department has a long-standing and predictable practice of selecting economically comparable countries on the basis of GNI, and nothing in Bridgestone's submissions undermines the reasonableness of that practice. While Bridgestone also requests that the Department expand the high bookend country by the same absolute difference between the GNIs of the PRC and India, in order to include Colombia, again, we disagree. The absolute difference between the lower bookend and the PRC (USD 1,900) and upper bookend and the PRC (USD 1,050) in this case is USD 850[79]—an unsubstantial amount considering the broad range of worldwide GNIs available and the absolute range of GNIs for economically comparable surrogates in this review (USD 2,950). The Department determines that an exact balance of countries with GNIs above and below the PRC is unnecessary for arriving at the best available wage value. The Department resolves that there is not an exact, absolute, and/or equidistant range of countries with GNIs relative to the PRC that can denote economic comparability.[80] Moreover, it would be unreasonable to expect that the Department can or should always ensure that the upper range and lower range are equivalent since the underlying data does not permit such mathematical precision.

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 numbers 4011.20, 4011.61, 4011.62, 4011.63, 4011.69, 4011.92, 4011.93, and 4011.94, the six-digit HTS codes identified in the scope of this order)[81] between 2007 and 2009.[82] In this case, we have defined a "significant producer" as a country that has exported comparable merchandise during the period 2007 through 2009. After screening for countries that had exports of comparable merchandise, we determine that 24 of the 43 countries designated as economically comparable to the PRC are also significant producers. Accordingly, for purposes of valuing

[76] *Preliminary Results* at 64261*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 Cntry Letter.
[77] *See* Prelim SV Memo at Attachment V.
[78] *See Coated Paper/PRC (September 27, 2010)* and accompanying IDM at Comment 30.
[79] India's 2008 GNI is USD 1,040, the PRC's 2008 GNI is USD 2,940, and Peru's 2008 GNI is USD 3,990.
[80] *See Aluminum Extrusions/PRC (April 4, 2011)* and accompanying IDM at Comment 1.
[81] *See Preliminary Results* at 64260.
[82] The export data is obtained from Global Trade Atlas ("GTA").

wages for the final results, the Department determines the following 24 countries out of 43 countries designated as economically comparable to the PRC are also significant producers of comparable merchandise: Albania, Belize, Bolivia, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, Honduras, India, Indonesia, Jordan, Morocco, Nicaragua, Paraguay, Peru, Philippines, Sri Lanka, Swaziland, Syria, Thailand, Tunisia, and Ukraine.[83]

With respect to Titan's argument that the Department's methodology for defining "significant producer" is flawed, we disagree. 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.[84] Moreover, while the legislative history provides that the "term 'significant producer' includes any country that is a significant net exporter,"[85] 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 *WBF/PRC Prelim (March 3, 2010)*,[86] 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.

The Department then identified which of these 24 countries also reported the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B "earnings," if available, and "wages" if not. 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 period of review using the relevant CPI.[87] Of the 24 countries that the Department has determined are both economically comparable and significant producers, 16 countries, *i.e.*, Albania, Belize, Bolivia, El Salvador, Fiji, Guatemala, Guyana, Honduras, India, Morocco, Nicaragua, Paraguay, Sri Lanka, Swaziland, Syria, and Tunisia 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.[88]

[83] *See* Prelim SV Memo at Attachment V.

[84] *See* section 773(c) of the Act; *Nation Ford Chem. (Fed. Cir. 1999)* at 1377.

[85] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

[86] *See WBF/PRC Prelim (March 3, 2010)*, unchanged in *WBF/PRC (July 29, 2010).*

[87] Under the Department's regression analysis, the Department limited the years of data it would analyze to a two-year period. *See Antidumping Methodologies (October 19, 2006)* 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 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 Calculation Methodology (June 30, 2005)* at 37762. 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* Prelim SV Memo at Attachment V for the CPI data used in the instant case.

[88] *See* International Labor Organization's Yearbook of Labor Statistics.

With respect to Titan's argument that the Department should not use "wages" data, but only "earnings" data, we disagree. As we stated in *TRBs/PRC (January 19, 2011),*[89] under the industry-specific methodology, 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 to 60+ countries using only earnings. Given that the current basket in this administrative review now includes significantly fewer countries, the Department finds 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, Peru and Thailand, reported only a "wage" rate. Thus, if earnings data is unavailable from the base year (2008) and the previous five years (2003-2007) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use "wages" data, if available, from the most recent of the base year or previous five years for those countries. The hierarchy for data suitability is described in the *Antidumping Methodologies (October 19, 2006)* and 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.

With regard to Starbright's assertion that we should rely on the Indian wage data from the Department's regression model, we disagree. 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 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 finds to be preferable. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable MEs.[90] 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 1,880 and USD 3,690), the hourly wage rate spans from USD 0.52 to USD 2.29.[91] Additionally, although both Indonesia and Ecuador have GNIs below USD 3,700, and both could be considered economically comparable to the PRC, Indonesia's observed wage rate is USD 0.52, as compared to Ecuador's observed wage rate of USD 2.29 – over four times that of Indonesia.[92] 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

[89] *See TRBs/PRC (January 19, 2011)* and accompanying IDM at Comment 17.

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

[91] *See* Prelim SV Memo at Attachment V.

[92] *See id.*

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 that also meet 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 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.[93]

Titan and Bridgestone have also requested that the Department use data from the surrogate financial statements of Indian producers of comparable merchandise. As discussed above, we find that data from one country does not constitute the best available information for valuing the wage rate. Moreover, as stated in *Shrimp/Vietnam (August 9, 2010),*[94] the Department disagrees with the proposal to derive wage rates from financial statements because the manner in which each company reports labor costs varies. For example, as most financial statements do not report the number of manufacturing working hours, the Department would only be able to obtain a wage rate based on output instead of hours worked.

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 25 of the ISIC-Revision 3 standard by countries determined to be both economically comparable to

[93] The statute recognizes the Department's discretion to source factor data from more than one country. *See* section 773(c)(1) of the Act ("the valuation of the factors of production shall be based on the best available information . . . in a market economy country *or countries* considered to be appropriate. . . ." (emphasis added)); section 773 (c)(4) of the Act ("in valuing factors of production {Commerce} . . . shall utilize . . . the prices or costs of factors of production in *one or more market economy countries* . . . ." (emphasis added)). 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 a mandate in all cases. 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.

[94] *See Shrimp/Vietnam (August 9, 2010)* and accompanying IDM at Comment 9.

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 Nation, 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 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.

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 pneumatic OTR tires. Under the ISIC-Revision 3 standard, the Department identified the two-digit series most specific to pneumatic OTR tires as Sub-Classification 25, which is described as "Manufacture of rubber and plastics products." The explanatory notes for this sub-classification states that this sub-classification includes the "manufacture of pneumatic tyres and solid or cushion tyres; manufacture of tyres designed for use on off-the-road vehicles or equipment such as aircraft or bulldozers; manufacture of inner tubes for the tyres described above; manufacture of tyre parts such as interchangeable tyre treads, or tyre flaps."[95] 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 25 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 25, we used the most specific wage data available within this revision.

From the 24 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. Of these 24 countries, the following eight reported industry-specific data under the ISIC-Revision 3, under Classification 25, "Manufacture of rubber and plastics products:" 1) Ecuador, 2) Egypt, 3) Indonesia, 4) Jordan, 5) Peru, 6) Philippines, 7) Thailand, and 8) Ukraine. The following sixteen, however, did not report wage or earnings data on an industry-specific basis: 1) Albania, 2) Belize, 3) Bolivia, 4) El Salvador, 5) Fiji, 6) Guatemala, 7) Guyana, 8) Honduras, 9) India, 10) Morocco, 11) Nicaragua, 12) Paraguay, 13) Sri Lanka, 14) Swaziland, 15) Syria, and 16) Tunisia. Accordingly, these sixteen countries are

[95] *See* Prelim SV Memo at Attachment V. While the Department prefers to use the most specific wage data available within the selective 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.

not included in our wage rate calculation.[96]

Based on the above, the Department relied on data reported under ISIC-Rev.3. Sub Classification 25 "Manufacture of rubber and plastics products" from the following countries to arrive at the industry-specific wage rate calculated for this review: Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, and Ukraine. Following the foregoing methodology, the wage rate to be applied in the final results is 1.48 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 (Fed. Cir. 2010)* and the statutory requirements of section 773(c) of the Act.

Comment 9: Valuation of Brokerage and Handling

- Bridgestone argues that the Department should not deflate brokerage and handling costs because they cover a period that is contemporaneous with the POR.

- No other party commented on this issue.

Department's Position: Bridgestone placed evidence on the record after the *Preliminary Results* which indicates that brokerage and handling costs should not have been deflated because the data used to value this expense were contemporaneous with the POR.[97] Since the record clearly indicates that the data for brokerage and handling costs were contemporaneous with the POR, we have not deflated brokerage and handling for the final results.

Comment 10: Valuation of RSOFT

- Bridgestone asserts that the Department should modify its calculation of the RSOFT value to conform to the Department's practice to use daily exchange rates when converting foreign currencies.[98]

Department's Position: In the *Preliminary Results*, the Department selected a surrogate value for RSOFT which was denominated in Indian rupees.[99] It is the Department's practice, pursuant to section 773A of the Act, to use its official daily exchange rate in effect on the date of sale when it is necessary to convert foreign currencies into U.S. dollars. Therefore, for the final results, we have applied daily exchange rates based on the date of sale to all surrogate values denominated in foreign currencies, pursuant to section 773A of the Act.

Comment 11: Selection and Calculation of Financial Ratios

[96] India was not included in the calculation of the wage rate because India did not have wage/earnings data reported under this particular ISIC industry category. Therefore, we have not addressed Bridgestone's argument that the Indian wage data is flawed.

[97] *See* Bridgestone's Post-Prelim SV Sub at Attachment 2.

[98] Bridgestone cites the following in support of its argument: Prelim Analysis Memo at Attachment II.

[99] *See* Prelim SV Memo at 2.

- Bridgestone argues that the Department should make a number of changes to the preliminary surrogate financial ratio calculations.

    A) The Department should exclude income that relates to prior years (*e.g.* the line item "Liabilities/Provision no longer required written back") from Goodyear's financial statement.
    B) The Department should classify retirement contributions from Goodyear's financial statement as manufacturing overhead.
    C) The Department should classify raw materials processing costs from TVS's financial statement as manufacturing overhead.
    D) The Department should use both the 2008 and 2009 financial statements of Goodyear.[100]

- Starbright rebuts that the Department appropriately chose to use Goodyear's 2008 financial statement when calculating financial ratios. Starbright contends that the Department should not also use Goodyear's 2009 financial statements, since that would produce a distorted financial ratio and because it is contrary to the Department's practice to use a single set of financial statements from each company.[101]

Department's Position: For the final results, we have excluded a portion of "Liabilities/Provision no longer required written back" and reclassified "Retirement Gratuities" as manufacturing overhead in Goodyear's 2008 financial statement for the surrogate financial ratios.

A) With respect to "Liabilities/provision no longer required written back," contained in Goodyear's 2008 financial statement, we have reviewed the financial statement to determine what can be discerned about this item. As a result, and consistent with our practice,[102] we have excluded for the final results a portion (Rs. 53,952 of the total Rs. 66,158) of this line item that we were able to determine relates to a previous year, based on the notes to the financial statements.[103] Conversely, we have continued to include Rs. 12,206 as an offset to SG&A in the calculation of the financial ratios because there is no indication in the financial statements that these expenses were not related to the general operations of the company during the fiscal year covered by the statement.

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[100] Bridgestone cites the following in support of its argument: *Chlorinated Isos/PRC (September 10, 2008)* and accompanying IDM at Comment 5B; *Antidumping Methodologies (October 19, 2006)* at 61716, 61721; *Carrier Bags/PRC (February 11, 2009)* and accompanying IDM at Comment 3; *Woven Electric Blankets/PRC (July 2, 2010)* and accompanying IDM at Comment 3; *WBF/PRC Prelim (August 17, 2009)* and accompanying IDM at Comment 16; *Malleable Pipe/PRC (October 28, 2003)* and accompanying IDM at Comment 3; *WBF/PRC (August 22, 2007)* and accompanying IDM at Comment 17D; *Circular Welded Carbon Steel/Thailand (November 29, 2010)*.

[101] Starbright cites the following in support of its argument: *Shrimp/Vietnam (September 9, 2008)* and accompanying IDM at Comment 3; *Honey/PRC* (*February 25, 2005)* and accompanying IDM at Comment 3; *WBF/PRC (August 22, 2007)* and accompanying IDM at Comment 17D; *Circular Welded Carbon Steel/Thailand (November 29, 2010)*.

[102] *See Chlorinated Isos/PRC (September 10, 2008)* and accompanying IDM at Comment 5B.

[103] *See* Starbright's SV Sub at Exhibit SV-9 (Goodyear's 2008 financial statements at p. 37, note "(q) i)").

B) In the *Preliminary Results*, we classified Goodyear's "Retirement Gratuities" as a direct labor expense. This expenditure relates to the retirement contributions of an employer on behalf of its employees. The wage rate definitions published by the ILO state that "earnings exclude employers' contributions in respect of their employees paid to social security and pension schemes."[104] Because retirement contributions are not included in the ILO wage rates that we use as the source of the surrogate labor valuation, we should not have included them in the labor costs used to calculate the surrogate financial ratios. Accordingly, we have re-classified "Retirement Gratuity" as manufacturing overhead for the purpose of the final results, consistent with prior practice.[105]

C) TVS's financial statement includes a note that the line "Purchases – Raw Materials" includes "processing charges" of Rs. 744.62 lakhs. In the initial investigation[106] and the *Preliminary Results*, the Department classified the entire line item as part of the ML&E denominator.

Because we cannot go behind line-items in the surrogate financial statements, it is the Department's longstanding practice not to make adjustments that may introduce unintended distortions into the data rather than achieving greater accuracy and, therefore, we properly have not attempted to reclassify part of the raw materials cost in TVS's financial statement.[107] There is no information in TVS's financial statements indicating to what these processing charges refer, other than being related to purchases of raw materials. Therefore, we find it appropriate to continue to classify the entire line item of "Purchases – raw materials" as materials in the ML&E denominator of the surrogate financial ratio calculations.

Furthermore, we find to be inapposite the cases that Bridgestone cites: *Carrier Bags/PRC (February 11, 2009)*; *Woven Electric Blankets/PRC (July 2, 2010)*; *WBF/PRC Prelim (August 17, 2009)*; *Malleable Pipe/PRC (October 28, 2003)*. In none of the cases cited do "processing costs" appear to have been embedded in the raw materials purchases line item, as they are in the instant review. Thus, we have not reclassified the "processing charges" portion of raw materials as manufacturing overhead.

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[104] *See* Bridgestone's Post-Prelim SV Sub at Attachment 3.

[105] *See Antidumping Methodologies (October 19, 2006)* at 61721; *Folding Metal Tables/PRC (January 18, 2006)* and accompanying IDM at Comment 1B; *Shrimp/PRC (September 12, 2007)* and accompanying IDM at Comment 3B; *Persulfates/PRC (February 14, 2006)* and accompanying IDM at Comment 3; *TRBs/PRC (January 19, 2011)* and accompanying IDM at Comment 16. *See also Zhengzhou Harmoni (CIT 2009)* at 1327-1334.

[106] *See* Bridgestone's Factual Info Sub at Exhibit 15 (Attachment 8).

[107] *See Free Sheet Paper/PRC (October 25, 2007)* and accompanying IDM at Comment 4; *Shrimp/PRC (September 12, 2007)* and accompanying IDM 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.); *Brake Rotor/PRC (January 25, 2005)* and accompanying IDM at Comment 3 (citing *Magnesium Corp (CIT 1996)*, stating "{t}he statute does not require the Department to value each individual element in a non-market economy case. As the Court of International Trade noted, the Department is not required to do an item-by-item analysis in calculating factory overhead"); *Carbazole Violet/PRC (November 17, 2004)* and accompanying IDM at Comment 14 (citing *Pure Magnesium (September 27, 2001)* and accompanying IDM 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")); *WBF/PRC (November 17, 2004)* and accompanying IDM at Comment 12.

D) Consistent with the *Preliminary Results* and the Department's practice, we have only used Goodyear's 2008 financial statement because it covers more of the POR than Goodyear's 2009 financial statement and because it goes against the Department's practice to use two financial statements from the same company for a single POR.[108]

In *Shrimp/Vietnam (September 9, 2008)*, we concluded that "in this and future reviews, the Department intends to use one set of financial statements from a company that overlaps the most months of the appropriate POR, when the record contains multiple financial statements from the same company." Moreover, as we observed in *Shrimp/Vietnam (September 9, 2008)*, "averaging multiple financial statements from the same company results in a derivation of financial ratios based on data that is less contemporaneous and creating a temporally less representative method for deriving financial ratios than simply using the most contemporaneous financial statements."

Furthermore, the cases cited by Bridgestone are unsuited to the facts of this review. In *WBF/PRC (August 22, 2007)*, the Department used two financial statements from the same company because they both covered exactly half of the POR.[109] In *Circular Welded Carbon Steel/Thailand (November 29, 2010)*, the Department calculated a selling and general expense ratio for a ME respondent company, using that company's own financial statement(s); moreover, the case cited is an amended final of a ME case and is correcting for an error in the use of a financial statement from the wrong year.

Comment 12: Whether to Grant MOE Treatment

- Starbright argues that the Department was wrong not to utilize a market economy AD methodology to calculate Starbright's AD rate. Furthermore, Starbright argues that the record demonstrates that Starbright is a *bona fide* MOE and should have been issued a market economy AD questionnaire. Moreover, Starbright asserts that the Department's failure to issue a market economy questionnaire to Starbright is a violation of law.[110]

- Bridgestone rebuts that there is no statutory or legal basis for MOE treatment of an individual enterprise, as Starbright is requesting; and, Bridgestone asserts that Starbright has failed to demonstrate that its prices are derived from reliable costs. Furthermore, Bridgestone contends that, contrary to Starbright's claims, the Department has not made any promises of market economy treatment. Additionally, Bridgestone alleges that there are no standards for determining what constitutes MOE status. Finally, Bridgestone maintains that even if the Department could treat Starbright as an MOE, Starbright did not take the opportunity to submit data onto the record that would allow the Department to do so.[111]

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[108] *See, e.g., Shrimp/Vietnam (September 9, 2008)* and accompanying IDM at Comment 3; *Honey/PRC* (*February 25, 2005)* and accompanying IDM at Comment 3.

[109] *See WBF/PRC (August 22, 2007)* and accompanying IDM at Comment 17D.

[110] Starbright cites the cases in support of its argument: Georgetown Memo; *Antidumping Methodologies (May 25, 2007); Antidumping Methodologies (October 25, 2007)*; *GPX (CIT 2009)*.

[111] Bridgestone cites the following in support of its argument: section 773(c)(1) of the Act ; *Protocol on the Accession Of The People's Republic of China to the World Trade Organization*, paras. 15(a) and (d), WT/L/432 (November 10, 2001); Normal Trade Relations for the People's Republic of China, Pub. L. 106-286, 114 Stat. 880;

- Titan rebuts that Starbright's claims to MOE status have previously been rejected by the Department and sustained by the CIT. Titan further contends that Starbright cannot be separated from the NME environment in which it operates and that a CVD proceeding does not imply that a company is an MOE. Moreover, Titan asserts that Starbright has failed to demonstrate that its costs are market-determined and can be reliably used in a market economy analysis.[112]

Department's Position: We disagree with Starbright that the Department erred by not utilizing ME methodology to calculate its AD rate, and we continue to find that the NME methodology is the best way to calculate Starbright's margin for the final results.

The antidumping statute and the Department's regulations are silent with respect to the term "MOE." Neither the statute nor the regulations compel the agency to treat some constituents of the NME industry as MOEs while treating others as NME entities. To date, the Department has not adopted any MOE exception to the application of the NME methodology in any proceeding involving an NME country. As we stated in *Free Sheet Paper/PRC (October 25, 2007)*, and accompanying IDM at Comment 1, no determination has been made "whether it would be appropriate to introduce a market oriented enterprise process" in NME antidumping proceedings. We note that Starbright has presented the same criteria for MOE treatment here as those that Starbright presented in the LTFV investigation. Under protest in the subsequent remand redetermination, the Department evaluated Starbright's request for MOE treatment in the underlying investigation and the specific criteria identified therein, and found that MOE treatment was not warranted. [113] This determination was upheld by the Court.[114]

Speaking to the complexity of the issue, the Department has twice asked for public comment on whether it should consider granting market-economy treatment to individual respondents operating in non-market economies, the conditions under which individual firms should be granted market-economy treatment, and how such treatment might affect antidumping calculations for such qualifying respondents.[115] The Department received numerous comments in response to the two *Federal Register* notices. The Department is still considering those comments while evaluating whether to adopt an official policy concerning MOEs.

Pursuant to section 771(18)(A) of the Act, when a country is determined to be an NME, it means that the designated country, in this case the PRC, "{d}oes not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise." In accordance with section 771(18)(C)(i) of the Act, the presumption

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Coated Paper/PRC (September 27, 2010) and accompanying IDM at Comment 7; *GPX (CIT 2009)* at 1235; *GPX (CIT 2010)* at 1347-1348; Georgetown Memo; *Antidumping Methodologies (October 25, 2007)* at 60650; *GPX Redetermination (CIT 2010)*; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 75.

[112] Titan cites the following in support of its argument: *Coated Paper/PRC* (May 6, 2010) at24896-24897; *Coated Paper/PRC (September 27, 2010)* and accompanying IDM at Comment 7; *GPX (CIT 2010)*; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 1.

[113] *See GPX Redetermination (CIT 2010)* at 16-20.

[114] See *GPX (CIT 2010)* at 13-15.

[115] *See Antidumping Methodologies (May 25, 2007)* at 29302-03; *Antidumping Methodologies (October 25, 2007).*

of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for the purpose of this administrative review. Accordingly, the NV of the product is appropriately based on FOPs valued in a surrogate ME country in accordance with section 773(c) of the Act, a methodology that has been repeatedly upheld by the Courts. *See, e.g., Sigma Corp. (Fed. Cir. 1997)* at 1405; *Nation Ford Chem. (Fed. Cir. 1999).*

Under the NME presumption established by the statutory scheme, the only mechanism for market economy treatment currently available to respondents in NME proceedings is an MOI classification. The Department currently employs an industry-wide test to determine whether, under section 773(c)(1)(B), available information in the NME country permits the use of the ME methodology for the NME industry producing the subject merchandise. The MOI test affords NME-country respondents the possibility of market economy treatment, but only upon a case-by-case, industry-specific basis. This test is performed only upon the request of a respondent or the foreign government.[116] Starbright did not request MOI classification in this review.

Comment 13: Double Remedies

- Starbright argues that record evidence clearly shows double counting will occur if AD duties calculated under the NME methodology and CVD duties are both imposed on Starbright in this review. As such, Starbright states that it would be unlawful for the Department to not account for imposed CVD duties when calculating AD duties.[117]

- Titan rebuts that the Department should remain consistent with precedent and maintain the position it is currently defending in court regarding double remedies, as the court's decision may still be reversed. Titan further argues that the statute does not support Starbright's argument, and that Starbright failed to prove the economic assumption underlying its argument that subsidies "pass through" to buyers in the form of lower prices.[118]

- Bridgestone rebuts that the record evidence does not show double counting occurs in the instant review, and that neither economic theory nor the court's stand in current, relevant proceedings require the Department to account for CVD duties in its AD margin calculation.

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[116] *See, e.g., Antidumping Methodologies (May 25, 2007)*; *Coated Paper/PRC (September 27, 2010)* and accompanying IDM at Comment 1.

[117] Starbright cites to the following in support of its argument: *GPX (CIT 2009)*; NME Memo*;* Georgetown Memo; *Free Sheet Paper/PRC (October 25, 2007)* and accompanying IDM at Comment 2; *Lock Washers/PRC (November 19, 1997)* and accompanying IDM at Comment 1; *Cold-rolled Carbon Steel/Korea (October 3, 2002)*; *Preliminary Results*; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at 14; *KASR/PRC (July 24, 2009)* and accompanying IDM at 10-11; *Circular Welded Line Pipe (March 31, 2009)* and accompanying IDM at 36-37; *Enriched Uranium/France (August 3, 2004)* at 46506; *GAO Report* at 27-28; *GAO USCC Testimony* at 18; *Timken (CIT 1986)* at 1333; *Freeport (Fed. Cir. 1995)* at 1034; *Timken (CIT 2001)* at 629-630; *Wieland-Werke (CIT 1998)* at 1212; *Rhone-Poulenc (CIT 1996)*; *Transcom (Fed. Cir. 2002)*; *British Steel (CIT 1996)* at 699; *LTV (Fed. Cir. 1999); NLRB (1979)*; *United Scenic Artists (D.C. Cir. 1985); Sec'y of Labor (D.C. Cir. 1998)*; *National Mining (D.C. Cir. 1999)* at 911*; Daewoo (CIT 1989)*; *Daewoo (Fed. Cir. 1993)*; *Nippon (Fed. Cir. 2003)*; *Dorbest (CIT 2006); GPX (CIT 2009)* at 13, 18.

[118] Titan cites to the following in support of its argument: *GPX (CAFC 2011)*; *Shrimp/PRC (September 12, 2007)* and accompanying IDM at Comment 4; *Shrimp/Vietnam (September 15, 2009)* at Comment 4; *Polyester Staple Fiber/PRC (January 11, 2010)* and accompanying IDM at Comment 1; *Daewoo (Fed. Cir. 1993)*; *Committee Portland Cement (Fed. Cir. 1994)*; Starbright's Case Brief at 30-31.

Therefore, Bridgestone avers that the Department should take no action regarding this issue.[119]

Department's Position: The Department disagrees with Starbright that the concurrent application of AD NME methodology CVD law results in a double remedy. Section 701 of the Act requires that the Department apply CVD law to firms including those in the PRC. While the Act does not expressly address the issue of concurrent application of CVD law and AD NME methodology, section 772(c)(1)(C) of the Act is instructive. Section 772(c)(1)(C) of the Act provides for an adjustment to the AD calculation to offset CVDs based on export subsidies. Section 772(c)(1)(C) of the Act, combined with the absence of any such corresponding adjustment to offset domestic subsidies, strongly suggests that Congress did not intend for any adjustment to be made to offset domestic subsidies.[120]

The AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices. The CVD law provides for the imposition of duties to offset foreign government subsidies. Such subsidies may be countervailable regardless of whether they have any effect on the price of either the merchandise sold in the home market or the merchandise exported to the United States. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. With the exception of section 772(c)(1)(C) of the Act, AD duties are calculated the same way regardless of whether there is a parallel CVD proceeding.

With respect to section 772(c)(1)(C) of the Act, the legislative history of the export subsidy adjustment establishes only that Congress considered it to satisfy the obligations of the United States under Article VI: 5 of the GATT. The legislative history does not suggest specific assumptions about whether foreign government subsidies lower prices in the United States (*i.e.*, contribute to dumping)[121] and, in fact, is not solely concerned with the effects of subsidies in the

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[119] Bridgstone cites to the following in support of its rebuttal: Starbright's Case Brief at 23, 29-34, 38; *United States (2009); Lasko (Fed. Cir. 1994)*; *Zenith (1978)*; *Kajaria (Fed. Cir. 1998)*; *GPX Redetermination (CIT 2010); Lopez (2001)*; *Amendola (Fed. Cir. 1993)*; *GPX (CIT 2010)* at 1345; *OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 2; *Al Tech (CIT 1986)* at 1430; *Enriched Uranium/France (August 3, 2004)* at 46506; *Carbon and Alloy Pipe/PRC (September 21, 2010)* and accompanying IDM at Comment 2; *Shandong Huarong (CIT 2007)*; *SKF (CIT 2000)*; *SKF (CIT 1999); SKF (Fed. Cir. 1999)*; *AD CVD Final Rule (May 19, 1997)*; *Magnesia Carbon Bricks/PRC (August 2, 2010)* and accompanying IDM at Comment 2; *GPX (CAFC 2011).*

[120] *See Central Bank of Denver (1994)* ("Congress knew how to impose aiding and abetting liability when it chose to do so. If, as Starbright seems to say, Congress intended to impose aiding and abetting liability, we presume it would have used the words 'aid' and 'abet' in the statutory text. But it did not."); *Blue Chip Stamps (1975)* ("When Congress wished to provide a remedy . . . it had little trouble in doing so expressly."); *Franklin Nat'l Bank (1954)* (finding "no indication that that Congress intended to make this phrase of national banking subject to local restrictions, as it has done by express language in several other instances"); *Meghrig (1996)* ("Congress . . . demonstrated in CERCLA that it knew how to provide for the recovery of clean up costs, and . . . the language used to define the remedies under RCRA does not provide that remedy"); *NextWave Personal (2003)* (when Congress has intended to create exceptions to bankruptcy law requirements, "it has done so clearly and expressly"); *Dole (2003)* (Congress knows how to refer to an "owner" "in other than the formal sense," and did not do so in the Foreign Sovereign Immunities Act's definition of foreign state "instrumentality"); *Whitfield (2005)* ("Congress has imposed an explicit overt act requirement in 22 conspiracy statutes, yet has not done so in the provision governing conspiracy to commit money laundering.").

[121] Trade Agreements Act of 1979, Report of the Committee on Finance United States Senate on H.R. 4537, July 17, 1979, 96th Cong., 1st Sess. Rep. No. 96-249; Trade Agreements Act of 1979, SAA , H. Doc. No. 96-153, Part II (1979) ("SAA") at 412.

United States. Thus, although the Act requires a full adjustment of AD duties for CVDs based on export subsidies in all AD proceedings, it provides no basis for concluding that Congress's action was based on any specific assumptions about the effect of other subsidies upon export prices.

Starbright argues that under the NME methodology, the Department compares the export price, presumably reduced by the domestic subsidies, to a NV that has been calculated using non-subsidized surrogate values. Starbright adds that the safeguard against double counting is inherent in the ME methodology, *i.e.,* that section 772 of the Act is non-existent in the Department's NME methodology.

The argument that domestic subsidies inflate dumping margins by lowering export prices assumes that domestic subsidies in NME countries do not affect NV when based on the current NME methodology. However, while NME subsidies may not affect the factor *values* used to calculate NV in an NME proceeding, such subsidies may easily affect the *quantity* of factors consumed by the NME producer in manufacturing the subject merchandise. For example, a domestic subsidy in an NME country may enable a respondent to purchase more efficient equipment in turn lowering its consumption of labor, raw materials, or energy. When the surrogate values are multiplied by the NME producer's lower factor quantities, they result in lower NVs and, hence, lower dumping margins.[122] Any reduction in factor usage by NME producers would reduce normal value in a second manner, because the final factor values are also used to calculate the amounts for SG&A, and profit[123] that are additional components of normal value.

Moreover, in determining NV in NME cases, the Department does not exclusively use factor quantities in the NMEs valued in the surrogate, ME country. Some factors values are based on the prices of imported inputs (priced in the currency of the country from which the inputs were obtained or in U.S. dollars). Given that the input suppliers in these countries are often competing with PRC suppliers of those same inputs, it is fair to conclude that those prices are influenced by subsidies in the PRC.

Finally, in some cases, the NME exports of the subject merchandise will account for a significant share of the world market, enough to influence world market prices. In such cases, particularly where the industry is export oriented or has excess capacity (as is often observed in the PRC), subsidies could increase output and exports from China, which, in turn, would reduce the prices of the good in question in world markets. These lower prices would reduce profits for producers selling in these markets which, in turn, would reduce the profit the Department derives from their financial statements, (used as surrogates for the PRC producers), and, thus, reduce NV.

Starbright argues that the AD NME methodology provides a remedy for any and all countervailable subsidies such that concurrent application of CVDs is necessarily duplicative. The general premise of Starbright's argument is that concurrent application of AD ME methodology and CVD law do not create automatic double remedies in ME proceedings because domestic subsidies automatically lower normal value, and hence the dumping margins, *pro rata*.

[122] *See* section 773(c)(3) of the Act.
[123] *See e.g., Hebei Metals* (CIT 2005) and *Dorbest* (CIT 2006).

The AD NME methodology, on the other hand, produces a normal value that is not affected by subsidies in any way, so that it necessarily exceeds what would have been the ME dumping margin by the full amount of the subsidy, thus creating a double remedy, which the statute requires the Department to offset. The Department disagrees.

There are several reasons why subsidies in ME cases would not necessarily lower the normal value calculated by the Department, *pro rata*, below what it would have been absent any subsidies. Subsidies can be accompanied with conditions attached that reduce the cost savings to the recipient below the nominal amount of the benefit received. For example, subsidy recipients may be required to retain redundant workers, maintain higher levels of production than would be optimum, remain in economically disadvantageous locations, reduce pollution, obtain supplies from favored sources, and so forth. Even if subsidies are unaccompanied by such requirements, it is not necessarily the case that they will contribute to a lower cost of production. For example, subsidies could be paid out as dividends, used to increase executive pay, or wasted in any number of ways.

Further, the Act provides that normal value in ME cases is to be based on home market prices, where possible. Where normal value is based on home market prices, the relationship of subsidies to normal value becomes yet more tenuous. Not only is the extent to which the subsidies will affect costs uncertain but, even to the extent that subsidies may lower costs, the extent to which the producer will pass these cost savings through to home market or third-country prices is uncertain. Basic economic principles indicate that the prices are a function of the supply and demand for the product in the relevant market, so that any cost savings will be reflected in prices only indirectly. Finally, to the extent that domestic subsidies lower normal value in ME cases, they may lower export prices commensurately, so that the dumping margins may not change. Thus, it is not safe to conclude that subsidies in MEs automatically reduce dumping margins, still less that they automatically reduce dumping margins, *pro rata.*

In the OTR Tires investigation and other cases, the Department did not deduct domestic CVDs from U.S. prices because this would have resulted in the collection of total AD duties and CVDs that would have exceeded both independent remedies in full.[124] The Federal Circuit has upheld this position.[125] Similarly, the Department's refusal to treat AD duties and safeguard duties as a cost in AD calculations reflects the Department's effort to collect these distinct remedies in full, but no more.

The Department has explained that the effect of domestic subsidies upon export prices depends on many factors (*e.g.*, the supply and demand for the product on the world market, and the exporting countries' share of the world market), and is therefore speculative.[126] Thus, the

[124] *See, e.g., OTR Tires/PRC (July 15, 2008)* and accompanying IDM at Comment 2; *KASR/PRC (July 24, 2009)* and accompanying IDM at Comment 1.

[125] *See Wheatland Tube (2007)* (reversing *Wheatland Tube Co. v. United States,* 414 F. Supp. 2d 1271 (Ct. Int'l Trade 2006)).

[126] *See OTR Tires/PRC (April 21, 2008)* at 9287.

Department has determined that domestic subsidies do not inevitably reduce export prices, *pro rata*.[127]

In considering the impact of domestic subsidies upon export prices, the form of the subsidy is important because, like export subsidies, some domestic subsidies give domestic producers a greater incentive to increase production than others. A production subsidy (*e.g.*, raw materials at reduced prices) reduces the unit cost of producing that merchandise and, therefore, increases the producer's profit on sales of that merchandise. This may give the producer a commercial incentive to increase production of that merchandise. In an NME, however, it is not necessarily the case that economic decisions are made on the basis of such market forces. In any event, more general subsidies (*e.g.*, general grants or debt forgiveness) would not provide that direct incentive. A foreign producer might use a general subsidy to modernize its plant, pay higher dividends, fund research and development, clean up the environment, make severance payments, increase the production of some other product, or waste the money. Consequently, this type of domestic subsidy will not necessarily result in any increase in production and, therefore, will not necessarily result in any reduction in export prices, still less an automatic *pro rata* reduction.

Even if a producer attempted to respond to a domestic subsidy exclusively by increasing production, it might not be able to do so, at least in the short or medium term. Various constraints (*e.g.*, limits on the supply of raw materials, energy, or transportation) might limit its ability to do so. Moreover, capacity expansion is time-consuming. Thus, it would be incorrect to claim that domestic subsidies automatically result in increased production.

Additionally, even if all producers in an NME country do respond to domestic subsidies by increasing production, it is an uncertainty that this increase would result in lower export prices. For example, if world market prices are increasing, it is an unrealistic assumption that an NME producer that receives a domestic subsidy will reduce its export prices by the full amount of the subsidy, as allocated under the Department's CVD methodology. Increased production and exports will tend to lower export prices *over time*, but this reduction will be neither automatic nor necessarily *pro rata*. For example, in previous cases, the ITC has determined that some PRC producers raised their prices in line with world market prices, despite having received substantial subsidies.[128] Increased export sales will reduce the price of the subject merchandise on world markets only to the extent that the producer or producers in question supply a substantial share of the world market, so that the additional production will drive down prices in that market. Even this will take time and will not occur if other producers in the market reduce production to avoid a price war.

Congress established two separate remedies for what it evidently regards as two separate unfair trade practices. The only point at which the Act requires the Department to reconcile these separate remedies is in the adjustment of AD duties to offset export subsidies. Because neither AD nor CVD duties are concerned with economic distortion, as such, but are simply remedial

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[127] *See, e.g.*, World Trade Organization, *World Trade Report 2006* (page 57), Alex F. McCall and Timothy E. Jostling, *Agricultural Policies and World Markets*, MacMillan Pub. Co., 1985, p. 126-7.

[128] *See OTR Tires/PRC ITC Final Report (August 2008)*, pages IV-5 (Table IV-2), E-3 (Table E-1) and E-6 (Table E-4), and *Steel Pipe/PRC ITC Prelim Report (July 2007)*, pages V-12 ((Table V-3) V-14 (Table V-5), and V-19, showing rising average unit values on imports from China for the years 2005-2007.

duties calculated according to the detailed specifications of the Act, it follows that no overall economic distortion cap for concurrent proceedings can be distilled from the Act.

Starbright's reference to *Enriched Uranium/France (August 3, 2004)* is misplaced. The Department's statement that, "domestic subsidies presumably lower the price of the subject merchandise in the home and the U.S. markets" does not stand for the firm proposition that domestic subsidies are always passed through into export prices, *pro rata*. This is no more than a presumption, and a very limited one. In *Enriched Uranium/France (August 3, 2004)*, the Department noted that not all domestic subsidies are presumed to be fully passed through into domestic and export prices, but that the effect of domestic subsidies on the price in each market presumably was the same, *e.g.*, the reductions in price could be one percent of the subsidy in each market. Similarly, in *Cold-Rolled Steel/Korea (October 3, 2002)* cited by Starbright, the Department refers only to adjusting the AD duties for any CVD determined to be based on export subsidies,[129] and does not find an automatic *pro rata* offset for domestic subsidies.

Also, Starbright's reliance on *GPX (CIT 2009)* and *GPX (CIT 2010)* is misplaced. Those decisions are not final, as parties, including the United States, have exercised their appellate rights.[130] Even if reliance on *GPX (CIT 2009)* and *GPX (CIT 2010)* were not misplaced, those cases do not support the positions attributed to them by Starbright. *GPX (CIT 2009)* did not find a double remedy necessarily occurs through concurrent application of the CVD law and AD NME methodology. Rather, *GPX (CIT 2009)* held that the "potential" for such double counting may exist. The finding of a "potential" for double counting in the *GPX (2009)* decision does not mean that the Department must make an adjustment to its dumping calculations in this administrative review. The SAA places the burden on the respondent to demonstrate the appropriateness of any adjustment that benefits the respondent.[131] In this case, Starbright seeks the adjustment based on a "potential," but has not demonstrated the amount of the adjustment and the entitlement to it. The Department therefore maintains its previously stated position on double remedies.[132] Moreover, the Department does not agree with the CIT's decision and will wait for a final and conclusive decision in that case following the appeal in *GPX*.

Starbright asserts that the fact that the Department may find that an input for a particular product was provided for less than adequate remuneration in a CVD case, and then used an SV for that input in the AD case, proves that the subsidy lowered NV, *pro rata*. This conclusion is not logical. NME methodology involves more than the simple addition of input costs. It is a complex calculation that takes into consideration operating efficiencies, administrative expenses, the cost of capital, and numerous other factors. An SV for one factor of production that is higher than the price actually paid by the respondent company does not necessarily result in a higher dumping margin, nor does a lower SV for one factor of production necessarily result in a lower dumping margin. The individual elements of the NME methodology do not exist in a vacuum; the various elements necessarily work together. Moreover, while Starbright attempted to

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[129] *See Cold-Rolled Carbon Steel Flat Products/Korea (October 3, 2002)* at 62125.

[130] *See GPX (CAFC 2011).*

[131] *See* SAA at 829; 19 CFR 351.401(b)(1) ("The interested party that is in possession of relevant information has the burden of establishing to the satisfaction of the Secretary the *amount* and nature *of a particular adjustment*.") (emphasis added); *Fujitsu (Fed. Cir. 1996)* (explaining that a party seeking an adjustment bears the burden of proving the entitlement to the adjustment).

[132] *See, e.g., KASR/PRC (July 24, 2009)* and accompanying IDM at Comment 1.

illustrate this point using certain inputs in a hypothetical example, it did not provide evidence demonstrating how the CVDs the Department found on these inputs in the companion CVD administrative review lowered NV in this AD case.[133]

The Department is charged with calculating dumping margins as accurately as possible. Starbright fails to identify any item in the dumping margin calculation that is being counted twice. Thus, even if the NV and export price have been determined accurately, Starbright contends that, nevertheless, the difference between these amounts should not be treated as the margin of dumping. Rather, Starbright argues that the CVD law cannot be applied concurrently with the NME AD methodology, and the margin of dumping should be determined as the difference between the normal value and export prices (or constructed export price), less the amount of the CVD determined in a concurrent investigation of subsidies. Contrary to Starbright's assertions, it has provided no evidence of actual double counting in the dumping margin calculation. Accordingly, the accurately calculated dumping margin should be collected in full, except as offset for export subsidies found in the companion CVD proceeding, as the remedy for pricing at less than normal value.

Additionally, we do not agree with Starbright's argument that the Department's conclusion in several prior cases[134] that there is no evidence of a double remedy imposes an impermissible burden of proof on the respondent parties. This would imply that Starbright attempted to furnish some evidence that a double remedy was actually created, but was unable to meet the heavy burden of proof imposed upon it by the Department. Starbright asked the Department to read an automatic 100-percent offset into the Act that would make any evidence concerning the alleged double remedy irrelevant. Even in cases where a clear statutory basis for granting a price adjustment exists, the burden to establish entitlement to that adjustment is on the party seeking the adjustment, which has access to the necessary information.[135]

Moreover, contrary to its assertion, the GAO study cited by Starbright does not create any legitimate doubts about the Department's interpretation of the Act. As an initial matter, the GAO does not administer the antidumping and countervailing duty laws and has no expertise in antidumping or countervailing duty calculations. More importantly, the GAO did not conclude that domestic subsidies were automatically passed through into export prices, *pro rata*. On the contrary, in referring to the possibility of double counting that might result from the simultaneous application of CVDs and the Department's NME AD methodology, the GAO Report stated that "current trade law does not make any specific provision for adjusting antidumping duties in such situations, and the implications of such situations arising are therefore unclear."[136]

Finally, we disagree with Starbright's argument that the Department was contradictory in its statements in the NME Memo and in the Georgetown Memo. The Department notes first that

[133] *See* 19 C.F.R. 351.401(b)(1) ("The interested party that is in possession of relevant information has the burden of establishing to the satisfaction of the Secretary the *amount* and nature *of a particular adjustment*.") (emphasis added).

[134] *See, e.g., Circular Welded Pipe/PRC (March 31, 2009),* and accompanying IDM at Comment 14.

[135] *See* SAA at 829.

[136] *See GAO Report (June 2005)* at 28.

the complete quotes from the referenced sources are as follows. In the NME Memo, we said that, "{w}hile China has enacted significant and sustained economic reforms, our conclusion, as stated in the May 15th memorandum, is that market forces in China are not yet sufficiently developed to permit the use of prices and costs in that country for purposes of the Department's dumping analysis." In the Georgetown Memo, in contrast, we cited a study from the Economist Intelligence Unit, indicating that "market forces now determine the prices of more than 90 percent of products traded in China," in the context that the PRC Government has eliminated price controls on most products, besides certain "essential" goods and services.

Once the complete quotes are read and understood, it is easy to reconcile them. In the NME Memo, the quote is a reference to (1) the government's continued and significant role in the economy, particularly from a resource allocation standpoint and (2) the negative implications for PRC domestic prices from an antidumping perspective. The quote from the Georgetown Memo is actually a quote from the Economist Intelligence Unit. The Department used that quote in a section of the memo concerning price controls, simply to point out that reforms in China had progressed enough that most prices in China now are no longer subject to direct government controls. But de-controlled prices, in the context of the PRC government's overall role in the economy, particularly with respect to resource allocations, are not the same as market-based prices. Thus, we determine that there is no conflict or inconsistency between the positions taken in the two memoranda.

Comment 14: Zeroing

- Starbright alleges that the Department's practice of "zeroing" negative margins in administrative reviews is not in accordance with U.S. law and is inconsistent with WTO findings on the issue. Moreover, Starbright asserts that the Department should, due to an imminent change in practice, eliminate the use of zeroing in the instant review.[137]

- Bridgestone rebuts that the Department is precluded from changing its practice in response to a WTO dispute settlement or an appellate body without Congressional consultation and publication of a final rule in the *Federal Register*. Furthermore, Bridgestone notes that because the *Preliminary Results* were published in October 2010, forthcoming changes in the Department's methodology regarding zeroing of negative margins will not apply in the instant review; hence, Bridgestone asserts that the Department must continue to use its current calculation methodology for the final results.[138]

[137] Starbright cites the following in support of its argument: *Antidumping Proceedings (December 28, 2010)*; section 771(35)(A) of the Act; *Corus Staal (Fed. Cir. 2005)*; *Chevron (1984)*; *SKF (Fed. Cir. 2001)* at 1377, 1379, 1381, 1382; *Charming Betsy (1804)*; *Federal Mogul (Fed. Cir. 1995)* at 1581; *Luigi Bermioli (Fed. Cir. 2002)* at 1368; *Allegheny (Fed. Cir 2004)* at 1348; *Timken (Fed. Cir. 2004)*; Appellate Body Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)*, WT/DS294/AB/R, adopted May 9, 2006, and Corr.1 DSR 2006:II 417; Appellate Body Report, *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R, adopted January 23, 2007, DSR 2007:I, 3; Appellate Body Report, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*, WT/DS344/AB/R, adopted February 19, 2009; *Stainless Steel Sheet and Strip in Coils from Mexico (2010)* at 22, 23, 24; *Antidumping Proceedings (December 28, 2010)* at81535; *Antidumping Proceedings (December 27, 2006)* at 77723; *Corus Staal (Fed. Cir. 2005)* at 1347.

[138] Bridgestone cites the following in support of its argument: *Timken (Fed. Cir. 2004)* at 1344-1345; *Allegheny (Fed. Cir 2004)* 1348; *Corus Staal (CIT 2007)* at 1288; *Antidumping Proceedings (December 28, 2010)*; *Antidumping Proceedings (February 1, 2011)*; 19 U.S.C. § 3533(g).

- Titan rebuts that the Department's practice of zeroing negative margins has been upheld by the Federal Circuit as lawful under U.S. law and that the Federal Circuit would not disturb the Department's decision in regard to zeroing until the changes (as a result of WTO findings) have been fully implemented. Titan further points out that, though the Department has issued a notice of proposed rulemaking regarding zeroing of negative margins in reviews, the eventual final rule will not come into effect in time to affect the instant review.[139]

Department's Position: We have not changed our calculation of the weighted-average dumping margin, as suggested by Starbright, for the final results.

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 EP or 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.[140]

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 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 (Fed. Cir. 2004)* that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain

[139] Titan cites the following in support of its argument: *SKF (Fed. Cir. 2008)* at 1381-82; *Koyo Seiko (Fed. Cir. 2008)* at 1290-91; *NSK (Fed. Cir. 2007)* at 1379-80; *SKF (Fed. Cir. 2011)* at 17-18; *Antidumping Proceedings (December 28, 2010)*.

[140] *See, e.g., Timken (Fed. Cir. 2004)* at 1342; *Corus Staal (Fed. Cir. 2005)* at 1347-49, *cert. denied* 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006).

profitable sales serve to mask sales at less than fair value."[141] 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.[142] Notwithstanding one NAFTA Panel's decision in *Stainless Steel Sheet and Strip in Coils from Mexico (2010)*, as discussed above, U.S. courts have affirmed the Department's decision to not offset non-dumped merchandise.[143]

Starbright has cited WTO dispute-settlement 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").[144] Congress 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.[145] With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure.

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 Antidumping Proceedings (December 27, 2006)*. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.[146]

Further, the proposed modification cited by Starbright, *Antidumping Proceedings (December 28, 2010)*, does not provide a basis for changing the Department's approach of calculating weighted-average dumping margins in the instant administrative review. The proposed modification is only a proposal that remains subject to comment from the public and statutory consultation requirements involving congressional committees, among others. *See* 19 U.S.C. § 3533(g)(1). It does not provide legal rights or expectations for parties in this review. The proposed modification proposes that, in terms of timing, any changes in methodology will be prospective only, and "will be applicable in . . .all reviews pending before {Commerce} for which a preliminary results is issued more than 60 business days after the date of publication of {Commerce's} Final Rule and Final Modification."[147] Additionally, the proposed modification would not apply to this administrative review because, normally, "{a} final rule or other

[141] *See Timken (Fed. Cir. 2004).*
[142] *See, e.g., id.*; *Corus Staal (Fed. Cir. 2005)*; *Corus Staal (Fed. Cir. 2007)* at1375; and *NSK (Fed. Cir. 2007).*
[143] *See id.*
[144] *See Corus Staal (Fed. Cir. 2005)* at 1347-49; *accord Corus Staal (Fed. Cir. 2007)* at 1375; *NSK (Fed. Cir. 2007)* at 1375.
[145] *See* 19 U.S.C. 3533(g); *see, e.g., Antidumping Proceedings (December 27, 2006).*
[146] *See Antidumping Proceedings (December 27, 2006)* at 77724.
[147] *See Antidumping Proceedings (December 28, 2010)* at 81535.

modification . . . may not go into effect before the end of the 60-day period beginning on the date which consultations {between the Trade Representative, heads of the relevant departments or agencies, and appropriate congressional committees} under paragraph 1(E) begin . . ."[148] Because the final results of review will be completed prior to the effective date of the final rule, any change in the treatment of non-dumped sales, pursuant to the proposed modification (*Antidumping Proceedings (December 28, 2010)*), if implemented, would not apply to this review.

With respect to *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R (January 9, 2007), *United States – Continued Existence and Application of Zeroing Methodology*, WT/DS350/AB/R (February 9, 2009), and *United States – Final Antidumping Measures on Stainless Steel from Mexico*, WT/DS344/AB/R (April 30, 2008), 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.

RECOMMENDATION:

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

AGREE_____ DISAGREE_____

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____
Date

[148] 19 U.S.C. § 3533(g)(2)

Attachment I

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table ***All cites in this table are listed alphabetically by short cite***	
Case: Short Cite	**Case: Full Cite**
Activated Carbon (March 2, 2007)	*Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China,* 72 FR 9508 (March 2, 2007)
AD CVD Final Rule (May 19, 1997)	*Antidumping; Countervailing Duties; Final Rule,* 62 FR 27296 (May 19, 1997)
Aluminum Extrusions/PRC (April 4, 2011)	*Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 18524 (April 4, 2011)
Antidumping Methodologies (October 25, 2007)	*Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Market-Oriented Enterprise,* 72 FR 60649 (October 25, 2007)
Antidumping Methodologies (May 25, 2007)	*Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprise; Request for Comment*, 72 FR 29302 (May 25, 2007)
Antidumping Methodologies (March 21, 2007)	*Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates*, 72 FR 13246 (March 21, 2007)
Antidumping Methodologies (October 19, 2006)	*Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, (October 19, 2006)
Antidumping Proceedings (December 27, 2006)	*Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006)
Antidumping Proceedings (December 28, 2010)	*Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings,* 75 FR 81533 (December 28, 2010)
Antidumping Proceedings (February 1, 2011)	*Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings,* 76 FR 5518 (February 1, 2011)
Brake Rotor/PRC (January 25, 2005)	*Brake Rotors from China: Final Results of the Twelfth New Shipper Review*, 71 FR 4112 (January 25, 2006)
Bulk Aspirin/PRC (May 25, 2000)	*Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China,* 65 FR 33805 (May 25, 2000)
Bulk Aspirin/PRC (June 27, 2000)	*Notice of Amended Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China,* 65 FR 39598 (June 27, 2000)
Calculation Methodology (June 30, 2005)	*Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761 (June 30, 2005)
Carbazole Violet/PRC (November 17, 2004)	*Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China,* 69 FR 67304 (November 17, 2004)

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Case: Short Cite	**Case: Full Cite**
Carbon and Alloy Pipe/ PRC (September 21, 2010)	*Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part*, 75 FR 57449 (September 21, 2010)
Carbon Wire Rod/Canada (April 20, 1994)	*Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18,791 (April 20, 1994)
Carbon Wire Rod/Canada (August 30, 2002)	*Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Canada,* 67 FR 55782 (August 30, 2002)
Carrier Bags/PRC (February 11, 2009)	*Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009)
Chlorinated Isos/PRC (September 10, 2008)	*Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 52645 (September 10, 2008)
Circular Welded Carbon Steel/Thailand (November 29, 2010)	*Circular Welded Carbon Steel Pipes and Tubes from Thailand: Amended Final Results of Antidumping Duty Administrative Review*, 75 FR 73033 (November 29, 2010)
Circular Welded Line Pipe/PRC (March 31, 2009)	*Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 14514 (March 31, 2009)
Citric Acid/PRC (April 13, 2009)	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 16838 (April 13, 2009)
Coated Paper/PRC (May 6, 2010)	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 75 FR 24892 (May 6, 2010)
Coated Paper/PRC (September 27, 2010)	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 59217 (September 27, 2010)
Cold-rolled Carbon Steel/Korea (October 3, 2002)	*Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-rolled Carbon Steel Flat Products from Korea,* 67 FR 62124 (October 3, 2002)
Diamond Sawblades/PRC (May 22, 2006)	*Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006)
Electrolytic Manganese/PRC (August 18, 2008)	*Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008)
Enriched Uranium/France (August 3, 2004)	*Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France,* 69 FR 46501 (August 3, 2004)
Folding Metal Tables/PRC (January 18, 2006)	*Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905, (January 18, 2006)

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Case: Short Cite	**Case: Full Cite**
Free Sheet Paper/PRC (October 25, 2007)	*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)
Frontseating Service Valves/PRC (March 13, 2009)	*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)
Garlic/PRC (December 4, 2002)	*Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002)
Glycine/PRC (January 31, 2001)	*Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review,* 66 FR 8383 (January 31, 2001)
Hangers/PRC (August 14, 2008)	*Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008)
Honey/PRC (October 4, 2001)	*Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People's Republic of China,* 66 FR 50608 (October 4, 2001)
Honey/PRC (November 3, 2003)	*Honey From the People's Republic of China: Notice of Final Results and Final Rescission, in Part, of the New Shipper Review*, 69 FR 64029 (November 3, 2003)
Honey/PRC (October 31, 2003)	*Notice of Final Results, of Antidumping Duty New Shipper Review: Honey From the People's Republic of China*, 68 FR 62053 (October 31, 2003)
Honey/PRC (*February 25, 2005)*	*Honey From the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Reviews*, 70 FR 9271 (February 25, 2005)
Ironing Tables (March 18, 2008)	*Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 14437 (March 18, 2008)
KASR/PRC (July 24, 2009)	*Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009)
Light-Walled Pipe/PRC (September 13, 2010)	*Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 75 FR 57456 (September 13, 2010)
Lined Paper Products/PRC (September 8, 2006)	*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).
Lock Washers/PRC (November 19, 1997)	*Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review* , 62 FR 61794 (November 19, 1997)
LWS/PRC (June 24, 2008)	*Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 35646 (June 24, 2008)
Magnesia Carbon Bricks/PRC (August 2, 2010)	*Certain Magnesia Carbon Bricks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR

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Case: Short Cite	**Case: Full Cite**
	45468 (August 2, 2010)
Malleable Pipe/PRC (October 28, 2003)	*Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October, 28, 2003)
Manganese Metal/PRC (November 6, 1995)	*Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China:* 60 FR 56045 (November 6, 1995)
Nails/PRC (June 16, 2008)	*Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008)
OCTG/PRC (April 19, 2010)	*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)
OTR Tires/PRC (April 21, 2008)	*Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Affirmative Preliminary Determination of Critical Circumstances*, 73 FR 21312 (April 21, 2008)
OTR Tires/PRC (July 15, 2008)	*Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008)
Paper Clips/PRC (October 7, 1994)	*Certain Paper Clips from the People's Republic of China*, 59 FR 51168 (October 7, 1994)
Persulfates/PRC (February 14, 2006)	*Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 7725 (February 14, 2006)
Persulfates/PRC (December 13, 1999)	*Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69494 (December 13, 1999)
Persulfates/PRC (February 2, 2005)	*Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 2, 2005)
PET Film/PRC (February 22, 2011)	*Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 9753 (February 22, 2011)
Polyester Staple Fiber/PRC (January 11, 2010)	*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)
Preliminary Results	*Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 64259 (October 19, 2010)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table ***All cites in this table are listed alphabetically by short cite***	
Case: Short Cite	**Case: Full Cite**
Pure Magnesium (September 27, 2001)	*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
Replacement Glass Windshield/PRC (February 12, 2002)	*Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshield from the People's Republic of China*, 67 FR 6482 (February 12, 2002)
Seamless Pipe/PRC (October 1, 2010)	*Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010)
Shrimp/PRC (December 8, 2004)	*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)
Shrimp/PRC (September 12, 2007)	*Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 52049 (September 12, 2007)
Shrimp/Vietnam (September 9, 2008)	*Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273 (September 9, 2008)
Shrimp/Vietnam (September 15, 2009)	*Frozen Warmwater Shrimp from the Socialist Republic of Vietnam*, 74 FR 47191(September 15, 2009)
Shrimp/Vietnam (August 9, 2010)	*Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010)
Silicon Metal/PRC (January 19, 2011)	*Silicon Metal From the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 3084 (January 19, 2011)
Silicon Metal/PRC (January 12, 2010)	*Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010)
Silicon Metal/Russia (February 11, 2003)	*Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal from the Russian Federation*, 68 FR 6885 (February 11, 2003)
SSSS/Mexico (February 9, 2009)	*Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009)
TRBs/PRC (January 19, 2011)	*Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011)
WBF/PRC (November 17, 2004)	*Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004)
WBF/PRC (August 22, 2007)	*Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 46957

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Case: Short Cite	**Case: Full Cite**
	(August 22, 2007)
WBF/PRC (August 20, 2008)	*Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008)
WBF/PRC (August 17, 2009)	*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)
WBF/PRC Prelim (March 3, 2010)	*Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 75 FR 9581 (March 3, 2010)
WBF/PRC (July 29, 2010)	*Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 75 FR 44764 (July 29, 2010)
Wire Decking/PRC (June 10, 2010)	*Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 32905 (June 10, 2010)
Woven Electric Blankets/PRC (July 2, 2010)	*Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010)

Attachment II

Short Cite Table For Court Cases ***All cites in this table are listed alphabetically by short cite***	
Court Cases: Short Cite	**Court Cases: Full Cite**
Allegheny (Fed. Cir 2004)	*Allegheny Ludlum Corp. v. United States*, 367 F. 3d 1339 (Fed. Cir. 2004)
Al Tech (CIT 1986)	*Al Tech Specialty Steel Corp. v. United States*, 651 F. Supp. 1421 (CIT 1986)
Amendola (Fed. Cir. 1993)	*Amendola v. Secretary, Department of Health and Human Services*, 989 F. 2d 1180 (Fed. Cir. 1993)
Aramide (CIT 1995)	*Aramide Maatschappu V.o.F. and Akzo Fiber Inc. v. United States*, 901 F. Supp. 353 (CIT 1995)
Blue Chip Stamps (1975)	*Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 734 (1975)*
Bridgestone Remand (CIT 2009)	*Bridgestone Americas, Inc. et al. v. United States, et al.*, 636 F. Supp. 2d 1347 (CIT 2009)
Bridgestone Redetermination (CIT 2010)	*Final Redetermination Pursuant to Court Remand, January 8, 2010, Bridgestone Americas, Inc., et al. v. United States, et al., Court No. 08-00256*
Bridgestone Sustained (CIT 2010)	*Bridgestone Ams.. v. United States*, 710 F. Supp. 2d 1359, 1363-1364 (CIT 2010)
Central Bank of Denver (1994)	*Central Bank of Denver v. First Interstate Bank, 511 U.S. 164, 176-77 (1994)*
Charming Betsy (1804)	*Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804)
Chevron (1984)	*Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984)
Committee Portland Cement (Fed. Cir. 1994)	*Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F. 3d 398 (Fed. Cir. 1994)
Corus Staal (Fed. Cir. 2005)	*Corus Staal BV v. U.S. Dep't of Commerce*, 395 F. 3d 1343 (Fed. Cir. 2005), *cert. denied* 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006)
Corus Staal (Fed. Cir. 2007)	*Corus Staal BV v. U.S.*, 502 F.3d 1370 (Fed. Cir. 2007)
Corus Staal (CIT 2007)	*Corus Staal BV v. United States*, 493 F. Supp. 2d 1276 (CIT 2007)

Short Cite Table For Court Cases ***All cites in this table are listed alphabetically by short cite***	
Court Cases: Short Cite	**Court Cases: Full Cite**
Daewoo (CIT 1989)	*Daewoo Electronics Co. v. United States*, 13 CIT 253, 712 F. Supp. 931 (1989)
Daewoo (Fed. Cir. 1993)	*Daewoo Electronics Co. v. International Union*, 6 F. 3d 1511 (Fed. Cir. 1993)
Dole (2003)	*Dole Food Co. v. Patrickson, 538 U.S. 468, 476 (2003)*
Dorbest (CIT 2006)	*Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262 (CIT 2006)
Dorbest (CIT 2007)	*Dorbest Ltd. v. United States*, 452 F. Supp. 2d 1262 (CIT 2007)
Dorbest (Fed. Cir. 2010)	*Dorbest Ltd. v. United States*, 604 F. 3d 1363 (Fed. Cir. 2010)
Eurodif (2009)	*United States v. Eurodif S.A.*, 129 S. Ct. 878 (2009)
Federal Mogul (Fed. Cir. 1995)	*Federal Mogul Corp. v. United States*, 63 F. 3d 1572 (Fed. Cir. 1995)
Franklin Nat'l Bank (1954)	*Franklin Nat'l Bank v. New York, 347 U.S. 373, 378 (1954)*
Freeport (Fed. Cir. 1995)	*Freeport Minerals Co. v. United States*, 776 F. 2d 1029 (Fed. Cir. 1995)
Fujitsu (Fed. Cir. 1996)	*Fujitsu General Ltd. v. United States, 88 F.3d 1034, 1040 (Fed. Cir. 1996)*
Gallant Ocean (Thailand) (Fed. Cir. 2010)	*Gallant Ocean (Thailand) Co., Ltd. v. United States*, 602 F.3d 1319, 1323 (Fed. Cir. 2010)
Georgetown Steel (Fed. Cir. 1986)	*Georgetown Steel Corp. v. United States*, 801 F. 2d 1308 (Fed. Cir. 1986)
GPX (CIT 2009)	*GPX International Tire Corporation v. United States*, 645 F. Supp. 2d 1231 (CIT 2009)
GPX Redetermination (CIT 2010)	*Final Results of Redetermination Pursuant to Remand, April 26, 2010, GPX International Tire Corporation v. United States*, No. 08-00285
GPX (CIT 2010)	*GPX International Tire Corporation v. United States*, 715 F. Supp. 2d 13375 (CIT 2010)
GPX (CAFC 2011)	*GPX International Tire Corporation v. United States*, CAFC Appeal Nos. 2011-1107, -1108, -1109
Hebei Metals (CIT 2005)	*Hebei Metals & Mineral Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264 (CIT 2005)

Short Cite Table For Court Cases ***All cites in this table are listed alphabetically by short cite***	
Court Cases: Short Cite	**Court Cases: Full Cite**
Kajaria (Fed. Cir. 1998)	*Kajaria Iron Castings Pvt. Ltd. v. United States*, 156 F. 3d 1163 (Fed. Cir. 1998)
Koyo Seiko (Fed. Cir. 2008)	*Koyo Seiko v. United States*, 551 F. 3d 1286 (Fed. Cir. 2008)
Lasko (Fed Cir. 1994)	*Lasko Metal Products, Inc. v. United States*, 43 F..3d 1442 (Fed. Cir. 1994)
Lopez (2001)	*Lopez v. Davis*, 531 U.S. 230 (2001)
LTV (Fed. Cir. 1999)	*LTV Steel Co. Inc. v. United States*, 174 F. 3d 1359 (Fed. Cir. 1999)
Luigi Bermioli (Fed. Cir. 2002)	*Luigi Bermioli Corp., Inc. v. United States*, 304 F. 3d 1362 (Fed. Cir. 2002)
Magnesium Corp (CIT 1996)	*Magnesium Corp. of Am. v. United States*, 938 F. Supp. 885, 897 (CIT 1996)
Magnesium Corp (Fed. Cir. 1999)	*Magnesium Corp. of Am. v. United States*, 166 F.3d 1364 (Fed. Cir. 1999)
Meghrig (1996)	*Meghrig v. KFC Western, Inc, 516 U.S. 479, 485 (1996)*
Nation Ford Chem. (Fed. Cir. 1999)	*Nation Ford Chem. Co. vs. United States*, 166 F.3d 1373 (Fed. Cir. 1999)
National Candle Association (CIT 2005)	*National Candle Association v. United States*, 366 F. Supp. 2d 1318 (CIT 2005)
National Mining (D.C. Cir. 1999)	*National Mining Association v. Babbitt*, 172 F. 3d 906 (D.C. Cir. 1999)
NextWave Personal (2003)	*FCC v. NextWave Personal Communications, Inc., 537 U.S. 293, 302 (2003)*
Nippon (Fed. Cir. 2003)	*Nippon Steel Corporation v. United States*, 337 F.3d 1373 (Fed. Cir. 2003)
NLRB (1979)	*NLRB v. Baptist Hospital, Inc.*, 442 U.S. 773 (1979)
NSK (Fed. Cir. 2007)	*NSK Ltd. v. United States*, 510 F.3d 1375 (Fed. Cir. 2007)
Rhodia (CIT 2001)	*Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343 (CIT 2001)
Rhodia (CIT 2002)	*Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247 (CIT 2002)
Rhone-Poulenc (CIT 1996)	*Rhone-Poulenc, Inc. v. United States*, 20 CIT 573, 927 F. Supp. 451 (1996)

Short Cite Table For Court Cases ***All cites in this table are listed alphabetically by short cite***	
Court Cases: Short Cite	**Court Cases: Full Cite**
RHP (Fed. Cir. 2007)	*RHP Bearings Ltd. v. United States*, 288 F. 3d 1334 (Fed. Cir. 2007)
Sec'y of Labor (D.C. Cir. 1998)	*Secretary of Labor v. Keystone Coal Mining Co.*, 151 F. 3d 1096 (D.C. Cir. 1998)
Shandong Huarong (CIT 2007)	*Shandong Huarong Mach. Co. v. United States*, No. 04-00460, 2007 CIT LEXIS 187 (CIT November 20, 2007)
Sigma Corp. (Fed. Cir. 1997)	*Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997)
SKF (CIT 1999)	*SKF USA Inc. v. United States*, 77 F. Supp. 2d 1335 (CIT 1999)
SKF (Fed. Cir. 1999)	*SKF USA Inc. v. INA Walzlager Schaeffler KG*, 180 F. 3d 1370 (Fed. Cir. 1999)
SKF (CIT 2000)	*SKF USA, Inc. v. United States*, 86 F. Supp. 2d 1287 (CIT 2000)
SKF (Fed. Cir. 2001)	*SKF USA Inc. v. United States*, 263 F. 3d 1369 (Fed. Cir. 2001)
SKF (Fed. Cir. 2008)	*SKF USA Inc. v. United States*, 537 F. 3d 1373 (Fed. Cir. 2008)
SKF (Fed. Cir. 2011)	*SKF USA Inc. v. United States*, _ F. 3d_, Court No. 2010-1128 (Fed. Cir. January 7, 2011)
Stainless Steel Sheet and Strip in Coils from Mexico (2010)	*Stainless Steel Sheet and Strip in Coils from Mexico*, USA-MEX-2007-1904-01 (April 14, 2010)
Timken (CIT 1986)	*Timken Co. v. United States*, 10 CIT 86, 630 F. Supp. 1327 (1986)
Timken (CIT 2001)	*Timken Co. v. United States*, 25 CIT 939, 166 F. Supp. 2d 608 (2001)
Timken (Fed. Cir. 2004)	*Timken Co. v. United States*, 354 F. 3d 1334 (Fed. Cir. 2004)
Transcom (Fed. Cir. 2002)	*Transcom Inc. v. United States*, 294 F. 3d 1371 (Fed. Cir. 2002)
United Scenic Artists (D.C. Cir. 1985)	*United Scenic Artists, Local 829 v. NLRB*, 762 F. 2d 1027 (D.C. Cir. 1985)
Wheatland Tube (2007)	*Wheatland Tube, 495 F.3d 1355 (Fed. Cir. 2007)*
Whitfield (2005)	*Whitfield v. United States, 125 S. Ct. 687, 692 (2005)*

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Court Cases: Short Cite	**Court Cases: Full Cite**
Wieland-Werke (CIT 1998)	*Wieland-Werke AG v. United States,* 22 CIT 129, 4 F. Supp. 2d 1207 (1998)
Yantai (CIT 2002)	*Yantai Oriental Juice Co. v. United States,* 26 CIT 605 (2002)
Zenith (1978)	*Zenith Radio v. United States,* 437 U.S. 443 (1978)
Zhengzhou Harmoni (CIT 2009)	*Zhengzhou Harmoni Spice Co. v. United States,* 617 F. Supp. 2d 1281 (CIT 2009)

Attachment III

Short Cite Table For Memorandum/Reports & Miscellaneous ***All cites in this table are listed alphabetically by short cite***	
Memorandum: Short Cite	**Memorandum: Full Cite**
Bridgestone's Case Brief	Certain New Pneumatic Off-the-Road Tires from China: Bridgestone Case Brief (February 8, 2011)
Bridgestone's Factual Info Sub	New Pneumatic Off-the-Road Tires from the People's Republic of China: Submission of Factual Information Concerning Hebei Starbright Co., Ltd. (May 10, 2010)
Bridgestone's Post-Prelim SV Sub	Administrative Review of the Antidumping Duty Order On New Pneumatic Off-the-Road Tires from China: Bridgestone's Post-Preliminary Results Surrogate Value Submission (November 8, 2010)
Bridgestone's Rebuttal	Certain New Pneumatic Off-the-Road Tires from China: Bridgestone's Rebuttal Brief (February 15, 2011)
Bridgestone's Supp Pre-Prelim Comments	Administrative Review of the Antidumping Duty Order On New Pneumatic Off-the-Road Tires from China: Bridgestone's Supplemental Pre-Preliminary Comments (September 16, 2010)
Deadline Extension Memo	Memorandum to The File regarding Extension of Deadlines (May 5, 2010)
Domestics' Pre-Prelim Comments	New Pneumatic Off-the-Road Tires from the People's Republic of China (POR-1): Domestic Interested Parties' Pre-Preliminary Comments Concerning Starbright (September 16, 2010)
Final Analysis Memo	Memorandum to The File regarding Analysis Memorandum for the Final Results: Hebei Starbright Tire Co., Ltd. (April 18, 2011)
GAO Report	*U.S.-China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties*, GAO-05-474 (June 2005)
GAO USCC Testimony	Testimony Before the U.S. China Economic and Security Review Commission, GAO-06-608T (April 4, 2006)
Georgetown Memo	Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy, Memorandum to David M. Spooner (March 29, 2007)
Investigation SV Memo	Memorandum to Wendy J. Frankel regarding Certain New Pneumatic Off-the-Road Tires from the People's Republic of China, Surrogate Value Memorandum (February 5, 2008); Bridgestone's Factual Info Sub, Exhibit 5.
Investigation Analysis Memo	Analysis Memorandum for the Final Determination: Hebei Starbright Tire Co., Ltd. (July 7, 2008); Bridgestone's Factual Info Sub, Exhibit 16.
NME Memo	Memorandum to David M. Spooner regarding Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China")-China's status as a non-market economy ("NME") (August 30, 2006)

Short Cite Table For Memorandum/Reports & Miscellaneous ***All cites in this table are listed alphabetically by short cite***	
Memorandum: Short Cite	**Memorandum: Full Cite**
Original Questionnaire	Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires ("OTR Tires") from the People's Republic of China ("PRC"): Questionnaire (January 22, 2010)
OTR Tires/PRC ITC Final Report (August 2008)	*Certain New Pneumatic Off-the-Road Tires from China, ITC Final Report* (Publ. 4031, August 2008)
Petitioner's 20-Day FOP Submission	New Pneumatic Off-the-Road Tires from the People's Republic of China (POR-1): Petitioner's 20-Day FOP Submission (November 8, 2010)
Petitioner's Case Brief	New Pneumatic Off-the-Road Tires from the People's Republic of China (POR-1): Petitioner's Case Brief (February 7, 2011)
Petitioner's Comments: Surrogate Cntry	New Pneumatic Off-the-Road Tires from the People's Republic of China (Administrative Review, POR 1): Petitioner's Comments re Surrogate Country Selection (July 23, 2010)
Petitioner's Rebuttal	Petitioner's Rebuttal Brief (February 14, 2011)
Petitioner's SV Sub	New Pneumatic Off-the-Road Tires from the People's Republic of China (POR-1): Petitioner's Surrogate Value Submission (July 29, 2010)
Prelim Analysis Memo	Memorandum to The File regarding Analysis Memorandum for the Preliminary Results: Hebei Starbright Tire Co., Ltd. (October 7, 2010)
Prelim SV Memo	Memorandum to The File regarding Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China, Surrogate Value Memo (October 7, 2010)
Starbright's Case Brief	Case Brief of Hebei Starbright Tire Co., Ltd.: Certain New Pneumatic Off-the-Road Tires from China (A-570-912) (February 8, 2011)
Starbright's Pre-Prelim Comments	Pre-preliminary Comments of Hebei Starbright Tire Co., Ltd.: Certain New Pneumatic Off-the-Road Tires from China (September 21, 2010)
Starbright's Rebuttal	Rebuttal Case Brief of Hebei Starbright Tire Co., Ltd.: Certain New Pneumatic Off-the-Road Tires from China (A-570-912) (February 15, 2011)
Starbright's Request for ME	Starbright's Request for Application of Market-Economy AD Methodology and Receipt of Market Economy AD Questionnaire (February 23, 2010)
Starbright's Response to Allegations of New Factual Information	Starbright's Response to Allegations of New Factual Information in Starbright's Affirmative Case Brief: Certain Pneumatic Off-the-Road Tires from China (February 24, 2011)
Starbright Supp Sec A Resp (June 29, 2010)	Supplemental Section A Response of Hebei Starbright Tire Co., Ltd.: Certain Pneumatic Off-the-Road Tires from China (June 29, 2010)
Starbright Supp Sec ACD Resp (September 13, 2010)	Fourth Supplemental Sections A, C and D Response of Hebei Starbright Tire Co., Ltd: Certain Pneumatic Off-the-Road Tires from China (September 13, 2010)

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Memorandum: Short Cite	**Memorandum: Full Cite**
Starbright Supp Sec C Resp (August 2, 2010)	Supplemental Section C Response of Hebei Starbright Tire Co., Ltd: Certain Pneumatic Off-the-Road Tires from China (August 2, 2010)
Starbright Supp Sec C Resp (September 13, 2010)	Part 2 of Second Supplemental Section C Response of Hebei Starbright Tire Co., Ltd: Certain Pneumatic Off-the-Road Tires from China (September 13, 2010)
Starbright Supp Sec C Resp (November 5, 2010)	Post-Prelim Fourth Supplemental Section C Response of Hebei Starbright Tire Co., Ltd.: Certain Pneumatic Off-the-Road Tires from China (November 5, 2010)
Starbright Sec D Resp (April, 6, 2010)	Section D Response of Hebei Starbright Tire Co., Ltd: Certain Pneumatic Off-the-Road Tires from China (April 6, 2010)
Starbright Supp Sec D Resp (August 17, 2010)	Supplemental Section D Response of Hebei Starbright Tire Co., Ltd: Certain Pneumatic Off-the-Road Tires from China (August 17, 2010)
Starbright Supp Sec D Resp (November 3, 2010)	Post-Prelim Fourth Supplemental Section D Response of Hebei Starbright Tire Co., Ltd: Certain Pneumatic Off-the-Road Tires from China (November 3, 2010)
Starbright's SV Sub	Hebei Starbright Co. Ltd.'s Surrogate Value Submission, Certain Pneumatic Off-the-Road Tires from the People's Republic of China (July 29, 2010)
Steel Pipe/PRC ITC Prelim Report (July 2007)	*Circular Welded Carbon-Quality Steel Pipe from China, ITC Preliminary Report*, (Publ. 3938, July 2007)
Surrogate Cntry Letter	New Pneumatic Off-the-Road Tires Antidumping Duty Administrative Review from the People's Republic of China: Request for Comments on Surrogate Country Selection (January 26, 2010)
Verification Agenda	Antidumping Duty First Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Verification Agenda for GPX International Tire Corporation (December 6, 2010)
Verification Exhibits	GPX CEP Verification First Day Minor Corrections and Verification Exhibits (December 16, 2010)
Verification Report	Memorandum to The File regarding First Administrative Review of Certain New Pneumatic Off-the-Road Tires ("OTR Tires") from the People's Republic of China ("PRC") - Verification of the Sales Information of Hebei Starbright Tire Co., Ltd. and its U.S. Affiliate GPX International Tire Corp. (January 31, 2011)