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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of 2004/2006 Antidumping Duty New Shipper Reviews of Silicon Metal from the People's Republic of China

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SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the 2005/2006 new shipper reviews ("NSR") of the antidumping duty order on silicon metal from the People's Republic of China ("PRC"). The period of review ("POR") is June 1, 2005, to May 31, 2006. As a result of our analysis, we have made changes to the preliminary results. See Silicon Metal From the People's Republic of China: Preliminary Results of the 2005/2006 New Shipper Reviews, 72 FR 28467 (May 21, 2007) ("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 a complete list of issues for which we have received comments:

General Issues
Comment 1: Selection of Surrogate Country
Comment 2: Electricity Valuation
Comment 3: Selection of Financial Statements
Comment 4: Quartz Valuation
Comment 5: Silica Fume By-Product Valuation
Comment 6: Steam Coal Valuation
Comment 7: Charcoal Valuation
Comment 8: Electrode Usage

Company-Specific Issues: Jiangxi Gangyuan
Comment 9: Clerical Errors in Calculating Freight
Comment 10: June 2005 Electricity Consumption
Comment 11: Work-In-Process Inventory
Comment 12: Silica Fume Offset During POR

Company-Specific Issues: Datong Jinneng/Shanghai Jinneng
Comment 13: Silicon Metal Fines Valuation
Comment 14: Polyethylene Bag Valuation
Comment 15: High Aluminum Quartz
Comment 16: Quartz Yield Loss
Comment 17: Instructions to Customs

Comment 1: Selection of Surrogate Country

Shanghai Jinneng International Trade Co., Ltd. ("Shanghai Jinneng") and its affiliated producer, Datong Jinneng Industrial Silicon Co., Inc. ("Datong Jinneng"), and Jiangxi Gangyuan Silicon Industry Co. Ltd. ("Jiangxi Gangyuan") (hereinafter collectively "Respondents") contend that Egypt is the correct choice for surrogate country, as only Egypt is a competitive producer of comparable merchandise, and the quality of the Egyptian data is superior to the Indian data. Respondents argue that only Egypt is a competitive producer of comparable merchandise because: (1) neither India nor Egypt produce silicon metal; (2) ferrosilicon is the only merchandise comparable to silicon metal; (3) Policy Bulletin 04.1 requires special consideration in electricity-intensive cases; and (4) Egypt is a competitive producer of ferrosilicon.

First, respondents state that the Department improperly suggested in its Surrogate Country Memorandum that India produces silicon metal. They refer to the Department's finding that export data for United Nations Harmonized Tariff Schedule ("HTS") 2804.69, "Silicon Not Elsewhere Specified," showed that India had exported only 588 metric tons ("MT") of Silicon Not Elsewhere Specified in 2005, and zero MT in 2006. Respondents point out that such an amount cannot be considered "significant," and refer to "The Economics of Silicon and Ferrosilicon", which concludes that India stopped producing silicon metal in 1999, and argue that there is no evidence to prove that any of the 588 MT of Silicon Not Elsewhere Specified exported in 2005 consisted of silicon metal.[1]

Respondents state that the Department correctly found ferrosilicon to be comparable to silicon metal in the preliminary results. However, they assert, the Department incorrectly accorded the petitioner the opportunity to include Indian ferroalloy production other than ferrosilicon, specifically silicomanganese, ferrochrome and ferromanganese, as well as ferrosilicon, in its analysis. While India might be considered a significant producer of other ferroalloy products, respondents state, it is not a significant producer of ferrosilicon. Respondents cite Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 1 ("Silicon Metal from Russia"), where the Department found that only ferrosilicon - and not other ferroalloys - is comparable to silicon metal. Whereas the Department found in that case that both Colombia (ferronickel) and Egypt (ferromanganese and ferrosilicon) produced ferroalloys, it determined that ferrosilicon, a "silicon-bearing ferroalloy,"

[1] The Economics of Silicon and Ferrosilicon, Section 5.14 - India (11th ed 2004) ("Economics of Silicon and Ferrosilicon"), Exhibit 3 (entire exhibit originally submitted with Respondents' Feb. 15 Submission at Exhibit 5).

is the only ferroalloy comparable to silicon metal. According to respondents, other ferroalloys require only one-third of the electricity required to produce silicon metal and one-half the electricity used to produce ferrosilicon, and have much smaller amounts of silicon, if any, compared to ferrosilicon and silicon metal. Respondents also argue that the United States Geological Survey ("USGS") Yearbook, relied on by the petitioner, refers to ferrosilicon and silicon metal as "silicon ferroalloys and metal" and "silicon products," while referring to ferromanganese and silicomanganese as "manganese ferroalloys."

In addition, respondents argue that Policy Bulletin 4.1 requires the Department to place particular emphasis on the "significant producer of comparable merchandise" factor when inputs like electricity - not traded internationally - are used intensively in the production of subject merchandise. Respondents also state Policy Bulletin 4.1 emphasizes that, with cases involving important non-traded inputs like electricity, a potential surrogate country be deemed a significant producer of comparable merchandise not merely on the level of production, but also whether the country is a "competitive" producer of that merchandise.

Respondents cite Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Pure Magnesium and Alloy Magnesium from the People's Republic of China 59 FR 55424 (November 7, 1994) ("Magnesium from China") as an example.[2] Respondents state that in Magnesium from China, the Department found both India and Indonesia to be economically comparable to China and significant producers of comparable merchandise (aluminum), and that India was not a competitive aluminum producer because its electricity rates were high compared to other countries which produce electricity-intensive products, and thus, selected Indonesia as the surrogate country.

The respondents also acknowledge, however, that this determination differs from other Chinese cases involving electricity-intensive products in which the Department selected India as the primary surrogate country. Respondents cite a recent administrative review of pure magnesium from the PRC, where respondents did not demonstrate that Indian electricity rates were aberrational during the POR. See Pure Magnesium from the People's Republic of China: Final Results of 2004-2005 Antidumping Duty Administrative Review, 71 FR 61019 (October 17, 2006).

Respondents contend that Egypt is a competitive producer of ferrosilicon because from 2001 through 2005 Egypt's production of ferrosilicon held steady at 55,000 MT, and Egypt exported almost 50,000 MT of ferrosilicon in 2004. Respondents argue that according to the Policy Bulletin, this proves Egypt is a net exporter of ferrosilicon, which is an important consideration in determining whether a country is a significant producer of comparable merchandise.

Respondents note that although Globe Metallurgical Inc. ("Petitioner"), in its February 26, 2007,

[2] Policy Bulletin 04.1 erroneously refers to the proceeding as "Pure Magnesium from the Russian Federation."

submission, argued that the Egyptian government subsidizes Egyptian electricity, the existence of subsidies alone has no bearing on whether the Department should select Egypt as the surrogate country. Respondents state that such subsidies must distort the price of electricity to be excluded, and cite Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 53347 (Sept. 10, 2003) and accompanying Issues and Decision Memorandum at Comment 2, wherein the Department specifically stated that it does not exclude surrogate values from countries that may have subsidies, but rejects prices that are distorted by subsidies.

Respondents also cite Notice of Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese from Kazakhstan, 66 FR 56639 (unchanged in final) (November 9, 2001) ("Silicomanganese from Kazakhstan") in support of its argument for Egypt as a surrogate country. In this proceeding, respondents assert, the Department stated that Egyptian subsidies did not lead to aberrational electricity rates.

Respondents state that the Indian ferrosilicon industry has declined drastically since 2004, and that India is a net importer of ferrosilicon, whereas Egypt is a net exporter. Respondents argue that the high cost of electricity is a reason why the Indian ferrosilicon industry has declined. Specifically, respondents cite four companies from the Economics of Silicon and Ferrosilicon which have had ferrosilicon production difficulties due to the scarcity of electricity: Nava Bharat Ferro Alloys Ltd. ("Nava Bharat"), Indsil Electrosmelts Ltd. ("Indsil"), Indian Metals & Ferro Alloys ("IMFA") and VBC Ferro Alloys Ltd. ("VBC").

Respondents further state that, because India's industrial electricity rates are distorted, the rates preclude the Indian ferrosilicon industry from producing competitively. Furthermore, respondents state that, regardless of surrogate country choice, the Indian electricity value must not be used because of this distortion. Respondents cite to Yantai Oriental Juice Co., et al, v. United States, 26 C.I.T. 605, 619 (2002) ("Yantai I"), and state that the Department may not apply a factor value which has been subsidized, as they claim the subsidy causes distorted factor values.

Respondents cite three reports in support of its argument that India's electricity rates are distorted: Government of India Planning Commission, Integrated Energy Report: Report of the Expert Committee ("India's Integrated Energy Report"); International Energy Agency ("IEA"), Electricity in India - Providing Power for the Millions ("IEA - Electricity in India"); and India's Council of Power Utilities ("CPU"), Electricity India 2005. Respondents state that these three reports reiterate the theme that India's industrial customers subsidize the residential and agricultural customers by paying inflated electricity rates. Respondents also cite the Indian Bureau of Mines Minerals Yearbook for 2005 ("IBM Yearbook"), which indicates that electricity accounts for 40-70 percent of ferroalloy production costs. Respondents further note that silicon metal and ferrosilicon are the most electricity-intensive of the ferroalloys, and that this explains why Indian producers have shifted production from silicon metal and ferrosilicon to less energy-intensive ferroalloys. Respondents also cite three secondary industry publications

that discuss the scarcity of electricity during the POR, and argue that this scarcity hindered India from being a "competitive" ferrosilicon producer and, therefore, precluded India from being a significant producer of ferrosilicon according to the Department's Policy Bulletin 4.1 guidelines.

Whereas the respondents argue that Egypt should be chosen as surrogate country since only it (and not India) is a competitive producer of comparable merchandise, respondents also contend that Egyptian data are superior because only it is a competitive producer. Respondents state that the record contains Egyptian values for all factors of production except for charcoal.

Respondents state that while the Department prefers to use surrogate values from a single surrogate country, it is only a preference. Respondents cite to Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 48026 (September 17, 2001) (Issues and Decision Memorandum at Comment 14), where the Department used data from multiple surrogate countries where doing so was reasonable and appropriate. Respondents further state that where primary surrogate country data prove unreliable or aberrational, the Department's practice is to use information from another country chosen by the Office of Policy ("OP") as being at a comparable level of economic development.

In rebuttal, petitioner argues that the Department correctly chose India in the preliminary results.

First, petitioner states that the Department's practice with regard to surrogate country selection involves a two-step process: (1) finding one or more market economies at a comparable level of economic development to the non-market economy ("NME") country which are also significant producers of comparable merchandise; then, (2) selecting the best fit based on data availability.

Petitioner states that respondents do not contest that India is economically comparable to China. Petitioner further contends that respondents have not proven that either India is not a significant producer of comparable merchandise or that Egypt is both an appropriate surrogate country and provides better data than India.

First, petitioner argues that India is an appropriate choice for surrogate country since it is a large producer of both ferrosilicon and other ferroalloys. With respect to respondents' reference to Egyptian production of 55,000 MT of ferrosilicon in 2004, petitioner notes that the same source also attributes 55,000 MT of ferrosilicon production to India for 2004. Petitioner notes that IBM further states that India produced 68,844 MT of ferrosilicon for the 2003-2004 fiscal year, and thus, petitioner states, India produces at least as much or more ferrosilicon than Egypt.

With respect to other ferroalloys, petitioner argues that India produced 160,000 MT of silicomanganese, another silicon-bearing ferroalloy, in 2004, and that Egypt produced no silicomanganese. Petitioners claim that ferroalloys should also be comparable merchandise in these new shipper reviews. Petitioner further compares the ferroalloy production of India and notes that, according to the most recent Indian Minerals Yearbook (2005), the IBM estimates that the Indian ferroalloy industry produced over 1.2 million MT of ferroalloys, including 68,844

MT of ferrosiliocn, 380,316 MT of silicomanganese, 248,388 MT of ferromanganese, and 525,824 MT of ferrochrome during Indian fiscal year 2003-04. On the other hand, petitioner points out that total 2003-2004 ferroalloy production volume in Egypt amounted to just 85,000 MT, according to the USGS. Thus, petitioners argue, if Egypt is to be considered a significant producer of comparable merchandise, India should receive the same consideration.

Petitioner disputes respondents' argument that only ferrosilicon can be considered comparable merchandise. Petitioner cites Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65674 (December 15, 1997) ("Sebacic Acid from China"), Issues and Decision Memorandum at Comment 1, wherein the Department states:

> The statute does not define 'comparable merchandise' and the relevant legislative history evidences Congress' intent to allow the agency to select from a wide category of merchandise in identifying comparable merchandise.

Petitioner states that in Sebacic Acid from China, the Department determined that one or more differences in the merchandise does not prevent a product from being comparable. Petitioner states that the production of silicon metal, ferrosilicon, silicomanganese and other ferroalloys are all energy-intensive processes, and cites Euoralliages, the European ferroalloys association, to demonstrate that these processes are all energy-intensive activities. Petitioner argues that all ferroalloy production industries qualify for the same industrial electricity tariff rate available in India.

Petitioner argues that India's role as a net importer of ferrosilicon is not important. Petitioner cites Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (Issues and Decision Memorandum at Comment 2) (November 17, 2004) ("Wooden Bedroom Furniture LTFV Investigation"), in which the Department states:

> "{W}e find that a primary consideration of determining whether a country is a significant producer is not whether the country is a net exporter.... The fact that India is a larger consumer of furniture than Indonesia and, therefore, does not have large export volumes does not negate the fact that India is a significant producer."

Petitioner also cites the Department's Policy Bulletin 04.1 at 3 to show that "net exports" are relevant only when adequate production data are not available; petitioner argues that those circumstances do not apply to this case, since Indian ferrosilicon production data are available from USGS and IBM.

Petitioner contends that respondents' argument that Indian ferrosilicon production has declined in recent years is both irrelevant and misleading. Petitioner cites IBM data stating that Indian

ferrosilicon production during 2003-2004 was 68,844 MT, and that this figure was higher than each of 1998-99, 1999-2000, and 2000-2001. Petitioner states that Egyptian ferrosilicon production during this period, on the other hand, has been flat at 55,000 MT per year. Petitioner also states that Indian production of ferroalloys, such as silicomanganese, ferromanganese, and ferrochrome have increased in recent years according to the IBM.

Petitioner contends that respondents' argument that the surrogate country must be a "competitive" producer of comparable merchandise runs counter to the Department's regulations and practice. Petitioner cites both the statue and regulations, wherein the Department selects a "significant" producer of comparable merchandise, not a "competitive" producer of said merchandise.

Petitioner states that the "competitive producer" reference in the Policy Bulletin is an exception to the normal surrogate country analysis. Under that exception, the Department first identifies countries which are significant producers of comparable merchandise and then analyzes whether any of those identified countries are economically comparable. Petitioner argues that this exception, however, still requires the Department to analyze countries' production of comparable merchandise, and further argues that respondents have not cited any Department determinations in support of their argument that a "competitive producer" standard should be applied.

Petitioner also disagrees with respondents' argument that the Egyptian data are superior to the Indian data. Petitioner argues that the Department used Indian data for all inputs and costs in the preliminary results, and that additional Indian values have been placed on the record since the publication of the preliminary results.

Petitioner further states that, in contrast to the Indian data, the Egyptian data are incomplete and inferior to the Indian data. For example, petitioner states that respondents do not have an Egyptian value for charcoal, that the Egyptian quartz value is a corporate price quote from an export director, even though respondents assert that the price is not export specific, and that the price quote is for a form of quartz with a different silicon content that respondents reported using.

Petitioner also states that while the WTA Indian import data for inputs are for the POR, the Egyptian data for many input values are for 2005 import statistics. Petitioner argues that the Department has a strong preference for data contemporaneous with the POR. Petitioner also notes that Egyptian data are limited to 1999 values for truck and rail freight, as compared to the Indian values for these freight costs, which are from the POR and August 2004, respectively.

Petitioner also argues that the Egyptian financial statements are inferior, and are for a state-owned company. Petitioners state that the Department has previously found that state-owned companies are not suitable for financial ratio calculations in an NME case.

Finally, petitioner states that India has a rapidly developing economy, like China, and that both countries' power supplies are being tested by rapid growth. Petitioner suggests that scarcity, or

electricity constraints exist in both of these countries, and this fact also makes Indian rates reflective of what respondents would pay in a market economy at a comparable level of economic development.

Department's Position:
With respect to respondents' argument that *only* ferrosilicon may be treated as comparable merchandise, we disagree. As petitioners have noted, one or more differences in the merchandise does not prevent a product from being comparable. Although respondents have cited to Silicon Metal from Russia, for the proposition that ferrosilicon *must* be treated as the only comparable merchandise, we note that the facts of that case and the instant case are not identical, in that the record for Silicon Metal from Russia did not contain the same data that we have here. However, we note that we need not conclude that only ferrosilicon, or only ferroalloys are comparable merchandise, given that we find that India is a significant producer of both.

We further disagree with respondents' contention that a prospective surrogate country must also be a "competitive" producer of comparable merchandise before choosing it as a surrogate country. The Department's established practice is to analyze whether prospective surrogate countries are *significant* producers of comparable merchandise. See, e.g., Policy Bulletin 4.1. Under certain circumstances, the Department may, as an exception, address economic comparability after the "significant producer of comparable merchandise" requirement is met. It would be inappropriate to follow that sequence here, as both India and Egypt are significant producers of comparable merchandise.

The OP identified five possible surrogate countries as being at a level of economic development comparable to the PRC for the POR: India, Sri Lanka, Indonesia, the Philippines, and Egypt. See Letter to All Interested Parties, from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, regarding 2005/2006 New Shipper Reviews of Silicon Metal from the People's Republic of China (October 19, 2006) at Attachment II (Memorandum to Christopher Riker, Program Manager, China/NME Group, Office 9, from Ron Lorentzen, Director, Office of Policy regarding New Shipper Reviews of Silicon Metal from China: Request for a List of Surrogate Countries (October 16, 2006) ("Surrogate Country Memorandum"). Of these five countries, the Department finds both Egypt and India to be significant producers of ferrosilicon. The USGS has reported that both India and Egypt produced 55,000 MT of ferrosilicon in 2004 (the last year for which data are available for both countries), and the IBM reported India produced 68,844 MT of ferrosilicon in 2003-2004. Although respondents state that the production data for Egypt indicate that it is a more "robust" producer of ferrosilicon, the production data for the most recent years available for both countries demonstrate that they are both significant producers of ferrosilicon.

Respondents note that Indian ferrosilicon production declined from 81,955 MT in 2002-2003 to 68,844 MT in 2003-2004, according to the IBM Yearbook. Although respondents argue that this proves that there has been a decline in Indian ferrosilicon production, the annual Indian production data actually show that production has been at least 50,000 MT for each year from

1998-2002 and at least 55,000 MT for 2003 and 2004. Thus, Indian production has been at least as high as Egyptian ferrosilicon production in the most recent years for which data is available for both countries.

With respect to ferroalloy production, the Indian Ferroalloy Producers' Association reports that the Indian ferroalloy industry currently produces about 1.2 million MT of ferroalloys annually. According to the USGS, however, the 2003-2004 annual Egyptian ferroalloy production volume was only 85,000 MT. Thus, as noted above, India is a significant producer of both ferrosilicon and ferroalloys in general, whether the Department treats ferrosilicon as comparable merchandise or not.

We also disagree with respondents' argument that India, because it is a net importer of ferrosilicon, should be excluded from consideration as the surrogate country. As noted in Wooden Bedroom Furniture LTFV Investigation, a country's role as a net importer of comparable merchandise does not disqualify it from also being considered as a significant producer of that merchandise as well.

Because we find both India and Egypt to be economically comparable and significant producers of comparable merchandise, we next examine which country has the best available data. Policy Bulletin 4.1, at page 4, provides guidance:

> In assessing data and data sources, it is the Department's stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data.

In evaluating the data based on these criteria, we disagree with respondents' contention that Egypt offers the best available data in the instant case. In examining the Egyptian data, we find that the data are less complete and inferior to the Indian data, as (1) there is no Egyptian value for charcoal on the record of this proceeding, (2) the only Egyptian value for quartz is a price quote, and (3) the only Egyptian electricity value consists of a price quote, solicited by respondents' agent in Egypt. In addition, the quartz price quote is for a form of quartz with a different silicon content than respondents reported using.

Furthermore, the Indian WTA data are more contemporaneous than the Egyptian data, as the Indian data correspond to the POR, whereas the Egyptian data are for 2005 annual import statistics. In addition, the Indian WTA data are net of taxes and import duties, and are specific to the input in question. Thus, for the reasons noted above, we find that the Indian data on the record constitutes the best available data. As such, we find that India is the most appropriate choice as a surrogate country for purposes of the final results.

Comment 2: Electricity Valuation

Respondents contend, citing to Yantai I, that based on the findings of independent articles, the

Indian electricity value is distorted by subsidies. Respondents argue that the Department has found that subsidized, distorted surrogate values are inappropriate to use as factors of production in the normal value calculation, and excludes only values that are distorted by subsidies based on the totality of circumstances. Respondents further argue that to test the validity of electricity rates, the Department should analyze and compare rates from a wide range of countries, with a wide range of economic development. They cite both Silicon Metal from Russia and Silicomanganese from Kazakhstan as instances where the Department compared Egyptian electricity rates to world industrial rates and found the Egyptian rate to be reasonable.

Respondents also cite Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000) ("Silicomanganese from China"), as another instance in which the Department compared Indian electricity rates to rates found in a wide range of subject merchandise-producing countries, with varying levels of economic development. In that proceeding, respondents assert, the Department used an Indian electricity value of $0.06 per kWh, in comparison to the $0.102 per kWh used in the above-captioned reviews.

Respondents contend that the Department should use either: (1) an Egyptian value which they solicited through an agent in Egypt from the Egyptian Ministry of Electricity, which provided a document entitled, "Prices for Selling Electricity to Industrial Establishments," of $0.022 per kWh, or (2) a market average of electricity rates for 19 ferrosilicon-producing countries, of $0.048 per kWh .

Respondents further cite to a report prepared by CRU International ("CRU"), a leading consultancy for mining, minerals and other industrial sectors, and note that the average price of electricity for nine countries in the study is much less than the $0.102 per kWh value used in the preliminary results. Respondents further note that the CRU average cost is similar to the $0.022 per kWH proposed by respondents.

In rebuttal, petitioner states that the Department has used Indian industrial electricity rates in numerous recent cases, including Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 5 ("Chlorinated Isocyanurates"). Petitioner also cites IEA - Electricity in India, the publication that respondents submitted to support the position that Indian electricity rates are aberrational, which states that, while residential and agricultural rates would rise dramatically if subsidies were eliminated, industrial rates would not materially change.

Petitioner also addresses the respondents' proposal to benchmark other countries' electricity rates against Indian rates. Petitioner states that such benchmarking is not Department practice. Petitioner cites Silicomanganese from China and accompanying Issues and Decision Memorandum at Comment 2, where the Department states, "electricity is not a good where world market forces would impact domestic prices. In fact, petitioner contends, electricity prices vary quite significantly from country to country. Petitioner argues that this alone does not make

the rates of electricity in any country unreliable." Petitioner also cites 19 C.F.R. § 351.408(c)(2), which states that the Department "normally will value all factors in a single surrogate country."

Petitioner also addresses the rates chosen by respondents. Petitioner asserts that several countries, such as Australia and the United States, are not economically comparable and their use in this analysis would be contrary to the statute and the Department's regulations and practice. Petitioner asserts that two of the chosen countries, Kazakhstan and Russia, have lower industrial rates because of electricity subsidies, according to published reports.

Petitioner compares the Indian rate used in the preliminary results of about $0.102 per kWh to the range of rates in countries that produce silicon metal and comparable ferroalloy products (excluding countries known to subsidize industrial rates), which range from $0.0371 to $0.121 per kWh. Petitioner asserts that, since the Indian rate falls within this range, it is an appropriate surrogate for electricity.

Department's Position:
We agree with petitioner that the Indian IEA electricity value is the best available information on the record for which to value electricity. In valuing factors of production ("FOP") information, section 773(c)(1)(B) of the Tariff Act of 1930, as amended (the "Act"), directs the Department to use the "best available information" from the appropriate market-economy country. In choosing the most appropriate surrogate value, it is the Department's practice to consider several factors, including whether the value: is from a country included on the list of potential surrogate countries; is specific to the input; represents a broad market average; is publicly available; and is contemporaneous with the POR. See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 8B. See also Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 7. Additionally, the Department prefers to value the FOPs in a single surrogate country, in accordance with section 351.408(c)(2) of the Department's regulations. See Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005) and accompanying Issues and Decision Memorandum at Comment 5.

As stated above (see Comment 1), we have determined that India is the appropriate surrogate country for which to value all inputs. Moreover, the IEA value is specific to the input, falls within the range of the national electricity rates from the 19 ferrosilicon-producing countries cited by respondents in their case brief at Exhibit 29, and is publicly available.

As for respondents' argument that Indian subsidies affect electricity prices, respondents have presented insufficient evidence to demonstrate that the Indian government subsidizes electricity in India to such an extent as to make the IEA rate unreliable for purposes of surrogate valuation. The Department addressed a similar argument in Pure Magnesium from the People's Republic of

China: Final Results of 2004-2005 Antidumping Duty Administrative Review, 71 FR 61019 (October 17, 2006) and accompanying Issues and Decision Memorandum at Comment 5, with respect to the IEA value. In that case, the respondent argued that the Department should not use the Indian IEA value for the same reasons. The Department determined, however, as we do here, that the IEA value was an appropriate surrogate value for electricity, as the Department found that the value was not proven to be aberrational. In addition, although respondents contend that Indian electricity rates are distorted due to cross-subsidization, the IEA - Electricity in India publication cited by respondents also states that, if subsidies were removed, Indian industrial electricity rates would not materially change. We note that we do not rely on this statement to suggest that we need to demonstrate whether the alleged subsidy has an "effect" on electricity rates, as section 771(5)(C) of the Act makes clear that the Department "is not required to consider the effect of the subsidy in determining whether a subsidy exists." Rather, we point out this statement simply to demonstrate that the publication itself is contradictory with respect to the issue raised by respondents. Moreover, the Department has made no finding that the Indian electricity sector received any countervailable subsidies. See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty and New Shipper Reviews, 72 FR 19174 (April 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

We also disagree with the respondents' recommendation to use a broad market average of national electricity rates, as many of the countries listed in the broad market average recommended by respondents, such as Australia and the United States, are not economically comparable to the PRC. Furthermore, we disagree that the IEA value is unreliable simply because it differs from other countries' electricity rates. As stated in Silicomanganese from China, at Comment 2: "{e}lectricity is not generally a traded good. In fact, electricity prices vary quite significantly from country to country. This alone does not make the rates of electricity in any country unreliable."

We note that the Department has used the same IEA electricity value in numerous recent cases. See, e.g., Chlorinated Isocyanurates. Furthermore, the Department has used this IEA value for other electricity-intensive cases, such as Silicomanganese from China. Thus, for the reasons noted above, we find that the IEA electricity value is the best available information on the record with which to value electricity and will continue to use the IEA value to value electricity for purposes of the final results.

Comment 3: Selection of Financial Statements

Respondents state that, if the Department selects Egypt as the surrogate country for these reviews, the Department should use the financial report of Egyptian Ferroalloys Company ("Efaco"), an Egyptian ferrosilicon producer, to value the surrogate financial ratios. Respondents state that the financial statement coincides with the POR, the auditor's report clearly states that Efaco's financial statements are in accordance with Egyptian generally accepted accounting principles ("GAAP"), and it is an Egyptian producer of comparable merchandise.

Alternatively, respondents further state that, if the Department selects India as the primary surrogate country, it should use the financial statements of Maharashtra Electrosmelt Ltd. ("Maharashtra") and Hira Ferro Alloys Ltd. ("Hira"), instead of the two companies it used for the preliminary results, Indsil and Nava Bharat. Respondents state that the Department prefers financial statements from companies that most closely represent the respondent's experience, and they cite 19 C.F.R. § 351.408(c)(4) which states that the Department analyzes the surrogate companies' "comparability to the respondent's experience" to ensure that their financial statements reasonably reflect costs incurred by respondents in producing subject merchandise.

The respondents state that Indsil has two operating divisions: the hydroelectric power division and the smelter division. They assert that in its 2005-2006 financial statement, Indsil reported earning 34 percent of its revenue from the sale of self-generated electricity. In addition, respondents argue that Indsil also earned all of its profit from the sale of electricity and suffered a loss from the sale of ferroalloys. Respondents also state that it is Department practice, when considering financial statements from companies with multiple product lines, to calculate ratios based on segments of companies that most closely resemble the subject merchandise, and they citing Wuhan Bee Healthy Co., Ltd. v. United States, 374 F. Supp. 2d 1299, 1309 (Ct. Int'l Trade 2005), in support of this view.

Respondents also state that additional costs associated with electricity production reported in other line items on both Indsil's and Nava Bharat's income statements further support respondents' claim that these financial statements are inappropriate for use in these reviews. Respondents state that it would double-count overhead, SG&A and profit, since these companies report costs associated with electricity production in specific line items that will be used to derive financial ratios.

Respondents state that Nava Bharat, unlike respondents, is divided into three operating segments: the ferroalloy division, the power division, and the sugar division. Respondents further argue that Nava Bharat earned its profit from its electricity, sugar, spirits and alcohol operations, and suffered a loss from the sale of ferroalloys. Nava Bharat sells its electricity to both its ferroalloy division and the merchant market. Respondents state that the ferroalloy division suffered a loss when the market-based transfer price of electricity is used instead of the cost rate. Respondents note, however, that the power and sugar divisions both showed profit for 2005-2006.

Respondents cite Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 71 FR 34893 (June 16, 2006), and accompanying Issues and Decision Memorandum at Comment 7, where the Department

rejected the financial statements of companies where non-subject merchandise production accounted for more than a minor portion of total asset value.

Respondents state that Maharashtra and Hira are suitable companies for use in these reviews for these three reasons: their financial statements come from only ferroalloy and related operations;

their financial statements do not reflect vertically-integrated companies with diverse product segments; and their financial statements show a profit. Respondents state that Maharashtra produces only ferromanganese and silicomanganese, and Hira produces silicomanganese, ferromanganese, and pig iron. Respondents note that petitioner has stated that Hira produces more pig iron than ferroalloys. Respondents state, however, that the pig iron production process, smelting iron ore with coke and limestone in a furnace, is similar to the silicon metal production process. Respondents further state that Hira's production would only be a disqualifying factor if the pig iron production distorted its financial statement, but state that petitioner has not provided evidence to show Hira's financial statement is unreasonable.

Respondents state that Maharashtra and Hira are not vertically-integrated companies with multiple product divisions, and they more closely resemble the respondent companies. Respondents state that Maharashtra and Hira paid $0.067 per kWh and $0.071 per kWh respectively for electricity, and that these prices reflect the purchase price of electricity rather than the cost of the electricity. Respondents further state that, unlike Indsil and Nava Bharat, Maharashtra purchased 96 percent of its electricity from other companies and Hira purchased all of its electricity from other companies.

Respondents also state that neither Maharashtra, nor Hira, generated enough electricity to be required under Indian accounting principles to treat their electricity operations as unique business segments. Respondents state, however, that both Indsil and Nava Bharat are required to report their unique electricity segments, and other segments, to be in accordance with Indian accounting principles, and these numerous business segments make them improper surrogate companies for these reviews.

In rebuttal, petitioner states that the Department should use the financial statements of Indsil and Nava Bharat for the final results. Petitioner states that self-generation of electricity, where the Chinese respondents did not self-generate electricity, should not disqualify a company's financial statements. Petitioner also cites Chlorinated Isocyanurates, in which the Department used surrogate companies that self-generated electricity even though the Chinese respondents did not self-generate electricity. Petitioner states that respondents have not demonstrated how Indsil and Nava Bharat's self-generation of electricity makes these ratios higher than producers which do not self-generate electricity.

Petitioner further states that the Department has rejected the argument that a distortion would occur from using the financial statements of companies that self-generate electricity when the respondent did not do so, requiring an adjustment of the ratios. Petitioner cites both Chlorinated Isocyanurates and Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003) and accompanying Issues and Decision Memorandum at Comment 10, as instances where the Department has used such financial statements.

Petitioner cites Tapered Roller Bearings and Parts Thereof, Finished or Unfinished From the Republic of Romania: Final Results and Rescission in Part of Antidumping Duty Administrative

Review, 61 FR 51429 (October 2, 1996), in which the Department acknowledges that rarely, if ever, will NME producer expenses and surrogate overhead expenses correlate exactly. Petitioner also argues that the Department has rejected arguments that it must select the statements of surrogate country producers that were more similar to the respondents in some respect, and cites Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 10, in support of this position.

Petitioner states that Indsil, Nava Bharat, and the respondents all produce silicon metal by smelting raw materials in an electric furnace. Petitioner argues that none of these companies merely process merchandise produced elsewhere. Petitioner also states that these companies' ferroalloy production operations are fundamentally the same; some production differences will always exist between companies; and respondents failed to show whether or how self-producing some or all of a company's electricity results in skewed surrogate ratios.

Petitioner states that the Department prefers to use the financial statements of multiple companies to eliminate distortions that may occur from using fewer statements, and cites Brake Rotors from the People's Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review, 64 FR 73007 (December 29, 1999) (unchanged in final), where the Department used five companies' statements to calculate the financial ratios. Petitioner further states that disqualifying financial statements of companies that self-generate power would also constrict the Department's choices for use in future cases, particularly in countries where self-generation of electricity is a common practice.

Petitioner states that, contrary to respondents' assertion that Indsil earned its profit from the sale of electricity and suffered a loss on its ferroalloy business, Indsil did not sell any electricity. Petitioner states that the Indsil "Segment Report" and "Profit & Loss Account" show that Indsil's hydropower "revenue" represents "intradivisional sales of power," (i.e., power internally transferred to Indsil's ferroalloy plant). Petitioner also refers to the 2005-2006 Indsil financial statement at page 35, where the "Turnover" for silicomanganese (Rs 347,791,565) equals the amount of net sales less "Intervidisional sales of power" shown in the "Profit and Loss" account on page 24. Petitioner responds to respondents' statement that Indsil is not, in fact, primarily a ferroalloy company. Petitioner refers to the narrative of the company financial statements, in which Indsil refers to itself as a ferroalloy producer, and states that the company belongs to the ferroalloy industry.

Petitioner also states that Nava Bharat generated almost all of its electricity to transfer internally to its ferroalloy production. Petitioner states that Nava Bharat generated very little profit from the sale of electricity, and that its cost of self-generated power (like purchased electricity) is a cost of producing ferroalloys.

Petitioner acknowledges that Nava Bharat produced other sugar-based products, but states that

Department practice is not to exclude a company merely because it produced other merchandise. Petitioner states that the Department evaluates whether the company is "predominantly" engaged in the production of comparable merchandise, and cites Chlorinated Isocyanurates and accompanying Issues and Decision Memorandum at Comment 2, to support that position. Petitioner states that, during 2005-2006, 70 percent of Nava Bharat's combined production volume of ferroalloys and sugar products was ferroalloys.

Petitioner states that the Department should not use the financial statements of Hira or Maharashtra. Petitioner states that Hira produced more pig iron than ferroalloy products during 2005-2006. Petitioner states that pig iron production requires different equipment and technology than ferroalloys, has a different physical form than ferroalloys and different end uses, and that pig iron is not comparable merchandise.

Petitioner states that Maharashtra is problematic because it is a subsidiary of Steel Authority of India Ltd. ("SAIL"), an entity owned by the government of India. Petitioner states that the Department has found the data of state-owned companies do not accurately represent market-reflective amounts of overhead, SG&A and profit, and cites Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation, 64 FR 38626 (July 19, 1999) and accompanying Issues and Decision Memorandum at Comment 4 ("Hot-Rolled Steel from Russia"), to support this opinion.

Department's Position:
Pursuant to section 773(c)(1) of the Act, it is the Department's practice to use the best available information to derive the surrogate financial ratios. To determine the best information available in accordance with the Act, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. See, e.g., Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision Memorandum at Comment 5.

As the Department has selected India as the surrogate country, we have examined the Indian financial statements on the record to determine which statements constitute the best available information. We acknowledge that the financial statements of all four Indian companies under consideration are contemporaneous, publicly available, and all companies are producers of ferroalloys. However, in evaluating financial statements, "it is the Department's preference to match the surrogate companies' production experience with Respondents' production experience." See Certain Frozen Warmwater Shrimp from the People's Republic of China:

Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 70997 (December 8, 2004) and accompanying Issue and Decision Memorandum at Comment 9(D).

First, we note that, like respondents, Maharashtra and Hira are both ferroalloy producers. Unlike respondents, both Indsil and Nava Bharat produce their own electricity at such a high level, that under Indian GAAP rules, it must be reported as a separate segment of the companies' business. Additionally, Nava Bharat has extensive resources invested in other segments in addition to

electricity, such as sugar and spirits. Although petitioner has stated that the Department has used the financial statements of companies which self-generate electricity to value the financial ratios for companies which do not self-generate electricity, we do not need to do so here, as the other financial statements on the record, for Maharashtra and Hira, will result in our use of surrogate financial ratios that more closely match the respondents' production experience.

We disagree with petitioner's assertion that Maharashtra's financial statements are unreliable because Maharashtra is government-owned. In Hot-Rolled Steel from Russia at Comment 4, the Department dismissed that company's financial statements because the statements were not audited, not because of its status as a government-owned entity. Petitioner has cited no other cases which support rejecting the Maharashtra statements for this reason. Furthermore, although petitioner contends that Maharashtra and Hira should be disqualified because they are subsidiaries, petitioner again has provided no precedent which would support rejecting the statements for this reason. Therefore, based on the specificity and quality of the financial statements of Maharashtra and Hira, we use their financial ratios to value surrogate financial ratios for the purposes of the final results.

Comment 4: Quartz Valuation

Petitioner states the Department should value the quartz consumed by respondents using the price of Grade A quartz in India, and cites from the IBM Yearbook: "{q}uartz is the major source of silica in the manufacture of ferro-silicon. Occasionally quartzite is also used."[3] Petitioner contends that the Department should, consistent with its practice, select a surrogate quartz value based on the physical characteristics (silicon dioxide and impurity content, in the case of this input), and not on the term used to describe it. Petitioner states that Jiangxi Gangyuan and Datong Jinneng both report using a factor of production with extremely high silicon dioxide content. Petitioner also cites the IBM Yearbook, which states that silicon metal production requires "high purity quartz containing about 99.8 percent silicon dioxide."[4]

Petitioner states that quartz with such high silicon dioxide content is classified as "Grade A" quartz in India, and has provided two price quotes from Indian quartz suppliers which were both for Grade A quartz, and their quartz contained extremely high percentages of silicon dioxide. Petitioner states that other grades of quartz listed in the IBM Yearbook contain lower percentages of silicon dioxide. Specifically, petitioner states the quartz value that respondents suggest for quartz is for Grade II quartz from the IBM Yearbook. However, according to petitioner, Indian "Grade II" quartz contains a lower range of percentages for silicon dioxide, lower than the silicon dioxide content in the quartz consumed by the respondents. Petitioner also states that Grade II quartz is not suitable for the respondents because it contains higher levels of impurities than the input consumed by respondents. Petitioner states that the price quotes it has

[3] IBM Yearbook, page 65-19.

[4] Id.

placed on the record are for quartz that contains impurity levels that more closely represent the materials consumed by respondents. Petitioner further states that grades other than Grade A quartz listed in the 2005 Indian Minerals Yearbook have different silicon dioxide content and levels of impurities than the inputs reported by respondents.

Petitioner recommends that the Department use the average of the two quartz price quotes it has obtained, for an average value of Rs. 1,300 per MT. Petitioner offers as an alternative, the average price for Grade A quartz, from values found in the 2005 IBM Yearbook, which is Rs. 1009 per MT. As another option, petitioner suggests the Department continue to use the quartzite value it used in the preliminary results, for Rs. 695 per MT.

Respondents state that the Department should: (1) use quartz to value respondents' input; (2) use an Egyptian value submitted by respondents; or (3) should the Department select India as the surrogate country, it should rely on the IBM Yearbook Grade II price for quartz. Respondents note that they reported using quartz in rough and semi rough/fine form for Datong Jinneng, and Gangyuan reported using quartz in fine and crude or roughly trimmed form. They also cite the IBM Yearbook to differentiate between the use of quartz and quartzite:

> Quartz is the major source of silica in the manufacture of ferro-silicon. Occasionally quartzite is also used. However, use of quartzite is restricted as it contains higher alumina and iron and more likely that it would break down in the furnace. Lump silica in the size range from 3/4 to 5 inches are generally preferred.[5]

Respondents also cite other IBM Yearbook references which state that quartz is used to produce ferrosilicon and silicon metal, and quartzite is used to produce other metallurgical products, principally refractory products including silica bricks and iron and steel. Respondents also address the Department's reliance in the preliminary results of their use of the term quartzite for their consumption and production of silicon metal. Respondents state that "quartz" and "quartzite" are often used interchangeably. Respondents also state that Gangyuan officials specifically referred to the material as "quartz" during the factory tour, and the invoices examined during verification refer to the product as "quartz," and that these instances further confirm that the respondents use quartz in their production of silicon metal.

Respondents state that if the Department selects Egypt as the surrogate country, it should use the quartz price quote submitted by respondents from El Nasr Mining Co., for $30 per MT, since the Egyptian import data is aberrational and based on an extremely small quantity. Respondents note the Department uses price quotes as surrogate values when there is "no other source of useable, reliable information," as stated in Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 68 FR 27530 (March 20, 2004) and accompanying Issues and Decision Memorandum at Comment 1. Respondents state the

[5] IBM Yearbook, Chapter 65, page 19, Respondents' brief at Exhibit 43.

Department will "resort to company specific information when country-wide data are not available." See Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 9037 (February 24, 2005) and accompanying Issues and Decision Memorandum at Comment 9. Respondents also state that if the Department uses India as the surrogate country, it should value quartz using the averaged 2005 IBM Yearbook value for Grade II quartz, at Rs 225 per MT.

In rebuttal, petitioner states that respondents used a product comparable to Grade A quartz in India, and that other grades of quartz and quartzite listed in the 2005 IBM Yearbook have lower levels of silicon dioxide. Petitioner states that respondents have acknowledged consuming a higher quality of silicon dioxide ore, and yet are requesting that the Department use a lower value for the material.

In rebuttal, respondents state that the petitioner has proposed using price quotes that do not reflect national market prices for quartz. The respondents cite Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 9037 (February 24, 2005) and accompanying Issues and Decision Memorandum at Comment 9, to support their position that the Department resorts to company-specific information only when country-wide data is unavailable. Respondents assert that, since the IBM Yearbook is country-wide, it is not necessary to resort to price quotes.

Respondents also state that the Grade II data meets the Department's requirement for product specificity, since the IBM Yearbook states that Grade II quartz is appropriate for silicon metal production. According to respondents, the IBM Yearbook ranges the silicon dioxide content of Grade II quartz between 95 and 98 percent and very close to the respondents' levels.

Respondents state that, while Grade A quartz is listed in the IBM Yearbook, it is not specified, nor has petitioner provided an official definition other than their two price quotes. They further state that it is not possible to know whether Grade A quartz corresponds to the quartz consumed by respondents.

Department's Position:
As both the respondents and petitioner contend that quartz is more appropriate than quartzite for valuing the factor alternatively referred to by respondents on the record as quartz and quartzite,

we have examined all information on the record with respect to the physical characteristics reported by respondents to determine the most appropriate value for use in the final results.

When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use surrogate values that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of taxes on exports. See Cut-to-Length Carbon Steel Plate from the People's Republic of China, Final Determination of Sales at Less Than Fair Value, 62 FR 61972, 61964, 61966 (Nov. 20, 1997).

See also 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) and accompanying Issues and Decision Memorandum at Comment 3.

Information on the record, in both the Datong Jinneng December 1, 2006, supplemental response at Exhibit SD-1 and the Jiangxi Gangyuan November 15, 2006, supplemental response at Exhibit SD-1, indicates that respondents consume quartz which has silicon dioxide content which places it in the Grade I category of quartz, as found on page 65-21 of the IBM Yearbook. According to Table 8 on page 65-8 of the IBM Yearbook, the price of this quartz grade is 400-450 Rs. per MT, for which we have calculated an average value of 425 Rs. per MT. This value comes from a publicly available source, encompasses a broad market average, and is specific to the inputs consumed by respondents.

We disagree with petitioner's recommendation to use its two price quotes, as the Department has country-wide publicly available data for which to value this factor. As the Department has stated in Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum at Comment 5: "{t}here are many unknowns that accompany a price quote, so the Department does not favor the use of such information if other publicly available data are on the record as in this case."

Although petitioner also recommends that the Department use the average value for Grade A quartz prices, as found in Table 8 of the IBM Yearbook, the physical characteristics of Grade A quartz are not clearly defined in the IBM Yearbook and thus cannot be matched to the quartz that respondents consumed. With respect to the price quotes offered by petitioner which refer to "Grade A" quartz, again there is no definition of that quartz within the price quotes or elsewhere on the record, which would suggest that Grade A quartz is specific to the input in question.

We also disagree with petitioner's alternative recommendation that we continue to use a value for quartzite to value this input for the final results. As both respondents and petitioner have stated and supported with evidence on the record, quartz (and not quartzite) is the input consumed in the production of silicon metal.

We also disagree with respondents' recommendation that we value the input with Grade II quartz data from the IBM Yearbook, as the description for Grade II quartz contained in the IBM Yearbook indicates a lower level of silicon dioxide content than that reported as having been consumed by the respondents. The description for Grade I quartz, however (silicon dioxide content of 98% or higher), is specific to the input in question, and thus constitutes the best available data on the record for valuing this input for the final results.

Comment 5: Silica Fume By-Product Valuation

Petitioner states that the value used by the Department in the preliminary results for silica fume, a by-product, claimed by both Datong Jinneng and Jiangxi Gangyuan, is a basket category that

has yielded a distorted average unit value ("AUV"). Petitioner asserts that this calculated value of Rs. 76 per kilogram, approximately $1700 per MT, includes extremely high grades of silicon dioxide, and thus does not provide an appropriate match to the silica fume produced by respondents.

Petitioner contends the Department should value silica fume using either two invoices from ELKEM Materials ("Elkem"), a large supplier of silica fume in India, or Infodrive India data which corresponds to the type of silica fume respondents have produced and sold. Petitioner states that there are two Indian sources on the record (Infodrive India and www.eximon.com) which both show the types of silicon dioxide being imported into India. According to petitioner, these data show these imports to be mostly chemical forms of silicon dioxide, and not the silica fume associated with silicon metal production.

Petitioner states that the value of silica fume imported from several countries is extremely high, and notes, for example, that the average unit value for silicon dioxide imported from Switzerland is $31,983 per MT. Petitioner cites Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964 (November 20, 1997), where the Department found average unit values less than two times higher than other values on the record to be aberrational where import quantities were also low. Petitioner asserts that the Department rejects the use of a basket category when its value does not reflect the value of the input in question, and cites Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2007) and accompanying Issues and Decision Memorandum at Comment 1, in support of this position.

Petitioner states that the Department should match the surrogate silica fume value to the grade of silica fume that respondents sold. Petitioner states that the Shanghai Jinneng website identifies its three grades of silica fume as having minimum silicon dioxide contents of 90, 92, and 94 percent respectively. Petitioner states that silica fume for refractory purposes must have a silicon dioxide content of at least 95 percent, and states that the silica fume produced by Datong Jinneng must be concrete grade silicon dioxide. Accordingly, petitioner states the Department should use a silica fume value for concrete applications of $294 per MT, which is an average value for POR imports into India, taken from Infodriveindia, for "Elkem concrete grade" silica fume.

Petitioner also states that Jiangxi Gangyuan has reported that its silica fume has a silicon dioxide content of 95-97 percent, and would, thus, qualify as refractory grade silica fume. Petitioner states the Department should use a silica fume value for refractory applications of $449 per MT, which is an average value for POR imports into India, taken from Infodriveindia, for Elkem refractory grade silica fume.

Alternatively, petitioner states the Department should use Elkem invoices for concrete and refractory grade silica fume sold in India placed on the record of this proceeding to value silica fume. Petitioner cites Manganese Metal from the People's Republic of China: Final Results of Second Antidumping Administrative Review, 64 FR 49447 (September 13, 1999), where the

Department used price quotations or invoices to value an input.

Petitioner also recommends that the Department use a suitable subset of Indian import data. Petitioner indicates the Department should use the value of all POR Infodrive India imports specifically identified as silica fume or microsilica, and that this value would total $490 per MT. Petitioner alternatively recommends the Department use the WTA data, then exclude the 12 countries which do not produce silica fume and the five countries whose imports consist mainly of higher quality silicon dioxide (approximately $570 per MT). Petitioner states that the use of an improper, overstated silica fume value distorts the dumping margin, and states that the Department has the responsibility under the statute to calculate dumping margins as accurately as possible.

Respondents state in rebuttal that the Department should continue to rely on the WTA Indian import statistics. Respondents state that this is the best choice for silica fume, as the WTA data are publicly available, non-export average values, contemporaneous with the POR, product-specific, and tax-exclusive. Respondents state that parties seeking to exclude import data as aberrational must advance a reasonable and objective standard, and they cite Wooden Bedroom Furniture LTFV Investigation and accompanying Issues and Decision Memorandum at Comment 18, where the Department declined to exclude import values from countries respondents claimed were significantly different than the HTS classification as a whole.

Respondents also cite Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006) and accompanying Issues and Decision Memorandum at Comment 8. In that proceeding, respondents proposed using price quotes instead of WTA data for cartons, since they contended the Indian import statistics included "specialty" boxes transported by air. The Department, respondents note, continued to rely on WTA Indian import statistics.

Respondents state that petitioner has not provided a reasonable or objective standard to measure whether Indian WTA import statistics are aberrational. Respondents state that whereas the petitioner has asserted the Department should exclude a group of countries which have not produced silicon metal or ferrosilicon, respondents assert that silica fume could be produced as a by-product from products other than silicon metal or ferrosilicon. Furthermore, respondents cite Germany as one of the original countries listed by petitioner as not having exported silica fume to India, yet silica fume imports from Germany to India did appear in the Infodrive India data submitted by petitioner.

Respondents state that the Department should not parse the WTA import statistics, as suggested by petitioners. Respondents state that one case upon which petitioner has relied, Hebei Metal & Minerals Import & Export Corp. v. United States, Crt. No. 03-00442, Slip Op. 04-88 (Ct. Int'l Trade July 19, 2004), the CIT did decide that the Swedish value was aberrational, but only by comparing it with values in three other countries, which accounted for over 60 percent of the total quantity imported. In this case, however, respondent indicates that petitioner concedes that

imports from eight countries are fair, and these imports represent 59 percent of total silicon dioxide imports by volume.

Respondents also assert that, whereas the AUV of the excluded Swedish imports were 10-14 times higher than the three main exporting countries, the countries the petitioner advocates excluding have an AUV that is only six times higher than the eight countries the petitioner agreed to include. Furthermore, respondents state that the average unit value for four of the countries the petitioner wants to exclude - the United States, Sweden, Canada, and Italy - is only four times higher than that of the eight countries petitioner agrees to include.

Respondents further assert that both Infodrive India and Eximon data are incomplete and unreliable. Respondents cite Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 38366 (July 6, 2006) and accompanying Issues and Decision Memorandum at Comment 1, where the Department found Infodrive India data represent, at most, 60 percent of the imports into India.

Respondents further state that WTA Indian import data for silicon dioxide during the POR list a total of 8,287 MTs imported into India during the POR, while the Infodrive India data show total silicon dioxide imports during the POR as 17,864 MTs. Respondents indicate that many of the Infodrive India entries were not subject to customs duties and were, in all likelihood, not entries for domestic consumption. When respondents exclude non-dutiable imports, the total drops to only 3,409 MT, less than half the official WTA volume.

Respondents also state that Infodrive India itself acknowledges that it does not collect import information from all Indian ports. Respondents cite Dorbest, Ltd. v. United States, 462 F. Supp.2d 1262, 1277 (Ct. Int'l Trade 2006) ("Dorbest"), where the court upheld the Department's determination to reject Infodrive India data in favor of the Indian import data reported by the WTA.

Respondents state that the Infodrive India data do not report specific items in a consistently comparative manner, whereas the WTA data is consistently reported in rupees per kilogram. Respondents cite Wooden Bedroom Furniture LTFV Investigation and accompanying Issues and Decision Memorandum at Comment 10, where the Department declares its preference for the consistency of WTA data.

Respondents also disagree with petitioner's proposal to exclude certain products, such as Elkem's 971U microsilica, which petitioner argues may contain higher silicon dioxide content than the silica fume produced by respondents. Respondents state that the Department would have to determine how to classify these imports, yet the parties would not be able to comment on the classifications.

Respondents also assert that the record does not support petitioner's contention that Gangyuan produces the more expensive "refractory" grade of silica fume, Datong Jinneng produces only the less expensive "concrete" grade. Thus, respondents state, the Department should rely on

WTA import statistics to value both respondents' silica fume.

Respondents also address what they argue is a contradictory statement in one affidavit provided by petitioner, wherein petitioner states that refractory materials are part of the cementitious applications of silica fume. Respondents cite the ASTM International 2005 "Standard Specification for Silica Fume Used in Cementitious Mixtures," which states that silica fume used in such materials require only 85 percent silicon dioxide or more, in contrast to petitioner's argument that silica fume must contain 95 percent silicon dioxide to be used for refractory applications.

Respondents address the "File Note" provided by petitioner's expert, and assert that this note is not an affidavit, nor is it signed. Respondents state that neither the "File Note" nor the accompanying emails are legally certified, notarized or authenticated in any way, and that the Department should reject the "File Note." Respondents assert that the "File Note," put on the record by petitioner in support of its position that silica fume must have at least 95 percent silicon dioxide to be considered refractory grade, is not persuasive and contradicts its other expert's affidavit and ASTM specifications.

With respect to the Elkem silica fume invoices submitted by petitioner, respondents state that petitioner submitted two product descriptions for 85 percent and 90 percent, respectively, as being used for concretious applications and priced at less than $300 per MT, with another grade with at least 96 percent silicon dioxide priced at $675 per MT. Respondents state that this description does not suggest it is intended for refractory purposes. Furthermore, respondents state that petitioner then arbitrarily assigned the Datong Jinneng silicon dioxide, which contains a minimum of 92-94 percent silicon dioxide, to the lower "concrete" grade prices.

Respondents also state that petitioner could potentially have influenced the quote it received from Elkem, since Elkem is a corporate entity related to petitioner. Respondents cite Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71, FR 26329 (May 4, 2006)

and accompanying Issues and Decision Memorandum at Comment 8, where the Department has considered such submissions and stated its preference for publicly available information.

Department's Position:
When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use surrogate values that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of taxes on exports, as stated above in Comment 4.

In applying the Department's surrogate value selection criteria, the Department has found in numerous NME cases that WTA import data are reliable information for valuation purposes because they consist of average import prices, are representative of prices within the POR,

product-specific and tax-exclusive. See, e.g., Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Review, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 2. See also 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), and accompanying Issues and Decision Memorandum at Comment 11A.

As noted, petitioner has requested that the Department examine the Infodrive data as a corroborative tool, to demonstrate that the contents of the WTA data are not specific to the input at issue. Thus, we have first examined the Infodrive data to determine whether it accounts for a significant percentage of the WTA data. In comparing the data, however, we note that while the WTA Indian import data for silicon dioxide during the POR contains a total of 8,287 MT of silicon dioxide, the Infodrive India data contains 17,864 MT, which is over twice the amount appearing in the WTA data. As respondents have noted, 80% of the Infodrive India entries by volume are identified as not subject to customs duties. If we accept that such entries should be excluded, the total Infodrive India volume drops to just 3,409 MT, which is less than half the official WTA Indian import volume. Thus, it is impossible using either measure to determine accurately whether the Infodrive India data consist of a significant percentage of the WTA data.

In Dorbest, where the CIT upheld the Department's use of WTA data over a suggested Infodrive India alternative, it stated that the Department's "preference for a broader data set is reasonable and supported by substantial evidence." Also, as stated in Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007) and accompanying Issues and Decision Memorandum at Comment 7, "{t}here is no record evidence that Infodrive India contains all imports or accounts for mis-classifications at the time of import that may be corrected later in MSFTI (the source for WTA data)."

While we acknowledge that the Infodrive India data suggest that the WTA data may include higher-valued products under the HTS category 2811.22.00, given the discrepancies listed above between it and the WTA data, we have determined that the Infodrive data are not a reliable source for use in the valuation of silica fume or to corroborate the suitability of the WTA data for silica fume.

We also disagree with petitioner's suggestion that we use the Elkem invoices or the "File Note" submitted in an affidavit provided by petitioners. As noted throughout this memorandum, the Department prefers, whenever possible, to use country-wide data and only to resort to company-specific information when country-wide data are not available. Therefore, for the reasons stated above, we find that the WTA Indian import data for HTS 2811.22.00, remains the best information on the record for which to value silica fume for the final results.

Comment 6: Steam Coal Valuation

Respondents state that the Department correctly chose steam coal to value coal usage for the

preliminary results, however they argue that the WTA import statistics used by the Department are not the best available data on the record to value this input. If the Department chooses Egypt as the surrogate country for the final results, respondents recommend the Department use the 2005 United Nations Commodity Trade Statistics data for Egypt under HTS 2701.

If the Department chooses India as the surrogate country for the final results, respondents recommend the Department use the IBM Yearbook for non-coking steam coal as a reliable source for Indian steam coal prices. Specifically, they recommend the Department use the highest grade to value Jiangxi Gangyuan's steam coal, and a simple average of the two lower grades to value Datong Jinneng's coal usage. Respondents state that this differentiation reflects the coal which respondents consumed to produce silicon metal. Petitioner did not submit comments on this issue.

Department's Position:
We agree with respondents, in part. As stated in Comment 4, the Department's preference is to use surrogate values that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of taxes on exports.

We have examined all information on the record with respect to the physical characteristics of steam coal reported by respondents to determine the most appropriate value for use in the final results. In particular, Jiangxi Gangyuan supplied the useful heat value for the coal it consumed in its November 16, 2006, response at page 8. Datong Jinneng supplied the useful heat value for the coal it consumed in its December 4, 2006 response, at Exhibit SD-1.

Based on the information respondents have placed on the record with regard to the type of coal consumed as compared to the steam coal grade definitions found on page 24-17 of the IBM Yearbook , Jiangxi Gangyuan consumed Grade B coal (with useful heat value of between 5600-6200 kcal), and Datong Jinneng consumed Grade C coal (with useful heat value of between 4940 5600 kcal). The prices for these grades are found on page 24-12 of the IBM Yearbook. As the descriptions for steam coal of Grades B and C, as differentiated by useful heat value in the IBM Yearbook, are more specific to the input in question, the Department finds that the IBM Yearbook values for steam coal are the best available information on the record, and thus constitute the best available data on the record for valuing this input for the final results.

Comment 7: Charcoal

Petitioner states that the WTA import statistics for charcoal used in the preliminary results do not accurately reflect the value for charcoal and are based on a very small volume of imports. Petitioner asserts that the Indian National Mission on Bamboo Applications published an article on producing charcoal from bamboo in India, wherein it states that the price of charcoal ranges from 5000-14,000 Rs. per MT. Petitioner further states that the article also evaluates the prospective charcoal producer's return on charcoal as Rs. 6000 per MT. Petitioner states that the Department should use either the midpoint of the charcoal price range, 9,000 Rs. per MT, or the estimated return of Rs. 6000 per MT, to value charcoal for the final results.

In rebuttal, the respondents state that the Department correctly used WTA import statistics in the preliminary results. Respondents state that the WTA Indian import quantity of charcoal is not aberrationally small, but is comparable to charcoal quantities used by each respondent. Respondents cite the Memorandum from James C. Doyle to Edward C. Yang, regarding "Factors of Production Valuation Memorandum for the Preliminary Determination, Silicon Metal from the Russia Federation (September 13, 2002), in which the Department stated that the imported charcoal from Tunisia to Egypt in 1999, 2991 MTs, were moderate. Respondents state that the WTA Indian imports of charcoal in this proceeding, 4687 MTs, are significant and should be used for the final results.

Respondents further state that the article offered by the petitioner defines charcoal broadly. Whereas the charcoal evaluated in the article might refer to wood, bamboo, sugarcane waste, rice husk or some other type of charcoal, respondents consumed wood charcoal only. Respondents further assert that the article does not state clearly whether its analysis was based on regional, local, city or nation-wide data. Respondents cite Notice of Final Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China, 68 FR 67053 (October 31, 2003), wherein the Department dismissed similar studies and articles for honey prices that did not capture country-wide prices.

Respondents also assert the Department should continue to use the Indian import statistics even if the Department selects Egypt as the surrogate country. Respondents state the Egyptian import volume for charcoal is extremely low and its price aberrationally high.

Department's Position:
We agree with respondents. As noted throughout this memorandum, the Department has found in numerous NME cases that WTA import data are reliable information for valuation purposes because it is an average import price, representative of prices within the POR, product-specific and tax-exclusive.

In applying the Department's surrogate value selection criteria as mentioned above, the Department has selected WTA data in preference to surrogate values taken from publicly available studies. See, e.g., Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Review, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 2, where the Department rejected the use of surrogate value data based on a publicly available study because WTA data were available to value bottles and caps.

As for the values recommended by the petitioner, the Department finds that the article refers to various kinds of charcoal rather than the specific type of charcoal respondents consumed. The article encompasses bamboo, sugarcane waste, and other types of charcoal, and contains far more varieties of charcoal than the wood charcoal consumed by respondents. Thus, in accordance with the Department criteria to select product-specific surrogate values, the Department finds that the WTA Indian data is most specific to the input in question, and thus remains the most reliable data for purposes of the final results.

Comment 8: Electrode Usage

Petitioner asserts that both Jiangxi Gangyuan and Datong Jinneng consumed a specific category of electrodes to remove silicon metal from the furnaces during the POR. Although the Department categorized this input as an auxiliary item and part of overhead costs for the preliminary results, petitioner asserts that the Department should value this factor as a direct input for the final results. Petitioner claims that these electrodes are consumed in the production process.

Petitioner cites 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) and accompanying Issues and Decision Memorandum at Comment 2 ("Sawblades"), wherein the Department explained that "{w}e have valued all materials that are required for a particular segment of the production process as factors except where the record indicates that the input is not replaced so regularly as to represent a direct factor rather than overhead."

In rebuttal, respondents state that this electrode acts as a tap to cover the furnace tap hole, allowing the liquid silicon to flow out of the furnace without melting the iron around the furnace tap hole. Therefore, respondents state that this input is part of the furnace, and is not incorporated into the final product. Respondents cite Silicon Metal from Russia as a case in which the Department did not value these electrodes as direct inputs, but as auxiliary inputs.

Department's Position:
We agree with petitioner. As the Department stated in Sawblades: "{w}e have valued all materials that are required for a particular segment of the production process as factors except

where the record indicates that the input is not replaced so regularly as to represent a direct factor rather than overhead."

In the instant case, this input is consumed regularly and replaced regularly during the continuous production of silicon metal, as petitioner and respondents acknowledge. According to respondents, the molten silicon metal must be tapped from the furnace every six to eight hours to permit the smelting furnace to operate continuously and to allow the molten metal to cool for further processing. See Jiangxi Gangyuan's November 16, 2006, response at page 14. See also Shanghai Jinneng's December 4, 2006 response at page 33.

With respect to the cases cited by respondents, in which they state that the Department determined not to value such electrodes, we note that the record for those reviews does not support such a conclusion, as the issue of whether these specific electrodes should be considered a factor of production was not raised. Therefore, as these electrodes are consumed regularly in the production of silicon metal, we have determined that the input is appropriately treated as a factor of production for purposes of the final results.

Comment 9: Clerical Error Allegations in Calculating Freight

Respondents assert the Department erroneously applied a higher distance for quartz and coal in the preliminary results, and that the Department should correct its margin program for Jiangxi Gangyuan at lines 853 and 857 to apply what they contend is the correct distance for these inputs.
Respondents also contend the margin program failed to calculate a weighed-average freight cost for charcoal that is transported by both rail and truck, and instead calculated distinct railway and truck freight costs using the same Sigma distance and then combined the two amounts. As a result, respondents assert, the Department overstated the freight charge for charcoal. Respondents recommend changing line 854 in the margin program to create the weighted average.

In rebuttal, petitioner states that the Department properly calculated the freight cost for quartz. Petitioner states that the Department uses the Sigma distance only when using CIF import data as surrogate values. When other data are used, as for quartz, the Department uses the actual distance from the supplier to the factory to calculate the freight cost, and the petitioner cites Honey from the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review, 68 FR 69988 (December 16, 2003), unchanged in Honey from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review, 69 FR 25060 (May 5, 2004) ("Honey"). Petitioner further states that no matter which value the Department chooses for the final results, the options will not be based on import data and, therefore, the Department should continue to calculate the freight cost for quartz for Jiangxi Gangyuan using the reported actual distance from its supplier to its factory.

Department's Position:
We note that the Department inadvertently erred in using the actual distance for the coal freight value in the margin program and will correct the program to use the Sigma distance for the final results. For the quartz calculation, however, the Department will continue to use the actual distance. As cited in Honey above and unchanged in the final results, the Department uses the Sigma distance only when using CIF import data as surrogate values. The Department also acknowledges the inadvertent charcoal freight calculation error, and will correct it for the final results to calculate a weighted average for the charcoal surrogate value.

Comment 10: June 2005 Electricity Consumption

Respondents assert that the Department incorrectly included June 2005 electricity consumption in its margin calculation for Jiangxi Gangyuan. Respondents state that the Department reduced the June 2005 production figure to account for missing raw materials and labor used in that month. Respondents assert that the Department should deduct the June 2005 electricity amount in line 812 of the Jiangxi Gangyuan margin program.

In rebuttal, petitioner states that, whereas Jiangxi Gangyuan did not report labor and raw

material consumption, it reported electricity due to maintenance the company performed during the month. This maintenance process was to reactivate the furnace after a shutdown and, while the process did produce silicon metal at the end of June 2005, it also restored the furnace to operational status to enable the production of silicon metal during the POR.

Petitioner further states that Jiangxi Gangyuan failed to report consumption of materials and labor for June 2005. Within that context, states petitioner, deducting the June 2005 electricity consumption would further reward Jiangxi Gangyuan for failing to provide the Department with the complete data required to generate an accurate margin. Thus, states petitioner, the Department decision to include electricity consumption for all 12 months of the POR was intentional, appropriate, not a ministerial error, and should be retained for the final results.

Department's Position:
We agree with petitioner, and will continue to value the June electricity consumption of Jiangxi Gangyuan for the final results. The Department correctly included electricity cost as part of the June 2005 calculation, since Jiangxi Gangyuan reported at verification that it consumed electricity in June 2005 in order to begin production of silicon metal during the rest of the POR.[6]

For a full discussion of this issue, see Jiangxi Gangyuan Verification Report at pages 3-4 and 26-27, and Exhibits 4 and 18.

Comment 11: Work-in-Process Inventory

Petitioner states that Jiangxi Gangyuan's work-in-process inventory may have been reduced during the POR and requests the Department issue Jiangxi Gangyuan a supplemental questionnaire requesting inventory records covering the POR. During the Public Hearing held on July 30, 2007, however, petitioner withdrew this work-in-process argument based on a translation change made by Jiangxi Gangyuan to calculate its factors of production (Hearing Transcript, p. 27-28).

Department's Position:
As petitioner withdrew its argument with respect to this issue, the Department need not address this issue for the final results.

Comment 12: Silica Fume Offset

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[6] Whereas the same would apply to labor costs for June 2005, Jiangxi Gangyuan reported that its labor records do not allow us to account for it. See Memorandum to the File through Christopher D. Riker, Program Manager, Office 9, AD/CVD Operations, Office 9, from Scot T. Fullerton, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding Verification of the Sales and Factors Response of Jiangxi Gangyuan Silicon Industry Company, Ltd. in the Antidumping Duty New Shipper Review of Silicon Metal From the People's Republic of China ("Jiangxi Gangyuan Verification Report"), at page 33.

Petitioner states that Jiangxi Gangyuan transferred its silica fume to a joint venture in January, 2006, and the joint venture profits generated from the sale of silica fume do not qualify as a by-product offset under Department practice. Petitioner further states that there is no clear statement of the joint venture profits for 2006 and, since it was a start-up in 2006, might not have generated any profit in that year.

Also, petitioner states that Jiangxi Gangyuan has not demonstrated entitlement to an offset to its costs, and cites Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy, 69 FR 18869 (April 9, 2004) and accompanying Issues and Decision Memorandum at Comment 4, stating that the respondent bears the burden of demonstrating its entitlement to a cost offset.

In rebuttal, respondents state that the Department correctly granted Jiangxi Gangyuan a by-product offset for its sales of silica fume. Respondents state that it is the Department's practice to grant an offset when the by-product is resold and the company received a financial benefit from these sales, and cites Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 54897 (September 19, 2005) and accompanying Issues and Decision Memorandum at Comment 8(E). Respondents state that there is ample evidence on the record tracking the production, sale and recording of Jiangxi Gangyuan's silica fume transactions.

Respondents state that Jiangxi Gangyuan sold silica fume through an affiliate in which it has an ownership interest. Respondents cite Sinopec Vinylon Works v. United States, 2006 WL 1550005 (Ct. Int'l Trade 2006), slip op. 06-78, at 7-11 ("Sinopec"), wherein the court directed the Department to apply the self-input rule to inputs produced by an affiliated joint venture supplier when it concludes that the responding company exercises both de jure and de facto control. Although the Department found in Sinopec that there was insufficient control by the responding company and denied applying the self-input rule, respondents contend that the record demonstrates that Jiangxi Gangyuan exercises sufficient control over its affiliate.

Respondents address petitioner's argument that Jiangxi Gangyuan and its affiliate are separate entities, citing to Sinopec, which states, "whether or not the companies possess separate legal entities" should not form "the basis of the Department's methodology." Respondents state that the degree of affiliation between Jiangxi Gangyuan and its affiliate warrant the Department's treatment of Gangyuan and its affiliate as a single entity for the purposes of the silica fume by-product offset.

Alternatively, respondents contend that the Department recognize that Jiangxi Gangyuan received an economic benefit from silica fume sales by its affiliate. Gangyuan states that it received rent, increased value of its land, and its interest in its affiliate is recorded on its 2006 balance sheet, and respondent argues that the Department should recognize that these benefits are related to the revenue received from the silica fume sales.

Department's Position:
We agree with respondent. In 2006, Jiangxi Gangyuan sold silica fume to its affiliate, which operates from the Jiangxi Gangyuan production facilities. Under the joint venture agreement, Jiangxi Gangyuan has a significant ownership interest, and its management exercises significant involvement in the affiliate's business activities. Although the specific percentage of ownership is proprietary information, the joint venture contract is on the record of the proceeding as Exhibit SSA-2 to the Jiangxi Gangyuan supplemental response of November 15, 2006.

Furthermore, we find that regardless of whether the Department treats Jiangxi Gangyuan and the joint venture as a single entity, the fact remains that Jiangxi Gangyuan received consideration from the sales of silica fume, whether such sales were made directly from Gangyuan to the joint venture, or sold by the joint venture, and profits distributed at a later date. Thus, for the reasons noted above, we have determined that it is appropriate to continue to grant the offset claimed by Gnagyuan for the entire POR.

Comment 13: Silicon Metal Fines

Petitioner states that the Department incorrectly included silicon metal fines in the silicon metal production quantity for Datong Jinneng. According to petitioner, fines are inferior quality silicon metal and are either recycled back into the production process or sold at a substantial discount compared to regular-sized silicon metal. Petitioner cites Silicon Metal From Brazil: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,

62 FR 1954 (January 14, 1997) ("Silicon Metal from Brazil"), where the Department ruled such fines to be a by-product and did not include them in the production quantity.

Petitioner states that Jiangxi Gangyuan stated that it considers fines to be waste and excludes them in its production quantity. Petitioner asserts that Datong Jinneng, however, includes fines in its production quantity, although there is no evidence that Datong Jinneng sold silicon metal fines at near the prices of normal, commercial-sized silicon metal. Petitioner states that Datong Jinneng stated in its December 1, 2006, supplemental response that it sold no fines during the POR.

Petitioner cites the sworn affidavit of its technical expert as part of its January 31, 2007, factual submission, wherein he states that fines are unavoidably generated in the production of silicon metal. Further, the affidavit states that the quantity of fines generated varies depending on customer requirements, which means that Datong Jinneng does not intentionally control the volume of fines it generates. Also, petitioner states that the production of fines was very small compared to the silicon metal production, there was no sale of fines during the POR, and no further processing is required for silicon metal fines after the split-off point of crushing and sizing. Petitioner further asserts that, although it should consider the fines to be a by-product, it should not grant a by-product offset for the fines generated during the POR because Datong Jinneng did not sell any fines.

In rebuttal, respondent states that silicon metal fines should be included in Datong Jinneng's production quantity. Respondent cites Silicon Metal from Russia (Issues and Decision Memorandum at Comment 11), where the Department found that costs should be allocated to commercial-grade silicon metal. Respondent states that the fines produced by Datong Jinneng are commercial-grade. They further state that the fines possess the same chemical properties as the silicon metal and that Datong Jinneng sells fines as silicon metal. Respondent also states that, although petitioner views fines as a by-product, they are actually non-prime merchandise, or "seconds," within the scope of the investigation and should not be considered a by-product.

Respondent cites 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) and accompanying Issues and Decision Memorandum at Comment 5, wherein the Department found that the scope language contained no size or form distinctions, and included fines within the scope of activated carbon. Respondent further asserts that the scope in the instant proceeding does not exclude silicon metal based on size or form, so fines are not by-products but subject merchandise. They also assert that Datong Jinneng values fines as subject merchandise in the normal course of business; it calculates a single cost for silicon metal, and sells fines as silicon metal.

Department's Position:
We agree with respondents and continue to include silicon metal fines in the silicon metal production quantity for Datong Jinneng for the final results. In order to treat the fines as silicon

metal, Datong Jinneng must demonstrate that it treats fines as silicon metal as defined by the scope of the investigation.

At verification and over the course of the review, Datong Jinneng reported that the fines and silicon metal share identical chemical properties, and that the only difference between them is size. In Datong Jinneng's supplemental response of March 27, 2007, it states that it sells fines to customers at diameters from zero to 10 millimeters. Datong Jinneng further states on page 13 of that response that it "in the ordinary course of business only calculates a single cost that applies to all silicon metal, including fines." Further, the scope of the investigation does not differentiate between size or form of silicon metal. Although the petitioner may treat fines as be non-prime merchandise, they are not explicitly excluded from the scope of the investigation. Moreover, fines are treated as any other silicon metal in Datong Jinneng's books and records.

Thus, for these reasons, we find it appropriate to continue to include silicon metal fines in the silicon metal total production quantity reported by Datong Jinneng.

Comment 14: Polyethylene Bag Valuation

Respondent states that the Department should use HTS 3923.21.00, under chapter 39, "Plastics," to value the bags in which Datong Jinneng packs silicon metal. Shanghai Jinneng notes that the Department used the term "plastic bags" to describe the bags seen by verifiers at verification. They further state the Department should value bags using the Egyptian import statistics or, if

the Department chooses India as the surrogate country, the WTA import statistics for this category. Respondent asserts that the product the Department chose for the preliminary results, HTS 6305.33.00, under chapter 63, "Textiles," is inappropriate for the bags respondent consumed. Respondent also suggests the Department average the values for HTS 3923.21.00 and 6305.33.00, to derive a surrogate value for the final results.

Petitioner did not address this issue.

Department's Position:
We disagree with respondents. As noted throughout this memorandum, the Department's preference is to use surrogate values that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of taxes on exports. Given the specific characteristics of the bags consumed by Datong Jinneng, we continue to value these bags using HTS 6305.33.00, as this category is more specific to the packing input in question. The description for bags in HTS 6305.33.00 refers to them as "sacks and bags of polyethylene or polypropylene strip," whereas the description for HTS 3923.21.00 refers to "sacks and bags of polymers or ethylene, including cones."

The bags in question are designed to hold one MT each of packed silicon metal, as stated in Exhibit SD-1 from Datong Jinneng's December 4, 2006 response, and the Datong Jinneng section D response refers to these bags as "woven plastic bags." Although we have used HTS 3923.21.00 to value lightweight plastic bags designed to package frozen seafood products, its use is not appropriate here, as the bags consumed by Datong Jinneng, as observed at verification, are heavier duty, textile reinforced bags. Thus, the Department, in selecting a suitable surrogate value which is specific to the input in question, finds it appropriate to value Datong Jinneng's packing materials using a value derived from WTA import statistics for HTS 6305.33.00 for the final results.

Comment 15: High Aluminum Quartz

Petitioner asserts that Datong Jinneng inappropriately excluded high aluminum quartz from its factor of production database. Petitioner asserts that Shanghai Jinneng and Datong Jinneng, in their joint Section D Response at D-4, reported consumption of this specific grade of silica quartz. Petitioner asserts that this quartz was a significant source of silicon for the silicon metal Datong Jinneng produced during the POR, and that the Department should revise Datong Jinneng's factor of production calculation accordingly for the final results.

In rebuttal, respondent states that this type of quartz was not consumed in the production of the Datong Jinneng merchandise sold in the United States. Respondent cites the Datong Jinneng Questionnaire Response at Section C-3 (September 15, 2006), which states that the products containing this type of quartz are sold in markets other than the United States. Respondent states that Datong Jinneng reported only the factors of production used to produce the grade of silicon metal sold to the United States, and did not include this type of quartz because it was not used in the process. Respondent states that the Department, in section 773(c)(1)(b)(a) of the Act states

that it "shall determine normal value of the subject merchandise on the basis of the value of factors of the production utilized in producing the merchandise."

Department's Position:
We agree with respondents and continue to exclude high aluminum quartz as part of the factor of production analysis. Although Datong Jinneng did consume high aluminum quartz, there is no evidence on the record that it consumed high aluminum quartz in the production of silicon metal sold to customers in the United States. As Datong Jinneng reported the consumption of the input or sales in other markets, and the Department found no contradictory information at verification, we find it appropriate to continue to exclude high aluminum quartz in these final results.

Comment 16: Datong Jinneng's Quartz Yield Loss

Petitioner asserts that silicon metal producers incur losses in quartz in the production process. Petitioner further notes that Jiangxi Gangyuan accounts for a yield loss when it crushes the quartz, and that Datong Jinneng's production process is virtually identical to that of Jiangxi Gangyuan.

Petitioner recommends that the Department add yield losses for Datong Jinneng's reported consumption of this input. Petitioner states that the Department should use the yield losses reported by Jiangxi Gangyuan as facts available for Datong Jinneng, and accordingly increase Datong Jinneng's consumption of this factor. Alternatively, petitioner asserts the Department should issue a supplemental questionnaire to Datong Jinneng to request Datong Jinneng's raw material yield losses on raw materials.

In rebuttal, respondent states that Datong Jinneng has reported its appropriate yielded quantity for quartz. Respondent states that there are differences between the manufacturing processes of Datong Jinneng and Jiangxi Gangyuan. Respondent further states that Datong Jinneng also produces ferrosilicon, and quartz deemed not suitable for silicon metal is transferred to the ferrosilicon inventory, not wasted. Respondent cites Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 71 FR 7517 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 2 ("Silicon Metal from Brazil II"), to note the Department's practice that respondent should account for the actual yield loss incurred.

Department's Position:
We disagree with petitioner's contention that we should add yield losses for Datong Jinneng's reported consumption of quartz for the final results. Although Jiangxi Gangyuan reported a yield loss, there are crucial differences between the respondent's production processes. Datong Jinneng reported production of both silicon metal and ferrosilicon at the same facility, which allows it to utilize quartz which would otherwise be discarded. Datong Jinneng further reported that small diameter quartz, while not consumed to produce silicon metal, is not wasted because it becomes a raw material for ferrosilicon. Datong Jinneng also separately tracks costs for silicon metal and ferrosilicon, as it stated in its questionnaire response of March 28, 2007. Thus, in

accordance with Datong Jinneng's demonstrated use of discarded quartz in the production of ferrosilicon, we have not accounted for "presumed" quartz yield losses in our factor of production calculation.

Comment 17: Instructions to Customs

Petitioner states that the Department issued draft U.S. Customs and Border Protection ("CBP") instructions for "Producer/Exporter Shanghai Jinneng International Trade Co., Ltd....80.74." Petitioner cites the Policy Bulletin of 03.2 as "limiting the ... post-review cash deposit rate to subject merchandise produced and exported by the particular producer/exporter combination that qualified for the review, as opposed to all merchandise shipped by the exporter." Petitioner states that the Department should limit the cash deposit rate for Shanghai Jinneng to the particular producer/exporter combination that participated in the review.

Respondent did not address this issue.

Department's Position:
We agree with petitioner. We will amend the language in the draft CBP instructions to apply a combination rate to the new shipper producer and exporter, whereas all silicon metal produced by other manufacturers and exported by Shanghai Jinneng would receive the China-wide rate of 139.49. This would be in accordance with Department policy, as stated in Policy Bulletin 03.2, to apply the new shipper rate only to those parties that have participated in the new shipper review.

RECOMMENDATION:

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

AGREE_____ DISAGREE_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date