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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 Antidumping Investigation of Certain New Pneumatic Off-the-Road Tires 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 antidumping investigation Certain New Pneumatic Off-the-Road ("OTR") Tires from the People's Republic of China ("PRC"). The period of investigation ("POI") covers October 1, 2006, through March 31, 2007. As a result of our analysis, we have made changes to the margin calculations, including corrections of inadvertent programming and ministerial errors. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Please refer to the attached Appendices for the full names and citations of abbreviations, acronyms, *Federal Register* Notices, Issues and Decision Memoranda, litigation and other memoranda referred to throughout this Memorandum.

Below is the complete list of the issues for which we received comments and rebuttal comments by parties:

I. GENERAL ISSUES

III. TARGETED DUMPING ISSUES

Comment 23: **Targeted Dumping**
Comment 23.A: **Whether the Department Should Reject the Targeted Dumping Allegation Filed by Bridgestone**
Comment 23.B: **Whether the Targeted Dumping Test Used by the Department is Flawed and Should be Replaced**
Comment 23.C: **Whether the Department Should Use the "P/2 Test" to Test for Targeted Dumping**
Comment 23.D: **Whether the Department Should Use the "T-Test" to Test for Targeted Dumping**
Comment 23.E: **If the Department Continues to Use its *Nails* Test, Whether it Should Permit Certain Margins to be Offset with Negative Margins**
Comment 23.F: **Treatment of Xugong's Sales**
Comment 23.G: **Programming Errors**
Comment 23.H: **Changes based on *TD Methodology***

IV. CRITICAL CIRCUMSTANCES

Comment 24: **Critical Circumstances**

V. ISSUES SPECIFIC TO GUIZHOU TYRE

Comment 25: **Guizhou Tyre's Eligibility for a Separate Rate**
Comment 26: **Treatment of Guizhou Tyre's Guangzhou Warehouse Expenses**
Comment 27: **Treatment of Guizhou Tyre's Reported Manufacturing Overhead Materials**
Comment 28: **Calculation of Guizhou Tyre's Domestic Movement Expenses**
Comment 29: **Treatment of Guizhou Tyre's Demurrage Charge**
Comment 30: **Distance from Guizhou Tyre's Factory to the Guangzhou Warehouse**
Comment 31: **Appropriate Unit of Measure for Guizhou Tyre's Reported Water Consumption**
Comment 32: **Treatment of Guizhou Tyre's Unreported Labor Hours Discovered at Verification**
Comment 33: **Classification of Guizhou Tyre's Sales Made to a Certain U.S. Customer**
Comment 34: **Byproduct Offset for Guizhou Tyre**
Comment 35: **Treatment of Guizhou Tyre's International Freight Costs**
Comment 36: **Appropriate Classification for Certain Guizhou Tyre Material Inputs**
Comment 37: **Calculation of Value of Guizhou Tyre's Carbon Black**
Comment 38: **Treatment of Guizhou Tyre's Sales Made Through TED**
Comment 39: **Whether to Include Licenses and Taxes in Guizhou Tyre's Indirect Selling Expense Ratio**
Comment 40: **Treatment of Guizhou Tyre's Billing Adjustment for Tubes and Flaps**

VI. ISSUES SPECIFIC TO XUGONG

VII. ISSUES COMMON TO STARBRIGHT AND TUTRIC

VIII. ISSUES SPECIFIC TO STARBRIGHT

DISCUSSION OF THE ISSUES

I. GENERAL ISSUES

Comment 1: Whether the Department Should Apply Market-Economy Calculation Methodologies in this Investigation

The GOC maintains that there is an inherent contradiction in applying both the NME methodology to the Chinese respondents in this AD investigation and the CVD law to the PRC. Guizhou Tyre endorses and incorporates by reference the GOC's arguments.

The GOC submits that in the CVD investigation of coated free sheet paper from the PRC, the Department stated that "modification of the Department's current NME methodology may be warranted," and that "the Department might grant an NME respondent market economy treatment."[1] However, in the AD investigation of coated free sheet paper from the PRC, the Department declined to modify the existing NME AD methodology, concluding that "while the presence of limited market forces supports the application of the CVD law, this does not necessarily warrant market economy status in AD proceedings if these forces are significantly distorted by government intervention, as they are in China."[2]

[1] Citing *CFS-PRC-CVD 10/25/07* IDM at Comment 1.

[2] Citing Georgetown Steel Memorandum.

The GOC objects to the Department's application of the traditional NME AD methodology in this investigation in light of the current characteristics of the PRC economy, and asks that the Department reconsider the position taken in the Georgetown Steel Memorandum. The GOC requests that the Department determine that the traditional NME AD methodology should be eliminated and replaced by conventional ME calculation methodologies or, at the very least, that the NME methodology should be modified for the respondents in the instant investigation.

Bridgestone submits that the GOC has provided no legal or factual bases for the Department to depart from its standard NME methodology in this investigation. Specifically, Bridgestone argues that the PRC has not met the statutory criteria[3] to be determined an ME, nor has the GOC provided any information addressing these criteria in this investigation. Moreover, Bridgestone argues, contrary to the GOC's apparent belief, the Department's decision in *CFS-PRC-CVD 10/25/07* does not provide a sufficient basis to find that the PRC has met the statutory criteria for an ME. Thus, Bridgestone contends, using an ME methodology for a country deemed an NME would be contrary to law.[4] Bridgestone also submits that the treatment of the PRC by other countries,[5] particularly as a pre-condition to opening bilateral trade negotiations, is irrelevant under the Act. Further, Bridgestone asserts that none of the respondents have provided all of the information necessary to conduct an ME AD analysis. Therefore, Bridgestone concludes, the Department should reject the GOC's request that the Department utilize an ME methodology in this investigation. Petitioners endorse and incorporate by reference Bridgestone's rebuttal arguments.

Department's Position: The Department declared in *CFS-PRC-AD 10/25/07* that the PRC's economy no longer resembles a Soviet-style command economy, and while this evolution permits the application of the CVD law to the PRC, the Department disagrees with the notion that this evolution necessitates granting the PRC ME status, a reversal of the presumption of state control, or automatic market oriented enterprise treatment.[6] In the instant investigation, the GOC stops short of requesting that the Department grant ME status to the PRC. However, it does request that the Department apply ME calculation methodologies in the event that it continues to apply CVD law to the PRC. In this respect, the GOC misconstrues two of the Department's recent analyses of the PRC's economy: the China's NME Status Memo (2006) affirming the PRC's status as an NME; and the Georgetown Steel Memorandum analyzing whether to apply the CVD law to the PRC.

The conclusion of the Department's recent analyses of the PRC's economy is that despite ongoing economic reforms, the government's intervention in the PRC is too significant to

[3] Citing 19 U.S.C. 1677(18)(B).

[4] Citing *WBF-PRC 11/17/04*, and *CWP-PRC 06/05/08* IDM at 11-14.

[5] Citing GOC May 27, 2008, case brief, at 4.

[6] Citing *CFS-PRC-AD 10/25/07* IDM, at 6.

warrant ME status and, since the China's NME Status Memo (2006), the Department has continued to apply its standard NME AD methodology in every proceeding involving the PRC. Meanwhile, the Department also found that:

> it is possible to determine whether the PRC Government has bestowed a benefit upon a Chinese producer (*i.e.*, the subsidy can be identified and measured) and whether any such benefit is specific. Because we are capable of applying the necessary criteria in the CVD law, the Department's policy that gave rise to the Georgetown Steel litigation does not prevent us from concluding that the PRC Government has bestowed a countervailable subsidy upon a Chinese producer.[7]

In making an NME country determination under section 771(18) of the Act, the Department examines an economy as a whole, as opposed to individual industries or companies, and takes into account: 1) the extent to which the currency of the foreign country is convertible into the currency of other countries; 2) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management; 3) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; 4) the extent of government ownership or control of the means of production; 5) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and 6) such other factors as the administering authority considers appropriate.[8]

In conducting its 2006 review of the PRC's status as an NME for purposes of U.S. AD law, the Department considered the totality of the PRC's economic reforms, either as executed pursuant to changes in law and policy, or as evidenced by the behavior of commercial, financial, and political actors. The Department concluded that, while the PRC has enacted significant and sustained economic reforms, the PRC government has preserved a significant role for the state in the economy and, as a result, the limits the PRC government has placed on the role of market forces are sufficient to preclude its designation as an ME under U.S. AD law. [9]

Specifically, the Department determined that the PRC government continues to insulate the currency from market forces, and that there are still important restrictions on workers' freedom of movement, as well as on bargaining between labor and management. In addition, while the PRC has attracted an enormous amount of foreign direct investment, it extensively guides and constrains this investment in line with governmental policy objectives.[10]

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[7] *See* Georgetown Steel Memorandum, at 10.

[8] *See* section 771(18)(B) of the Act.

[9] *See* China's NME Status Memo (2006), at 4, 82.

[10] *See* China's NME Status Memo (2006), at 51, 74, and 76.

Furthermore, SOEs are still a crucial part of the economy and remain many of the largest enterprises in the country, and the government's stated policy is to maintain a leading role for SOEs in many important sectors of the economy. Moreover, the Department found that the government usually no longer sustains such SOEs through the traditional means of direct resource allocations or price controls but, rather, through a complex web of regulatory restrictions, control over the allocation of land-use rights, and the continued dominance of state-owned banks in the financial sector.[11] In addition, despite ongoing reforms, there is no compelling evidence that the PRC's banks act as genuine commercial entities. For instance, after amassing huge volumes of non-performing loans to SOEs, the PRC's banks have been repeatedly bailed out by the government and shielded from both foreign and domestic competition. Despite official pronouncements to the contrary, credit in the PRC still flows primarily to state-owned firms, large enterprises, and enterprises favored by the state for development. Further, the central government still imposes administrative measures to control the lending growth that had been spurred, in part, by local governments. Finally, the lack of a reliable set of laws and procedures for redress serves in part to preserve the role of the state in the economy, rather than simply being a feature of a period of transition.[12]

On the basis of these findings, the Department found that despite the significant progress the PRC has made to transition away from a traditional command economy, the extent of government control and direction over the country's economy warrants the continued designation of the PRC as an NME.[13]

Notwithstanding this central conclusion that prices and costs within the PRC are still too affected by government intervention (even where not directly set by the government) to permit their use in the calculation of NV, the China's NME Status Memo (2006) described many positive reforms that set the PRC apart from traditional Soviet-style command economies. The Georgetown Steel Memorandum compared these command economies with the PRC's economy with respect to how wages and prices were generated, on their treatment of private enterprise, the conduct of foreign trade, and the allocation of resources. The outcome of this comparison led to a finding that, while the PRC's economy still features extensive state intervention and control, it is more flexible than traditional command economies. For example, whereas the government directly sets nearly all prices and wages in Soviet-style economies, the PRC government directly sets neither prices nor wages.[14] Nevertheless, there are important institutional constraints on the impact that market forces can exert on wages and prices, given the fact that prices are set in an economy where the state has not ceded fundamental control.

[11] *See* China's NME Status Memo (2006), at 81.

[12] *See* China's NME Status Memo (2006), at 78-80.

[13] *See* China's NME Status Memo (2006), at 82.

[14] *See* Georgetown Steel Memorandum, at 5-6.

Regarding currency, while the renminbi remains somewhat insulated from market forces, it is convertible to a much greater extent than in traditional command economies, where access to foreign exchange was extremely limited. Whereas entrepreneurship was essentially banned in Soviet-style economies, private enterprise in the PRC is encouraged in some areas of the economy and limited in others, resulting in an economy that features both a certain degree of private initiative as well as significant government intervention, *i.e.*, an economy that combines market processes with continued state guidance.[15]

With respect to foreign trade, state trading enterprises controlled exports in the Soviet-style economies, whereas in the PRC, individual firms now have significant discretion in these business decisions, even if they operate in an environment of onerous administrative burdens. Regarding the allocation of resources, the governments of Soviet-style economies generally allocated resources directly, often through the central bank. On the other hand, in the PRC, the banking sector is much more developed and nominally operates independently of the government, even if it remains overwhelmingly state-owned. Nonetheless, despite the banks' nominal independence from the government, the government still maintains levers of control over the banks in terms of guiding the allocation of credit, which still flows disproportionately to the state sector.[16]

In sum, the Department found that the PRC government has resisted a definitive break from its command-economy past, opting instead to shrink the role of the state in some areas while preserving it in others, but never ceding fundamental control over the economy to market forces.[17] That said, however, the PRC's economy, while distorted, is demonstrably more flexible than the Soviet-style economies. While traditional command economies were most notably characterized by the absence of market forces, the PRC's economy is best characterized as one in which constrained market mechanisms operate alongside of (and, sometimes, in spite of) government plans. The limits the PRC government has placed on the role of market forces are not consistent with recognition of the PRC as an ME under U.S. AD law. However, the Department concluded that, given the substantial differences between the Soviet-style economies and the PRC's economy in 2005, the Department's previous decision to not apply the CVD law to these Soviet-style economies does not preclude the Department from proceeding with CVD investigations involving products from the PRC.[18]

On the one hand, the China's NME Status Memo (2006) makes clear that market signals in the PRC have not evolved sufficiently to justify granting the PRC ME status. On the other hand, the Georgetown Steel Memorandum documents market forces operating in the PRC (unlike in Soviet-style economies), albeit constrained by government interference. Because market forces

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[15] *See* Georgetown Steel Memorandum, at 6.

[16] See Georgetown Steel Memorandum, at 8-9.

[17] *See* Georgetown Steel Memorandum, at 9.

[18] *See* Georgetown Steel Memorandum, at 10.

are present in the PRC to a limited extent, and because firms have some autonomy from the government in their reactions to those market forces, firms in the PRC (unlike in traditional command economies) are able to respond to the incentives that subsidies provide. The GOC regards this as a contradiction. We disagree. The Department's previous decision to not apply the CVD law to Soviet-style economies was predicated on the absence of market forces in these economies. The Department determined that the Soviet-style economies differ significantly from the PRC's "non-market economy of today. The PRC's economy, though riddled with the distortions attendant to the extensive intervention of the PRC Government, is more flexible than these Soviet-style economies."[19] The Department found that market forces are present, to a limited extent, in the PRC's economy today.[20] Furthermore, the fact that the government may provide subsidies that further distort prices that are already distorted by the broader, non-market environment, also explains why the Department can use these prices in a CVD proceeding (together with a third-country or internal PRC benchmark) to measure the benefit of an alleged subsidy, while rejecting their use in the calculation of NV in an AD proceeding. Since a firm in the PRC may have the discretion to change its export and/or production decisions in response to the incentive provided by, for example, a subsidized input price, it is possible to measure the benefit provided by this subsidy. If the price is set in an environment distorted by significant government interference, however, this price cannot form the basis of NV in an AD proceeding.

Thus, on the basis of the Department's recent analyses of the PRC's economy, we believe it is not inconsistent to find that the presence of limited market forces supports the application of the CVD law to the PRC, while at the same time finding that the significant distortions caused by government intervention preclude the application of ME methodology in this investigation.

Comment 2: Whether the Dual Application of the Non-Market Economy AD Methodology and the Market-Economy CVD Methodology Results in Double Remedies

If the Department continues to apply its NME AD methodology, the GOC, GPX, Starbright and TUTRIC submit that the Department must recognize, and must take action to eliminate, the double application of trade remedies that result from the concurrent application of the Department's ME CVD methodology. Guizhou Tyre endorses and incorporates by reference the GOC's arguments.

Specifically, the GOC and respondent parties argue that the Department must adjust any calculated AD rate by the amount of both export and domestic subsidies determined in the companion CVD investigation. According to the parties, 1) U.S. law and the WTO Agreements prohibit the imposition of two duties for the same unfair trade practice; 2) the Department has the legal authority to prevent imposition of a double remedy for domestic subsidies; 3) the Department's position that the "connection between domestic subsidies and export price is indirect and subject to a number of variables {and} presuming domestic subsidies automatically

[19] *See* Georgetown Steel Memorandum, at 5.

[20] See Georgetown Steel Memorandum, at 5, 9.

lower export prices, *pro rata*, would be speculative,"[21] is economically wrong[22] and conflicts with prior rulings;[23] and 4) the Department is required to calculate AD margins as accurately as possible. The parties argue that the NME AD methodology does not use actual prices or costs from the NME country, but rather uses subsidy free data from a surrogate ME country which corrects the market-distorting behavior. The parties conclude that when subsidy allegations are addressed in corresponding CVD investigations, the result is correction of the market-distorting behavior in both trade remedies (*i.e.*, double remedies).

In making this argument, the GOC, Guizhou Tyre, GPX, Starbright and TUTRIC point to the rubber input in the AD and CVD investigations which, they argue, demonstrates the existence of double remedies on the record. The parties argue that the same unfair advantage (the ability to purchase rubber at low prices) is directly addressed in both the AD (as a raw material cost) and the CVD investigations (through application of a world benchmark price). As a result, the parties argue that by countervailing the subsidies in the CVD investigation (where the Department preliminarily found that rubber was subsidized) but by also using an SV for rubber (thereby eliminating the effect of subsidization) in the AD investigation, the Department is unfairly penalizing the respondents in NME investigations twice. The parties argue that, "as a matter of economics, that cost savings {from subsidized rubber} may or may not be passed through to the purchaser of the rubber . . . {and} depends on market conditions, the price elasticity of demand, and other factors" and, as a result, there is "no economic justification for the Department to conclude the . . . producer will always chose {*sic*} to increase profitability if the benefit is conveyed via a domestic subsidy, but will choose to lower price if the benefit is conveyed via an export subsidy."[24]

The GOC, Guizhou Tyre, GPX, Starbright and TUTRIC assert that the Department has the legal authority to adjust for double remedies. The parties state that the Department was wrong in *OTR Tires-PRC-AD 02/20/08* and in *CFS-PRC-AD 10/25/07*, when it found that "Congress provided no adjustments for CVDs imposed by reason of domestic subsidies in NME proceedings," pursuant to section 772(c)(1)(C) of the Act. They argue that the lack of express authority in the statute on adjusting for domestic subsidies is not an express prohibition of domestic subsidies, and the Department's interpretation as such is overly narrow, and conflicts with the Department's broad discretion in NME cases as well as its legal obligation to calculate AD margins as accurately as possible.[25] In fact, the GOC asserts that domestic subsidies are not

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[21] Citing *CFS-PRC-AD 10/25/07* IDM, at 14; and *OTR Tires-PRC-AD 02/20/08*, at 9287.

[22] GOC May 27, 2008, case brief, at 14, citing *The Law and Economics of Simultaneous Countervailing Duty and Antidumping Proceedings*, 3 Global Tr. and Cust. J. 41, 48 (2008). The GOC also argues that the Department's assumption that domestic subsidies have zero effect on producers' prices is flawed and not supported by any evidence on the record.

[23] Citing *LEU-France 08/03/04*, at 46506; the GOC also cites *Softwood Lumber-Canada 12/20/04*.

[24] GPX, Starbright, TUTRIC May 27, 2008, case brief, at 125-126.

[25] Citing, as examples of the Department's discretion, *Dorbest (2006)*, *Lasko (1994)*.

mentioned in the statute because double remedy does not exist in ME AD cases. Furthermore, the GOC argues that the statute was last amended prior to the application of CVD laws to the PRC. In addition, Guizhou Tyre notes that the Department is obligated under section 773(a) of the Act to achieve a "fair comparison" by adjusting for domestic subsidies.[26]

Finally, Starbright and TUTRIC argue that the statute does not distinguish between export and domestic subsidies, but requires that the full amount of the CVD be imposed against both types of subsidies. The parties point out that pursuant to section 772 of the Act, the Department adjusts its AD calculation for countervailable export subsidies by adding such subsidy to the U.S. price, assuming the full amount of the export subsidy is reflected in the U.S. price.[27] The parties also point out that in ME cases, the Department does not adjust the AD calculation for countervailable domestic subsidies, assuming the benefit is reflected in both home-market and export-market sales. As a result, the parties argue that the Department is statutorily required to take into account the pass through of the subsidy in the CVD investigation when making its determination in the AD investigation.

Bridgestone asserts that the application of the Department's NME methodology in this investigation will not result in double remedies. Bridgestone contends that the adjustment requested by respondents[28] fails because it is based on a faulty economic premise previously rejected by the Department. According to Bridgestone: 1) the Department has no statutory authority to adjust the NME AD methodology to address domestic subsidies and, in fact, adjusting the dumping margin to account for non-export subsidies would run counter to the statute which only provides for an adjustment to offset export subsidies, a conclusion already reached[29] by the Department; 2) respondents' assertions that the SV methodology is intended to result in a subsidy-free restatement of the Chinese producer's actual costs[30] misconstrues the operation and purpose of NME SV methodology; 3) respondents cannot demonstrate double remedies in this case; and 4) any adjustment should be made only in an administrative review, not in the original investigation.[31] Petitioners endorse and incorporate by reference Bridgestone's rebuttal arguments.

Bridgestone argues that by explicitly providing for an adjustment to export subsidies but not domestic subsidies, Congress plainly intended that no adjustment be made in the AD calculations

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[26] Guizhou Tyre May 27, 2008, case brief, at 9.

[27] GPX, Starbright, TUTRIC May 27, 2008, case brief, at 127-128.

[28] Citing GOC May 27, 2008 case brief, at 5; Guizhou Tyre May 27, 2008, case brief, at 6-7; and GPX, Starbright, TUTRIC May 27, 2008, case brief, at 123.

[29] Citing *LEU-France 08/03/04*, at 46505.

[30] Citing GPX, Starbright, TUTRIC May 27, 2008, case brief, at 123; Guizhou Tyre May 27, 2008, case brief, at 6-7; and GOC May 27, 2008 case brief, at 6-9.

[31] Citing *Dupont (2005)*.

of domestic subsidies.[32] Bridgestone notes that the Department followed this rationale in *CWP-PRC 06/05/08* and *CFS-PRC-AD 10/25/07*, and it should reach the same conclusion in this investigation. [33]

Bridgestone also argues against respondents' claim that double remedies result where there are subsidized inputs, asserting that the purpose of the NME AD methodology "is to correct for price distortions in the NME country . . . not to provide a remedy for government subsidization in the NME country."[34] Bridgestone notes that respondents have not demonstrated double remedies in the instant investigation, and their arguments regarding the double remedy of domestic subsides are based on the flawed premise that such subsides necessarily result in lower prices. Bridgestone points out that the Department has previously addressed such a premise and found that "presuming that domestic subsidies automatically lower export prices, *pro rata*, would be speculative."[35]

Bridgestone argues that subsidies provided in connection with an input (*e.g.*, rubber, in this instance) "are no different than any other type of domestic subsidy; their effect on the pricing of the final product is unclear"[36] and that the record does not support a finding that the respondents lowered prices, *pro rata*, in response to the domestic subsidies received in connection with rubber; such a finding, argues Bridgestone, would be speculative. Petitioners reiterate this argument, and further note that respondents provided no evidence that the subsidy benefits were in fact passed through to U.S. customers.

Finally, Bridgestone argues that even if there was double remedy, which there is not, the statute requires adjustments only for CVDs that have already been imposed (*i.e.*, requiring the issuance of a CVD order).[37] As a result, argues Bridgestone, adjustments can only be made in the context of an administrative review, and not in an investigation. In addition, Petitioners note that because of the legal distinction between export and domestic subsidies, and the lack of any evidence on the record of "pass through," the Department would be following its obligation to calculate AD margins as accurately as possible by rejecting the respondent parties' arguments.

Department's Position: As we stated in *CFS-PRC-AD 10/25/07*, we disagree with the GOC's and respondent parties' argument that the Department must assume that domestic subsides necessarily result in lower prices to U.S. customers. The GOC and the responding parties have

[32] Citing *US v Koonce (1993)*.

[33] Citing *CWP-PRC 06/05/08* IDM at Comment 6 and *CFS-PRC-AD 10/25/07*, at 60632.

[34] Bridgestone June 2, 2008, rebuttal brief, at 17.

[35] Citing *OTR Tires-PRC-AD 02/20/08*, at 9287; *CFS-PRC-AD 10/25/07* IDM, at 14; *CWP-PRC 06/05/08*, IDM, at 19-22.

[36] Bridgestone June 2, 2008, rebuttal brief, at 20.

[37] Citing 19 U.S.C. §1677a(c)(1); *DuPont (2005)*.

not demonstrated that a double remedy will result from this investigation because they have failed to present any data showing that the benefits received from any domestic subsidy lowers U.S. prices, *pro rata*, or that they are entitled to an adjustment under the AD law to prevent a presumed double remedy. This fundamental defect remains the same in the instant investigation as it was in *CFS-PRC-AD 10/25/07*.

While we agree that U.S. law requires certain adjustments to avoid the imposition of two duties for the same unfair trade practice,[38] we disagree with the assertion that the Department has recognized that domestic subsidies lower prices *pro rata* in both domestic or export markets. It would be more accurate to say "that, when it has considered the issue, the Department has sometimes presumed that, whatever the effect, if any, of domestic subsidies upon the prices subsequently charged by their recipients, that effect would be the same for domestic prices and export prices."[39] In *CFS-PRC-AD 10/25/07*, the Department specifically stated that "we find the assertion that the AD law embodies the presumption that domestic subsidies automatically lower prices, *pro rata*, to be baseless. . . . {and} presuming that domestic subsidies automatically lower export prices, *pro rata*, would be speculative."[40]

With regard to *LEU-France 08/03/04*, the Department stated that the 1979 amendments to the statute require that CVDs to offset export subsidies be added to initial U.S. prices, but that they do not speak directly to domestic subsidies. The Department reasoned that the fact that the statute addresses CVDs to offset export subsidies directly, but "then remains silent about the plainly related issue of CVDs to offset domestic subsidies, is not complete silence -- it implies that no adjustment is appropriate."[41] The Department saw no reason why Congress would have provided for the addition of export subsidy CVDs, but not considered the plainly related issue of domestic subsidy CVDs. Further, in *CVD Final Rule (1998)*, pursuant to 19 CFR 351.525(a)(3), the Department "will attribute a domestic subsidy to all products sold by a firm, including products that are exported."[42]

As we noted in *CFS-PRC-AD 10/25/07*, "despite addressing the issue of parallel AD duties and CVDs directly, and explicitly requiring that the amount of any CVDs to offset export subsidies be added to U.S. price, Congress provided no adjustment for CVDs imposed by reason of domestic subsidies in NME proceedings."[43] In addition, the statutory and legislative history

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[38] *See* GATT Art. VI.6 (no product can be subject to both AD and CVD duties "to compensate for the same situation of dumping or export subsidization"); section 772(c)(1)(C) of the Act (requiring adjustments to AD duties in the event of simultaneous CVDs to counter export subsidies on the same product); *see, e.g., CR Flat Products-Korea 10/03/02*.

[39] *CFS-PRC-AD 10/25/07* IDM at Comment 2.

[40] *Id*.

[41] *See LEU-France 08/03/04*, at 46505.

[42] *CVD Final Rule (1998)*, at 65416.

[43] *CFS-PRC-AD 10/25/07* IDM at Comment 2.

provides no basis for adjusting for domestic subsidies, or any presumption of their effect on export prices.[44] As we stated in *CFS-PRC-AD 10/25/07*:

> The Senate Report accompanying the 1979 legislation states simply that, for domestic subsidies (where the situation with respect to the domestic and export markets is the same) no adjustment to U.S. price is appropriate. Trade Agreements Act of 1979, Report of the Committee on Finance on H.R. 4537, Senate Report No. 96-249, 96th Cong. July 17, 1979, at 79. In so stating, Congress may have presumed that domestic subsidies had no effect on prices, had the same (if uncertain) effect on domestic and export prices, or may have presumed nothing. Thus, neither the statute nor the Senate Report indicates that the statute embodies the presumption that domestic subsidies automatically lower prices (including export prices) *pro rata*.[45]

Nor does the fact that a material input (*i.e.*, rubber) was found to be subsidized in the CVD investigation necessarily mean that the benefit from the subsidy resulted in a lower price to the U.S. customer. Although the subsidy was input-specific, it does not change the fact that the recipients of such subsidies may not necessarily choose to respond to such subsidies by lowering prices, *pro rata*. As we found in *CFS-PRC-AD 10/25/07*, "{w}hile subsidies unquestionably benefit their recipients, it is by no means certain that those recipients automatically respond to subsidies by lowering their prices, *pro rata*, as opposed to investing in capital improvements, retiring debt, or any number of uses."[46] The fact that the CVD investigation found that a material input is subsidized does not change the Department's position on this matter. In addition, while the respondent parties argue that "the Department may *only* use surrogate values that are *subsidy free*,"[47] as we have previously noted, the House Report cited by the respondent parties "establishes only that Congress believed that Commerce should avoid using values that may have been affected by dumping or subsidies. Similarly, the Department's compliance with Congress' direction does not establish that the Department has made any assumption about the impact of subsidies upon prices. The Department has acknowledged simply that the existence of dumping or subsidies may taint the values upon which it otherwise would rely."[48]

Contrary to the GOC's and Guizhou Tyre's claims, the Department's decision not to make an adjustment is not the same as assuming that there is zero impact on prices. As stated above, the Department's reasoning rests on no particular assumption about the impact of subsidies on prices. Rather, the Department has determined that, absent a statutory directive for an

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[44] *See e.g., CWP-PRC 06/05/08* IDM at Comment 6.

[45] *Id.; CFS-PRC-AD 10/25/07* IDM at Comment 2.

[46] *Id.*

[47] GPX, Starbright, TUTRIC May 27, 2008, case brief, at 123 (emphases in original).

[48] *CFS-PRC-AD 10/25/07* IDM at Comment 2.

adjustment and underlying assumption similar to that regarding CVDs imposed to offset export subsidies, or evidence that domestic subsidies have lowered U.S. prices in a given case, any adjustment for an assumed or undetermined effect would be inappropriate.

We also disagree with the GOC's and Guizhou Tyre's claim that Congress' revision of the statute in 1988 and 1994 after the Federal Circuit's *Georgetown Steel (1986)* decision shows Congress did not intend to overrule *Georgetown Steel (1986)* and that it would be "improper to read any meaning" into the statutory adjustment for export subsidies but not domestic subsidies.[49] Contrary to the premise of the GOC's argument, *Georgetown Steel (1986)* did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise issue. The court held only that the Department's decision not to apply the CVD law was reasonable based on the language of the statute and the facts of the case.[50] Accordingly, as stated above, there is nothing in the statute or the legislative history to indicate that the statute embodies the presumption that domestic subsidies automatically lower prices (including export prices) *pro rata*.

As for Guizhou Tyre's claim that the Department is obligated to achieve a "fair comparison" by adjusting for domestic subsidies, in addition to the statutory adjustment for export subsidies, we note that the statute and the SAA demonstrate that the "fair comparison" language in section 773(a) of the Act is merely descriptive of the adjustments contemplated by the statute, and does not impose an additional, independent requirement on the Department.[51]

We agree that the Department is required to calculate AD margins as accurately as possible.[52] However, supporting evidence is necessary in order to achieve such accuracy. As we noted in the *OTR Tires-PRC-AD 02/20/08*, in response to comments filed by the BOFT, we have always been determined to prevent any double remedies from arising, but the BOFT "offered no evidence supporting its argument that domestic subsidies automatically lower prices (including export prices) *pro rata*."[53] Similarly, no evidence has been provided on this record demonstrating that domestic subsidies pass through, *pro rata*, to U.S prices. As the GOC, GPX, Starbright and TUTRIC have not demonstrated that a double remedy will result from this investigation, or that they are entitled to an adjustment under the AD law to prevent a presumed double remedy from arising, we have not made any such adjustment.

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[49] GOC May 27, 2008, case brief, at 10.

[50] *Georgetown Steel (1986)*, at 1318.

[51] *See* SAA at 809, 820.

[52] *Rhone Poulenc (1990)*, at 1191 (the basic purpose of the statute is to determine current margins as accurately as possible).

[53] *OTR Tires-PRC-AD 02/20/08*, at 9287.

Comment 3: Treatment of Corrections from Verifications

Bridgestone argues that the Department should calculate the final margins using the most recent data submissions incorporating corrections from issues discovered at verification.

Department's Position: For discussions of the Department's treatment of the most recent data submissions, please refer to the relevant company-specific comments addressed in this Memorandum as well as the relevant company-specific final analysis calculation memoranda.

Comment 4: Ministerial Error Corrections

Petitioners and Bridgestone state that although the Department did not amend the preliminary determination, the Department has acknowledged that it made several ministerial errors in the preliminary determination and that it will correct them in the final determination. To support this argument Bridgestone cites to 03/28/08 Allegations of Ministerial Errors Memo.
Starbright does not challenge Petitioners' and Bridgestone's claim that the Department should make certain ministerial error corrections in the final determination.

Department's Position: We corrected all general and company-specific ministerial errors with respect to Guizhou Tyre and Starbright in the 03/28/08 Allegations of Ministerial Errors Memo with the exception of errors related to the wage rate, brokerage and handling SV, and the truck rate inflator, for which we are applying corrections in this final determination. The ministerial error allegation regarding the previous wage rate decimal place is no longer relevant because we have used the new wage rate for the final determination. *See* Comment 5 of this memorandum and Final SV Memo. In the 03/28/08 Allegations of Ministerial Errors Memo, we applied the corrections to the brokerage and handling SV and to the truck rate inflator. However, due to a necessary correction of the inflator, there is an additional change reflected for these items in this final determination. *See* Final SV Memo. Because we updated the inflator applied and corrected the inflator calculation for Essar Steel's brokerage and handling, our statement that the SV for brokerage and handling is 0.1586 is no longer accurate. *See* Final SV Memo. In sum, we have corrected the error related to brokerage and handling alleged in the 03/28/08 Allegations of Ministerial Error Memo, applied the updated POI inflator, and corrected a linking error in the inflator for brokerage and handling for Essar Steel. As a result of these collective corrections, the new SV for brokerage and handling is 0.1511. Finally, because we updated the POI inflator and corrected the ministerial error with regard to the inflator source, the inflator for the truck rate SV now reflects an updated SV. *See* Final SV Memo.

Comment 5: Wage Rate Methodology

Starbright and TUTRIC argue that the Department should abandon the calculation of the surrogate wage rate using the regression methodology and, instead, use the published country-wide wage rate for India. According to Starbright and TUTRIC, the Department's calculation of the surrogate wage rate using the regression analysis is contrary to law, is distortive, and does not achieve any of the stated objectives the Department provided to justify its use. Alternatively, if the Department continues to use the regression-based methodology, Starbright and TUTRIC argue that the Department should use the same wage rate used in the preliminary determination.

In support of their argument, Starbright and TUTRIC cite *AD/CVD Final Rule (1997)*, *Chevron (1984)*, and *Dorbest (2006)*.

Bridgestone asserts that the Department's wage rate methodology is not *ultra vires* or contrary to the Department's stated objectives, and that there also is no inherent distortion in the methodology. According to Bridgestone, the statute does not require the Department to use only India's wage rate and, in fact, the Department's use of the regression methodology was recently affirmed by the CIT. Further, Bridgestone states that the Department made clear in a published *Federal Register* notice that the new NME wage rates will be in effect for this investigation, and it properly has explained its rationale for doing so. In support of its argument, Bridgestone cites *Dorbest (2006)*, *Dorbest (2007)*, *Dorbest (2008)*, *Luoyang Bearing (2004)*, *Chevron (1984)*, *Koyo (1994)*, *AD/CVD Proposed Rule (1996)*, and *AD/CVD Final Rule (1997)*.

According to Petitioners, the regression methodology is dictated by the Department's regulations, and has been exhaustively reviewed and approved by the CIT and, therefore, Starbright's and TUTRIC's proposals to use alternative methodologies should be rejected. In support of their argument, Petitioners cite *NME Wage Rates – Request for Comments on 2007 calculations (2008)*, *NME Wage Rates – Finalized January 2007 (2007)*, *Corrected 2007 Expected Wage Rate (2008)*, and *Dorbest (2008)*.

Department's Position: In arguing that the Department's wage rate methodology is unlawful, Starbright and TUTRIC make two points. First, they claim that the Department's regression analysis includes countries at a level of economic development not comparable to the PRC, specifically noting Germany, the Netherlands, Switzerland and the United Kingdom. Second, Starbright and TUTRIC submit that there is no record evidence to suggest that the countries used to derive the $1.04/hour wage rate for the PRC are significant producers of comparable merchandise. Starbright and TUTRIC believe that the Department's regression-based wage rate methodology is not in accordance with section 773(c)(4) of the Act, which states that, to value factors of production, the Department shall use "the prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise."

We disagree with Starbright's and TUTRIC's argument that the regression methodology is unlawful. As Petitioners point out, the Department's long-standing regression methodology is dictated by 19 CFR 351.408(c)(3). As Petitioners further note, the Department's methodology was recently affirmed by the CIT in *Dorbest (2008)*. Starbright and TUTRIC cited *Dorbest (2006)*, but failed to acknowledge *Dorbest (2008)*, where the CIT affirmed the Department's methodology *in toto*.

We disagree with Starbright's and TUTRIC's claim that the regression methodology leads to distortions, particularly for countries with comparable economic development where, they claim, the regression analysis predicts wage rates higher than the actual values. We also disagree with Starbright's and TUTRIC's claim that distortions exist where the regression analysis attempts to predict wage rates of countries with lower GNI's, or the fact that in the Department's regression model, the predicted wage rate of a company with a GNI of zero would not be a wage rate of

$0.00/hour. In fact, while Starbright and TUTRIC argue that the regression analysis fails to meet the Department's objectives of accuracy, fairness and predictability, we contend that it is precisely for those reasons that the regression analysis is appropriate.

The Department considered other methodologies in the remand redetermination in *Dorbest (2008)*, including Starbright's and TUTRIC's suggested use of India alone. Specifically, the Department considered choosing a single wage rate from an economically comparable market economy, averaging the wage rates of economically comparable market economies, and running the regression only on economically comparable countries. In rejecting these alternative methodologies, the Department concluded that none of these alternatives reduces the potential for distortion or increases either fairness or predictability. Considering the use of data from a single surrogate country, the Department determined that there was so much variation in wage rates that the use of a single surrogate would "undermine the accuracy, fairness and predictability of the calculations." Remand Results at 13. Also, because not all countries reported suitable wage rates every year, the Department declared that using a larger group and "averaging" the data by means of the regression analysis is a more desirable option. Remand Results at 16. The CIT in *Dorbest (2008)* found this approach reasonable. In short, the Department already considered the alternative methodologies suggested by Starbright and TUTRIC and ultimately rejected all of them, and the CIT affirmed the Department's conclusions.[54]

In quoting *Chevron (1984)*, Starbright and TUTRIC state that a regulation cannot stand if it is "arbitrary, capricious, or manifestly contrary to the statute." However, the entire quote, as Bridgestone points out, states that, where the statute does not require a specific methodology, the Department's interpretations "are given controlling weight, unless they are arbitrary, capricious, or manifestly contrary to the statute."[55] The Department's wage rate methodology is neither arbitrary, capricious or manifestly contrary to the statute and the Department's determination is entitled to controlling weight. Moreover, the CIT held in *Luoyang Bearing (2004)* that the "statute does not direct Commerce to use a specific method in its valuation of labor." The Department considered several alternative methodologies in *Dorbest (2008)*. As the court explained, the Department "reasonably rejected . . . all the alternatives proposed to its chosen approach. Accordingly, the court will affirm its choice." *See Dorbest (2008)* at 19.

Furthermore, there is no merit to Starbright's and TUTRIC's proposal that the Department continue to apply the wage rate from the preliminary determination because, they claim, the Department has denied parties the opportunity to comment on the wage rate calculations or to submit rebuttal or correcting information with respect to this issue. Starbright and TUTRIC argue that section 782(g) of the Act provides that the Department "shall cease collecting information and shall provide the parties with a final opportunity to comment on the information . . . upon which the parties have not previously had an opportunity to comment." The Department has done so throughout this proceeding.

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[54] *See Dorbest (2008)* at 4 – 19, 68.

[55] *See Chevron (1984)* at 844.

As Petitioners note, all parties had ample opportunity to comment on the calculated wage rates to be applied to the final determination in this investigation. Specifically, the Department published *NME Wage Rates – Request for Comments on 2007 calculations (2008)* on April 11, 2008, which requested comments on potential ministerial errors in the Department's wage rate calculations. The Department published NME Wage Rates (May 9, 2008), notifying parties of the finalized NME wage rates and informing parties that those wage rates would be "in effect for all antidumping proceedings for which the Department's final decision is due after the publication of this notice."[56] All of these notices preceded the deadline for filing case briefs for this investigation. Indeed, the Department issued its May 20, 2008, memorandum regarding Schedule for Submission of Case and Rebuttal Briefs after the publication of the aforementioned notices. The fact that Starbright and TUTRIC commented on this issue in their case brief demonstrates that no party was denied an opportunity to comment. Moreover, the Department notified all parties of its intention to apply the revised wage rates for the final determination in its May 22, 2008 memorandum regarding Courtesy Copies of Case and Rebuttal Briefs and Use of the Revised Non-Market Economy ("NME") Wage Rates.

Comment 6: Adjustment for Un-refunded Value Added Taxes

Petitioners urge the Department to change its practice and to make an adjustment equal to the differences between either a) the VAT paid on MEP of inputs or the amount of VAT respondents would have paid if the inputs had been purchased at an ME value and b) the VAT refunded on the inputs upon exportation of subject tires. Petitioners argue that such an adjustment would 1) achieve tax neutrality (as envisioned by the *SAA* and approved by the CAFC in *Federal Mogul (1995)* and 2) be another way to give effect to an NME producer's actual market-type experience in the calculation of NV, where appropriate. Referring to *Manganese Metal 11/06/95*, where the Department explained its reasoning for not making such adjustments in NME cases, Petitioners refute the Department's position and encourage the Department to change its NME practice, citing ME practice as a reason for the proposed change.[57] Specifically, in this investigation, Petitioners contend that such an adjustment is warranted for all material inputs, as the value added tax rate paid on most material inputs was higher than the refund on exported products,[58] and propose that the Department could calculate an adjustment using the relevant percentages.

Guizhou Tyre, Starbright, TUTRIC and Xugong alternatively argue that: 1) Petitioners have not demonstrated that the NVs used in this proceeding are distorted by un-refunded VAT (*i.e.*, that VAT payments exceeded VAT refunds on exports); 2) there is no record evidence with which the Department could make such a determination or the requested adjustments; 3) Petitioners' proposal is contrary to the Department's clear and consistent practice with regard to this issue in

[56] On May 14, 2008, the Department published *Corrected 2007 Expected Wage Rate (2008) c*orrecting a ministerial error in the wage rate calculation.

[57] Petitioners cite: *Silicon Metal-Brazil 02/15/00*; *Camargo (1999); HR Carbon Flat Products-India 10/03/01;* and *Elkem Metals (2006).*

[58] In support of their positions, Petitioners cite to a series of articles presented to the Department in their March 10, 2008, submission where they first requested that the Department consider this issue in this proceeding.

NME cases;[59] 4) it would be inappropriate to adjust normal value for VAT paid on NME inputs because the Indian surrogate values do not include Indian taxes. They further assert that Petitioners: 1) have not substantiated their claims regarding how the Chinese VAT system works; 2) suggest the Department ignore respondents' actual COP, and then apply the Chinese tax structure to market-economy surrogate values; and 3) propose the Department calculate a theoretical cost that is not based on the respondents' actual experience.

Citing *Elkem Metals (2006)* and *HR Carbon Flat Products-India 10/03/01,* Xugong disputes Petitioners' assertion that the Department's current practice is to include the un-refunded portion of the VAT in its AD calculations. Moreover, again citing *Elkem Metals*, Xugong contends that Petitioners' reliance on *Camargo (1999)* and *Silicon Metal-Brazil 08/06/98* are misplaced, as they stand for the premise that decisions regarding this issue must be made on a case-specific basis. Additionally, Xugong, citing *HR Carbon Flat Products-India 10/03/01* and *Pipes and Tubes-Thailand 10/13/00,* argues that where the Department has not requested the relevant tax information from a respondent, as is the case here, it will not include taxes in its calculations.

Xugong further argues that such an adjustment is contrary to the statute, which requires that the Department value costs in a surrogate market-economy country. Nevertheless, Xugong states that it agrees with Petitioners' contention that the NME methodology yields a distorted result, but does not agree that the Department should value only certain items using the respondents' actual costs. Xugong asserts that it would be absurd for the Department to consider using in its calculations a tax that is applied to costs that the Department does not accept for purposes of its margin calculations. However, Xugong argues that if the Department does make such an adjustment, it must make similar adjustments for circumstance of sale and differences in LOT between the surrogate country and Xugong's information, as well as to the surrogate financial data. Xugong requests that if the Department were to accept the proposed VAT adjustment, and does not agree to its suggested additional adjustments, it provide, in the alternative, an opportunity for Xugong to submit a market-economy response.

Department's Position: Because we are using surrogate value methodology, which does not rely on Chinese prices and costs, the issue of un-refunded taxes is irrelevant to our NV calculation in this case. The Department's FOP calculation uses predominantly Indian surrogate values which are exclusive of Indian taxes. *See* notice of final determination, dated concurrently with this memorandum. As we stated in *Bags-PRC 03/17/08*, the Department's normal methodology is to exclude income taxes or VAT from the antidumping calculations. Because this results in an NV that is net of taxes, consistent with our established practice with respect to this issue,[60] no adjustment for un-refunded tax is warranted, and we have not made one here. Further, we agree with respondents that Petitioners have not demonstrated how an NV calculated using values that are net of VAT is distorted by un-refunded taxes. Because we have determined that NV in this case is already tax-neutral, we are not addressing the parties' arguments with respect to our methodology for achieving tax neutral calculations in ME proceedings, as they are

[59] The respondents cite *Manganese Metal 11/06/95*and *Bags 03/17/08.*

[60] *See Bags-PRC 03/17/08* IDM at Comment 2.

not relevant to the instant proceeding. Further, we need not address the issues raised by Xugong, as they all reflect concerns surrounding a hypothetical adjustment that the Department is not making in this investigation.

Comment 7: Treatment of Respondents' Packing Labor

Petitioners argue that the Department should include in its calculations Respondents' unreported packing labor hours, even if limited to loading containers. According to Petitioners, "normal value" is the value of the product packed and ready for shipment, and none of the respondents has reported packing labor in their reported FOPs. Petitioners contend that the Department should correct the omission by applying "facts available." To support this argument Petitioners cite to Starbright DQR, Xugong DQR, Xugong 01/09/08 SQR, section 773 of the Act, Starbright CEP Verification Report, Starbright 01/16/08 SQR, *Steel Beams-Russia 05/20/02.*

Starbright argues that none of its products sold to the U.S. was packed; thus, it did not incur packing labor. Starbright further argues that its sales discounts are not related to packing labor, and, therefore, cannot be used as a proxy for packing labor, as proposed by Petitioners. To support this argument Starbright cites to Starbright CEP Verification Report and Starbright 01/16/08 SQR.

Xugong states that it has accounted for its packing labor as part of indirect labor. According to Xugong, its inability to break out the packing labor from the COM is to its own detriment, because in the Department's normal practice, packing inputs and packing labor are added to the COM rather than being included in the build-up of the COM. Finally, Xugong claims that the Department's verification would have uncovered packing labor if it existed. To support this argument Xugong cites to Xugong Verification Report and Xugong 01/22/08 SQR.

Department's Position: None of the respondents, with the exception of Xugong, reported any packing materials. Because Starbright, TUTRIC, and Guizhou Tyre did not pack their products and did not report packing materials, packing labor is irrelevant for calculating NV for these companies, and thus the issue of whether Starbright's trailer-load discount is an appropriate proxy for packing labor is moot.

Xugong reported tape as a packing material and stated that packing labor is included in indirect labor. *See* page D-13 of Xugong's DQR and pages 33-34 of 01/09/08 SQR. During verification, we examined all labor categories reported by Xugong. Xugong used tape only for taping tubes and flaps to the tire. Because we have determined that tubes and flaps are not subject merchandise, we are not including Xugong's reported packing tape in the FOP buildup for subject merchandise. *See* Comment 21 and Xugong Final Analysis Memo. We note that because it could not segregate its packing labor from its reported indirect labor, we have made no adjustment to Xugong's packing labor.

General Surrogate Value Issues

Comment 8: Standard for Accepting Respondents' Proposed HTS Categories

Domestic Producers argue that respondents bear the burden of providing the information necessary for the Department to calculate the dumping margin, including information to classify and value the FOPs. According to Domestic Producers, the Department asked respondents to provide detailed factor descriptions and to propose HTS classifications based on the descriptions provided for all of their factors. Domestic Producers maintain that in the preliminary determination, the Department accepted the respondents' asserted classifications for numerous FOPs for which respondents provided inadequate descriptions and information, thus failing to ensure that the most accurate surrogate valuations were used to calculate the dumping margins. Domestic Producers argue the Department should use facts available and select the most specific HTS classification that applies, based on the information provided by that respondent, and in conjunction with other record evidence. To support this argument Domestic Producers cite *Zenith (1993), WBF 08/22/07*, and *Mannesmannrohren-Werke (2000)*.

Xugong argues that for the final determination, the Department should continue to rely on Xugong's reported descriptions and HTS classifications to value its FOPs. Xugong contends that it has more than adequately described its inputs and classifications. According to Xugong, its descriptions and classifications represent the best available information on the record because Xugong is in the best position to know what classifications are the most appropriate. Specifically, Xugong claims that its reported HTS classifications are based on its import experience for the materials. Additionally, Xugong maintains that the Department had the opportunity to verify the classifications and descriptions provided by Xugong. To support this argument Xugong cites *Ironing Tables 03/21/07* IDM at Comment 5, Xugong's 01/09/08 SQR, and Xugong Verification Report.

Starbright and TUTRIC contend that Domestic Producers' arguments are general in nature and do not address any particular input for any particular respondent. Starbright maintains that Domestic Producers do not suggest any alternative; thus, there is no action for the Department to take in response. To support this argument Starbright and TUTRIC cite *WBF 08/22/07*.

Department's Position: We agree with Starbright and TUTRIC that the Domestic Producers' argument is very broad. Specifically, Domestic Producers did not identify in their arguments the specific respondents and factors to which the Domestic Producers argue the Department applied inaccurate SVs due to respondents' failure to provide adequate descriptions and information. As for Domestic Producers' reference to *Mannesmannrohren-Werke (2000)* and *Zenith (1993)*, these cases merely state that the burden to respond to the questionnaires and to develop the record is on the respondents. Because Domestic Producers have not explained in any detail why they think that respondents' classifications or FOPs may be inaccurate, we cannot respond in detail to their assertions. As a general matter in this case, we believe respondents Xugong, Starbright, TUTRIC and Guizhou Tyre have met such burden in responding to our requests for information. With respect to particular inputs that Domestic Producers address elsewhere, the Department has utilized the best information available on the record of the proceeding to value each input, and has addressed specific arguments with respect to valuation, as appropriate, throughout this

memorandum.

Comment 9: Treatment of Aberrational Data in Certain Surrogate Values

Starbright and TUTRIC argue that when relying on import statistics as SVs of material inputs, it is the Department's practice to exclude 1) clearly aberrational data and 2) low quantity/high value import data. According to Starbright and TUTRIC, the HTS categories for certain SVs are basket categories that include high-end specialty items not used by the respondents, and the Indian data are often misclassified. Starbright and TUTRIC claim that the Department should correct the SVs for paraffin wax (Indian HTS 2712.90.90), silicon dioxide (Indian HTS 2811.22.00), benzoic acid (Indian HTS 2916.31.10), rubber softener (Indian HTS 3812.30.20), polyacetal resin (India HTS 3907.10.00), butadiene rubber (Indian HTS 4002.20.00), isoprene rubber (Indian HTS 4002.60.00), nylon cord (Indian HTS 5607.50.20), and nylon chafer (Indian HTS 5604.90.00). To support this argument Starbright and TUTRIC cite *Cased Pencils 12/07/06*, Prelim SV Memo, and Starbright and TUTRIC's 12/7/07 SV submission.

Petitioners argue that the Department should not exclude import prices that Starbright and TUTRIC regard as aberrational or otherwise excludable. According to Petitioners, the fact that some prices may be higher than the average is not a valid reason for exclusion. Petitioners also argue that the Department should not exclude imports from North Korea from the SV calculations because the Department never excludes North Korea as an NME country.

Domestic Producers specifically argue that the Department properly valued Starbright and TUTRIC's "nylon cord" in the preliminary determination. According to Domestic Producers, although Starbright and TUTRIC argue that the Department should reject import data from the Czech Republic, Germany, and the United States as aberrationally high, and instead rely only on the import data from Colombia, Starbright and TUTRIC provide no support for their claim that high price/low quantity data automatically should be "disqualified" from the Department's SV calculations, nor do they explain why the converse would not be true (*i.e.*, why Columbia's import data should not be considered aberrationally low when compared to the other three countries). Domestic Producers conclude that the Department has rejected similar arguments in the past as being "self-serving," and it should do so again in this investigation. To support this argument Domestic Producers cite *Hebei Metals (2004)*, Petitioners' 12/7/07 SV submission, Respondents' 12/7/07 rebuttal information, Respondents' 1/17/07 SV comments, Prelim SV Memo, *Fish 01/31/03*, and *Shrimp 09/12/07*.

Starbright argues that, alternatively, if the Department adheres to WTA data, it must exclude the data from the Czech Republic, Denmark, and North Korea as these data are aberrational. To support this argument, Starbright cites to Starbright's 12/17/07 SV submission.

Department's Position: When selecting possible SVs for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is: 1) an average non-export value; 2) representative of a range of prices within the POI or most contemporaneous with the POI; 3) product-specific; and 4) tax-exclusive. *See Sawblades-PRC 05/22/06* IDM at Comment 11. In applying the Department's SV selection criteria as mentioned above, the Department has found in numerous NME cases that the import data from WTA

represent the best information available for valuation purposes because they provide average import prices, representative of prices within the POI, and are product-specific and tax-exclusive. *See Activated Carbon-PRC 03/02/07* IDM at Comment 16.

Starbright and TUTRIC do not point to any specific evidence to substantiate their claim that any of the import prices discussed below are aberrational. We agree with Bridgestone's citation of *Shrimp 09/12/07* IDM at Comment 4, where the Department rejected the respondent's claim of aberrationally high SVs, by characterizing that the exclusion of high values not found to be otherwise aberrational "would lead to a skewed view of the overall market." *See Shrimp 09/12/07* IDM at Comment 4. In that case, the Department rejected the exclusion of high values absent specific evidence that such values were aberrational. *See Shrimp 09/12/07* IDM at Comment 4. In this case, Starbright and TUTRIC have presented no evidence to substantiate their claim that certain data are aberrational. Rather, all they have done is claim that the quantities are low and the values are high and assert that this is sufficient to warrant exclusion. We also note that Starbright and TUTRIC have not argued that values significantly below the average should be excluded from the SV calculation because they are aberrationally low. As a result, we find that the evidence on the record of this proceeding does not support a finding that the values at issue are aberrational. Thus, the Department has determined not to disregard them. Furthermore, the impact of excluding the values characterized by Starbright and TUTRIC as aberrationally high would, in most instances, result in minor differences in the average. *See* Starbright's 12/7/07 SV submission.

We note that the Hong Kong price which Starbright and TUTRIC argue should be excluded is as close to the next highest value (imports from Japan) as the lowest value (from Iceland) is to the second lowest value (from Egypt). *See* Starbright's 12/7/07 SV submission. Thus, we find that the value from Hong Kong is not outside the normal range of price differentials evidenced in this category. Furthermore, we note that the quantity of imports into India from Italy and Switzerland are so low that their exclusion would have an insignificant impact on the weighted-average value.

Regarding benzoic acid, in the preliminary determination we applied a value of 42.09 Rs/kg, whereas after the exclusion of imports from Poland, as suggested by Starbright and TUTRIC, the average value is 42.07 Rs/kg. With respect to rubber softener, in the preliminary determination we applied a value of 23.72 Rs/kg, whereas after the exclusion of imports from Belgium, Germany, and Spain, as suggested by Starbright and TUTRIC, the average value is 23.15 Rs/kg. In the preliminary determination we valued polyacetal resin at 80.68 Rs/kg, whereas after the exclusion of imports from Australia and Austria, as suggested by Starbright and TUTRIC, the average value is 80.47 Rs/kg. *See* Final SV Memo.

With respect to isoprene rubber, in the preliminary determination we applied a value of 51.52 Rs/kg, whereas after the exclusion of imports from Japan, as suggested by Starbright and TUTRIC, the average value is 49.26 Rs/kg. *See* Final SV Memo. The record contains no additional evidence to support a finding that the prices for imports into India from Japan are aberrational. With respect to nylon cord, we find that exclusion of three out of four countries from the SV calculation, as suggested by Starbright and TUTRIC, would have a significant effect on the weighted-average SV. However, Starbright and TUTRIC do not support their argument

for exclusion with any specific evidence of the aberrational nature of such prices other than the fact that imports from Germany, the Czech Republic, and the United States have low volume and high prices. As stated above, a low volume and high price, in and of itself, is not sufficient to find a particular value aberrational.

In the preliminary determination, we valued carbon black at 53.53 Rs/kg, whereas after the exclusion of imports from Czech Republic, Denmark, and North Korea, as suggested by Starbright, the average value is 53.31 Rs/kg. We note that while the import value from Czech Republic and Denmark appear to be high, the effect as a result of the exclusion is mathematically insignificant. Absent of any further reasoning besides that of higher price, we disagree that these prices are not market driven and do not represent the Indian import market in its entirety. Furthermore, we do not include North Korea in the list of NME countries and, thus, its exclusion as an NME country is unwarranted. The Department has not made any determination designating North Korea as an NME country for AD purposes. Therefore, we have not revised our calculation of SV for carbon black for the final determination.

Comment 10: Reliability of *Infodrive India* Data

Domestic Producers assert that the Department should disregard the *Infodrive India* data submitted by Starbright for certain HTS classifications because these data are unreliable and incomplete. According to Domestic Producers, *Infodrive India* data do not include imports from the same countries that are reported in the official Indian import statistics. Additionally, Domestic Producers state that the raw entry data received by *Infodrive India* remain uncorrected, in contrast to the official import statistics. Domestic Producers conclude that the *Infodrive India* data should not be used for any purpose in the final determination. To support this argument, Domestic Producers cite to Starbright's and TUTRIC's April 14, 2008, Rebuttal SV Submission, Bridgestone's April 24, 2008, Surrebuttal SV Submission, *Dorbest (2007), Dorbest (2008), Silicon Metal-PRC 10/16/07, PSF 04/19/07, WBF 11/17/04*, and *Mushrooms 08/09/07.*

Starbright and TUTRIC argue that *Infodrive India* and IBIS provide significant amounts of additional product-specific information, relevant to the determination of accurate SVs. According to Starbright and TUTRIC, *Infodrive India*/IBIS data are also publicly available, contemporaneous, neutral, and reliable.[61] To support this argument, Starbright and TUTRIC cite to *Dorbest (2006), Sichuan Changhong (Sept 2006),* and *CTVs-PRC 04/16/04.*

Department's Position: When selecting possible SVs for use in an NME proceeding, the Department's preference is to use SVs that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of taxes on exports. *See, e.g., Silicon Metal-PRC 10/16/07* IDM at Comment 5. In applying the Department's SV 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, are product-specific and tax-exclusive. *See. e.g., Honey-PRC 10/04/06.* Although the Department has used *Infodrive India* in

[61] Starbright and TUTRIC argue the Department should particularly consider *Infodrive India* and IBIS data for valuing carbon black.

limited instances in the past, it is the Department's normal practice not to use *Infodrive India* data unless the record demonstrates that the *Infodrive India* data are more inclusive and more reliable than WTA data. We agree with Domestic Producers that the Department has determined in numerous cases that *Infodrive India* data are incomplete and unreliable and, therefore, has rejected their use. *See, e.g., Silicon Metal-PRC 10/16/07* IDM at Comment 5, *PSF 04/19/07* IDM at Comment 7, *WBF 11/17/04* IDM at Comment 10, *Cased Pencils 07/06/*07 IDM at Comment 1, *Cased Pencils 07/22/05* IDM at Comment 2, and *Mushrooms 08/09/07*. The CIT upheld the Department's use of WTA data over a suggested *Infodrive India* alternative, finding that the Department's use of WTA data "is supported by substantial evidence in that the record supports Commerce's conclusion that the {WTA} data is more inclusive than the {Infodrive India} alternatives." *See Dorbest (2006)* at 33. As Domestic Producers have shown, *Infodrive India* yields different results compared to WTA and does not include all import data from the countries that exported to India. *See* Exhibit 2 of Domestic Producers' Case Brief and Exhibit V of Starbright's and TUTRIC's April 14, 2008, Rebuttal SV Submission. Therefore, we continue to find *Infodrive India* data to be unreliable and incomplete, and we have not used them to value any input, including, carbon black, for the final determination.

Comment 11: Surrogate Value Source for Steam

Petitioners and Bridgestone state that the Department used a value from 1999 for natural gas when calculating the SV for steam in the preliminary determination. Petitioners and Bridgestone argue that more contemporaneous data for natural gas are available on the record. Petitioners and Bridgestone assert that in the final determination, the Department should use a more contemporaneous value for natural gas in calculating an SV for steam (and also should include the cost of transporting the natural gas to the consumer). To support this argument, Petitioners and Bridgestone cite Bridgestone's April 4, 2008, SV Factual Submission and Starbright's April 14, 2008, Rebuttal SV Submission.

Starbright, TUTRIC, and Xugong argue that the Department should value steam based on the natural gas price used in the preliminary determination. Xugong claims that Bridgestone's sources for natural gas have no indication of being tax-exclusive and do not represent a broad market average. To support this argument, Xugong cites *Artist Canvas 03/30/06, Honey 06/16/06, WBF 11/17/04, PSF 04/19/07,* and *Ironing Tables 03/12/07*. Starbright and TUTRIC argue that the natural gas rates provided by Petitioners and Bridgestone do not reflect prices of natural gas throughout India because they represent a small sector of the economy. According to Starbright and TUTRIC, the gas industry in India has a regulated, monopolistic market, and the inflated price used in the preliminary determination reflects the commercial reality of the natural gas market in India. To support this argument Starbright and TUTRIC cite Starbright and TUTRIC's April 14, 2008, Rebuttal SV Submission and Prelim SV Memo.

Department's Position: We agree with Petitioners and Bridgestone that there are more contemporaneous data for natural gas on the record of this proceeding than the 1999 data selected in the preliminary determination. However, we also agree with respondents that Petitioners' and Bridgestone's suggested data for natural gas do not represent the best available information on the record. In reconsidering the value for natural gas, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate ME

country. On the record of this proceeding, we have several potential values for natural gas: 1) 1999 value as used in the preliminary determination; 2) May 2005 value as published in *Financial Express* and used in *Certain Steel Nails 01/23/2008* (unchanged in *Certain Steel Nails 06/16/2008*); 3) futures values for contracts on natural gas which expired during the POI; and 4) post-POI prices from *Petrowatch*. After reviewing the potential SVs for natural gas on the record of this proceeding, we have declined to use the 1999 value as used in the preliminary determination, and have selected the May 2005 value for natural gas as published in *Financial Express* and used in *Certain Steel Nails 01/23/2008* (unchanged in *Certain Steel Nails 06/16/2008*).

While Petitioners and Bridgestone argue that the Department should use natural gas prices from the POI, neither of their recommended values represents a price from the POI. Petitioners and Bridgestone recommend that the Department use natural gas data obtained from the Multi Commodity Exchange of India, Ltd. ("MCEI"). Petitioners and Bridgestone allege that these data are comprised of futures trading values on contracts of natural gas which expired during the POI. However, a futures contract is an "agreement to buy or sell a specific amount of a commodity or financial instrument at a particular price on a stipulated future date."[62] Therefore, futures contract values do not represent an actual price paid by consumers of natural gas during the POI.

Furthermore, it is not clear based on the record evidence that all of the MCEI data points for natural gas are finalized futures contract prices. Exhibit 6 of Bridgestone's April 4, 2008, submission, containing the MCEI data on natural gas, states that there are 12 contracts for natural gas per year, and that the contract specifies a delivery unit of 10,000 MMBTU. *See* Exhibit 6 of Bridgestone's April 4, 2008, submission. However, the data points presented by Bridgestone consist of significantly more data points than 12 finalized contract prices, and many of the quantities associated with these data points represent undeliverable quantities. Because futures contracts can be traded, re-traded, divided and re-divided, there can be many price points which represent intermediate transactions, rather than finalized contract prices. Therefore, we find that the MCEI data do not represent the best available information on the record.

Petitioners and Bridgestone also suggest natural gas prices obtained from *Petrowatch*. However, these values are post-POI prices and, therefore, are not contemporaneous with this proceeding. While Petitioners and Bridgestone placed on the record a natural gas price from *Financial Express*, which was also used by the Department in *Certain Steel Nails 01/23/2008* (unchanged in *Certain Steel Nails 06/16/2008*), they did not recommend this value for use in the final determination. Petitioners and Bridgestone argue that the natural gas value used in *Certain Steel Nails 01/23/2008* (unchanged in *Certain Steel Nails 06/16/2008*) does not represent an appropriate value for natural gas during the POI of this proceeding because of post-2005 natural gas price increases in India. However, the Department does not agree.

Much of the evidence provided by Bridgestone to demonstrate post-2005 natural gas price increases in India is from publications that were published after the POI. However, a publication

[62] *See Dictionary of Finance and Investment Terms*, published by Barron's Educational Series, Inc., (Third Edition) at 168.

submitted in Starbright and TUTRIC's Rebuttal SV Submission, dated April 14, 2008, at Exhibit II, published by the ICRA, demonstrates that the August 2006 landed cost to consumers with an offtake of less than 50,000 cubic meters per day (the most similar consumer to producers of the merchandise subject to this investigation) is roughly the same price as the May 2005 value used in *Certain Steel Nails 01/23/2008* (unchanged in *Certain Steel Nails 06/16/2008*).

While Starbright and TUTRIC present some data to demonstrate the regulated nature of the natural gas industry in India and its effect on natural gas prices, this information seems simply to indicate that the government of India reviews the prices of natural gas due to the monopolistic nature of the industry. Xugong argues that Petitioners' and Bridgestone's suggested prices may not be tax-exclusive, and cites several cases indicating the Department's preference for tax-exclusive prices. However, evidence on the record does show the prices recommended by Petitioners and Bridgestone to be tax-exclusive. Nonetheless, the Department has declined to use the values proposed by Petitioners and Bridgestone for the aforementioned reasons. In the case of natural gas there are few suppliers and, based on record evidence, the range of prices varies more by type of consumer than by supplier. Therefore, we sought a value in line with the prices offered to consumers similar to the producers of merchandise subject to this investigation. Lastly, although Xugong argues that Petitioners and Bridgestone have not demonstrated that the steam SV used in the preliminary determination is inaccurate, the Department finds that the Petitioners and Bridgestone have shown that there are more contemporaneous data for natural gas on the record of the investigation and, consequently, we have revised the natural gas value used to calculate an SV for steam for the final determination. Therefore, we find that the May 2005 value for natural gas, obtained from *Financial Express* and used in the recently completed investigation on *Certain Steel Nails 01/23/2008* (unchanged in *Certain Steel Nails 06/16/2008*), inflated to the POI period is the best available information with which to calculate a steam value in this investigation.

Comment 12: Natural Rubber Surrogate Value

In the preliminary determination the Department used WTA data to value natural rubber. Domestic Producers argue that the Department should not use WTA data, as the two selected HTS numbers used to value natural rubber are basket categories. Rather, the Department should use pricing information published by the Rubber Board, Ministry of Commerce and Industry, Government of India, as these prices are specific to the actual inputs used by respondents and, therefore, are more accurate. Domestic Producers cite *Mushrooms-PRC 08/09/07* IDM at Comment 1 to support their contention that the Department prefers to select a more product-specific SV, when available, than WTA import data, and *Aspirin-PRC 02/10/03* IDM at Comment 1, noting that in that case the Department generally used domestic prices due to "a wide variety of purity/concentration levels for an input."

Domestic Producers argue that the prices published by the Rubber Board are superior to WTA import data due to the specific grades of natural rubber used by respondents, and the fact that the WTA import data do not distinguish between the different grades of natural rubber. They contend that the import data understate the value for the grades of natural rubber used by respondents and that the Indian tire producers do not import the rubber required by their industry. Domestic Producers note that these Rubber Board prices are exclusive of VAT, packing

expenses, transportation, and warehousing, and are period-wide price averages, specific to the input, and publicly available.

Finally, Domestic Producers argue that it is immaterial whether or not the domestic Indian rubber industry is subsidized as this would affect import and domestic prices equally, and cite *Sulfanilic Acid-PRC 01/15/02* to support the assertion that the Department uses domestic prices for SVs even when there is a subsidy in place for a particular input.

Starbright and TUTRIC contend that the Department should continue to use WTA import data under subheadings 4001.21 (for smoked sheets of natural rubber) and 4001.22 (for technically-specified natural rubber) to value natural rubber in the final determination. These respondents submitted evidence of a variety of "actionable" subsidies that the government of India provides to the rubber growers and submit that Domestic Producers do not dispute this evidence. Starbright and TUTRIC go on to highlight the Department's practice of disregarding prices when it has knowledge, or potential knowledge, of subsidies, citing *Honey-PRC 10/04/06* IDM at Comment 3; *CTL Plate-Romania 03/15/05* IDM at Comment 4; *HFHT-PRC 09/10/03* IDM at Comment 2; *TPRB-PRC 11/15/01* IDM at Comment 1; and H.R. Rep. 100-576 (1988).

Starbright and TUTRIC also refute the Domestic Producers' argument that the rubber industry subsidy distorts WTA import prices as well, citing *CFS-PRC AD 10/25/07* IDM at Comment 2, where the Department stated that "Congress provided no adjustment of CVDs imposed by reason of domestic subsidies in NME proceedings {and the Department found that} the assertion that the AD law embodies the presumption that domestic subsidies automatically lower prices, pro rata, to be baseless."

Department's Position: The Department agrees with Starbright and TUTRIC on this issue and continues to use WTA import data under subheadings 4001.21 (for smoked sheets of natural rubber) and 4001.22 (for technically-specified natural rubber) to value natural rubber in this final determination.

Domestic Producers' reliance on *Sulfanilic Acid-PRC 01/15/02* to assert that the Department may use input prices where there is an apparent subsidy in a particular industry is not supported by the record of that proceeding. In *Sulfanilic Acid-PRC 01/15/02*, there were allegations that the Indian government gave industries a subsidy if they used the domestic input in their production, but not that the Indian Government was subsidizing the industry that produced the input. Therefore, the facts in *Sulfanilic Acid-PRC 01/15/02* are not analogous to the facts on the record of this investigation in regard to the subsidies afforded the Indian natural rubber industry. In citing *Aspirin-PRC 02/10/03* IDM at Comment 1, Domestic Producers note that in that case the Department generally used domestic prices due to "a wide variety of purity/concentration levels for an input." This is not informative here as the purity or concentration levels of the factors being used to value natural rubber are not in question; rather, what Domestic Producers question is the specificity of the grades of rubber included in the SV. Domestic Producers also cite *Mushrooms-PRC 08/09/07* IDM at Comment 1 to assert that the Department finds more specific pricing data for SVs to be superior to WTA import data by noting that price quotes were used in *Mushrooms-PRC*. However, these prices where for actual sales, and there were no allegations of subsidization in this industry, whereas in the case of the Rubber Board prices, these are quoted/indicative prices published on a particular day and do not necessarily reflect an actual

sale of natural rubber. Therefore, the Department continues to use WTA import data as the best available information with which to value natural rubber in this final determination.

Comment 13: Steam Coal Surrogate Value

Starbright and TUTRIC argue that the Department should value steam coal based on TERI data, consistent with *WBF-PRC 08/22/07*, where the Department used TERI data to value steam coal. They also cite *ISOS-PRC 01/02/08* IDM at Comment 7, where the Department followed the decision made in *WBF-PRC 08/22/07*.

Bridgestone argues that the Department should not value coal using TERI data, as these data merely reflect prices set by CIL and its subsidiaries, which are owned by the government of India. They contend that this source does not reflect market pricing, citing *Wuhan Bee (2005)*, is not specific to the type of coal consumed by the PRC respondents, citing *ISOS-PRC 01/02/08* IDM at Comment 7; *CFS-PRC-AD 10/25/07* IDM at Comment 19; and *Pure Magnesium-PRC 10/17/06* IDM at Comment 4, and is not contemporaneous with the POI. Bridgestone also notes that when the Department did use TERI data it was because of the specificity of the data, citing *CFS-PRC-AD 10/25/07* IDM at Comment 19 and *Saccharin-PRC 09/11/07* IDM at Comment 3. Therefore, according to Bridgestone, it is more appropriate to use WTA import data to value coal in this instance, as these import data capture all grades of steam coal.

Department's Position: The Department agrees with Bridgestone and continues to use Indian WTA import data to value steam coal in this final determination. Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors …." The Department considers several factors when choosing the most appropriate SVs, including the quality, specificity, and contemporaneity of the data. As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" SV is for each input.[63]

TERI data are categorized by major types of coal and UHV value, whereas WTA import data are listed under "steam coal" without further specificity. Where we have information on the specific type of coal used and the UHV value, we prefer using TERI data.[64] In the instant investigation, no respondent provided such specificity with regard to the steam coal used. Absent the necessary information regarding the type of coal used by respondents, there is no advantage to using TERI data. Consequently, we have continued to use the Indian WTA data to value steam coal.

[63] *See Mushrooms-PRC 08/09/07* IDM at Comment 1; *see also Nation Ford Chem. (1999)* at 1377 (the CIT affirmed that the statute does not define "best available information" and that the Department is given "wide discretion in the valuation of factors of production in the application of those guidelines").

[64] *See ISOS-PRC 01/02/08* IDM at Comment 7.

Comment 14: Carbon Black Surrogate Value

Starbright and TUTRIC contend that the Department should use only a subset of the import data where only particular grades are represented as published by IBIS Trade Intelligence data. They suggest that the Department weight average the value for carbon black grades N330 and N220 because these specific grades were used by Starbright 60 percent of the time during the POI. These respondents argue that the Department should use the most specific data possible, citing *Manganese Metal-PRC 09/13/99* IDM at Comment 4. They go on to note that these grades are a subset of the HTS category 2803.00.10, and that IBIS captures more than 90 percent of the import data.

Domestic Producers argue that the Department should change its carbon black SV calculation. They argue that the calculation contained an error and, thus, should be adjusted, because the calculation contains a weighted average with Guizhou Tyre's reported ME purchase price. Domestic Producers note that errors were found in the reporting of carbon black sales data at Guizhou Tyre's verification, and they request that the Department correct for any additional errors.

Bridgestone also argues that the IBIS data proposed by Starbright and TUTRIC should not be used to value carbon black because these data do not reflect all imports and are unreliable. Bridgestone further argues that the Department has in the past rejected IBIS data, citing *WBF-PRC 11/17/04* IDM at Comment 10; and *Brake Rotors-PRC 01/08/01*.[65]

Department's Position: The Department has in the past rejected use of the IBIS data as unreliable. We find that the IBIS data that the respondents have placed on the record are not an appropriate source for the SVs because they are not representative of the range of POI prices. As we noted in *Furniture-PRC 11/17/04* IDM at Comment 10, the IBIS data are not representative of the range of POI prices because they represent only a segment of Indian imports from a limited number of ports.

In determining the most appropriate SVs the Department's practice is "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."[66] The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. On this basis, IBIS data are less representative of country-wide average prices in India than are the WTA data.

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[65] *See WBF-PRC 11/17/04* IDM at Comment 10; and *Brake Rotors-PRC 01/08/01,* 66 FR 1303, 1308 (WTA data "provided a more representative Indian import value . . . because {they} cover all imports . . . into India. The IBIS data appear to be based on a limited number of shipments . . . to India.").

[66] *See* Policy Bulletin 04.1.

Starbright and TUTRIC argue that the SV calculated from Indian WTA data is less specific to the direct material input than SVs derived from the IBIS data. These respondents cite *Manganese Metal-PRC 09/13/99* IDM at Comment 4 to support the proposition that the Department's general practice is to use surrogate data that are as specific as possible. However, as in *WBF-PRC 11/17/04* IDM at Comment 10, we have in this instant investigation determined that there is no Department precedent that would support the use of IBIS data, nor is there any record evidence that IBIS data are the best available information. In fact, Starbright suggests that IBIS data would be specific to the type of carbon black used by Starbright 60 percent of the time during the POI. However, using the WTA data, which cover all imports into India of all types of carbon black, is more likely to encompass all types of carbon black used by Starbright 100 percent of the time, as opposed to the limited coverage afforded by the less comprehensive IBIS data. Accordingly, we have made no changes to our valuation of carbon black and have used the Indian WTA import statistics as the basis of this valuation.

Comment 15: Surrogate Value Source for Electricity

Starbright and TUTRIC argue that the Department should value electricity using a surrogate value based on the CEA of the Government of India. According to Starbright and TUTRIC, the CEA data are more accurate and contemporaneous, and show actual prices geographically and sectorally. Starbright and TUTRIC assert that, since the CEA price is contemporaneous with the POI, there is no need to inflate the electricity value. To support this argument Starbright and TUTRIC cite their 4/14/08 Rebuttal SV Submission and Prelim SV Memo.

Domestic Producers argue that the Department should continue using IEA data for valuing electricity. Domestic Producers maintain that the CEA data are not properly on the record, as they were filed after the deadline for the submission of publicly available information to value FOPs. Nevertheless, according to Domestic Producers, even if the Department accepts the CEA data for the record, the CEA data are estimates, and the Department should reject their use in this investigation. To support this argument Domestic Producers cite http://www.cea.nic.in/e&c/Estimated%20Average%20Rates%20of%20Electricity.pdf, 19 CFR 351.301(c)(3)(i), *WBF 08/22/07*, *TRBs-PRC 01/17/06*, and *Pure Magnesium 10/17/06.*

Department's Position: Ordinarily, the Department's policy is to reject submission of new SV information filed under the pretext of rebutting SV information submitted by another party. Starbright and TUTRIC submitted CEA data purportedly as a rebuttal to Bridgestone's electricity inflator submission. *See* Starbright's and TUTRIC's 4/14/08 Rebuttal SV Submission at Exhibit 1. However, CEA data had not been on the record prior to April 14, 2008. The deadline for submitting SV information was April 4, 2008. Moreover, Starbright and TUTRIC did not limit their submission of CEA data to "rebut" the use of an electricity-specific inflator but, instead, further used it as an alternative SV for electricity. We agree with Domestic Producers that the CEA data constitute new factual information that should have been rejected as untimely. *See* Bridgestone's 4/24/08 Surrebutal. However, by the time the Department determined that Starbright and TUTRIC's 4/14/08 Rebuttal SV submission contained untimely filed new factual information, the parties had already filed case briefs and rebuttal briefs. We recognize that the late timing of a rejection of Starbright's and TUTRIC's 4/14/08 Rebuttal SV submission would have led to rejection of arguments pertaining to the CEA data which, in turn, would have resulted in depriving parties of an opportunity to submit arguments based on a record that did not contain

the CEA data. Therefore, we have not rejected the CEA data and, for the final determination, we have considered Starbright's and TUTRIC's 4/14/08 Rebuttal SV Submission in its entirety.

It has been the Department's long-standing practice to use IEA data as a source for the SV for electricity. Starbright and TUTRIC have proposed an alternative source for electricity SV based on the CEA data, arguing that the CEA chart provides the real picture of actual electricity prices in India, both geographically and sectorally. However, Starbright and TUTRIC do not explain how they concluded that the CEA prices are actual prices when they appear to be derived from a chart that is labeled "Statement Showing Estimated Average Rates of Electricity." *See* Exhibit 1 of Starbright's 4/14/08 Rebuttal SV Submission.

For the final determination we find that it is appropriate to continue to use the IEA data to value electricity. First, the Department's practice of using the IEA data for 2000 and adjusting with an inflator to value electricity is well established. *See, e.g., WBF 08/22/07* IDM at Comment 15. Although these data are not contemporaneous, as the Department usually prefers for most surrogate data, the Department has consistently found IEA data, using an inflator, to represent the most reliable, publicly available data for electricity.

Furthermore, as stated above, we cannot determine how the CEA data were compiled. The chart with "estimated average rates of electricity" did not demonstrate how usage rates were recorded or derived. Therefore, for the final determination, we have continued to use IEA data to value electricity.

Starbright and TUTRIC discuss the applicability of averaging the CEA data for small, medium, large, and heavy industry to match the Indian surrogate producers used by the Department to calculate surrogate financial ratios. However, the methodological application of the CEA data is of no consequence in the context of this argument because selection of the proper industry designation is only appropriate if the CEA data are accepted as the electricity SV source, and we have determined that they are not appropriate for use in this final determination.

Comment 16: Use of Electricity-Specific Inflation Index

Domestic Producers argue that the Department should use an inflator that is more specific to electricity than the inflator used in the preliminary determination to inflate the electricity SV. Domestic Producers state that in the preliminary determination, the Department adjusted all SVs using the Indian WPI, a broad index reflecting price levels for a wide spectrum of commodities. Domestic Producers maintain that the RBI, which collects and publishes the WPI data, disaggregates the overall WPI and publishes an index that tracks pricing levels specifically for electricity. According to Domestic Producers, an inflator that is specific to electricity, whether the electricity is for residential or commercial uses, is more appropriate than the overall price index covering a wide range of commodities such as foods, textiles, chemicals, metals, and machinery. Domestic Producers claim that the Department should use the electricity-specific price index in the final determination, because it constitutes the best available information and achieves the most accurate valuation of this factor during the POI. To support this argument Domestic Producers cite Prelim SV Memo, Bridgestone's 04/04/08 SV Submission, *HSLW11/09/04, Hand Trucks 05/15/07,* and section 773(c)(1) of the Act.

Xugong and Guizhou Tyre argue that the Department should continue to inflate electricity based on the WPI. Xugong argues that Domestic Producers do not demonstrate that RBI data are more accurate than WPI data. To support this argument Xugong and Guizhou cite *Hand Trucks 05/15/07*. Guizhou additionally cites *HSLW11/09/04, Activated Carbon 10/11/06, Honey 06/06/06*, and *Sawblades 12/29/05*.

Starbright and TUTRIC argue that the Department should value electricity using an SV based on the CEA of the Government of India. *See* Comment 15. According to Starbright and TUTRIC, the CEA data are more contemporaneous, negating the need to inflate the electricity value. To support this argument Starbright and TUTRIC cite Bridgestone's 04/04/08 SV Submission, Starbright's 04/14/08 Rebuttal SV Submission and *Hand Trucks 05/15/07*.

Department's Position: We acknowledge that the Department has been inconsistent in the past with respect to this issue. Domestic Producers mentioned *HSLW11/09/04* as one example of a case where the Department did, in fact, use an electricity-specific inflator. However, the Department more recently articulated its position on this issue.[67] Domestic Producers argue that the electricity-specific inflator published by the RBI may not be perfect, but it will produce a far more accurate estimate of POI electricity prices in India for industrial customers than would the aggregate WPI. Domestic Producers argue that the Department's reasoning in *Hand Trucks 05/15/07* was flawed when the Department declined to use the RBI inflator because it does not distinguish between industrial and residential electricity. Other than claiming that this is a flawed reasoning, Domestic Producers did not provide any evidence to refute that reasoning. Further, Domestic Producers have provided no evidence to demonstrate that the Department's use of the WPI index to adjust the electricity SV results in inaccurate, faulty, or unreasonable results. In light of the Department's demonstrated history of using the WPI inflation index to adjust the SV for electricity, the Department finds that it is reasonable to continue to use the WPI data for the final determination. *See e.g,, WBF-PRC 08/22/07, TRBs-PRC 01/17/06, Nails-PRC 06/16/08.*

Starbright's and TUTRIC's argument that the Department would have no need to inflate the electricity SV if it uses the CEA data to value electricity is moot. As explained in Comment 15, the Department has determined to continue valuing electricity using the IEA data.

[67] *See, e.g., Hand Trucks 05/15/07* IDM at Comment 1 ("due to the infrequency of precise matching between surrogate values and inflators, as well as the Department's need to inflate unrelated products in one proceeding, the Department finds it appropriate to continue to use WPI to inflate all inputs, including electricity, because the WPI data is calculated from a wide range of commodities.")

Surrogate Financial Statements

Comment 17: Selection of Surrogate Financial Statements

Comment 17.A: Use of Financial Statements of Surrogate Companies That May Have Received Government Subsidies

Petitioners contend the Department should use Balkrishna's financial statement in calculating the surrogate financial ratios, arguing that Balkrishna's receipt of subsidies is not a basis for distinguishing it from other record financial statements because the record indicates that Apollo, CEAT, Falcon, JK Industries, MRF, Goodyear, Malhotra, and Govind also received subsidies. According to Petitioners, the Department's practice is to use financial statements for companies that received subsidies when they represent the best information on the record. Petitioners cite: *Crawfish-PRC 04/17/07* IDM at Comment 1*; Shrimp-PRC 09/12/07* IDM at Comment 2*; Fish-Vietnam 03/21/07* IDM at Comment 9*; CVP-PRC 11/17/04* IDM at Comment 1.

Guizhou Tyre, Starbright and TUTRIC support the Department's exclusion of Balkrishna's statement from the surrogate financial ratio calculations, arguing that because Balkrishna exported more than 90 percent of its production, its financial statement does not represent the Indian market and its financial ratios would necessarily be significantly impacted by any subsidies it received pursuant to the DEPB Scheme, a program the Department has previously determined to be countervailable.[68, 69] Nevertheless, Guizhou Tyre acknowledges that the Department has used financial statements from subsidy-receiving parties, but only in circumstances where the Department does not have any other representative surrogate financial statements, which Guizhou Tyre argues is clearly not the case here.

Starbright and TUTRIC argue that while the financial statements of Apollo, Goodyear, Malhotra and Govind all mention the DEPB, the statements of CEAT, Falcon, JK Industries, and MRF do not and, therefore, consistent with *Crawfish-PRC 04/17/07* (citing *Fish-Vietnam 03/21/07* IDM at Comment 9), there is insufficient record evidence to reach a finding that these latter companies received actionable subsidies. Finally, in the alternative, Starbright and TUTRIC suggest that the Department could base the surrogate financial ratios solely on TVS as there is no indication that this company received countervailable subsidies.

Department's Position: For the reasons discussed below, for the final determination, we are calculating the surrogate financial ratios using the statements of CEAT, Falcon, Goodyear and TVS. During the course of this investigation, parties placed ten publicly available financial

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[68] Starbright and TUTRIC cite *Shanghai Foreign Trade (2004)* to support the contention that the Department does not use financial statements that are not representative of the industry in the surrogate country and the SSKI Report to support its contention regarding the impact of the subsidies in combination with its extensive exports. The SSKI Research Report was put out by SS Kantilal Ishwarlal Securities which states that it is a "full-service, integrated investment banking, investment management and brokerage group." *See* Attachment to back of Report.

[69] *See, e.g., CVP-India-CVD 11/17/04* IDM at Comment IV.A.1.b and *Iron-Metal Castings- India 11/12/99* (unchanged in final results), where we found the DEPB Scheme to constitute a countervailable program.

statements on the record of the proceeding. For purposes of the preliminary determination, the Department based the surrogate financial ratios on five of these ten statements: Apollo; CEAT; Falcon; Goodyear; and TVS; and determined that the remaining five financial statements were not suitable for use in deriving the surrogate financial ratios. Specifically, we determined that we could not use the Balkrishna statement because this company had received subsidies in the form of the DEPB Scheme, a program the Department has previously found to be countervailable. *See, e.g., CVP-India-CVD 11/17/04* IDM at Comment IV.A.1.b and *Iron-Metal Castings- India 11/12/99* (unchanged in final results), where we found the DEPB Scheme to constitute a countervailable program.

We further determined that the statements for Govind and Malhotra were also not suitable for use consistent with the Department's practice not to use incomplete or illegible statements. Specifically, the Govind statement, as provided to the Department, did not contain the auditor's statements and extensive data on the Income Statement and accompanying schedules in the Malhotra statement were not legible.[70] Finally, we did not use the financial statements from JK Industries and MFR because they are not contemporaneous with the POI. While contemporaneity on its own would not be a reason to reject the statements if they otherwise constituted the best available information, we preliminarily found that there remained five additional surrogate financial statements on the record of this proceeding that we deemed to constitute the best available information. Accordingly, we did not use non-contemporaneous data.

The statute directs the Department to base the valuation of the factors of production on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate . . ." *See* section 773(c)(1) of the Act. Moreover, in valuing such factors, Congress further directed Commerce to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices." *See OTCA 1988 at 590.*

Section 351.408(c)(4) of the Department's regulations further stipulates that the Department normally will value manufacturing overhead, SG&A expenses and profit using "non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." In complying with the statute and the regulations, the Department calculates the financial ratios based on contemporaneous financial statements of companies producing comparable merchandise from the surrogate country, some of which may contain evidence of subsidization. However, where the Department has a reason to believe or suspect that the company producing comparable merchandise may have received actionable subsidies, it may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. Consequently, the Department does not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios. *See Shrimp-PRC*

[70] *See, e.g., CLPP-PRC 09/08/06* IDM at Comment 1 (Department used surrogate producer's financial statement after pages that were initially missing were supplied by an interested party); and *Rebar-Belarus 06/22/01* IDM Comment 2 (Department chose not to use a financial statement because "financial statement on the record appears incomplete").

09/12/07 IDM at Comment 2, citing *Crawfish-PRC 04/17/07* IDM at Comment 1, where the Department determined that the financial statements of several companies that had received countervailable subsidies did not constitute the best available information to value the surrogate financial ratios and, consequently, did not use them.

Nevertheless, the Department has used financial statements with some evidence of subsidies when the circumstances of the particular case warranted. For example, the Department determined, in certain frozen fish fillets from Vietnam, that it was appropriate to use a financial statement where there was insufficient information on the record regarding the subsidy program to warrant disregarding the financial statement. *See Fish-Vietnam 03/21/07* IDM at Comment 9. The Department also has previously accepted the financial statement of a surrogate producer (Pidilite) which contained evidence that the company received a subsidy that the Department had found to be countervailable.[71] However, in that case the only other reliable alternative was Reserve Bank of India data, which was not industry-specific and comprised two sets of data, one based on 997 selected public limited companies based in India and the other based on 2,204 selected public limited companies based in India.[72] Consequently, the Department found, in that case, that the financial ratios of Pidilite, a producer of identical merchandise, represented the best available information on the record in comparison to the extremely broad-based data from the Reserve Bank of India. *See CVP-PRC 11/17/*04 IDM at Comment 1.

For purposes of this final determination, we continue to find the financial statements of Govind and Malhotra not usable due to the incompleteness of the former and the illegibility of the latter.[73] Therefore, the issue of whether either of these companies received an actionable subsidy during the period in question is rendered moot and we do not need to address it here. However, in light of the parties' arguments, we have reviewed the remaining contemporaneous financial statements on the record, including the Balkrishna statement, to determine their appropriateness for use in calculating surrogate financial ratios based on this issue (*i.e.*, to determine whether the financial statements provide any evidence that the respective companies received actionable subsidies), and we outline our findings below.

Apollo:
Schedule 13 "Significant Accounting Policies and Notes on Accounts," Item 9 states: "Export Incentive in the form of Advance Licenses / credit earned and Duty Entitlement Pass Book Scheme are treated as income in the year of export at the estimated realizable value / actual credit earned on exports made during the year and are credited to the Raw Material Consumption

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[71] *See CVP-India-CVD 11/17/04* IDM at Comment IV.A.1.b

[72] *See CVP-India-AD 11/17/04* IDM at Comment 1(summary of parties comments).

[73] Starbright and TUTRIC put forward unrelated arguments why the Department should use the Malhotra financial statement for the final determination. In addition, Petitioners and Bridgestone provided arguments against the use of the Malhotra statement. Because the Department has determined that this financial statement is unsuitable for purposes of deriving surrogate financial ratios due to its illegibility, the remaining arguments proffered by the interested parties are rendered moot and we have not addressed them for this final determination.

Account."

Balkrishna:
Schedule R "Accounting Policies and Notes to the Accounts," Item A. "Significant Accounting Policies," Item "Export Benefits" states "Consumption of Raw Materials is arrived at after adjusting the difference between the cost of indigenous/duty paid imported raw materials and international cost of raw materials entitled to be imported/imported under Duty Exemption Scheme of the Government of India against direct/indirect exports made/to be made by the Company during the year. Export Incentives under Duty Entitlement Pass Book Scheme and Focus Market Scheme under EXIM Policy/Foreign Trade Policy are accounted for in the year of export. Profit/Loss on sale of DEPB/Import licenses is accounted for in the year of such sale."

CEAT:
Schedule 20 "Notes Forming Part of the Accounts," 1) "Significant Accounting Policies," H) "Export Incentives" states: "Export Incentives are treated as income in the year of Export and are credited to the Raw Material Consumption Account."

Falcon:
Schedule 20 "Significant Accounting Policies," Item "Export Benefits" states: "Export benefits arising on account of entitlement for duty free imports are accounted for at the time of receipt of material. Other export benefits are accounted for as and when accrued." In addition, Schedule 14 "Other Income" reports a line item for "Export Incentives."

Goodyear:
Schedule 17 "Notes to Accounts," makes no mention of export incentives or benefits of any kind; however, Schedule 12 "Other Income," has two line items reflecting export incentive programs. The first item, "Miscellaneous Income" states that it includes "Target Plus export incentives of Rs. 29, 993." The second line item is for "DEPB License Sale;" however, there is no value recorded for this line item in the relevant fiscal year.

TVS:
No mention of export incentive or benefit programs.

In reviewing these six statements, we find that two statements reference the DEPB Scheme, which, as discussed above, is a program that the Department has previously found to be countervailable in a number of its CVD investigations regarding India. Specifically, the Apollo and Balkrishna financial statements each state that they have recorded raw material costs net of income earned pursuant to the DEPB Scheme, thus indicating that these two companies each received benefits from this program. In addition, the Apollo financial statement indicates that Apollo received a subsidy pursuant to the Advance License Scheme, another program the Department has previously found to provide a countervailable subsidy.[74]

Accordingly, we determine that because these companies received countervailable subsidies

[74] *CLPP-India 08/08/06* IDM at Comment 10.

from the Indian government their financial statements are not representative of the financial experience of the relevant industry in India and, therefore, are not appropriate for use in valuing the surrogate financial ratios in this proceeding. Consequently, we have not used the Apollo or Balkrishna financial statements for purposes of the final determination.[75]

Goodyear's financial statement identifies two specific export incentive programs. The first is the Target Plus program. The Department has not issued any determination finding the Target Plus program to constitute a countervailable subsidy. The second is the DEPB Scheme. The line item in the financial statement reflecting this program is titled "DEPB License Sale," and is recorded as "other income." However, there is no revenue recorded for that line item, indicating that there was no revenue generated by the sale of licenses under this program during the fiscal year. There is no other mention of the DEPB Scheme in the Goodyear financial statement. Consequently, we find this situation analogous to that in *Fish-Vietnam 03/21/07* IDM at Comment 9, in that there is insufficient evidence on this record to conclude that this company received a benefit pursuant to an actionable subsidy. We have therefore continued to use the Goodyear statement for purposes of calculating the surrogate financial ratios for this final determination.

We further find that CEAT and Falcon's financial statements identify the respective companies' as having accounted for export incentive programs, but do not identify any specific program. While these companies may have received subsidies, we find that there is no evidence that these companies received actionable subsidies during the period. Consequently, we find this scenario also to be analogous to that addressed in *Fish-Vietnam 03/21/07* IDM at Comment 9 (and discussed above), where we found that there was insufficient information to warrant disregarding the financial statement in question. Accordingly, we have continued to use these two financial statements to value the surrogate financial ratios for purposes of the final determination.

Finally, we find that the remaining contemporaneous statement, for TVS, makes no mention at all of export incentive or benefit programs. Consequently, we find that there is no evidence that this company received actionable subsidies during the period and we have continued to use the TVS financial statement for purposes of the final determination.[76]

In addition, given the Department's preference for contemporaneous surrogate data,[77] because we find that the contemporaneous CEAT, Falcon, Goodyear, and TVS financial statements continue to represent the best available information for use in the final determination, we also

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[75] Because the Department has determined that the Apollo and Balkrishna financial statements are not suitable for purposes of calculating the surrogate financial ratios for the reason discussed above, the remaining issues raised by the parties with respect to these financial statements are moot and we have not addressed them for this final determination.

[76] *See* Department's Position to Comment 17.B., below, with respect to use of the TVS financial statement.

[77] *See, e.g., Mushrooms-PRC 04/23/08* and *LWR-PRC 06/24/08* IDM at Comment 3 (Department declined to use non-contemporaneous financial statements because it had complete, legible, publicly available contemporaneous statements on the record).

find that we do not have to use the non-contemporaneous MFR or JK Industries statements. Therefore, we have not reviewed them to determine if these companies received actionable subsidies during the period in question.[78]

Comment 17.B: Use of TVS's Financial Statement

Petitioners assert that it is common knowledge that tires produced for two-wheel vehicles are physically different from OTR tires and that production methods differ between the products. Therefore, they argue that TVS's production experience of predominantly two-wheeler, three-wheeler and automotive tires does not accurately reflect OTR tire production in terms of product type or volume of production and, thus, its inclusion distorts the surrogate financial ratios. They contend that using the TVS data is in conflict with the legislative history of the AD statute, which dictates that the Department should, where possible, use data that are based on production of the same general class or kind of merchandise under investigation, using similar levels of technology at similar levels of volume as the production of the subject merchandise. *See House Report (1988)* and 19 CFR 351.408(c)(4). In support of their arguments, Petitioners also cite: *Nation Ford (1999); Sigma (1997); Lasko (1994); Rhone Poulenc (1990);* and *Shakeproof (2001).*

Guizhou Tyre, Starbright and TUTRIC argue that there is no record evidence supporting Petitioners' claim that TVS does not produce merchandise comparable to OTR Tires and urge the Department to continue to rely on TVS's financial ratios for the final determination. Starbright and TUTRIC further counter that, in general, each of the surrogate companies sells a wide variety of tires both in India and for export and, thus, there is no reason to disregard TVS's financial statement for the final determination.

Department's Position: As an initial matter, we agree with Petitioners that, in accordance with the Department's regulations, legislative history, and practice, the Department attempts to: (1) establish margins as accurately as possible, (2) use the best available information and, (3) base its surrogate data on companies whose experience reflects the general merchandise and production of the respondent companies.[79,80] Consistent with our practice, we have applied these parameters to our selection of financial statements in this investigation.

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[78] This is consistent with the Department's practice of not using non-contemporaneous data where reliable, publicly available contemporaneous data from producers of comparable merchandise are available. *See, e.g., Mushrooms-PRC 04/23/08* IDM at Comment 1.

[79] *See, e.g., HR Carbon Flat Products-PRC 05/03/01* at 22193 (unchanged in the final determination), *HR Carbon Flat Products-PRC 09/28/01* at Comment 4 (rejecting the surrogate financial statement of a producer because it may be less representative of the financial experience of the Indian integrated steel industry).

[80] We agree with Petitioners that: (1) *Shakeproof (2001)* stands for the principle of calculating margins as accurately as possible; (2) *Nation Ford (1999), Lasko (1994), and Rhone Poulenc (1990)* stand for the principle of using the best available information in calculating margins; and (3) *Sigma (1997)* stands for the practice of considering the comparability of the respondents' and the surrogates' production experience.

While it appears that TVS produces predominantly two- and three-wheeler tires, the record indicates that it also has substantial production of other types of tires, including merchandise meeting the description covered by the scope of this proceeding. Furthermore, in reviewing the information on the record,[81] it is clear that all of the surrogate companies manufacture a wide range of tires. For example, the record information with respect to Falcon indicates that it also produces tires for two- and three-wheelers, passenger cars, jeeps, light commercial vehicles and farm vehicles. Thus, while Petitioners argue that TVS is predominantly a two-wheeler and three-wheeler tire producer and, consequently, does not represent the OTR production experience, they seem to overlook similar information with regard to Falcon. The record evidence indicates that one of Falcon's major market segments is also for two-wheeler and three-wheeler tires, notwithstanding that it also manufactures a wide product range, including merchandise meeting the description of in-scope tires. *See* page 21 of Falcon's financial statement.[82] Similarly, the Director's report to the CEAT financial statement indicates that CEAT produces a wide range of tires including tires for motorcycles, passenger cars, light commercial vehicles, tractors, heavy commercial vehicles and mining/other vehicles.[83] While the information for CEAT indicates that two-and three-wheeler tires are not the major component of its product mix, it clearly demonstrates that, like the other surrogate companies, it produces a wide mix of products. Finally, with respect to Goodyear, information contained in that financial statement indicates that it produces bias tires such as medium commercial truck tire and farm tires, meeting the description of scope merchandise. There is no indication, however, that Goodyear also produces radial tires meeting the description of OTR tires, once again demonstrating that the surrogate companies produce a wide range of tires.[84] Thus, as Starbright and TUTRIC argue, record evidence suggests that the tire manufacturers in India generally produce and sell a wide mix of tires, each targeting multiple market sectors, but not necessarily producing every type of tire within a market sector mix. More significantly, the record clearly indicates that the respondent companies in this investigation also produce a range of tires, large and small, encompassing subject and non-subject merchandise.[85]

The Department's regulations at 19 CFR 351.408(c)(4) stipulate that the Department normally will value manufacturing overhead, SG&A expenses and profit using "non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." Thus, when selecting surrogate companies for the purpose of calculating financial ratios, the Department will consider the availability of public financial statements covering a

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[81] *See* Starbright and TUTRIC's December 7, 2007, SV Submission containing information from the TVS website www.tvstyres.com and information from the Falcon website www.falcontyres.com.

[82] *See* Starbright and TUTRIC's December 7, 2007, SV Submission containing information from the Falcon website www.falcontyres.com.

[83] *See* CEAT's financial statement at page 15 in Guizhou Tyre's December 7, 2007, SV Submission

[84] *See* Goodyear's financial statement at page 15 in Bridgestone's December 7, 2007, SV Submission

[85] *See, e.g.*, Xugong DQR at D-4 (providing a list of tires it produces and stating that they are produced in the same production facilities), and Guizhou Tyre CQR at C-10 (stating that it had to add CONNUM codes to include diameters greater than 60 and less than 86 inches).

period contemporaneous with the period under consideration, and the comparability of the respondents' and the surrogate companies' production experience.[86] While the statute does not define "comparable merchandise" in selecting surrogate values for OH, SG&A and profit, the Department has considered whether the surrogate company's products have similar production processes, end-uses, and physical characteristics as the respondents' products. When evaluating production processes, the Department has taken into account the complexity and duration of the processes and the types of equipment used in production.[87] The record in this investigation indicates that all four surrogate producers manufacture OTR and other tires. While sizes may differ across different types of tires, they also differ within a type; for example, the subject merchandise covers a range of tires between 8 and at least 54 inches. The end-uses are all to support motion for some type of vehicle and there is insufficient information on the record to determine if the production processes differ significantly for the different types of tires. Further, the record in this investigation clearly demonstrates that the respondents produce OTR tires in a multitude of sizes, using production lines that are also used for non-subject merchandise.[88]

Notwithstanding their arguments, Petitioners fail to proffer any record evidence to substantiate their contentions that there are substantial physical differences between two- or three-wheeler tires and OTR tires and that the production methods differ significantly between the two. Thus, while Petitioners surmise that such tires have different construction requirements that lead to "radically different cost structures, creating large variations in factory overhead, possibly levels of G&A and proportions of selling expense," they have not provided any evidence to substantiate the accuracy of this claim. Further, in reviewing the record information with regard to the surrogate companies, we have not found any evidence to support Petitioners' claims. Moreover, there is no specific evidence on the record that TVS's production process is any more or less similar to that of respondents' than the other surrogate producers'. Accordingly, we will continue to include TVS's financial data in the calculation of the surrogate financial ratios for purposes of this final determination.

Comment 18: Calculation of Surrogate Financial Ratios

Comment 18.A: Treatment of Rental Receipts in TVS's Financial Statement

Petitioners and Bridgestone argue that should the Department continue to use TVS's financial statement, it should disallow any adjustment for TVS's rental income, an item these parties

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[86] *See, e.g., LWR-PRC 06/24/08* IDM at Comment 3, and *Shrimp-PRC 12/08/04* IDM at Comment 9F.

[87] *See e.g., ISOS-PRC 05/10/05* IDM at Comment 2.

[88] *See, e.g.,* Xugong DQR at D-4 (providing a list of tires it produces and stating that they are produced in the same production facility); Xugong AQR at A-21(stating that "The production process [sic]of all the types of tires are the same except for the percentage of each raw material putted [sic] into the process.") *See* also Guizhou Tyre 11/21/07 DQR at D-4 (saying "A list of products produced in the same facilities as the merchandise under consideration includes: (1) radial passenger tires; (2) radial truck tires; (3) bias medium truck tires; and (4) solid tire and rubber air springs.")

contend is not relevant to the production and sale of the company's merchandise.[89]

Guizhou Tire, Starbright and TUTRIC dispute Domestic Producers' conclusion that rental income reported in the surrogate financial statements is unrelated to the company's production or sale of OTR Tires.[90] Moreover, citing *SSSS Coils-Taiwan 02/13/06* IDM at Comment 18 and *Swine-Canada 03/11/05* IDM at Comment 62, Guizhou Tyre argues it is the Department's practice, in calculating SG&A, to include income and expenses related to the general operations of the company, not just those related solely to production. Starbright and TUTRIC further argue that if the surrogate company is generating rental income, it is also incurring costs associated with the rented property, and that if the Department were to exclude the income, it would also have to exclude the associated costs from the SG&A calculation, and point out that the financial statement does not provide the requisite information for such an adjustment. Consequently, the respondents argue, the offset to SG&A should be allowed.

Department's Position: We agree with Guizhou Tyre, Starbright and TUTRIC that the Department's practice is to calculate the SG&A expense ratio using income and expenses relating to the general operations of the company. *See e.g., SSSC-Taiwan- 02/13/06* IDM at Comment 18 (stating that "the Department's practice is to calculate the G&A expense ratio using income and expenses relating to the general operations of the company.") In deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to MLE, factory OH, SG&A and profit, and excludes certain expenses (*e.g.*, movement expenses) consistent with the Department's practice of accounting for these latter expenses elsewhere. *See Crawfish-PRC 04/17/07* IDM at Comment 1. However, in NME cases, it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding, as the Department has no authority to either ask questions or verify the information from the surrogate company. *See WBF 12/06/06* IDM at Comment 5.

Because we cannot go behind the financial statements, in determining the appropriateness of including an item in the financial ratio calculations, we look to information within the respective financial statements to determine the possible nature of the activity generating the potential adjustment, to see if a relationship exists between the activity and the principal operations of the company. *See e.g., Brake Rotors 08/02/07* IDM at Comment 3. In the current case, the rental income at issue is recorded under Schedule 15, "Other Income" in TVS's financial statement. In this case, there is no information in the TVS financial statement to indicate that the rental income

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[89] *See* summary of Petitioner and Bridgestone's Comments regarding use of the TVS financial statement at Comment 17.B, above.

[90] The domestic producers raised the issue specifically with respect to the Apollo financial statement and then stated that if the Department continues to use TVS, it should similarly exclude rental income from those calculations, as well. Guizhou Tyre responded to the issue specifically with respect to Apollo, and in general as regards the Department's practice. Because we are not using the Apollo financial statements, we have not addressed the issue with respect to Apollo for the final determination.

is not related to the general operations of the company. Therefore, in accordance with the Department's practice, the rental income should be reflected in the SG&A expense ratio for this company and we have continued to treat it as an offset to SG&A expenses for the final determination.[91] *See Silicomanganese-Brazil, 03/24/04* IDM at Comment 10; *Swine-Canada 03/11/05* IDM at Comment 62 (where the Department found, specifically, that rental income related to the general operations of the company should be allowed as an offset to the G&A expenses); and *SSSS Coils-Taiwan 02/13/06* IDM at Comment 18.

Comment 18.B: Treatment of "Miscellaneous Income" in Goodyear's Financial Statements

Citing *Brake Rotors-PRC 01/25/06* IDM at Comment 3, Petitioners and Bridgestone contend that, in calculating the financial ratios based on Goodyear's financial statements, the Department should not exclude from the calculations miscellaneous income derived from: 1) the sale of scrap (under miscellaneous expenses), and 2) settlement from a vendor, both of which they aver are properly treated as an offset to raw material costs.

Citing *Brake Rotors-PRC 08/02/07* IDM at Comment 3, Guizhou Tyre asserts that the Department's practice in calculating surrogate financial ratios is not to make adjustments purportedly intended to make the surrogate ratios more accurate, when there is no evidence that making the adjustment would in fact do so. In this instance, Guizhou Tyre argues, there is no evidence that the items identified by Petitioners and Bridgestone are related to either the sale or purchase of raw materials and, thus, concludes that no adjustment to materials cost is warranted. With respect to the item "settlement from vendor" Starbright and TUTRIC agree with Guizhou Tyre, but argue that, should the Department determine to include this item in the SG&A ratio calculation, it should split the value between manufacturing and SG&A.

Department's Position: The issue raised by the parties here is the treatment of miscellaneous income in the surrogate financial ratio calculations. Specifically, the parties raised whether to treat Goodyear's revenue from 1) the sale of scrap, and 2) settlement from a vendor, as offsets to the cost of materials when calculating surrogate financial ratios. In response to the comments regarding Goodyear's miscellaneous income, we have re-evaluated the full miscellaneous income category in Schedule 12 (Other Income) of Goodyear's financial statements. Because we cannot go behind the financial statements to determine the appropriateness of including this item in the financial ratio calculations, we looked to information in Goodyear's financial statement to determine the possible nature of the activity generating the miscellaneous income to see if a relationship exists between the activity and the general operations of the company. In doing so, we found the miscellaneous income is described as: 1) income from an export incentive program; 2) scrap sale revenue; 3) a settlement from a vendor. In addition, there is a small portion of the miscellaneous income for which the source is not identified. We discuss each item in turn, below.

[91] This is consistent with our treatment of this item in the TVS financial statement, where we treated rental income as part of the SG&A surrogate ratio calculation for the Preliminary Determination. *See* Prelim SV Memo. We have continued to include this item in the TVS surrogate SG&A ratio calculation for purposes of the final determination.

Income from an export incentive program:
Income generated from an export subsidy program is not considered income related to the general operations of the company and, therefore, for the final determination, we are excluding this income from our financial ratio calculations.[92] *See Shrimp-Thailand 12/23/04* IDM at Comment 2.

Scrap sale revenue:
An examination of Goodyear's financial statements indicates that it recorded certain "scrap sale revenue" as miscellaneous income under "other income" in its financial statements, and additional scrap sales as part of the company's cost of goods sold (*see* schedule 12 "Other Income" and Schedule 13 "Raw Material Consumed, . . . reported net of scrap," respectively of Goodyear's surrogate financial statements). In other words, Goodyear, in its financial statements, treated some "scrap sale revenue" as an offset to its SG&A and, other scrap-related revenue as an offset to its cost of materials. It is the Department's practice, in calculating surrogate financial ratios, to treat revenue from the sale of scrap as it is treated in the surrogate company's financial statements. *See e.g., WBF 12/06/06* IDM at Comment 5. Accordingly, in determining the appropriateness of these items' inclusion in the surrogate financial ratios, we looked to their treatment in Goodyear's financial statements. Because the Department has no information on the record beyond the items' respective treatment in the financial statement, we find that it would be inappropriate to treat the "scrap sale revenue" identified as "other income" in the financial statement as an offset to COM for purposes of calculating the surrogate financial ratios. *See e.g., Brake Rotors 08/02/07* IDM at Comment 3. Specifically, Goodyear treated this item as income under SG&A, while it accounted for additional scrap revenue as an offset to its material costs.

Further, we disagree with Petitioners and Bridgestone's contention that an offset to COM for all revenue generated by scrap sales is consistent with the Department's recent practice. Notwithstanding *Brake Rotors-PRC 01/25/06* as referenced by Petitioners and Bridgestone, which was decided on the specific facts in that segment and which predates both *Brake Rotors 08/02/07* and *WBF 12/06/06*, we see no reason to depart from our longstanding practice of accepting financial statements *in toto* and not making adjustments to them when those adjustments might not increase the accuracy of the result. In addition, we found no information to indicate that the "scrap sale revenue" is not related to the general operations of the company. Accordingly, we have treated the two items reflecting sales of scrap as they were each treated in Goodyear's financial statement. Therefore, in accordance with the Department's practice, we have treated the "other income, . . . scrap sale" as an offset to SG&A expenses for the final determination.

Settlement from a vendor and remaining miscellaneous income source:
In addition, we similarly have not found any information in the financial statement to indicate that the settlement from a vendor and the remaining miscellaneous income are not related to the

[92] This is consistent with our treatment of this item in the Falcon financial statement for the Preliminary Determination. *See* also the Department's Position to Comment 17.A for a discussion of the Department's treatment of financial statements evidencing that the surrogate company may have received government subsidies. The program identified in this statement is not one the Department has previously found countervailable.

general operations of the company, nor did we find any information in the financial statement to indicate that they are related to either specific manufacturing or specific selling activities. Therefore, for the reason discussed above, we do not agree with Starbright and TUTRIC that the value of this revenue should be split between manufacturing and SG&A. Accordingly, we are treating these items as offsets to SG&A in the surrogate financial ratio calculations based on their treatment in Goodyear's financial statement.

Finally, in response to these comments, we have examined the other three financial statements that we are using for this final determination to ensure that our methodology is applied consistently in this proceeding. In so doing, we found that in our preliminary determination we treated the income from "sale of scrap" in CEAT's financial statement as an offset to materials cost. However, because CEAT has treated this item as "other revenue," consistent with that treatment and for the reasons discussed above, we have treated this item as part of the SG&A ratio calculation for purposes of the final determination. In addition, we excluded CEAT's miscellaneous income from the surrogate financial ratios for the preliminary determination. However, because we have found no information in that financial statement to indicate that CEAT's miscellaneous income is not related to its general operations, we have treated this item as SG&A for purposes of the final determination.[93] With respect to Falcon,[94] we found the same fact pattern as for CEAT. Therefore, we have made the same changes with respect to the surrogate financial ratios calculated using Falcon's data as we made for CEAT. Finally, with respect to TVS,[95] we have made a change with respect to our treatment of miscellaneous income and miscellaneous sales, similar to the change we made with respect to CEAT and Falcon, as discussed above. That is, for purposes of the final determination, we treated these items as part of the SG&A ratio calculation, consistent with our methodology and reasoning articulated above.

Comment 18.C: Treatment of Discounts and Rebates in the SG&A Ratio Calculation based on CEAT's Financial Statements

Guizhou Tyre argues that, consistent with past practice, the Department should exclude discounts and rebates from the SG&A calculation because, as the Department has previously stated, such items are price adjustments which are separately valued in the calculation of NV (citing *Mushrooms-PRC 10/19/05; CTVs-PRC 04/16/04; Aspirin-PRC 02/10/03; and TRBs-PRC 11/17/98*).

Bridgestone contends that because CEAT treated these items as an expense in the financial statement, there is no evidence that they are in fact related to the company's sales and, therefore, the Department should continue to treat them as SG&A expenses.

Department's Position: We agree with Guizhou Tyre that discounts and rebates, where clearly

[93] *See* Schedule 13 in CEAT's financial statement.

[94] *See* Schedule 14 in Falcon's financial statement.

[95] *See* Schedule 15 of TVS's financial statement.

identified on the surrogate financial statements, should be excluded from the surrogate financial ratio calculations because they are separately accounted for elsewhere. As discussed in the Department's Position to Comments 18.A, 18.B, and 18.D, above, in deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to MLE, factory OH, SG&A and profit, and excludes certain expenses (*e.g.*, movement expenses) consistent with the Department's practice of accounting for these expenses elsewhere. *See Crawfish-PRC 04/17/07* IDM at Comment 1. In reviewing the CEAT financial statement we were able to observe that CEAT has included the line item for rebates and discounts amidst a series of additional selling expense items such as "Advertisement and Sales Promotion," indicating that it is, in fact, related to sales of the company. Because the Department deems rebates and discounts to be price adjustments that are accounted for elsewhere in the margin calculation, we have excluded them from the financial ratio calculations for purposes of the final determination. *See e.g., Brake Rotors –PRC 06/10/*08 IDM at Comment 3, *Mushrooms-PRC 10/19/05* IDM at Comment 3d*; CTVs-PRC 04/16/04* IDM at Comment 14*; Aspirin-PRC 02/10/03* IDM at Comment 5; *TRBs-PRC 11/17/98 at* Comment 18.

In addressing this issue, we reviewed the remaining three financial statements that we are using for the final determination, Falcon, Goodyear, and TVS, and have determined, for the reasons stated above, that we should make a similar adjustment to the financial ratios based on Falcon's financial statement. Specifically, Falcon included a line for "Discount" under Schedule 18, "Manufacturing, Administrative, Selling and Distribution Expenses." Accordingly, we have revised our financial ratio calculations to exclude the value for "Discount" from the financial ratio calculations. Finally, with respect to this item, we observed that the TVS financial statement contains a line item for "Commission and Discount." As we stated above, in NME cases, it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding, as the Department has no authority to either ask questions or verify the information from the surrogate company. Moreover, it is the Department's longstanding practice, because we cannot go behind line-items in the surrogate financial statements, not to make adjustments that may introduce unintended distortions into the data rather than achieving greater accuracy. *See e.g.*, 1) *CFS-PRC-AD 10/25/07* IDM at Comment 4, and 2) *Shrimp 09/12/07* IDM at Comment 2. *See also*, the Department's Position to Comment 18.F: Treatment of "Conversion Charges" in CEAT, Falcon, and Goodyear's Financial Statements, below. Therefore, because the commissions and discounts are combined in one line item, and we were unable to find information within the financial statement that would allow us to distinguish the discounts from the commissions in this line item, we have treated this line item as SG&A for purposes of the final determination.

Comment 18.D: Offset for Interest Revenue in Goodyear's Financial Statements

Citing *WBF-PRC 12/06/06* IDM at Comment 8; *Aspirin-PRC 02/10/03* IDM at Comment 5; and *Honey-PRC 10/04/01* IDM at Comment 3 to support their argument that the Department's practice is to offset interest expense only for short-term interest revenue, Petitioners and Bridgestone contend that the Department should eliminate any investment income offset that cannot be identified as short-term in nature in calculating SG&A ratios for Apollo and Goodyear. Specifically, they contend that the Department should not make any offset for "deposits" with

respect to Goodyear because there is no record information to substantiate that these are short-term investments.

Guizhou Tyre disputes the domestic interested parties' contentions that the Department's preliminary calculations granted an offset for long-term interest income. Specifically, Guizhou Tyre argues that there is no indication whether the deposits identified in Goodyear's financial statement that gave rise to this revenue were long- or short-term in nature. However, Guizhou Tyre asserts that Goodyear's balance sheet indicates that the company's long-term assets are limited to fixed assets, and that all other assets identified in the financial statement are designated as short-term, indicating that any revenue derived therefrom should properly be treated as an offset to interest expense.

Department's Position: The Department's longstanding practice is to disaggregate interest income between short-term and long-term income and to only offset interest expense with the short-term interest revenue earned on working capital. *See e.g., Bags-PRC 03/17/08* IDM at Comment 1; *ISOS-PRC 05/10/07* IDM at Comment 7; and *WBF-PRC 12/06/06* IDM at Comment 8. It is the Department's practice to exclude income from long-term financial assets because such income is related to investing activities and is not associated with the general operations of the company. *See Silicon Metal-Brazil 02/13/06* IDM at Comment 4. Further, as discussed in the Department's Position to Comments 18.A and 18.B above, the Department does not go behind the financial statements of the surrogate company. Accordingly, as stated in *Bags-PRC 03/17/08* IDM at Comment 1*; ISOS-PRC 05/10/07* IDM at Comment 7*;* and *WBF-PRC 12/06/06*, the Department will reduce interest and financial expenses by amounts for interest income only to the extent it can determine from those statements that the interest income was short-term in nature. See also, *Aspirin-PRC 02/10/03* IDM at Comment 5 (stating that we offset interest expense with short-term interest revenue where we could discern the short-term nature of the interest revenue from the financial statements) and *Honey-PRC 10/04/01* IDM at Comment 3 (stating that we did not offset interest expense because the financial statements did not provide sufficient data for us to identify short-term interest revenue.)

We have reviewed Goodyear's financial statements, and determined that all of Goodyear's assets that generated interest income are classified in the Balance Sheet as current (*i.e.*, short-term) assets. Therefore, the interest income generated from these assets is short-term interest income. Accordingly, we have applied the full interest income from the financial statement as an offset to Goodyear's financial expense as recorded in its financial statement.[96]

Comment 18.E: Treatment of "Less transfer from revaluation reserve" in Falcon's Financial Statements

Petitioners and Bridgestone argue the Department should eliminate the deduction for this item from its calculation of manufacturing OH using Falcon's financial statement. Guizhou Tyre avers that Goodyear's treatment of this item is consistent with Indian GAAP and the item

[96] This is consistent with our recent decision in *Bags-PRC 03/17/08* IDM at Comment 1 (where we determined from review of the surrogate financial statement that all interest bearing assets of the company were current assets, and thus generated short-term interest revenue).

appears to be related to the revaluation of fixed assets and recording of depreciation, and therefore, is related to manufacturing or OH. Consequently, the respondent contends that the Department properly adjusted for this item in its calculations.

Department's Position: We have reviewed the Falcon financial statement in light of Petitioners and Bridgestone's contentions. In doing so, we have determined that the transfer from revaluation reserve reflects the amortization of past fixed asset revaluation (*see* schedule 20 of the financial statement), and is therefore appropriately treated as an offset to depreciation expense. Accordingly, we have continued to include this item in the OH ratio calculation based on Falcon's financial statement.

Comment 18.F: Treatment of "Conversion Charges" in CEAT, Falcon, and Goodyear's Financial Statements

Starbright and TUTRIC contend that the Department should treat conversion charges as part of the labor and energy denominator rather than as part of the manufacturing OH numerator in the surrogate financial ratio calculations. Citing *Door Locks-Taiwan 12/27/89* at Comment 10, they argue that such charges replace in-house labor, and claim that comparing the ratios calculated for each of the surrogate financial companies further evidences that these charges replace labor, energy, and overhead expenses that would be incurred if the merchandise were produced in-house. Starbright and TUTRIC conclude that, as such, treating conversion charges as manufacturing OH constitutes double counting, which they claim is contrary to longstanding Department practice, as articulated in *HSLW-PRC 01/24/08; Tissue Paper-PRC 10/16/07* IDM at Comment 2; *CVP-PRC 05/10/07* IDM at Comment 2; and *Malleable Pipe Fittings-PRC 06/29/06* IDM at Comment 16.

Petitioners claim that Starbright and TUTRIC's position is without merit. First, they argue there is no information within the respective financial statements defining the term "conversion charges" for each company. Second, citing *TRBs-PRC 01/17/06*,[97] *Garlic-PRC 06/16/04*, and *Creatine-PRC 11/06/03* (as unchanged in the final, *Creatine-PRC 01/13/04)*, they contend that the Department's practice is to treat conversion charges as indirect expenses. Third, Petitioners assert that it is established Department practice not to go behind the line items of the surrogate financial statements (citing *CFS-PRC-AD 10/25/07* IDM at Comment 5; *Shrimp-PRC 09/12/07* IDM at Comment 2; *Brake Rotors-PRC 01/25/06; CVP-PRC 11/17/04; and WBF-PRC 11/17/04* IDM at Comment 12). Fourth, referencing *Crawfish-PRC 04/17/*07 IDM at Comment 1, Petitioners aver that even if the conversion charges constitute processing costs, they must be treated in the Department's calculations as they are in the underlying company's financial statements. Finally, they argue that such expenses necessarily include indirect expenses, as the subcontractor would undoubtedly account for its OH costs resulting from the use of its machinery in setting its conversion fees, and conclude that there is, therefore, no basis for the Department to treat these items as direct costs.

[97] Specifically, Petitioners cite the following documents: 1) *TRBs-PRC 01/17/06*, final results of review analysis memorandum for Yantai Company Ltd., at Attachment VIII (where conversion charges are included within the SG&A calculation); 2) *Garlic-PRC 06/16/04*, Factors Valuation memorandum at Attachment 5 (also showing conversion charges included in the SGA&); and 3) *Creatine-PRC 11/06/03* Factors of Production Valuation memorandum (including conversion charges in the OH calculation).

Department's Position: We have continued to treat conversion charges in CEAT, Falcon, and Goodyear's financial statements as OH items for the surrogate financial ratios calculated for the final determination (*i.e.*, we have left them in the numerator of the OH ratio calculation). In deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to MLE, factory OH, SG&A and profit, and excludes certain expenses (*e.g.*, movement expenses) consistent with the Department's practice of accounting for these expenses elsewhere. *See Crawfish-PRC 04/17/07* IDM at Comment 1. In so doing, it is the Department's longstanding practice to avoid double-counting costs where the requisite data are available to do so. *See HSLW-PRC 01/24/08; Tissue Paper-PRC 10/16/07* IDM at Comment 2; and *CVP-PRC 05/10/07* IDM at Comment 2, where in each case the Department has clearly articulated its practice to avoid double-counting costs in calculating dumping margins.

In this proceeding, we reviewed the three financial statements in question[98] and determined that each financial statement clearly accounts for direct labor and energy as separate line items as follows: CEAT (*e.g.*, "Salaries, Wages and Bonus" and "Power and Fuel"); Falcon (*e.g.*, "Power, Fuel and Water Charges" and "Salaries, Wages and Bonus, etc."); and Goodyear (*e.g.*, "Salaries, wages and bonus" and "Power and fuel"). Consequently, we have determined there is no evidence to support Starbright and TUTRIC's claim that treating conversion costs as OH results in double counting in this proceeding, and we have continued to treat this item as an OH cost for purposes of the final determination. This is similar to our findings in *Crawfish-PRC 04/17/07* IDM at Comment 1, where we stated that because direct labor and energy had been accounted for in separate line items in the surrogate producer's financial statement, the processing and freezing charges were properly allocated to the manufacturing OH portion of the calculation. *See* also, our treatment of conversion costs in *Creatine-PRC 11/06/03* (as unchanged in *Creatine 01/13/04)* (treated as OH) and *TRBs-PRC 01/17/06, Garlic-PRC 06/16/04* (where we treated conversion costs as SG&A expenses).

Moreover, as discussed by Petitioners, it is the Department's longstanding practice, because we cannot go behind line-items in the surrogate financial statements, not to make adjustments that may introduce unintended distortions into the data rather than achieving greater accuracy and, therefore, we properly have not attempted to do so in this case. *See*: 1) *CFS-PRC-AD 10/25/07* IDM at Comment 4; 2) *Shrimp 09/12/07* IDM at Comment 2 (stating that because the Department cannot adjust the line items of the financial statements of any given surrogate company, we must accept the information from the financial statement on an "as-is" basis in calculating the financial ratios.)*;* 3) *Brake Rotors-PRC 01/25/06* IDM at Comment 3 (citing *Magnesium Corp (1996),* (stating "{t}he statute does not require the Department to value each individual element in a non-market economy case. As the Court of International Trade noted, the Department is not required to do an item-by-item analysis in calculating factory overhead,"); 4) *CVP-PRC 11/17/04* (citing *Pure Magnesium-PRC 09/27/01* IDM at Comment 4 stating, "in calculating overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements *in toto*, rather than performing a line-by-line analysis of the types

[98] TVS does not identify conversion charges in its financial statement.

of expenses included in each category,"); and 5) *WBF-PRC 11/17/04* IDM at Comment 12. In *Magnesium Corp (1996*) (as upheld by the CAFC in *Magnesium Corp. (1999)*) the court explained that as factory overhead is composed of many different elements, the cost for individual items may depend largely on the accounting method used by the particular factory. Given these uncertainties, the broad statutory mandate directing the Department to use, "to the extent possible," the prices or costs of factors of production in a comparable market-economy country does not require item-by item accounting for factory overhead. *See* also *Rhodia (2002).*

Furthermore, Starbright and TUTRIC's reliance on *Door Locks-Taiwan 12/27/89* at Comment 10 is inapposite. In that case, which dealt with the respondent's own data, the respondent, in explaining why its reported labor costs differed from those of another respondent, argued that when a company relies on subcontractors, as it did, it will necessarily have lower labor costs than one that uses its own workers to produce components. In responding to the parties' comments, the Department acknowledged that it had verified the respondent's reported labor hours and found no reason to question those hours based on the verification results, but did not specifically address the issue of whether a company would necessarily incur significantly lower labor costs as a result of subcontracting any portion of its production. In that case, the respondent knew the nature of the work it had contracted out. As we stated in *WBF-PRC 12/06/06* IDM at Comment 5, it is not possible for the Department to dissect the financial statements of a surrogate company as if the surrogate company were an actual interested party because the Department has no authority to either ask questions or verify the information from the surrogate company. Therefore, because the Department does not go behind the information contained in the surrogate financial statements, it can only base its determination on the information as contained therein. As discussed above, the financial statements in question provide clear and separate line items for labor and energy consumption; however, they do not provide any detailed information with respect to the conversion charges at issue. Therefore, we continue to find there is no basis to treat conversion charges as anything other than OH costs in this case.

Furthermore, we do not agree with Starbright and TUTRIC that it is possible to intuit the nature of the expenses included in the conversion charges recorded on each of these four financial statements simply by comparing the companies' respective labor, energy and OH ratios. Such a comparison does not provide any information with respect to the specific conversion charges incurred by each producer, rendering any such comparison meaningless for purposes of deriving the surrogate financial ratios.

In addition, we find Starbright and TUTRIC's reliance on *Malleable Pipe Fittings-PRC 06/29/06* misplaced. In that case, the issue was the treatment of certain materials (as OH or direct materials) in light of the Department's treatment of "job and process charges" as direct labor. In assessing the question, the Department stated that the line item in the relevant financial statements, unless otherwise noted, "… does not typically represent all, or even a significant amount, of the material costs incurred by the Indian company." Therefore, the treatment of "job process charges" as direct labor in the surrogate financial ratio calculations does not remove the expenses for indirect materials from overhead expenses and the Department's treatment of the respondent's indirect materials as OH is fully appropriate.

Comment 18.G: Treatment of "Labor Costs" in CEAT, Falcon, Goodyear and TVS's Financial Statements

Arguing that the Department improperly limited direct labor costs to one line item in each financial statement, and citing *CTL Plate-Russia 01/23/03*, Starbright and TUTRIC contend that all such expenses, including those related to salary, bonus, overtime, training, and fringe benefits should be treated as labor expenses in the surrogate financial calculations.

Citing *AD Methodologies—NME Wages (2006)*, Petitioners contend that the Department followed its standard practice of categorizing as OH all individually identifiable labor costs not included in the ILO's definition of "earnings" under Chapter 5 of the YLS and urge the Department to continue to do so for the final determination.

Department's Position: The Department has continued to treat certain labor-related items as indirect costs, consistent with our regression-based expected PRC wage rate calculation and our current practice. However, in reviewing the parties' comments, we have made certain changes to our treatment of gratuities in the surrogate financial ratio calculations. The Department bases its calculation of the expected PRC wage rate on the ILO's categorization of information provided by the countries it surveys. The Department also notes that the ILO defines "earnings" under Chapter 5B of its Yearbook of Labour Statistics as being inclusive of "wages," and as including both bonuses and gratuities. It further defines earnings to "exclude employers' contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay."[99] In order to ensure that our calculation of expected NME wage rates accurately reflects the remuneration received by workers, we rely on "earnings," not "wages," when deriving our regression-based wage rate. Accordingly, as we stated in *AD Methodologies- NME Wages (2006) at 61721:*

> in order to ensure that labor costs not included in the ILO defined "earnings" are accounted for in its calculation of normal value, it is best to adjust, where possible, the surrogate financial ratios employed by the Department to value overhead expenses, selling, general and administrative (``SG&A") expenses, and profit. Accordingly, it is the Department's practice to categorize all individually identifiable labor costs not included in the ILO's definition of "earnings" under Chapter 5 of the Yearbook of Labour Statistics as overhead expenses. See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006) and accompanying Issues and Decision Memorandum, at comment 1. Such adjustments are fact-specific in nature and subject to available information on the record. Specifically, where warranted, individually identifiable labor costs in the surrogate financial statements which are not included in "earnings" are categorized as overhead or SG&A expenses for purposes of the Department's calculation of surrogate financial ratios.

[99] http://laborsta.ilo.org.

Based on the above, it is clear that the earnings category (Chapter 5) is exclusive of employee benefits such as pension and social security, while the labor cost category (Chapter 6) is inclusive of these employee expenses. Because the Department based its calculation of the regression-based expected PRC wage rate on "earnings" data from Chapter 5B of the *YLS*, in the instant investigation, the Department examined the financial statements to determine whether the statements contained the detail to permit the Department to easily segregate labor expenses into "earnings" (which correspond to Chapter 5B of the ILO database and, therefore, to the Department's expected NME wage rate), and other labor costs (which are not included in the Department's calculated NME wage rate). We found the following:

CEAT:
Schedule 16 "Personnel" reports three categories: 1) Salaries, Wages and Bonus; 2) Provident Fund, Gratuity Fund and Superannuation Scheme, etc.; and 3) Welfare Expenses. Schedule 20, "Notes Forming Part of the Accounts at 1) Significant Accounting Policies, item L) "Retirement Benefits" describes the items in the second of CEAT's three "Personnel" categories as follows:

> The Company has created an Employee's Group Gratuity Fund, which has taken a Group Gratuity-Cum-Life Insurance Policy from Life Insurance Corporation of India. Gratuity is provided on the basis of above policy.
> Liability towards leave encashment benefit on retirement is provided based on the actuarial valuation done at the year-end.
> Contributions to Company's Provident and Superannuation Funds are being charged to revenue.

Falcon:
Schedule 18 "Manufacturing, Administrative, Selling & Distribution Expenses" also lists three personnel related items: 1) Salaries, Wages and Bonus etc.; 2) Contribution to Provident, Gratuity and Other Funds; and 3) Staff Welfare Expenses. Schedule 20, item A. "Significant Accounting Policies" describes the second category identified above, under "Retirement Benefits" as:

a) Provision for gratuity is made as determined actuarially at the year end [sic] under group gratuity scheme of Life Insurance Corporation of India (LIC).
b) Contribution to Provident and Superannuation fund is accounted for on accrual basis.
c) Provision for leave encashment liability to employees at the year-end is determined on the basis of actuarial valuation and provided for in the accounts.

Goodyear:
Schedule 15, "Manufacturing, Selling and Administrative Expenses," identifies five items related to personnel: 1) Salaries, wages and bonus; 2) Contribution to provident and pension fund; 3) Workmen and staff welfare expenses; 4) Retirement Gratuities; and 5) Leave encashment. Schedule 17, "Notes to Accounts," at item (a) "Significant Accounting Policies," sub-item vii) "Retirement Benefits" states:

> Provident and other funds are administered by trusts recognized by income tax authorities and contributions to these funds are charged to revenue. Gratuity and leave encashment liabilities have been provided on the basis of actuarial valuation done at the year-end."

TVS:
Schedule 18, "Expenses" identifies four categories of personnel related expenditures: 1) Salaries and Wages; 2) Contribution to Provident and other funds; 3) Gratuity; and 4) Workmen and Staff Welfare. Schedule 19, "Notes on Accounts," at item 1, "Significant Accounting Policies," sub-item g) "Retirement benefits," states:

> The Company has schemes for retirement benefits such as Provident Fund, Superannuation Fund, Gratuity Fund and the contributions are charged to revenue. Leave encashment have been provided for based on actuarial valuation.

Accordingly, to be consistent with the methodology employed in calculating the expected PRC wage rate, in each instance where the financial statements contained data allowing the Department to segregate labor into 1) wages corresponding to Chapter 5B of the ILO database and 2) other labor costs, the Department did so, and has treated as direct labor only those items corresponding to the wages described in Chapter 5B as direct labor costs. Specifically, we have determined that the following categories within the respective financial statements correspond to wages as identified in Chapter 5B of the ILO database and have treated these items as direct labor in the surrogate financial ratio calculations:

- CEAT: Salaries, Wages and Bonus etc.
- Falcon: Salaries, Wages and Bonus etc.
- Goodyear: Salaries, wages and bonus; and Retirement Gratuities
- TVS: Salaries and Wages; and Gratuity.

As discussed in the Department's Position to Comment 18.H, below, the Department is not required to "duplicate the exact production experience of the Chinese manufacturers" (*Nation Ford (1999)),* or undergo "an item-by-item analysis in calculating factory overhead." *See Magnesium Corp. (1999).* In *Rhodia (2002)* the Court further stated that "Commerce need not use perfectly conforming information," only comparable information.[100] Therefore, we have treated Provident Fund, Gratuity Fund and Superannuation Scheme, etc., in the CEAT financial statement and Contribution to Provident, Gratuity and Other Funds in the Falcon statement as OH. While they identify "gratuities" as components of each of these line items, we are unable to distinguish the portion of each item related to gratuities from the portion related to the other items based on information contained in the respective financial statements. While this may result in the OH numerator containing some gratuity-related costs, we do not find that making an adjustment in an attempt to yield a more accurate result is warranted, as such an adjustment could, in fact, introduce unintended distortions into the calculations. Further, consistent with our practice as articulated above, we have continued to treat all remaining labor-related items, as OH because they correspond to "other labor costs" not "wages" as defined above. See also, *AD Methodologies- NME Wages (2006)* for further discussion of this issue.

Finally, we find that Starbright and TUTRIC's reliance on *CTL Plate-Russia 01/23/03* is misplaced. Specifically, the CTL plate decision is from 1993, which pre-dates the Department's clear articulation of its most recent practice with respect to treatment of labor related items in the surrogate financial ratio calculations, as discussed above. *See FMTCs-PRC 01/18/06* IDM at

[100] *See Nation Ford (1999)* at 1377; *Magnesium Corp. (1999)* at 1372; and *Rhodia (2002)* at 1251.

Comment 1.b, as discussed above.

Comment 18.H: Treatment of Non-Production Related Energy and Utility Consumption

Petitioners contest Starbright and TUTRIC's reporting methodology with respect to energy consumption, suggesting that in dividing their respective energy consumption between production- and non-production related consumption, both respondents equated the non-production consumption with OH, assuming that the OH portion would be captured by the OH ratio devised from the surrogate Indian financial statements. Petitioners maintain that the underlying assumption for Starbright's and TUTRIC's reporting methodology is inaccurate, since 1) the surrogate Indian financial statements do not distinguish between production and non-production energy, and 2) the Department determines its overhead ratio based on the total value of ML&E costs as reflected in the surrogate financial statements. As a result, Petitioners argue that energy is part of the denominator (*i.e.*, MLE) in the overhead ratio calculation, but not the numerator. Petitioners express concern that applying an OH ratio calculated in this manner to the MLE reported by the respondents (which does not contain complete energy costs) results in an understated OH amount for these respondents. Thus, they assert that it would only be appropriate to allow a respondent to exclude certain energy costs if the Department were to calculate the surrogate financial ratios on the same basis (*i.e.*, classifying some energy consumption as OH). Petitioners acknowledge that calculating the financial ratios in such a manner would be contrary to the Department's practice of using the data *in toto* (*i.e.*, not reclassifying the surrogate data from MLE to OH) from the financial statements as articulated in *ARG 02/12/02* IDM at Comment 24; *CVP 11/17/04* IDM at Comment 14; and *Pure Magnesium 9/27/01* IDM at Comment 4. Therefore, Petitioners maintain, the Department should include all of Starbright and TUTRIC's energy consumption in their respective margin calculations.

More specifically, Petitioners go on to contend that the Department should add to Starbright's reported factors for coal, water, and electricity, the amounts excluded as either overhead or non-production related. Finally, Petitioners allege that there may be additional unreported boiler-related energy and requests that the Department look into this issue.

Bridgestone put forward similar arguments with respect to Guizhou Tyre and Xugong, suggesting that while the Department captured all expenses related to energy and utility consumption by the surrogate companies in calculating the SG&A, manufacturing OH and profit ratios, the respondent parties generally reported MLE net of energy and utility consumption related to non-production activities. Thus, Bridgestone contends, the Department's application of the calculated surrogate SG&A, manufacturing OH and profit ratios to the respondents' MLE does not represent an "apples-to-apples" comparison. With respect to Guizhou Tyre, Bridgestone argues that the Department should inflate the surrogate financial companies' ratios by a specific percentage to account for Guizhou Tyre's non-production related energy and utility consumption. With respect to Xugong, Bridgestone argues that the Department should increase Xugong's reported consumption based upon the average amounts reported by the other respondents.

Guizhou Tyre, Starbright, TUTRIC, and Xugong each dispute Petitioners and Bridgestone's

allegations that they did not properly report their energy consumption, as required by the Department. Starbright and TUTRIC contend that the Department's Section D questionnaire requires respondents to report each type of labor and energy (*e.g.*, electric, water, gas, coal, etc.) required to produce one unit of the merchandise under consideration, asserting that this stipulation limits the reporting requirement to the amount of energy directly consumed in the manufacturing process. Starbright, TUTRIC, and Xugong all assert that the Department verified their reported energy consumption and did not identify any discrepancies.

Starbright and TUTRIC claim that Petitioners want the Department to adopt a major change in its longstanding practice and, along with Guizhou Tyre, assert that the Department addressed this same issue in *Activated Carbon-PRC 03/02/07*,[101] where it declined to make the requested adjustments. Furthermore, Starbright and TUTRIC maintain that the Department addressed a similar issue with respect to labor in *Bags-PRC 03/19/07*, wherein the Department also declined to acquiesce to the requested change in practice. Guizhou Tyre, Starbright and TUTRIC contend that the Department's longstanding practice is to exclude from FOPs the energy properly assigned to non-production usage, while classifying the total amount of energy recorded on the surrogate financial statements as energy expenses, without allocating any portion of those line items to overhead and/or SG&A. Starbright and TUTRIC conclude that, because it is not certain that the Department captures all non-production-related energy in the energy expenses (*i.e.*, the OH and SG&A recorded in the surrogate financial statements may also include energy expenses), the corresponding non-production energy is properly excluded from respondents' factors of production.[102]

Guizhou Tyre, Starbright, TUTRIC and Xugong conclude that the Department should reject Petitioners and Bridgestone's allegation that there is something unfair or unreasonable in the Department's practice and contend that there is no need for the Department to make an adjustment to either the reported energy inputs or the financial ratio calculations for purposes of calculating the final determination dumping margin.

Department's Position: We agree with the respondents that the Department has recently addressed this very same issue and has determined that it is appropriate to maintain our established practice. Specifically, in *Activated Carbon-PRC 03/02/07* IDM at Comment 6, we stated that we did not agree that any adjustment of the surrogate financial ratios or to the respondents' reported electricity or labor was warranted with regard to this issue. Consistent with that determination, we disagree with Petitioners and Bridgestone that any adjustments are appropriate. Therefore, we have not made the requested adjustments to the OH ratio calculation with respect to Guizhou Tyre's margin calculation, nor have we made the requested adjustments to Starbright, TUTRIC or Xugong's reported energy[103] consumption.

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[101] The parties note that *Activated Carbon-PRC 03/02/07* cited: *Nation Ford (1999); Magnesium Corp. (1999); and Rhodia (2002).*

[102] Starbright makes the same arguments with respect to treatment of labor expenses, both as reported by the respondents and as recorded in the surrogate companies' financial statements.

[103] Our reference to energy here should also be read to include utility.

As we stated in *Activated Carbon-PRC 03/02/07* IDM at Comment 6, in NME countries the Department determines "normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise. (Emphasis added.) *See* section 773(c)(1)(B)(a) of the Act and *TRBs-PRC 11/15/01* IDM at Comment 20, where we also emphasized that NME methodology requires parties to report the quantity of FOPs "actually used to produce the subject merchandise." (Emphasis added). As in activated carbon, and consistent with the regulations and the Department's AD questionnaire, the respondents in this case (Guizhou Tyre, Starbright, TUTRIC and Xugong) reported the energy-related FOPs necessary to produce the merchandise under investigation (*i.e.*, excluding non-production-related energy). Therefore, in accordance with section 773(c)(1)(B)(a) of the Act, the Department finds that it is inappropriate to increase Starbright, TUTRIC, or Xugong's reported energy consumption to include non-production energy as this energy is not "utilized in producing the merchandise." *Id*.

In addition, consistent with the Department's above-cited determination in activated carbon and *WBF-PRC 11/17/04* IDM at Comment 12, we further determine that we should not add a factory overhead- or SG&A-related energy amount to NV for any of the calculations of the respondents' margins, nor attempt to adjust the surrogate financial ratios to remove non-production electricity. As the Department stated in *Activated Carbon-PRC 03/02/07* IDM at Comment 6:

> Although the surrogate-company ratios may contain energy consumed for factory overhead and SG&A in the MLE denominator, we do not find that making such an adjustment yields a more accurate result. Indeed, such an adjustment could introduce unintended distortions into the data. Moreover, both the CIT and the Federal Circuit have affirmed that the Department does not generally adjust the surrogate values used in the calculation of factory overhead.1 In *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247 (CIT 2002) ("*Rhodia*"), the Court confirmed the Department's practice that once the Department establishes that the surrogate produces identical or comparable merchandise, closely approximating the nonmarket producer's experience, Commerce merely uses the surrogate producer's data. *See* section 771(c)(4) of the Act; 19 C. F. R. 351.408(c)(4). Furthermore, the Department is not required to "duplicate the exact production experience of the Chinese manufacturers," (*Nation Ford Chem. Co. v. United States*, 166 F. 3d. 1373, 1377 (Fed. Cir. 1999)), or undergo "an item-by-item analysis in calculating factory overhead." *See Magnesium Corp. of Am. v. United States*, 166 F. 3d. 1364, 1372 (Fed. Cir. 1999). In addition, in *Rhodia* the Court stated that "Commerce need not use "perfectly conforming information," only comparable information. *Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308, 7344 (Feb. 27, 1996)." *See Rhodia* 240 F. Supp. 2d at 1250-51.

As Starbright and TUTRIC maintain, the Department reached a similar conclusion with respect to labor in *Bags-PRC 03/19/07* IDM at Comment 3, wherein the Department stated:

> In fact, the Department normally classifies the entire value of the salary and wages recorded on the surrogate producer's financial statements as labor expenses when the financial statements do not clearly distinguish between wages and

salaries attributed to manufacturing and/or SG&A personnel.

Accordingly, we have not made adjustments to the respondents reported energy consumption amounts, or to the surrogate financial ratios, with respect to this item, as urged by Petitioners. Finally, we did not find any evidence at verification that Starbright had failed to report the appropriate energy consumption with respect to its boilers. Therefore we are not addressing this issue further.

II. SCOPE ISSUES

Comment 19: Imported Wheel Mounted Tires Certifications

Domestic Producers, Guizhou Tyre, Valmont and Super Grip Corporation concur that wheel mounted tires are not covered by the scope of this investigation. However, Domestic Producers assert that such tires should be accompanied by a certification that the importers will not disassemble the wheel mounted tires after importation. Valmont, an importer, stated that it would be willing to certify that the imported wheel mounted tires would not be disassembled after importation but noted that disassembly is unlikely, as it is cost prohibitive. Guizhou Tyre argues that Petitioners failed to present evidence that circumvention would occur or that there is any likelihood that circumvention would occur in the future. Guizhou Tyre also noted that the Department has acknowledged the difficulty in requiring end-use certifications, citing *C&A Pipe - Germany 6/19/95*.

Department's Position: The Department agrees with the parties that wheel mounted tires are not covered by the scope of the investigation. Specifically, there is no evidence on the record that: (1) imported wheel mounted tires are considered to be OTR tires; (2) the industry that produces imported wheel mounted tires is part of the OTR tire industry; or (3) the industry that produces imported wheel mounted tires is included in the definition of the domestic industry in the ITC injury investigation. Wheel mounted tires were not covered by the petition and all parties agree they are not subject merchandise. Further, the Department finds that the request for certification is neither necessary nor appropriate given the evidence on the record of this investigation. Specifically, no party has provided any evidence that parties would import wheel mounted tires and then disassemble them after importation.

Further, the Department must consider how CBP would enforce certification programs. In a limited number of cases, the Department has instituted an end-use certification program to determine the end-use of imported merchandise, where end-use was a defining characteristic of a class or kind of merchandise subject to an investigation or order. However, as stated in the CWP Scope Memorandum, the Department's experience with end-use certification programs is that they are difficult to administer and to enforce particularly where the first customer in the United States is a distributor who inventories the merchandise, often for a significant period of time, before reselling to an end-user or another reseller.[104]

[104] *See* CWP Scope Memorandum at 4.

Although the Department has implemented such certification programs in the past, we generally do so only in limited circumstances. For example, the Department eventually ended the certification program in *OCTG - Canada 09/04/90*, noting that it was "burdensome" and "difficult to administer." *See* CWP Scope Memorandum at 4 and Attachment 1 (citing Memorandum regarding "Final Determination - Abolishment of the End Use Certification Procedure," September 4, 1990). In *C&A Pipe - Germany 6/19/95* at 31975-6, the Department also discussed the difficulties attendant to an end-use certification program and, consequently, stated that it would only implement such a program in that case after evidence had been proffered that would provide a reasonable basis to believe or suspect that substitution was occurring, and then would only apply the program to products for which such evidence existed.

A scope based upon end-use application also raises administrative problems for the Department. In certain instances the actual end-use of merchandise may be unknown to the producers or exporters investigated by the Department. Any certifications or assertions made by the exporter/producer about the end-use of particular sales would be difficult, if not impossible, to verify. As a result, the Department's analysis would depend on a generally un-verifiable supposition about the end-use of individual sales, and would be subject to manipulation.

Accordingly, based on all of the above, the Department has determined not to implement an end-use certification with respect to imports of wheel mounted tires.

Comment 20: OTR Agricultural Tires, Including for Highway-Towed Implements

Domestic Producers contend that all agricultural tires are covered by the scope of this proceeding. Further, they argue that tires used for "highway-towed implements" are specifically referenced in the petitions and covered by the scope despite the fact that such tires are designed for partial on-road use. Domestic Producers note that such tires are specifically designed for agricultural use and that the TRA 2007 Yearbook specifically describes them as "farm implement tires for intermittent towed highway and agricultural service."[105] Domestic Producers further argue that the petition and following initiation language, "{t}he vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to, (1) agricultural and forestry vehicles, . . ." clearly indicates that all OTR agricultural tires, including those for agricultural implements, are covered.[106]

Guizhou Tyre contends that tires used for highway-towed implements are excluded from the scope of the investigations, because tires used for highway-towed implements are used on roads and highways, while the current investigations cover only OTR tires. Guizhou Tyre notes that the scope language in the Initiation Notices states that "all of the tires within the scope have in common that they are designed for off-road and off-highway use."[107] Guizhou Tyre argues that

[105] *See* Petitioners' Response to the Second Supp Questionnaire at Exhibit 7.

[106] *See* Preliminary Scope Determination at 2. Petitioners noted that in using the word "equipment" the scope description included "implements," citing *US v. Perry (1938).*

[107] *See* Initiation Notice at 43596.

whether or not tires are used on vehicles that are associated with or used in connection with "agricultural" activities is irrelevant because the investigations address imports of "off-the-road" tires, not all tires used in agricultural applications. They further note that adding all agricultural tires to the scope of these proceedings would constitute an expansion of the scope which at this point in the investigation would deprive parties of their due process citing *Sodium Hex-PRC 02/04/08* IDM at Comment 1; *OJ-Brazil 01/13/06* IDM at Comment 2; and accompanying Issues and Decision Memorandum at Comment 2, and *Allegheny (2004)*.

Department' Position: Sections 701 and 731 of the Act require the Department to define the scope of merchandise subject to investigation in each AD and CVD investigation. In deciding whether to initiate an investigation and whether an order should be imposed, the statute requires the Department to make determinations with respect to a class or kind of foreign merchandise. *See* sections 701 and 731 of the Act. If the Department initiates an investigation based upon a petition, it will continue to review the scope of the merchandise described in the petition to determine the scope of the final order.[108] The Department's legal authority to determine the scope of its orders is well-established.[109]

Generally, the Department prefers to define product coverage by the physical characteristics of the merchandise subject to investigation because reliance on end-use application often results in ambiguity with respect to product coverage at the time merchandise enters the country, which is when CBP must determine whether the importer has properly classified the merchandise as subject or non-subject merchandise.

In these proceedings, the Department found in its preliminary scope determination that the scope of these investigations, as provided in the petitions, is based on technical descriptions and design for OTR use.[110] The scope language in the petitions, adopted in the preliminary determinations, identifies the scope of these investigations as OTR tires designed for use in OTR and off-highway vehicles, subject to the limited number of exceptions enumerated in the scope. Similarly, the Department preliminarily concluded that "[t]here is no record evidence that indicates that the scope of the proceedings applies to all agricultural tires."[111]

The scope language specifically 1) encompasses agricultural tires designed for OTR use, with the exception of delineated exclusions, and 2) identifies tires for highway-towed equipment and/or implements as merchandise falling within the scope of these investigations.[112] These agricultural vehicles and highway-towed implements may be intermittently used on the road traveling

[108] *See* 19 CFR 351.202(b)(5).

[109] *See, e.g., Mitsubishi (1992).*

[110] *See* Preliminary Scope Determination at 6.

[111] *See* Preliminary Scope Determination at 10.

[112] *See* Petition at 5.

between fields, to markets, *et al*. but the intermittent highway use does not negate that the tires' design is generally for OTR use. However, the fact that a tire is used on an agricultural vehicle or implement does not place that tire within the scope of these proceedings unless that tire is a new pneumatic off-the-road tire. Including all agricultural tires at this point in these investigations would constitute an expansion of the scope, which would be in conflict with Department practice and precedent.[113] Therefore, the Department finds that new pneumatic OTR tires designed for agricultural vehicles and/or highway-towed agricultural implements are covered by the scope of these investigations.

Comment 21: Tubes and Flaps

Domestic Producers contend that while they never intended "parts" or "unassembled merchandise" to be included in this investigation, there is no basis to exclude tubes and flaps that are shipped and sold together with the tube-type tire. They cite *Crawfish-PRC 08/02/97*, where the Department included peeled and unpeeled tail meat even though the petition had not specified both forms. They argue that the tubes and flaps are essential to the operation of the tube-type tire and therefore are components of the tire. They cite *Toy Biz (2002)*, where the court agreed with Customs that components are an essential part of a good, and *Rollerblade (2000)*, where the court distinguishes an accessory as "an object or device not essential in itself but adding to the beauty, convenience or effectiveness of something else." Domestic Producers also cite the court's Customs ruling in *Better Homes (1997)*, where the imported merchandise was subject to two orders but the court classified the merchandise by the part of the component that gave the good its essential character, which was as a shower curtain rather than a textile curtain. Domestic Producers go on to note that the Department's "physically incorporated" standard is vague, and requested further definition.

Guizhou Tyre, Starbright and TUTRIC argue that tubes and flaps are outside of the scope of these proceedings regardless of whether they are sold separately, with, or attached to the tube-type tires. Guizhou Tyre further contends that tubes and flaps are accessories to, not components of, OTR tires similar to the Department's classification of rims in the preliminary scope determination, and that Petitioners never intended such articles to be included in this investigation.[114] Like Domestic Producers, Guizhou Tyre contends that the Department did not explain "physically attached" or "physically incorporated" and suggests that those terms need to be defined.

Department' Position: The Department preliminarily determined that: (1) tubes and flaps that are physically attached/incorporated to the subject tire for sale as a set to the United States

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[113] *See Sodium Hex-PRC 02/04/08* IDM at Comment 1("Amending the scope language ...would, in effect, serve to expand the current scope of subject merchandise that was subject to this investigation at too late a stage in this proceeding."); *OJ- Brazil 01/13/06* IDM at Comment 2 (the Department denied Petitioners' requested change to the scope as it would constitute an expansion of the scope contained in the petition); and *Allegheny (2004)* (where the CIT reiterated that the Department may not expand the scope of an investigation in the latter stages of a proceeding because of due process concerns).

[114] *See* Domestic Parties' Joint Scope Case Brief at 2.

constitute a component of the finished tire and, are subject to the scope of the proceedings: and (2) because the scope does not cover "parts thereof" or "unassembled" merchandise, tubes and flaps that are sold separately are not subject to the scope of these proceedings. Upon reviewing the record of these proceedings and the parties' comments regarding this issue, the Department now affirms its preliminary finding that tubes and flaps sold separately are not subject to the scope of these proceedings, and further concludes that the record does not support a finding that tubes and flaps are physically attached/incorporated components of finished tires. Thus, we find that tubes and flaps are not subject to the scope of this investigation and should not be considered in the FOP build-up for subject merchandise, regardless of the manner in which they are sold. Specifically, there is no evidence on the record that: (1) tubes and flaps are considered to be inputs to OTR tires; (2) the industry that produces tubes and flaps is part of the OTR tire industry; or (3) the industry that produces tubes and flaps was included in the definition of the domestic industry in the ITC investigation. Tubes and flaps were not covered by the petition and all parties agree that when sold individually, they are not within the scope of these investigations.

In its preliminary determination, the Department discussed tubes and flaps sold as "physically attached" or "incorporated to the subject merchandise." This language, taken from the Guizhou Tyre Verification Report, as noted by the parties, is vague and unintentionally misleading. Therefore, the Department's language from the verification report should not be taken to suggest any specific connotation with respect to these terms other than to mean that the tires, tubes, and flaps were basically sold together. We have reviewed the record, including the Guizhou Tyre Verification Report and accompanying exhibits, and have determined that the record with respect to the attachment or incorporation of the tubes and flaps is unclear. While the record in this case clearly demonstrates that tube-type tires can be sold independently of the tubes and flaps, which can also be purchased separately for later incorporation in the tire,[115] the record is not clear with respect to the meaning of "physically attached" or "incorporated to," as the parties have not specifically addressed this issue. The clearest discussion appears to be in Xugong's DQR at page 12, where the respondent noted that it uses packing tape "for the subject merchandise sold with tube as a set." Because Xugong does not report use of any other packing materials (a fact verified by the Department), we can infer that the tape is used to "attach" the tube and flap to the tire.

The courts have repeatedly held that the Department "has inherent authority to define the scope of an antidumping duty investigation."[116] The Department "generally exercises this broad discretion to define and clarify the scope of an antidumping investigation in a manner which reflects the intent of the petition."[117] However, the Department's discretion permits interpreting

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[115] The respondents reported sales of tube-type tires without tubes and flaps. *See, e.g., Xugong 01/09/08 SQR, Section C database, and Guizhou Tyre 11/21/07 CQR, Section C database. See also,TUTRIC Verification Report* (stating "In reviewing documentation received at verification (*see* Exhibit 8, Sales Trace … at pages 10-12), we noted that TUTRIC sold both tubeless and tube-type tires on the same invoice, but only sold tubes and flaps for one particular tube-type tire model on that invoice.")

[116] *NTN Bearing (1990); Koyo (1993)* at 1403.

[117] *Kern-Liebers (1995)* (quoting *Minebea (1992), aff'd on other grounds, (1993)*).

the petition in such a way as to best effectuate not only the intent of the petition, but the overall purpose of the antidumping law as well. (Emphasis added). As stated by the CIT in *NTN Bearing (1990),* if the Department "determine[s] the petition to be overly broad, or insufficiently specific to allow proper investigation, or in any other way defective, it possesse{s} the inherent authority to redefine and clarify the parameters of its investigation."[118] Moreover, the Department may fashion the scope of an order so as to prevent circumvention by parties in the future "employing inventive import strategies." *NTN Bearing (1990)* at 731.

In the present case, the petition describes the merchandise subject to the investigation as "new pneumatic tires designed for off-the-road and off-highway use."[119] The petition further clarifies that the "tires may be either tube-type or tubeless" as part of the scope description but does not go on to include the accessories or components of these tires in the scope description.[120] Rather, the petition is silent with respect to the issue of tubes and flaps. Petitioners could have drafted the scope to include accessories, components, parts thereof, or sets (*i.e.*, comprising the tube, flap and tire), but did not do so here. Because the OTR tire and tube/flap producers do not constitute a single industry, the fact that accessories, components, parts thereof, and sets which might reflect tubes and flaps are not included in the language signals to the Department that the industry seeking protection under the antidumping law is the off-the-road tires industry, not the tubes and flaps industry, and that tubes and flaps (whether accessories or components) when sold (1) on the same invoice as the tire, or (2) as a set which includes the tire, are not covered. In fact, Petitioners acknowledge in their case brief that "{they} never intended such articles to be included in this investigation."[121] However, they now contend that there is no basis to exclude them when sold on the same invoice as the subject tires. This argument is without merit as it is not possible to exclude items that had never been included in the first place.

For this reason, the issue here is distinguishable from that in *Crawfish-PRC 08/02/97*, where the issue was whether both forms of a specific product were covered by the scope of the proceeding. In *Crawfish-PRC 08/02/97*, the Department clarified that although the petitioner inconsistently referred to the covered merchandise as crawfish tail meat and "peeled" crawfish tail meat, the proceeding in fact covered all fresh crawfish tail meat whether peeled or unpeeled. In that case, the "unpeeled" items at issue were clearly a type of fresh crawfish tail meat. In the instant proceeding, the parallel situation would be whether tubeless and tube-type tires are covered. However, in the instant proceeding, the record is clear that both types, *i.e.,* tubeless and tube-type tires are covered as both are clearly addressed in the petition, but the record is silent with respect to the issue of tubes and flaps. Therefore, while the petition language here is similar to *Crawfish-PRC 08/02/97* in that it does not specifically reference tubes and flaps, the clarification of what types of fresh crawfish meat were covered is very different from whether a separate accessory to

[118] *NTN Bearing (1990)* at 731; *accord Torrington (1990)* at 721-22.

[119] Petition at 5.

[120] *Id.*

[121] *See* the Domestic Producers' May 22, 2008, Joint Case Brief at 2.

or component of covered merchandise is also covered, as is the case here. In *Crawfish-PRC 08/02/97*, there was no discussion of whether "unpeeled" crawfish represented a completely different industry from that producing "peeled" crawfish. In this case, there is no argument by any of the parties that tubes and flaps are OTR tires or that the producers of tubes and flaps constitute a single industry with OTR tire producers. Thus, the inclusion of tubes and flaps within the scope of this proceeding would constitute an expansion of the scope to include products other than OTR tires.

With respect to the other court cases that Petitioners cite, as an initial matter, the Department does not rely on Customs' classification criteria in defining the scope of merchandise subject to AD and CVD proceedings. As discussed above, in defining the scope of an AD/CVD proceeding, the Department looks to the intent of the petition and the overall purpose of the dumping law. In this case, the clear intent of the petition, as stated by Petitioners, was not to include tubes and flaps. Moreover, both *Toy Biz (2002)* and *Better Homes (1997)* focused on which section of the General Rules of Interpretation CBP should apply in classifying the respective products under the HTS for customs purposes. Because the Department does not rely on Customs' General Rules of Interpretation for determining the scope of AD/CVD proceedings, in that respect, these cases are not informative here.

Rollerblade (2000), which discusses whether certain items constituted accessories to another product, is similarly uninformative here, as again the issue was the proper HTS classification, which was dependent upon whether the items in question constituted accessories to the other product. In the OTR tires proceeding, however, we are not addressing HTS classifications. Rather we are addressing the product coverage as originally intended by the Petitioners and whether tubes and flaps constitute OTR tire components such that they are considered inputs into the production of finished tires. We have determined that they are not. In this case, tubes and flaps are analogous to the wheels and rims discussed above. A tubeless tire requires a wheel and a rim to function on a vehicle, but that does not make the wheels and rims components of the tire. Similarly, a tube-type tire requires the tube and flap as well as the wheel and rim to function on a vehicle. However, as with the wheel and rim, this does not make the tubes and flaps components of the tire.

Accordingly, the Department determines that tubes and flaps are not subject to the scope of these proceedings regardless of how they are sold.

Comment 22: Earthmoving, Mining, and Construction Tires

CMA notes that the Department has the ultimate authority to define the scope of AD/CVD proceedings and that the Department will examine whether the proposed scope language reflects the market, citing *Mitsubishi (1990)* and *CFS-PRC-AD 10/25/07* at 60632. CMA contends that the 39-inch rim diameter for earthmoving, mining, and construction tires is an arbitrary line that is not connected to the OTR tire's ability to function on a mining, earthmoving, or construction vehicle, and that the weight of the tire is a more meaningful and relevant characteristic to use in defining the exclusion for such OTR tires. CMA argues that there is no fundamental difference between a 35-inch and a greater than 39-inch mining, earthmoving or construction tire.

CMA also contends that ply ratings are inapplicable to radial tires; therefore, the exclusionary language does not provide a basis for CBP to distinguish such radial tires from all other radial tires above 39 inches in diameter. The Department should either remove the "ply-rating" element from the exclusionary language or add strength (star)-ratings that would address radial tires. It notes that star-ratings are not perfectly convertible to ply-ratings, but proposes that a two-star rating would be the applicable rating for the proposed exclusion of these radial tires.

Domestic Producers note that the Department generally exercises broad discretion to define and clarify the scope in a way that encompasses the intention of the petition and in a way that upholds the purpose of the AD law. They cite *Kern-Liebers (1995); Minebea (1992); AFBs-Germany 05/03/89*; and *Crawfish-PRC 08/01/97*. They also argue that construction, mining, and earthmoving tires with a 39-inch rim diameter are excluded because they differ from the subject merchandise in terms of production lines, production processes, and physical characteristics (*e.g.*, weight, number of plies, and number of beads). They further argue that the fact that the rim diameter does not determine the tires' ability to function on a mining, earthmoving or construction vehicle is irrelevant, and contend that such tires are not interchangeable with other OTR tires and do not compete with the smaller OTR tires that are within the scope. Domestic Producers also argue that they provided the greater than 39-inch cut-off point because the tires greater than 39 inches are not causing, or threatening to cause, material injury to a domestic industry.

They further assert that: (1) the use of the two-star rating would significantly narrow the scope of the proceeding as the two-star rating by itself can apply to tires with a rim diameter as small as 24 inches; and (2) number of plies does not equate directly to a specific ply rating; and (3) as there is no ply-rating (which relates solely to bias tires) in the exclusionary language, there is no need to add a star rating that would relate to radial tires.

Department's Position: As noted above, the courts have repeatedly held that the Department "has inherent authority to define the scope of an antidumping duty investigation."[122] The Department "generally exercises this broad discretion to define and clarify the scope of an antidumping investigation in a manner which reflects the intent of the petition."[123]

However, CMA is correct in its argument that while the scope language is intended to exclude certain radial tires, it does not do so clearly.[124] With respect to the issue of ply ratings, in it arguments, CMA appears to equate the number of plies with a specific ply rating. However, as Petitioners point out, information CMA put on the record indicates that this is not the case. For example, the information submitted by CMA indicates that a tire with an 18-ply rating can have

[122] *NTN Bearing (1990). Mitsubishi (1990).*

[123] *Kern-Liebers (1995)* (quoting *Minebea* (1992), *aff'd on other grounds, (1993).*

[124] Petitioners have not contested CMA's arguments that the exclusion for mining, earthmoving and construction tires relates to both bias and radial tires. Moreover, at the scope hearing, Petitioners specifically acknowledged that the exclusion applies to both bias and radial tires otherwise meeting the description of the exclusion.

either: 14, 16, or 18 plies.[125] Thus, the Department has concluded from this evidence on the record that there is not a direct correlation between the number of plies in a tire and a specific ply rating. Further, additional record evidence demonstrates the two-star rating proposed by CMA for the exclusion, as it relates to radial mining, earthmoving and construction tires, is not appropriate. The exclusion as proffered by Petitioners specifically relates to tires that are greater than 39 inches in rim diameter. However, the two-star rating can apply to tires that are significantly smaller than 39 inches.[126] Thus, replacing the rim diameter with the two-star rating definition would significantly expand the exclusion from the scope. Further, Petitioners provided an extensive explanation regarding their selection of "greater than 39 inches" as the starting point for the exclusion in their June 27, 2007, response to the Department's second supplemental questionnaire at 4. Based on all of the above, we are not altering the language with respect to the number of plies or the rim diameter of the excluded tires and we are not adding language regarding a star rating. However, the Department has added language to clarify that the exclusion relates to both radial and bias tires as follows: "Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches."

As discussed above, it is the Department's responsibility to define the scope of these investigations. However, it is also the Department's practice, and in keeping with its regulations, to defer to the intent of Petitioners in defining the products under investigation.[127] With respect to the rim dimensions and weight, the Department finds that the domestic producers have provided sufficient information to substantiate the reasoning behind the proposed exclusion cut-off,[128] and notes that CMA has not substantiated its claim that Petitioners' proposed exclusion represents an abuse of the process. Therefore, the Department continues to find that construction, mining, and earthmoving tires with a 39-inch rim diameter, meeting the other exclusionary criteria, are excluded from the scope of these proceedings. The fact that the rim diameter does not determine the tires' ability to function on a mining, earthmoving or construction vehicle does not negate its relevance for purposes of defining the scope exclusion. Rather, rim diameter is a physical characteristic that provides the Department with a basis to identify the excluded tires. Thus, with the exception of the additional language to address radial tires, the Department has not amended the exclusion for mining, earthmoving or construction tires.

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[125] *See* CMA's March 18, 2008 submission, at Exhibit 1, page titled "Tire Technology Ply Rating."

[126] *See* CMA's March 18, 2008 submission, at Exhibit 1, page titled "Comparative Size Chart, Star Rating/Ply Rating Equivalents" (which demonstrates that the two-star rating applies to tires as small as 13 inches).

[127] *Kern-Liebers (1995)* (quoting *Minebea (1992), aff'd on other grounds, (1993).*

[128] Petitioners' Response to the Second Supp. Questionnaire, at 4.

III. TARGETED DUMPING ISSUES

Comment 23: Targeted Dumping

Comment 23.A: Whether the Department Should Reject the Targeted Dumping Allegation Filed by Bridgestone

GPX/Starbright and TUTRIC argue that while the Department correctly concluded that Starbright was not found to have targeted dumping, Bridgestone's allegations should have been rejected for failing to allege legitimate reasons for price differentials. GPX/Starbright and TUTRIC assert that, in the final determination, the Department should make clear that a targeted dumping allegation must account for case-specific industry circumstances and sales practices (*e.g.*, that subject merchandise is not a "commodity" product, differences between original equipment and after-market sales, branding, sales quantities, customer types, LOTs, distribution channels, volume of purchases, time, etc.) and that mechanical tests divorced from industry and commercial realities are categorically not sufficient to establish targeted dumping.[129]

Bridgestone asserts that the Department should reject GPX/Starbright and TUTRIC's arguments regarding targeted dumping. Bridgestone maintains that the "P/2 Test" it utilized in its allegation already takes full account of all factors affecting price comparability required under the statute. Bridgestone argues that other variables, such as channel of distribution, customer categories, and "brand distinctions" are not characteristics that the Department takes into account when matching sales in the AD calculations, and there is no reason why it should do so in a targeted dumping analysis.[130] Bridgestone argues that there is no requirement in the statute or in the SAA requiring intent, or justification for the existence of patterns of price differences. Accordingly, Bridgestone argues that after making all adjustments to prices required by the statute, the Department should not entertain arguments or explanations for why such patterns of price differences exist.

Department's Position: GPX/Starbright and TUTRIC have taken issue with the Department's acceptance of Bridgestone's targeted dumping allegation. Given the Department's limited experience with targeted dumping,[131] we accepted Bridgestone's allegations based on the P/2 test for purposes of initiating an analysis as to whether respondents engaged in targeted dumping. Given that the P/2 test was the most recently applied targeted dumping analysis employed by the Department, at the time Bridgestone filed its targeted dumping allegation, it was reasonable for the Department to analyze Bridgestone's allegation under this standard.[132]

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[129] *See e.g., LWRP-PRC 01/30/08, AK Steel (1999), PPG (1991),* and *CFS-Korea 10/25/07* IDM at Comment 1.

[130] *See CFS–Korea 10/25/07* IDM at Comment 1.

[131] *See e.g. Nails–PRC 06/16/08* IDM at Comment 1.

[132] The Department notes that it initiated a separate process to seek further comments from the public on its targeted dumping methodology, including what standards, if any, the Department should adopt for accepting an allegation of targeted dumping. *See TD Methodology*.

Notwithstanding our rejection of GPX/Starbright and TUTRIC's argument that the Department improperly accepted Bridgestone's targeted dumping allegation, we recognize that there may be some merit to GPX/Starbright and TUTRIC's argument that other factors not related to targeting, such as LOT or circumstances of sale, may have an impact on price comparability in a targeted dumping analysis. While the statute and the regulations provide considerable guidance on comparing U.S. prices to NV for determining dumping, they provide no comparable guidance in comparing different sets of U.S. prices for purposes of determining the existence of targeted dumping. The SAA at 843 states that "the Administration intends that in determining whether a pattern of significant price differences exist, Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another."

In the instant case, GPX/Starbright and TUTRIC argue that a price pattern may be a result of other factors such as LOT or product branding. However, the data that would allow the Department to make an accurate LOT adjustment for GPX/Starbright and TUTRIC are not on the record even if we considered it appropriate to take this factor into account. We find a similar situation for the other PRC respondents. Furthermore, based on the record, there is no reasonable manner in which the Department could employ facts otherwise available under section 776 of the Act to account accurately for LOT.

With respect to product branding, the Department already considers differences in the physical characteristics of the merchandise for establishing unique products for purposes of comparison to NV. In addition, the data that would allow the Department to make a determination of the effects of branding on price for GPX/Starbright and TUTRIC or any other respondent are not on the record even if we considered it appropriate to take this factor into account.

Finally, with respect to the other factors that GPX/Starbright and TUTRIC argue may affect a price pattern such as differences in sales volumes or differences in sales terms, we note that by using the net U.S. price in our price comparisons under the new targeted dumping methodology, we have already taken into account any volume rebates or other sales term adjustments to the gross unit prices reported by GPX/Starbright and TUTRIC and the other respondents.

Comment 23.B: Whether the Targeted Dumping Test Used by the Department is Flawed and Should be Replaced

First, Bridgestone maintains that there is no statistical justification for the Department's test and that the various cutoffs chosen by the Department (*i.e.*, one standard deviation and 33 percent for the standard deviation test and 5 percent for the price gap test) are arbitrary. Bridgestone claims that the Department has provided no explanation for why these cutoffs were chosen and advocates a 2-percent threshold in conjunction with the P/2 test. *See* Comment 23.C.

Second, Bridgestone takes issue with the standard deviation test, stating that it performs an incorrect comparison and, thus, fails to properly address whether prices to the targeted customer are lower than prices to non-targeted customers. Specifically, Bridgestone claims that the Department's test compares the average price paid by the targeted customer to the average price paid by all customers, both targeted and non-targeted, and by doing so, has created a biased estimator. Instead, Bridgestone proposes that the Department should compare the average price

paid by the targeted customer to the average price paid by non-targeted customers. In support of this argument, Bridgestone gives a hypothetical example.[133]

Third, Bridgestone argues that the "price gap" test is unnecessary. Bridgestone maintains that if a test finds that the targeted price differs significantly from the non-targeted prices, then that result establishes a pattern of prices that differ significantly. Bridgestone contends that the price gap test provides no additional information about the occurrence of targeting and adds an arbitrary element to the analysis. In support of this argument, Bridgestone gives a hypothetical example.[134]

Fourth, Bridgestone also argues that the *Nails* test, unlike the P/2 test, frustrates the statutory purpose of ensuring that dumping margins are not masked through offsets. According to Bridgestone, the targeted dumping provision of the statute[135] was designed to limit the problem of masking that occurs under the average-to-average methodology whereby higher priced sales of a product would, through averaging, conceal dumping margins attributable to lower priced sales. Bridgestone asserts that under the statute, the targeted dumping methodology is applied when there is a pattern of significant price differences that cannot be taken into account under the average-to-average method.[136]

Bridgestone maintains that when the URAA was enacted, zeroing was the established practice and the average-to-average calculation method did not permit offsets, with the exception of limited instances. Bridgestone states with the elimination of zeroing in investigations,[137] high-priced sales will offset dumped sales within a CONNUM and margins for entire CONNUMs will be permitted to offset one another, thereby masking dumping. Bridgestone argues that the targeted dumping methodology was designed to address this masked dumping, but that the masking has been exacerbated greatly and the targeted dumping methodology has not accomplished its statutory intent. Bridgestone argues that in order to achieve this statutory purpose the Department must broadly construe what constitutes a "pattern of significant price differences" that can be addressed under the targeted dumping provision. Bridgestone asserts that the *Nails* test is inconsistent with the statute[138] because it fails to apply the average-to-transaction methodology even when dumping margins "clearly" are masked by offsets. Moreover, Bridgestone argues that the *Nails* test adopts a very narrow definition of the phrase

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[133] *See* Bridgestone Case Brief at 38-40 for a detailed explanation of this example.

[134] *See* Bridgestone Case Brief at 39-40 for a detailed explanation of this example.

[135] *See* section 777A(d)(1)(B) of the Act.

[136] *See Id.*

[137] *See AD Proceedings - LTFV Weighted Average Margin Calculation* (Commerce announced that it will begin permitting credits from non-dumped sales to offset margins for dumped sales (*i.e.*, "zeroing" will be eliminated) in the "A2A" methodology).

[138] *See* section 777A(d)(1)(B)(i) of the Act.

"patterns of significant price differences" that would exclude most situations otherwise satisfying any common sense meaning of that phrase. Petitioners support Bridgestone's position. Guizhou Tyre and Xugong argue that the Department should affirm its preliminary targeted dumping findings. Guizhou Tyre argues that the *Nails* test is capable of identifying targeted dumping as can be seen in the targeted dumping results in this case and the *Nails* case.

Guizhou Tyre contends that there is statistical justification for the Department's test and that the applied cutoffs, such as a distance of one standard deviation below a weighted-average price, are not arbitrary. Guizhou Tyre argues that using a 33-percent threshold is also by no means arbitrary because the Department already uses the same threshold in the NME context in determining whether purchases from ME suppliers are the best available information for SVs. Guizhou Tyre states that the 5-percent significant price differential standard is too low, but that whatever price differential standard is adopted by the Department must be subject to rebuttal based upon market-specific information. However, Guizhou Tyre also states that in this case, market information demonstrates that a 5-percent price differential is consistent with standard industry practice to reward large-volume customers and should not be confused with evidence of targeted dumping.

Guizhou Tyre asserts that the *Nails* test appropriately seeks to address the statutory criteria[139] in proper sequence because the first step addresses the "pattern" requirement using standard deviation and the second step addresses the "significant difference" requirement using the gap test. According to Guizhou Tyre, Bridgestone does not recognize that, before assigning prices to targeted and non-targeted groups, a test for targeted dumping must answer the fundamental question of whether there is indeed a "pattern" of prices. Guizhou Tyre maintains that standard deviation is a common and widely used statistical measurement of data dispersion and is being used as such in this case to identify price dispersion. Guizhou Tyre argues that Bridgestone's hypothetical example has several problems and it modifies the example to demonstrate that the *Nails* standard deviation test identifies significant price differentials and allows for further analysis of allegedly targeted dumping.[140]

GPX/Starbright and TUTRIC argue that the Department should not eliminate the standard deviation part of its targeted dumping test because it represents a positive step in the direction of a reasonable and statistically defensible test – the use of standard deviation to measure the degree of inherent variability in the underlying price data. However, GPX/Starbright and TUTRIC propose an alternative test. *See* Comment 23.D.

Department's Position: To implement the statutory provisions on targeted dumping, the Department needs a definition of "pattern" because the statute requires that we identify a pattern of export prices. For this purpose, the Department defines "pattern" as prices that distinguish the alleged target from others and, further, that the prices are "low" on CONNUMs that account for at least 33 percent of sales to the alleged target. "Low," for a given CONNUM, is defined to be

[139] *See* Section 777A(d)(1)(B) of the Act.

[140] *See* Guizhou Tyre Rebuttal Brief at 21-22.

at least one standard deviation below the average market price, *i.e.*, the weighted-average market price across all customers who purchased that CONNUM in the POI.
We consider the price threshold of one standard deviation below the average market price as a reasonable definition of "low" because (1) it is a measure of "low" relative to the spread or dispersion of prices in the market in question, and (2) it strikes a balance between two extremes, the first being where any price below the average price is sufficient to distinguish the alleged target from others (as may be the case under the P/2 test), and the second being where only prices at the very bottom of the price distribution are sufficient to distinguish the alleged target from others.

As stated in our Targeted Dumping Determination, in this investigation we conducted a targeted dumping analysis based on the test used in *Nails PRC*. For the reason stated in *Nails–PRC 06/09/08* IDM at Comment 5, the Department revised the *Nails* targeted dumping methodology to calculate the weighted-average prices and the standard deviation elements of the pattern test. As discussed further under *Nails–PRC 06/09/08* IDM at Comment 5, we consider the requirement that the "low" prices under the standard deviation test constitute at least 33 percent of the sales volume to the alleged target to be a reasonable threshold for establishing a pattern indicative of targeted dumping under section 777A(d)(1)(B)(i) of the Act.

Additionally, as stated in *Nails–PRC 06/09/08* IDM at Comment 5, we have revised our targeted dumping methodology in this investigation to aggregate the pattern test results on the basis of volume, rather than value, across different products (CONNUMs).[141] A volume-based aggregation method is free from being skewed by potentially dumped, or targeted dumped, sales values and, therefore, provides an appropriate measure. While we recognize that there may be certain cases where aggregating the pattern test results on the basis of value may be more appropriate (*e.g.*, in cases involving custom-made merchandise with large numbers of disparate parts, components and subassemblies where units of measure in these investigations cannot be reasonably converted), in these investigations we have a consistent unit of measure for aggregation on the basis of volume.

The Department also disagrees that 33 percent is not relevant to determining whether targeted dumping has occurred. Pursuant to section 777A(d)(1)(B)(i) of the Act, the Department must establish that there is a pattern of export prices that differ significantly in order to find that targeted dumping has occurred. Thus, the Department applies the standard deviation test to determine, on a CONNUM-specific basis, which sales meet the "low price" requirement of a pattern. Next, we must determine what level of these low-priced sales is sufficient to demonstrate a pattern of targeted dumping. We consider the requirement under our targeted dumping methodology that the "low" prices constitute at least 33 percent of the sales volume to the alleged target to be a reasonable threshold for establishing a pattern indicative of targeted dumping. Accordingly, we find this standard to be consistent with the pattern requirement of section 777A(d)(1)(B)(i) of the Act.

[141] We have also applied this volume-based method to the calculation of the weighted-average prices and standard deviation elements of the pattern test, as well as the derivation of the weighted-average price gaps and the aggregation of the price gap test results.

The price gap test determines whether the price gap associated with the alleged target is significant relative to the price gaps in the non-targeted group "above" the alleged target price gap. That is, using only the sales that meet the standard deviation requirement, where at least 33 percent by volume of the price charged to the alleged target is lower by at least one standard deviation than the average market price, we calculate the difference between the average price to the alleged target and the next higher average price to a non-targeted customer, region, or time period for a given CONNUM. This difference is compared to the average price gap, weighted by volume, in the non-targeted group, at prices above the price to the alleged target. If the difference exceeds the average price gap found in the group of non-targeted prices, then the difference in the price to the alleged target for that CONNUM is found to be significant. If the volume of sales for which the price differences are found to be significant meets the 5-percent threshold, then the customer, region, or time period is deemed to have been targeted.

Accordingly, the price gap test itself is not based on any bright-line standard or threshold because significance is defined in terms of the price gap associated with the alleged target, when this price gap is greater than the average price gap in the non-targeted group. In this regard, we have not set a bright-line standard or threshold, such as a fixed percentage, for measuring the price gap.

On the other hand, we consider a 5-percent share of sales to the alleged target, by volume, that are found to be at prices that differ significantly to be a reasonable indication of whether or not the alleged targeting has occurred. The use of this threshold must be considered together with the standard deviation test and the 33-percent sales volume threshold for determining whether there is a pattern as required by the statute. We believe that the combination of the pattern and gap tests meets the statutory criteria for discerning targeted dumping.

Comment 23.C: Whether the Department Should Use the "P/2 Test" to Test for Targeted Dumping

Bridgestone asserts that the Department should identify targeted dumping in this investigation using the same "P/2 test" that was accepted in *CFS- Korea 10/25/07*. Bridgestone claims that the P/2 test, unlike the *Nails* test, utilizes non-arbitrary statistical tests, and furthers the statutory goal of ensuring that dumping is not masked. Accordingly, the Department should calculate all dumping margins in this case using the average-to-transaction methodology set forth at section 777A(d)(1)(B) of the Act. Bridgestone argues it has demonstrated there are examples of obvious patterns of significant price differences – such as where one customer always pays twice as much for the same product as a second customer – that would not be considered "targeted dumping" under the *Nails* test. As such, Bridgestone asserts that the *Nails* test's restrictive method is inconsistent with section 777A(d)(1)(B)(i). Bridgestone maintains that the P/2 test, unlike the *Nails* test, can detect obvious patterns of significant price differences and can further the statutory goal of avoiding the masking of dumping margins. Petitioners support this position.

Bridgestone also argues that the Department should use a threshold of two percent to conclude that price differences between targeted and non-targeted purchasers or regions reflect distortions caused by targeting and are thus "significant." It argues that in all other contexts where the Department compares prices in antidumping investigations, a price difference is deemed

"significant" where it exceeds two percent (*e.g.*, a difference of less than two percent is considered *de minimis*[142]). Bridgestone maintains that as demonstrated in its targeted dumping allegation using the P/2 Test, the Department should make an affirmative finding of targeted dumping with respect to each respondent. Petitioners support this position.

Guizhou Tyre and Xugong argue that the Department should not change its *Nails* targeted dumping methodology and apply the P/2 test. Guizhou Tyre maintains that the P/2 test does not correctly address the statutory criteria in the correct sequence, lacks relevance, and objectivity, and that it has been recently replaced by the *Nails* test. Guizhou Tyre asserts that the P/2 test is out of sequence because it improperly reverses the test by identifying the pattern by virtue of a pre-determined price differential. Guizhou Tyre states that the Department's use of a 2-percent threshold in unrelated contexts does not justify using it to assess targeted dumping and that it is too low for use in this investigation. Guizhou Tyre maintains that any test for significance must be sufficiently flexible to consider market and industry practices and points to its business proprietary sales information to support its arguments. GPX/Starbright and TUTRIC argue that a fixed 2-percent test does not represent standard and appropriate statistical techniques and provides three hypothetical examples to support this argument.[143]

Department's Position: As explained in detail in *Nails PRC–06/6/08* IDM at Comments 1, 7, and 8, the Department has declined to continue using the P/2 test. The Department accepted the P/2 test for purposes of considering Bridgestone's targeted dumping allegation, but the Department emphasized that it was doing so "without endorsing the Bridgestone's test standards and procedures as a general practice."[144] The Department also stated that it was not establishing certain elements of the P/2 test as precedent for targeted dumping analysis. For example, with respect to the 2-percent threshold for determining significant price differences, while the Department accepted that the small price differences observed were significant in the *CFS-PRC AD 04/09/07* market, "{a}s a general matter, the Department has not adopted any specific percentages suggested by parties in their contentions regarding the definition of significance."[145]

We disagree with Bridgestone and Petitioners that the P/2 test is more accurate and reliable than the new targeted dumping methodology. The P/2 test collapses the pattern and significant difference requirements, which are analyzed separately under our new methodology. In so doing, the P/2 test may find targeted dumping in many cases when arguably no such dumping is occurring. The P/2 test relies on a single, bright-line price threshold of two percent to define targeted dumping that does not account for price variations specific to the market in question. As described above under Comments 23.B, the standard deviation test uses a measurement common in statistical analysis to provide a more appropriate and balanced threshold for

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[142] *See* section 733 (b)(3) of the Act.

[143] *See* GPX/Starbright and TUTRIC Rebuttal Brief at 16-18.

[144] *See CFS–PRC-AD 04/09/07* IDM at General Comment 2.

[145] *See CFS–PRC-AD 04/09/07* IDM at General Comment 3.

identifying a pattern and the gap test provides a more reasonable threshold for identifying significant price differences. While we recognize that the Department's new targeted dumping methodology may require further refinement, which we seek to accomplish through *TD Methodology* and application in subsequent investigations, we consider it to be statutorily and statistically superior to the P/2 test for identifying targeted dumping in this final determination.

Comment 23.D: Whether the Department Should Use the "T-Test" to Test for Targeted Dumping

GPX/Starbright and TUTRIC argue that the best way to address the statute's requirement for a "pattern of U.S. prices…that differ significantly among purchasers, regions, or periods of time"[146] is for the Department to employ readily available standard statistical techniques to determine the existence of targeted dumping. GPX/Starbright and TUTRIC assert that the Department's regulations make explicit that this pattern of significant price differences must be demonstrated through the use of "standard and appropriate statistical techniques."[147]

Specifically, GPX/Starbright and TUTRIC argue there are several advantages to building upon existing statistical techniques and, thus, rather than using a single standard deviation, the Department should use a "T-test" as a more appropriate statistical test. GPX/Starbright and TUTRIC conclude from examples they present that price deviation can only be considered large in conjunction with some approach that properly reflects the sample variation and a fixed value rule (*i.e.* 2 percent) for ascertaining "targeted dumping" (or deeming pricing deviations to be significant) is inherently unreliable. GPX/Starbright and TUTRIC argue that the T-test is (1) a representation of mainstream statistics and identifies how it can be used to meet the statutory and regulatory requirements and, 2) the "T-test" can be easily implemented since all major statistical programs include this standard test. GPX/Starbright and TUTRIC assert that their proposed approach is statistically rigorous and flexible, can be used to capture differences in the sample sizes, and can be adjusted to reflect different levels of confidence in the conclusions being drawn. While GPX/Starbright and TUTRIC contend that the T-test can be used to identify targeted dumping, they propose an alternative "shortcut" version of it that could also be incorporated into the final determination.[148]

Department's Position: The difference-in means test generates a t-statistic used to test the null hypothesis that the two independently drawn random samples are from the same normal distribution. The null hypothesis is rejected when the difference in sample means is different from zero after accounting for sampling error. However, saying that the difference in sample means is (statistically) different from zero is not at all the same as saying that the difference in sample means is significant. Since the latter is what the statute requires, *i.e.*, prices that differ significantly across purchasers, regions or time periods, the use of the difference-in-means test

[146] *See* section 777A(d)(1)(B) of the Act.

[147] *See* 19 CFR 351.414(f)(1)(i).

[148] *See* GPX/Starbright and TUTRIC Rebuttal Brief at 19-23.

would not be appropriate in the context of a targeted dumping analysis. Thus, for the reasons discussed in Comments 23.B and 23.C above, it is reasonable for the Department to continue to use the *Nails* test in this case.

Comment 23.E: If the Department Continues to Use its *Nails* Test, Whether it Should Permit Certain Margins to be Offset with Negative Margins

Bridgestone argues that even where there is no targeted dumping, the statute nonetheless requires the Department to calculate dumping margins without applying offsets for non-dumped sales. Bridgestone maintains that if the Department were to permit negative margins calculated for the non-targeted sales grouping to offset positive margins for the targeted sales, it would mask targeted dumping and thereby defeat the purpose of the targeted dumping provision. Furthermore, Bridgestone maintains that the Department stated that "when calculating the weighted-average margin, we combined the margin calculated for the targeted sales with the margin calculated for the non-targeted sales, without offsetting any margins found among the targeted sales."[149] Bridgestone states that there appears to be an error in the SAS program which would permit such offsets to occur and that such offsets would mask targeted dumping and would defeat the very purpose of the targeted dumping provision. Bridgestone argues that the Department should correct this apparent ministerial error.

Bridgestone argues that even for those exporters where the Department applies the average-to-average margin calculation methodology, dumping margins must be calculated without applying offsets for non-dumped sales. Bridgestone claims that the plain meaning of the statute, as well as its structure and purpose, demonstrates Congress' clear intent on this issue, and that intent is to require the Department not to apply such offsets. Specifically, Bridgestone contends that there is no basis to adopt inconsistent interpretations of section 771(35)(a) of the Act in investigations and administrative reviews and that section 777A of the Act would become meaningless if offsets were permitted.

Guizhou Tyre argues that the Department should reject Bridgestone's request to artificially treat negative price comparison results as if they were zero, an unlawful calculation methodology commonly referred to as "zeroing." Guizhou Tyre points out that the WTO has repeatedly condemned this practice, and the Department has stated explicitly that as a matter of policy it will no longer apply zeroing in original investigations where comparisons are made on an average-to-average basis.[150] There is no basis for the Department to depart from this policy in this investigation.

Department's Position: Bridgestone's proposed methodology and SAS change are not consistent with allowing offsets when using average-to-average comparisons for non-targeted sales. However, consistent with the Department's December 27, 2006, modification to its methodology for determining weighted average dumping margins,[151] the Department does allow

[149] *See* Targeted Dumping Determination at 5.

[150] *See AD Proceedings - LTFV Weighted Average Margin Calculation.*

[151] *See id.*

offsets when using average-to-average comparisons for non-targeted sales in investigations. Specifically, in the *Final Modification 12/27/06*, the Department stated that it "will no longer make average–to-average comparisons in investigations without providing offsets for non-dumped comparisons." Therefore, in this investigation, when calculating a respondent specific weighted-average margin, we combined the margin calculated for the targeted sales using the average-to-transaction methodology[152] with the margins calculated for the non-targeted sales using the average-to-average methodology.[153] In combining the margins for the targeted and non-targeted U.S. sales databases, we did not offset any margins found among the targeted U.S. sales as stated in Targeted Dumping Determination at 5. Thus, the SAS language does not contain an error as Bridgestone and Petitioners allege and the Department has not made the proposed changes.

Comment 23.F: Treatment of Xugong's Sales

Bridgestone argues that, in implementing the targeted dumping methodology, the Department should apply the average-to-transaction methodology to *all* of Xugong's sales, both targeted and non-targeted. Bridgestone believes that Xugong's targeting behavior was pervasive,[154] and the average-to-transaction method is the best benchmark for gauging the fairness of Xugong's pricing practices. Bridgestone maintains that, even if the Department does not apply the average-to-transaction methodology to Xugong's non-targeted sales, it must at the very least apply that methodology to all of Xugong's sales to the targeted customers and regions. Bridgestone asserts that there is no basis under the statute or regulations to limit application of the average-to-transaction methodology to only subsets of sales to the targeted customer or region. Bridgestone argues there must be symmetry between (1) the level at which targeted dumping is identified, and (2) the level at which the targeted dumping remedy is implemented. Bridgestone maintains that it does not make sense to require that a customer or region pass the two-prong test, but then find that only a portion of the sales to that customer or region were "targeted." Bridgestone contends that the Department should find that *all* sales to a targeted customer or region are "targeted" for purposes of 19 CFR. 351.414(f)(2). Petitioners support this position.

Xugong argues that, consistent with the statute, regulations, and prior practice, the Department should continue to limit the application of the average-to-transaction methodology to the targeted transactions. Xugong asserts that its targeted dumping was not pervasive and as such, does not justify applying the average-to-transaction method to any non-targeted sales. It argues that its margin did not change when the Department re-calculated it using the *Nails* test, which demonstrates that the different pricing patterns among regions identified by Bridgestone have no impact on its margin calculation. Xugong states two conclusions can be drawn from this analysis: (1) targeted dumping exists among regions for Xugong, but it has no distortive effect on

[152] Consistent with 19 CFR 351.414(f)(2).

[153] Consistent with 19 CFR 351.414(d)(1.

[154] *See* Bridgestone Case Brief at 48.

the Department's margin calculation and does not justify changing margin methodologies; or (2) the price differentials among regions identified by Bridgestone are in fact not due to targeted dumping but are due to other legitimate business reasons, because, unlike targeted dumping, they do not distort the calculation of the margin. Xugong argues that the price differences among regions identified by Bridgestone can be taken into account using the Department's normal margin methodologies.

Department's Position: We disagree with Domestic Parties. The Department's regulations at 351.414(c)(1) state that "{i}n an investigation, the Secretary will normally use the average-to-average method." Additionally, the Department's regulations at 351.414(f)(1) state that, for targeted dumping "{w}here the criteria for identifying targeted dumping … are satisfied, the Secretary normally will limit the application of the average-to-transaction method to those sales that constitute targeted dumping…." In the preamble to the *AD/CVD Final Rule*[155] the Department makes it clear that it envisions a limited application of the average-to-transaction method to sales found to be targeted.[156]

The preamble to *AD/CVD Final Rule (1997)* does, as Bridgestone points out, state that "the Department contemplates that in some instances it may be necessary to apply the average-to-transaction method to all sales to the targeted area, such as a region or customer, or even all sales of a particular respondent" and that "where a firm engages extensively in the practice of targeted dumping, the only adequate yardstick available to measure such pricing behavior may be the average-to-transaction methodology."[157] However, the preamble to *AD/CVD Final Rule (1997)* also states that this will only be done, "{f}or example, where the targeted dumping practice is so widespread it may be administratively impracticable to segregate targeted dumping." In the case of Xugong, it is not administratively impracticable to segregate targeted dumping. Nor do we find Xugong's targeted dumping to be so extensive that the only adequate way to measure such pricing is the average-to-transaction methodology.[158] Therefore, consistent with the Department's regulations and *Nails–PRC 06/09/08*, we will only apply the average-to-transaction methodology to those *sales* found to be targeted.

Comment 23.G: Programming Errors

Bridgestone asserts that if the Department continues to apply the *Nails* test, it must correct two ministerial errors in the SAS program. The first error Bridgestone identifies is the assignment of passing or failing the standard deviation test.[159] Petitioners support this position.

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[155] *See AD/CVD Final Rule (1997)* at 27375.

[156] *See* 19 CFR 351.414(f)(2).

[157] *See AD/CVD Final Rule (1997)* at 27375.

[158] *See* Xugong Final Analysis Calculation Memo*; See also* Targeted Dumping Determination at 1.

[159] *See* Bridgestone's Case Brief at 45-46 for a detailed description of this business proprietary argument.

The second error Bridgestone alleges is in the Department's calculation of the weighted-average price gap between non-targeted sales. Bridgestone asserts that while the Department stated that "{e}ach of the price gaps in the non-targeted group was weighted by the combined sales value associated with the pair of prices to non-targeted customers that make up the price gap,"[160] its actual calculation and the corresponding SAS language do not accomplish this stated objective. Bridgestone asserts that this error should be corrected and that, once it is, Xugong's sales to a certain region and to specific party/ies pass both the "standard deviation test" and the "price gap test."[161] Bridgestone argues that in its final determination the Department should include Xugong's sales to a certain region and to specific party/ies among the "targeted" set of sales. Petitioners support this position.

Department's Position: With regard to the alleged error in the standard deviation test, we agree with Bridgestone. There is a problem in the standard deviation test with the way in which we used SAS to merge the data in question. We have fixed this in the margin programs for all Respondents for these final determination. *See* TUTRIC Final Analysis Calculation Memo, Xugong Final Analysis Calculation Memo, Starbright Final Analysis Calculation Memo, and Guizhou Tyre Final Analysis Calculation Memo.

With regard to the second alleged programming error, we disagree with Bridgestone. As was our intention, we use pairs of prices to determine the price gap and the relevant SAS language looks at the value difference between prices or what is referred to as the price gap. Specifically, the program begins by calculating the price gap between non-targeted weighted-average customer prices[162] 1 and 2. Then it calculates the price gap between non-targeted weighted-average customer prices 2 and 3, then non-targeted weighted-average customer prices 3 and 4, and so on until the program has calculated a price gap for all the non-targeted weighted-average customer prices in question. The SAS program then multiplies each non-targeted price gap by the sum of the quantity associated with the two non-targeted weighted-average customer prices used to calculate the weighted-average price gap. Next, the SAS program sums the weighted-average price gaps for the line items in question and divides them by the sum of the quantity of sales used to calculate the weighted average price gaps. Thus, the SAS language used to execute the price gap test fulfills the Targeted Dumping Determination statement that "{e}ach of the price gaps in the non-targeted group was weighted by the combined sales value associated with the pair of prices to non-targeted customers that make up the price gap."

Comment 23.H: Changes based on *TD Methodology*

Xugong argues that the Department should not make changes to its targeted dumping test based on responses to the *TD Methodology*'s request for comments. Xugong argues that any comments

[160] *See* Targeted Dumping Determination at 5.

[161] *See* Bridgestone's Case Brief at 4 and 49 – 50 for further detail of this business proprietary argument

[162] The "weighted-average customer price" is the weighted-average (by quantity) price of a CONNUM for each customer.

submitted in response to the *TD Methodology*'s request would hinder Xugong's ability to comment at this stage of the investigation. Xugong maintains that the Department has not yet finalized its standard for defining region and for treating multiple allegations of targeted dumping and the Department has provided no explanation in the interim on how it intends to apply this test to Xugong. Xugong argues that any application of a revised test in this investigation would be unlawfully retroactive and illegal.

Department's Position: The Department is still in the process of analyzing comments received in response to the *TD Methodology*. Thus, we have not incorporated changes to the targeted dumping methodology based on comments received in response to the *TD Methodology* for this final determination.

IV. CRITICAL CIRCUMSTANCES

Comment 24: Critical Circumstances

Petitioners assert that the Department should find critical circumstances for all respondents. Petitioners maintain that in considering the existence of critical circumstances, the Department should have used number of tires, not weight, in determining whether imports have been massive. First, Petitioners point out that the Department relied exclusively on respondents' data in its findings of critical circumstances. According to Petitioners, the Department should request CBP to provide entry information for the mandatory respondents and determine which data (*i.e.*, respondents' reported data or data submitted by Petitioners) should be used for the final determination. Petitioners contend that TUTRIC's data are not reliable and should not be used in determining the existence of critical circumstances.[163] They assert that, even if the Department declines to change its methodology for performing calculations it should use Petitioners' data for TUTRIC because the preliminary TUTRIC determination fails the "substantial evidence" test. Finally, Petitioners argue that weight can easily mask increased units because tires can differ greatly in size.

Guizhou Tyre argues that the Department should affirm its preliminary critical circumstances determination because imports during the relevant period were not "massive." Guizhou Tyre asserts that in assessing whether imports were "massive" during the relevant period, the Department properly relied on the respondents' reported shipment data.[164] Guizhou Tyre submits that the shipment data reported by all respondents are specific to the subject merchandise and verifiable. Guizhou Tyre states that its data reconciles precisely to its verified sales data.[165] It maintains that the data underpinning Petitioners' critical circumstances allegation are unreliable because it is not clear that they relate specifically to OTR Tires and, according to

[163] Petitioners' specific arguments regarding why TUTRIC's data should not be used are business proprietary and cannot be summarized here. *See* Petitioners' Case Brief at 30.

[164] Guizhou Tyre's Rebuttal Brief at 30, referencing AD Manual at Chapter 10 page 5 (describing the "collection and verification of data" from respondents to support the critical circumstances analysis).

[165] Guizhou Tyre cites Guizhou Tyre Verification Report at 14-15.

Guizhou Tyre, they include non-subject merchandise. Guizhou Tyre also points out that the ITC concluded that the Petitioners significantly overstated the volume of subject imports during the POI.[166] Finally, Guizhou Tyre contends that the Department properly determined that weight was the appropriate measure for assessing whether imports were "massive" during the relevant period presumably, at least in part, because weight was the unit of measure upon which Petitioners' based their critical circumstances allegation.

Starbright and TUTRIC argue the Department should affirm its preliminary critical circumstances determination that TUTRIC and Starbright's imports have not been massive and that critical circumstances do not exist with respect to shipments from these two companies. Starbright and TUTRIC assert that Petitioners did not claim that number of tires was an appropriate measure for determining whether imports were massive when they filed their critical circumstances allegations on March 11, 2008, and that they have not provided a legitimate reason why the Department should examine number of tires at this point in the investigation. Moreover, Starbright and TUTRIC contend that the number of tires shipped is not an appropriate method for determining whether imports have been massive because the weight of subject OTR Tires varies significantly by model and an analysis based on number of tires imported could reflect a change in product mix, rather than the existence of massive imports. Starbright and TUTRIC maintain that analyzing massive imports based on weight will necessarily reveal whether there really was a significant increase in shipments and is consistent with Department practice.[167]

Next, Starbright and TUTRIC assert that TUTRIC's data are reliable and should be used. [168] They also argue that the evidence of the record confirms that TUTRIC's shipments did not increase by massive amounts during the relevant period.[169] Starbright and TUTRIC maintain that the company-specific data submitted by Petitioners do not qualify as "substantial evidence." They allege that, despite Petitioners' suggestion that these data were "compiled from U.S. Customs Automated Manifest System data," they were not, and they claim further that Petitioners did not obtain official CBP import data for subject merchandise on an exporter-specific basis. Starbright and TUTRIC argue that Petitioners' data must have been obtained from a private (and undisclosed) source, and that there are questions as to their reliability. Starbright and TUTRIC contend that any "discrepancy" between the data submitted to the Department by TUTRIC (based on verifiable data from company books and records) and Petitioners' data arises from inaccuracy in Petitioners' data.

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[166] Guizhou Tyre cites Petition at Exhibit 9, Page 1 (claiming 15 million subject tires were imported in 2006) and ITC Prelim. at 14 (estimating that 3.4 million subject tires were imported in 2006).

[167] *See Sawblades- Korea 05/22/06* IDM at Comment 9.

[168] Starbright and TUTRIC state that TUTRIC is precluded from submitting new factual information to the Department at this time, but notes that TUTRIC's EP database has been verified and that TUTRIC's critical circumstances response was based on verifiable records reflecting shipments of subject merchandise to the United States.

[169] *See* Starbright and TUTRIC joint rebuttal brief at 24-25.

Xugong argues that the Department should continue to determine that its imports were not massive pursuant to 19 CFR 351.206, and that critical circumstances do not exist for the final determination.[170] Xugong claims that Petitioners do not provide any reasonable basis upon which the Department should change its standard methodology for reviewing Xugong's reported import data. Xugong argues that neither the Petitioners' data source nor CBP entry data are appropriate, and that both are counter to the Department's standard methodology for determining whether Xugong's imports were massive. Specifically, Xugong asserts that the neither of these two data sources provides information specific to the merchandise under consideration[171] because these data would include both in-scope and out-of-scope merchandise. Xugong maintains that its reported data should be used because they do not suffer from the same deficiency since they are limited to in-scope merchandise, and that there is no record evidence that Xugong's reported data were not accurate.

Department Position: Parties have raised two broad issues with regard to critical circumstances. The first issue concerns the appropriate data source to use in determining if imports were massive. The second issue concerns the appropriate unit of measure (*i.e.*, number of tires or kilograms) to be used in assessing whether critical circumstances exist. With respect to data source, there are two data sources currently on the record: (1) data submitted by Petitioners and; (2) company-specific export data provided by respondents. Petitioners have requested for the first time in their case brief that the Department ask CBP to provide, on an expedited basis, entry information for the mandatory respondents in order to determine which data source is more reliable. However, we do not find it appropriate or feasible to collect new information from CBP at this point in the proceeding, *i.e.*, after case briefs have been filed with the Department.

In their March 11, 2008, allegation of critical circumstances, Petitioners claim that their data show imports of "subject tires." However, it is not clear that this is the case from their submission. Petitioners submitted these data on worksheets (*i.e.*, charts created by Petitioners) and did not place the original source data on the record to support these worksheets. Furthermore, Petitioners' March 11, 2008, submission does not explain their methodology for choosing and sorting the data they submitted, and no other submission on the record explains the Petitioners' methodology. Thus, it is not clear from the record of this investigation what imports the data submitted by Petitioners actually represent. Therefore, Petitioners' data are not an reliable source to use for determining whether imports were massive and, thus, whether critical circumstances exist.

Moreover, the Department's practice, where record data permit, is to conduct its surge analysis on an exporter-specific basis using an exporter's own data.[172] The company-specific data

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[170] *See Critical Circumstance Determination.*

[171] *Id* at 21316.

[172] *See e.g., TTR – Japan 3/12/04* IDM at Comment 2 (finding that that information provided by a respondent in an investigation, such as quantity and value of sales**,** is needed when analyzing a critical circumstances allegation with respect to specific producers); *CLPP – PRC 09/08/06* IDM at Comment 26 and; *Lemon Juice – Argentina 04/26/07* ("The Department requested and obtained from both respondents monthly shipment data from June 2006 through March 2007 in order to determine whether imports were massive.").

received by the Department on March 28, April 1, and April 2, 2008, were for OTR Tires subject to the scope of the investigation. At verification, the Department found no evidence that respondents' data were not reliable. Thus, we find that the company-specific export data that were provided by respondents are the most appropriate and reliable data for assessing whether critical circumstances exist in this investigation.

With respect to the second issue, unit of measure, the Department used weight as the basis of its preliminary critical circumstances determination, specifically stating that "kilograms is the appropriate measurement."[173] As respondents have pointed out, Petitioners also used kilogram as the unit of measure in their March 11, 2008, allegation of critical circumstances. (We note that the Department used weight as the basis of its respondent selection in this investigation.[174]) The Department continues to find that weight is an appropriate measure for determining whether massive imports occurred during the critical circumstance period. Therefore, the Department will continue to use weight (*i.e.*, kilograms) as its unit of measure for assessing whether critical circumstances exist in this investigation.

V. ISSUES SPECIFIC TO GUIZHOU TYRE

Comment 25: Guizhou Tyre's Eligibility for a Separate Rate

Petitioners and Bridgestone claim that Guizhou Tyre has failed to demonstrate an absence of *de facto* government control because the Guiyang State Assets Investment Management Company ("GAMC"), a sole state-owned enterprise that is completely controlled by the people's government of Guiyang Municipality, maintains a controlling interest in Guizhou Tyre via GAMC's ownership of 33.36 percent of GTC stock. Petitioners also claim that the Chinese government is re-asserting state control over "key" enterprises like Guizhou Tyre. Accordingly, Petitioners and Bridgestone argue that Guizhou Tyre should receive the "PRC rate." In support of this argument, Bridgestone and Petitioners cite *Tianjin (1992),* Guizhou Tyre Verification Report, Guizhou Tyre's SRA, Guizhou Tyre's SQR, Guizhou Tyre's January 29, 2008, submission, Petitioners' October 9, 2007, submissions, Petitioners' January 22, 2008, submission, and Bridgestone's January 22, 2008, submission.

Guizhou Tyre argues that it is not subject to *de facto* government control because the record evidence demonstrates that Guizhou Tyre's management exercises independent decision-making with respect to sales, production, and all other relevant business decisions. In support of this argument, Guizhou Tyre cites *Sparklers 05/06/91, Silicon Carbide 05/02/94, TRBs-PRC 02/11/97, HR Carbon Flat Products–PRC 05/03/01, Sawblades 05/22/06,* Guizhou Tyre Verification Report, and Guizhou Tyre's SQR.

Department's Position: In NME antidumping investigations, respondents must affirmatively demonstrate their entitlement to a separate rate by showing "an absence of central government

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[173] *See OTR Tire -AD CC 04/21/08.*

[174] *See* Respondent Selection Memo.

control, both in law and in fact, with respect to exports."[175] In the Preliminary Determination, we found that Guizhou Tyre demonstrated an absence of *de facto* and *de jure* government control over its export activities, and we granted it a separate rate. In this final determination, we have continued to find that Guizhou Tyre (*i.e.*, GTC, GAR and the remaining affiliates, collectively) has met this burden, and have accordingly continued to grant Guizhou Tyre a separate rate.

Neither Bridgestone nor Petitioners have alleged that Guizhou Tyre has failed to demonstrate an absence of *de jure* government control. Instead they argue that Guizhou Tyre has failed to demonstrate an absence of *de facto* government control over GTC's export activities. The proper analysis for *de facto* government control is based upon: 1) whether the respondent sets its own export prices independent of the government, and without approval of the government authority; 2) whether the respondent retains proceeds from its sales and makes independent decisions regarding dispositions of profits/losses; 3) whether the respondent has authority to negotiate and sign contracts; and 4) whether the respondent has autonomy from the government regarding the selection of management.[176]

Petitioners' and Bridgestone's arguments focus on the fact that GAMC owns 33.36 percent of **GTC stock** and that no other single shareholder owns more than one percent of GTC stock. However, the mere existence of government-owned shares in the producer is not a basis for denying separate rate status. The Department has previously granted separate rate status to both wholly state-owned producers[177] and producers, like GTC, whose stock was partially owned by a government state assets management company.[178]

Throughout this investigation, Guizhou Tyre has submitted information on the record demonstrating that there is neither *de jure* nor *de facto* government control over GTC's export activities. Guizhou Tyre has placed evidence on the record demonstrating that GTC's management sets its own export prices without any government participation, including price and sales negotiation correspondence between GTC managers and customers[179] and minutes from a management meeting at which export price decisions were made.[180] Furthermore, at verification we confirmed that Guizhou Tyre is free to set its own sales prices for U.S. and third-country sales, and that Guizhou Tyre does not coordinate its selling and pricing activities with

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[175] *Shandong Huanri (2007)* at 1357 (quoting *Sigma (1997)* at 1405); and *Tianjin (1992)* at 1013-14.

[176] *Shandong Huanri (2007)* at 1359; *see Silicon Carbide 05/02/94* at 22587; and *Sparklers 05/06/91* at 20589.

[177] *See, e.g., TRBs-PRC 02/11/97;* and *HR Carbon Flat Products – PRC 05/03/01* at 22188.

[178] *See, e.g., Sawblades 05/22/06* IDM at Comment 16.

[179] *See* Guizhou Tyre SQR, section A, Exhibit 1; and Guizhou Tyre's AQR at A-15.

[180] The determination of export prices is a responsibility of the GTC management; it is not a matter subject to shareholders' assembly meetings or decisions of the Board of Directors. *See* Guizhou Tyre's SQR, SRA section at 13 and Exhibit A-14-D.

other exporters.[181] In addition, Guizhou Tyre has affirmatively demonstrated, with documentary record evidence, GTC's independence in negotiating and signing contracts[182] as well as its independence in making decisions regarding dispositions of profits/losses.[183] At verification, we found no evidence that GMAC or any government entity exercised control over the daily operations of GTC, nor any indication in GTC's corporate documents that any governmental entity has the authority to exert such control.[184] It is the GTC managers, not GAMC or even the GTC board, who are responsible for the daily operational management of the company.[185]

Contrary to Petitioners' and Bridgestone's arguments, GAMC does not control the selection of GTC's directors or managers. Guizhou Tyre has explained, and the Department has confirmed at verification, that Guizhou Tyre is not required to submit any of its candidates for managerial positions for approval to any government entity at any level.[186] Again, Bridgestone and Petitioners focus on the fact that GAMC owns 33.36 percent of GTC stock and no other single shareholder owns more than one percent of GTC stock. Thus, Bridgestone and Petitioner argue, the Chinese government controls the selection of GTC's management. To the contrary, GAMC is clearly removed from the selection of GTC management based on the following: 1) GTC's board of directors during the POI was elected by GTC shareholders pursuant to cumulative voting procedures designed to protect the interests of GTC's minority shareholders;[187] 2) none of the GTC board members during the POI was a government official, or otherwise had any relationship with the national, provincial or local governments, including SASAC and GMAC;[188] and 3) GTC's board members selected GTC's managers. [189]

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[181] *See* Guizhou Tyre Verification Report at 8.

[182] *See* Guizhou Tyre SRA at 14 and Exhibit 9; and Guizhou Tyre's SQR, SRA section, at Exhibit A-14-C, which includes relevant portions of GTC's Working Rules of the General Manager and a sample contract between GTC and a client, signed by the Vice-Manager of the Sales Department of GTC.

[183] *See* Guizhou Tyre SRA at 16 and Exhibit 8; and Guizhou Tyre's SQR, SRA section, at 13, Exhibit A-14-B, for the resolutions of GTC's Shareholders' Assembly on the disposition of profits of GTC, and Exhibit A-14-E for GTC's 2005 dividend distribution resolution.

[184] *See* Guizhou Tyre Verification Report at 8 and 9.

[185] *See* Guizhou Tyre SQR, SRA section, Exhibit A-13 at Article 134.

[186] *See* Guizhou Tyre's SQR, SRA section, at 12 and Exhibit A-14-A, for minutes of the Shareholders' Assembly on the selection of GTC's directors and minutes of the GTC Board on the selection of GTC's managers; Guizhou Tyre's SQR, section A, at 16; and Guizhou Tyre Verification Report at 9.

[187] *See* Guizhou Tyre's SQR, SRA section, Exhibit A-13 at Article 83.

[188] *See* Guizhou Tyre's SQR, SRA section, at 1-2.

[189] *See* Guizhou Tyre's SQR, SRA section, at 1-2 and Exhibit A-13 at Article 110.

In response to Petitioners' argument about the Chinese government re-asserting control over key enterprises in general, and GTC in particular, the findings of the studies and reports which Petitioners have placed on the record are simply not supported by the factual evidence on the record. Instead, the record evidence confirms that: GTC's export prices are neither set by nor subject to the approval of the government at any level; GTC independently negotiated contracts for its sales and purchases; and GTC has autonomy over the selection of both its management and the distribution of profits, as well as independence with respect to the setting of export prices.

Accordingly, for the final determination, we have granted Guizhou Tyre a separate rate because it has affirmatively demonstrated an absence of both *de jure* and *de facto* government control over its export activities.

Comment 26: Treatment of Guizhou Tyre's Guangzhou Warehouse Expenses

Bridgestone claims that Guizhou Tyre's warehouse costs are movement expenses for U.S. price calculations because 1) the Guangzhou warehouse is not the original place of shipment; and 2) Guizhou Tyre leases the warehouse from an unaffiliated company. Accordingly, Bridgestone argues that the Department should assign a per-kilogram surrogate value for Guizhou Tyre's warehousing expense based on the average number of days that subject merchandise sits in the Guangzhou warehouse, and deduct the warehousing expense from U.S. price as a movement expense. In support of this argument, Bridgestone cites *WBF 11/17/04*, *HFHTs 03/10/04*, *Malleable Pipe Fittings 12/23/05*, Guizhou Tyre Verification Report, and Guizhou Tyre's CQR.

Guizhou Tyre argues that the Department should not add a warehouse expense for Guizhou Tyre's Guangzhou warehouse because the Guangzhou warehouse lease payments are not movement expenses, pursuant to 19 CFR 351.401(e)(2), as the Guangzhou warehouse is the original place of shipment for sales from the Guangzhou warehouse. If the Department decides to make an adjustment for warehousing expenses at the Guangzhou warehouse, then Guizhou Tyre requests that the Department open the record to the parties for the limited purpose of submitting suitable surrogate value information. In support of this argument, Guizhou Tyre cites 19 CFR 351.401(e)(2), Guizhou Tyre Verification Report, and *WBF 11/17/04*.

Department's Position: We have determined that Guizhou Tyre's warehousing costs are movement expenses under 19 CFR 351.401(e)(2) and require an adjustment to U.S. price. At verification, Guizhou Tyre officials explained that the Guangzhou warehouse "was a representative office for GTCIE to coordinate importation, exportation, and customs matters," and that the Guangzhou warehouse is leased from a private unaffiliated company.[190] We disagree with Guizhou Tyre that its Guangzhou warehouse is the "original place of shipment" under 19 CFR 351.401(e)(2). Pursuant to 19 CFR 351.401(e)(1), the Department normally considers the production facility to be the "original place of shipment" except for sales involving unaffiliated resellers, in which case the Department "may treat the original place from which the reseller shipped the merchandise" as the original place of shipment. Guizhou Tyre has not

[190] *See* Guizhou Tyre Verification Report at 10.

reported any sales of subject merchandise involving unaffiliated resellers, so the exception to the normal meaning of "original place of shipment" enunciated in 19 CFR 351.401(e)(1) does not apply to Guizhou Tyre's sales. Thus, pursuant to 19 CFR 351.401(e), the original place of shipment is Guizhou Tyre's production facilities (*i.e.*, its factories located in Guiyang), not the Guangzhou warehouse.

Pursuant to 19 CFR 351.401(e)(2), the Department "will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses." Furthermore, pursuant to section 772(c)(2) of the Act, the Department reduces the price used to establish export price by "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incidental to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." Accordingly, consistent with the Department's practice[191] and in accordance with our regulations, to calculate Guizhou Tyre's final margin, we have included a warehousing movement expense, based on surrogate value data and Guizhou Tyre's reported average days that subject merchandise is in inventory.[192] We valued Guizhou Tyre's warehousing expenses using a rate obtained from the Board of Trustees of Jawaharlal Nehru Port.[193]

Comment 27: Treatment of Guizhou Tyre's Reported Manufacturing Overhead Materials

Petitioners argue that the Department should treat as direct materials all of the 34 materials Guizhou Tyre classified as manufacturing overhead materials because: 1) Guizhou Tyre has failed to demonstrate that the values the Department is using for the overhead SV in this investigation include the materials that Guizhou Tyre has classified as overhead; and 2) these materials are ingredients consumed in the production process of subject merchandise. Should the Department decide not to include as direct materials all of Guizhou Tyre's 34 materials classified as overhead, Petitioners request that the Department include as direct materials the 25 materials used for machinery, equipment, water treatment, lab testing and as seclusion agents because such materials play essential roles in the production process. Petitioners request that the Department use facts available to value the direct materials Guizhou Tyre has classified as overhead by using the ratio between Guizhou Tyre's 2006 overhead and its cost of manufacturing in its reconciliation, and adding this percentage to Guizhou Tyre's reported consumption of all direct materials to account for those excluded as overhead. In support of these arguments, Petitioners cite *Crawfish 04/24/01, Pacific Giant (2002), Glyccine 01/31/01, WBF 11/17/04, ARG 06/09/05, Shrimp 12/08/04, Lighters 05/05/95, Indigo 05/03/00, Sawblades 05/22/06, Pipe-Romania 06/23/00,* Guizhou Tyre Verification Report, Guizhou Tyre's DQR and Guizhou Tyre's SQR. Bridgestone endorses and incorporates by reference Petitioners'

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[191] *See, e.g., WBF 11/17/04* I&D Memo at Comment 48.

[192] *See* Guizhou Tyre Verification Report at 10 and Exhibit 25; and Guizhou Tyre Final Analysis Calculation Memo.

[193] *See* Final SV Memo; *see also HFHTs 03/10/04* at 11381; *Malleable Pipe Fittings 12/23/05* at 76238.

arguments.

Bridgestone argues that, if the Department does not reclassify as direct materials each of the 34 materials classified by Guizhou Tyre as overhead, the Department should, at a minimum, treat the eight materials Guizhou Tyre has described as seclusion agents as an FOP because seclusion agents are essential elements in the production of subject merchandise. Bridgestone submits that the Department should rely on HTS heading 3403 to value seclusion agents. In support of this argument, Bridgestone cites *WBF 11/17/04*, *ARG 10/21/04*, *Bicycles 04/30/96*, Guizhou Tyre Verification Report, Guizhou Tyre's DQR, Guizhou Tyre's SQR, Guizhou Tyre Preliminary Analysis Calculation Memo, Xugong Preliminary Analysis Calculation Memo, and Bridgestone's April 4, 2008, submission.

Guizhou Tyre argues that the Department has no basis for reclassifying any of the 34 materials properly reported as overhead because all of these 34 materials: 1) are classified as overhead in the normal course of Guizhou Tyre's business; 2) are not physically incorporated into subject merchandise; 3) play an insignificant role in Guizhou Tyre's manufacturing operations; and 4) represent an insignificant portion of Guizhou Tyre's manufacturing costs. In support of these arguments, Guizhou Tyre cites *Saccharin 11/15/94*, *Sawblades 05/22/06*, the Petition, Prelim SV Memo, Guizhou Tyre Verification Report, Guizhou Tyre's AQR, and Guizhou Tyre's SQR. In the event the Department classifies any of these 34 materials as direct inputs, Guizhou Tyre requests that the Department reject Petitioners' proposed calculation method because Petitioners' proposal would unfairly double-count Guizhou Tyre's manufacturing overhead costs by including amounts not only for the 34 indirect materials in question, but also Guizhou Tyre's other manufacturing overhead costs such as depreciation, repair and maintenance.

Guizhou Tyre argues that seclusion agents are indirect consumable materials properly classified as overhead because seclusion agents: 1) play an insignificant role in Guizhou Tyre's manufacturing operations; 2) are used in the manufacturing process to prevent mixed rubber from sticking to itself; and 3) are not physically incorporated into the finished product. In support of this argument, Guizhou Tyre relies on *Bicycles 04/30/96*, *Persulfates 02/02/05*, *Urea 02/21/03*, *Saccharin 11/15/94*, *ARG 10/21/04*, Guizhou Tyre Verification Report, Guizhou Tyre's DQR, and Guizhou Tyre's SQR.

Department's Position: Guizhou Tyre properly reported all 34 of the indirect materials as manufacturing overhead materials.[194] Accordingly, for the final determination, the Department has determined to continue to treat all 34 of these materials as overhead materials, not direct materials.

In determining whether a given material should be treated as a part of factory overhead versus a direct material for purposes of calculating NV, the Department takes into consideration: 1) whether the material is physically incorporated into the final product; 2) the material's

[194] *See* Guizhou Tyre's DQR at 1 and Attachment D-2; Guizhou Tyre's SQR, section D, at 6 and Attachment D-20.

contribution to the production process and finished product; 3) the relative cost of the input; and 4) the way the cost of the input is typically treated in the industry.[195]

First, the Department considers whether the material is physically incorporated into the final product, since materials that are not physically incorporated into a final product are generally considered to be indirect materials that are valued as part of factory overhead.[196] In some cases, however, the Department has included as direct materials inputs that are essential to production and used in significant quantities, despite such inputs not being physically incorporated into the final product.[197] In other cases, the Department has stated that the mere fact that a material may be used in the production process, and even incorporated into the finished product, is not enough by itself to justify treating it as a direct material.[198]

Second, the Department will consider the material's contribution to the production process and finished product. The Department will typically value a material as a direct material if it is "required for a particular segment of the production process,"[199] is "essential for production,"[200] is not used for "incidental purposes,"[201] or is otherwise a "significant input into the manufacturing process rather than miscellaneous or occasionally used materials."[202] Direct materials can be distinguished from "consumables," such as cleaning products, in that the latter are insignificant inputs used for incidental purposes.[203]

Third, and closely related to the second criterion described above, the Department will consider the relative cost of the input and the frequency of its use.[204]

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[195] *See Urea 02/21/03* IDM at Comment 5.

[196] *See, e.g., Fuyao Glass (2005)* at 22-23 and 26-27 ("Commerce typically values material inputs as a separate factor of production only when that input is physically incorporated into the finished product").

[197] *See WBF 11/17/04* IDM at Comment 6; *ARG 10/21/04* IDM at Comment 1; *Crawfish 04/24/01* IDM at Comment 7; and *Bicycles 04/30/96* at 19040.

[198] *See, e.g., Urea 02/21/03* IDM at Comment 5; and *Saccharin 11/15/94* at 58824.

[199] *See Fuyao Glass (2005)* at 24; *Shrimp 12/08/04* at 71003; and *Sawblades 05/22/06* IDM at Comment 2.

[200] *See WBF 11/17/04* IDM at Comment 6.

[201] *See Crawfish 04/24/01* IDM at Comment 7.

[202] *See Glyccine 01/31/01* IDM at Comment 3.

[203] *See Fuyao Glass (2005)* at 23-24 (quoting *Bicycles 04/30/96* at 19040).

[204] *See Urea 02/21/03* IDM at Comment 5.

Fourth, when the Department is unable to determine whether a material is included in the SV for factory overhead, the Department will rely on normal accounting practices to prevent double-counting the particular material in both direct materials and overhead materials.[205] In reference to this fourth criterion, the Department has noted in past cases that, under Indian accounting practices, factory overhead materials "assist the manufacturing process" but do not "enter physically into the composition of the finished product."[206] However, the Department is not required to demonstrate that an input is not included in the surrogate company's factory overhead.[207] This broad discretion has been affirmed by both the CIT and CAFC.[208]

Accordingly, consistent with the Department's practice as described above, for the final determination, we continued to treat as overhead materials all 34 of the materials classified by Guizhou Tyre as overhead materials. We address each group of the 34 overhead materials separately below.

Materials used for machinery and equipment:
Guizhou Tyre uses six of the 34 materials for machinery and equipment.[209] These six materials are properly included as manufacturing overhead materials because: 1) none of these materials is physically incorporated into the finished products; 2) none of these materials represents a significant portion of Guizhou Tyre's manufacturing costs; 3) based on Indian accounting practices, the four Indian companies' financial statements which the Department used to calculate the surrogate financial ratios/values included such materials as overhead materials, not direct materials; and 4) in the normal course of business, Guizhou Tyre classified all six of these materials as overhead.

In response to Petitioners' argument that Guizhou Tyre's valves should be included as direct materials, we note that such valves are "consumed by equipment and machines, not by tires."[210]

Materials used for water treatment:
Guizhou Tyre uses four of the 34 materials for water treatment.[211] These four materials are properly included as manufacturing overhead materials because: 1) none of these materials is

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[205] *See Fuyao Glass (2005)* at 24-25; *Urea 02/21/03* IDM at Comment 5; *Lighters 05/05/95* at 22368; and *Saccharin 11/15/94* at 58824.

[206] *See Fuyao Glass (2005)* at 31.

[207] *See WBF 11/17/04* IDM at Comment 6; and *Urea 02/21/03* IDM at Comment 5 (stating that the Department is not required to do an item-by-item accounting for factory overhead).

[208] *See Magnesium Corp (1996)* at 1372 (affirming CIT decision in *Magnesium Corp (1996)* at 897).

[209] These include antiseptic, dirty-proof agent, salt, and sulphuric acid. *See* Guizhou Tyre's SQR, section D, at Exhibit D-20.

[210] *See* Guizhou Tyre SQR's, section D, at Exhibit D-20.

physically incorporated into the finished products; 2) based on the small quantities used during the POI, the record indicates that these materials are consumables that are not replaced so regularly as to represent a direct factor rather than overhead; 3) based on Indian accounting practices, the four Indian companies' financial statements which the Department used to calculate the surrogate financial ratios/values included such materials as overhead materials, not direct materials; and 4) in the normal course of business, Guizhou Tyre classified all four of these materials as overhead.

Petitioners' reliance on *Sawblades 05/22/06* is misplaced. In *Sawblades 05/22/06*, the Department valued certain "process materials and chemicals" as FOPs because such materials were required for certain production stages.[212] However, the Department included certain other materials in overhead because, while required for stages of production, those materials were not replaced so regularly as to represent a direct material as opposed to being an overhead material.[213] Guizhou Tyre's water treatment materials are similar to the materials the Department valued as overhead in *Sawblades 05/22/06* as well as the "trace chemicals" used to cool reactors in *Saccharin 11/15/94*, which the Department found were infrequently used in the production process and typically small in value relative to total cost of manufacturing.[214] Furthermore, certain of the materials in *Sawblades 05/22/06* that the Department valued as FOPs, such as paint thinner, were incorporated into the final product (paint thinner was used to dilute direct materials lacquer and varnish).[215] In contrast, Guizhou Tyre uses water to produce steam, which is never incorporated into the final product.

Materials used for testing:
Guizhou Tyre uses seven of the 34 materials for testing by its technical department.[216] These seven materials are properly included as manufacturing overhead materials because: 1) none of these materials is physically incorporated into the finished products; 2) none of these materials represents a significant portion of Guizhou Tyre's manufacturing costs; 3) based on Indian accounting practices, the four Indian companies' financial statements which the Department used to calculate the surrogate financial ratios/values included such materials as overhead materials, not direct materials; and 4) in the normal course of business, Guizhou Tyre classified all seven of these materials as overhead.

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[211] These include cooling agent, diesel oil, grease lubricant, machine oil, petrol oil, and valve. *See* Guizhou Tyre's SQR, section D, at Exhibit D-20.

[212] *See Sawblades 05/22/06* IDM at Comment 2.

[213] *See id.*

[214] *See Saccharin 11/15/94* at 58824.

[215] *See Sawblades 05/22/06* IDM at Comment 2.

[216] These include BASF resin, silicon rubber, stearic acid, compound rubber, carbon black, zinc oxide and process chemical 40MSF. *See* Guizhou Tyre's SQR, section D, at Exhibit D-20.

We disagree with Petitioners' application of *Pipe-Romania 06/23/00*. In *Pipe-Romania 06/23/00*, the respondent had MEPs of lacquer, but claimed that the MEPs of lacquer from Germany were only used for testing.[217] The Department determined that the MEP prices of lacquer from Germany were reliable, and that the respondent failed at verification to demonstrate that the German lacquer was used for testing purposes only.[218] Accordingly, pursuant to 19 CFR 351.408(c)(1), the Department used the MEP price paid for German-sourced lacquer to value the respondent's lacquer inputs.[219] However, in this case, at verification we confirmed that the amounts of carbon black, zinc oxide and compound rubber that Guizhou Tyre classified as overhead were, in fact, used in the technical department.[220]

Seclusion agents:
Guizhou Tyre uses eight of the 34 materials as seclusion agents, [221] specifically to prevent mixed rubber from sticking to itself.[222] These eight materials are properly included as manufacturing overhead materials because: 1) none of these materials is physically incorporated into the finished products; 2) based on the small quantities used during the POI, the record indicates that Guizhou Tyre's seclusion agents are consumable materials used too infrequently to be treated as a direct material, and not traceable to a particular product;[223] 3) none of these materials represent a significant portion of Guizhou Tyre's manufacturing costs;[224] 4) based on Indian accounting practices, the four Indian companies' financial statements which the Department used to calculate the surrogate financial ratios/values included such materials as overhead materials, not direct materials; and 5) in the normal course of business, Guizhou Tyre classified all eight of these materials as overhead.

Bridgestone argues that Guizhou Tyre's seclusion agents are similar to the chemicals determined to be direct materials in *Bicycles 04/30/96*, because Guizhou Tyre's seclusion agents are

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[217] *Pipe-Romania 06/23/00* IDM at Comment 10.

[218] *Id.*

[219] *Id.*

[220] *See* Guizhou Tyre Verification Report at 32 and at Exhibit 18A at 350-351.

[221] These include glycerin, oil-filled cloth, paint, parting agent, polypropylene fiber, seclusion agent, silicon oil and talcum powder. *See* Guizhou Tyre SQR, section D, at Exhibit D-20.

[222] *See* Guizhou Tyre Verification Report at 32-33.

[223] *See Persulfates 02/02/05* IDM at Comment 4, in which the Department defined "indirect materials" as "items used in production process but not traceable to particular product", and items "added directly to products but whose cost is so small that the effort of tracing that cost to individual products would be greater than the benefit of accuracy (*e.g.*, the cost of glue used in furniture manufacturing)."

[224] *See Urea 02/21/03* IDM at Comment 5 (noting that among the key factors to consider in determining whether a material should be included in overhead is the relative cost of the input and its contribution to the production process and finished product, the Department valued a catalyst as overhead because of its low value, despite the catalyst being used in the production process).

necessary inputs for the curing and calendaring stages of tire production, rather than a miscellaneous or occasionally used consumable material. However, the chemicals determined to be direct materials in *Bicycles 04/30/96* were incorporated into the final products: in pre-treating the semi-finished products, the chemicals permeated the components and were never completely washed off.[225] In the case at hand, we have no record evidence that the seclusion agents Guizhou Tyre used permeate the mixed rubber or in any other way are incorporated into the final product. Absent contrary information, the Department presumes that a consumable is an indirect overhead material.[226]

Other miscellaneous materials:
For nine of the 34 materials, neither Petitioners nor Bridgestone made any specific arguments that the Department should include these items as direct materials.[227] Accordingly, for the final determination the Department has continued to treat these nine materials as overhead materials because: 1) none of these materials is physically incorporated into the finished products; 2) none of these materials is essential for production; 3) all of these products are used for incidental purposes, such as cleaning and packing; 4) none of these materials represents a significant portion of Guizhou Tyre's manufacturing costs; 5) based on Indian accounting practices, the four Indian companies' financial statements which the Department used to calculate the surrogate financial ratios/values included such materials as overhead materials, not direct materials; and 6) in the normal course of business, Guizhou Tyre classified all nine of these materials as overhead.

Comment 28: Calculation of Guizhou Tyre's Domestic Movement Expenses

Bridgestone argues that the Department should recalculate foreign-inland freight (rail freight and train freight), domestic brokerage expense, and domestic insurance expense based upon actual weights, rather than Guizhou Tyre's reported standard weights, because Guizhou Tyre's movement expenses are incurred on an actual weight basis. In support of this argument, Bridgestone relies on Guizhou Tyre Preliminary Analysis Calculation Memo, and information found in Bridgestone's February 19, 2008, submission and Guizhou Tyre's CQR. Bridgestone requests that the Department calculate Guizhou Tyre's actual weights based on the weighted average of the percentage difference between the standard and actual weights of the eight transactions verified by the Department, instead of a cumulative percent difference basis that Guizhou Tyre provided at verification, because the latter is driven by the percent difference of heavier tires.

Guizhou Tyre argues that the Department should not recalculate domestic movement expenses to

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[225] *See Bicycles 04/30/96* at 19040.

[226] *See Persulfates 02/02/05* IDM at Comment 4 (noting that "it is the Department's practice, absent any information to the contrary, to consider such items as 'consumables' generally as an indirect material").

[227] These include dust-proof hat, grease-removing agent, plastic bag, plastic sheet, standard nylon thread, thread, Titan Bronze, washing powder, and clay. *See* Guizhou Tyre's SQR, section D, at Exhibit D-20.

account for the average difference between the reported nominal and actual weight of tires because: 1) Bridgestone has failed to substantiate its claim that surrogate providers charge on an actual weight basis; 2) the available data shows that the overall difference is small, and that there is no discernible pattern to the differences, positive or negative, that would justify an upward adjustment; and 3) there is no evidence that the results of Guizhou Tyre's calculation of the percentage differences are driven by the size of the tires. In support of this argument, Guizhou Tyre cites its CQR.

Department's Position: In the preliminary determination, the Department used the product weight reported in field WEIGHTU of Guizhou's U.S. sales database to calculate four different movement expenses: rail freight, truck freight, domestic brokerage, and domestic insurance.[228] Guizhou reported WEIGHTU on a nominal (*i.e.*, standard) weight basis.[229] At verification we discovered that Guizhou Tyre's reported standard weight differed from the actual weight shown on relevant shipping documentation.[230]

At the outset, we note that Bridgestone's assertion that surrogate providers (of freight, brokerage, and insurance) charge customers based on actual weight of the shipped merchandise is likely to be true. However, we believe that calculating the four above-mentioned domestic movement expenses based on Guizhou Tyre's reported standard weights is both reasonable and the most accurate methodology available on the record. Based on the verification, we have determined that there is neither a pattern of underreporting nor any significant differences between standard and actual weights for the eight transactions verified by the Department. Specifically, the percentage differences as calculated by both Guizhou Tyre and Bridgestone confirm this lack of any consistent pattern: there are both positive and negative differences for both larger and smaller tires.[231] Furthermore, we note that many of the positive differences are accounted for in the weight of tubes and flaps,[232] which have been determined to be outside the scope of this investigation.[233] Thus, taking into account the added weight of tubes and flaps, the percentage differences are even less significant. Therefore, for the final determination, we have continued to use Guizhou Tyre's standard reported weights to calculate the final margin.

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[228] *See* Analysis Memorandum for the Preliminary Determination: Guizhou Tyre Co., Ltd. (Feb. 5, 2008) at 5-6. *See also* Petitioners' and Bridgestone's Comments on Ministerial Errors Resulting from the Preliminary Determination, (Feb. 19, 2008) at 4-5.

[229] *See* Guizhou Tyre's SQR at C-4.

[230] *See* Guizhou Tyre Verification Report at 20.

[231] *See* Guizhou Tyre Verification Report, at Exhibit 11A; Guizhou Tyre Rebuttal Brief at Exhibit 1; Bridgestone Case Brief at Attachment 6.

[232] Tubes and flaps are included in the actual weight shown on the relevant shipping documentation, but not the standard weight reported to the Department. *See* Guizhou Tyre Verification Report at Exhibit 11A (for preselect sales that have tubes and flaps); and Guizhou Tyre Verification Report at Exhibit 11B (for the weight of tubes and flaps on preselect sales of tube-type tires).

[233] *See* Comment 21.

Because we have decided to continue to use Guizhou Tyre's standard weights for the final determination, we need not address which party's calculation of the difference between standard and actual weights would be more appropriate.

Comment 29: Treatment of Guizhou Tyre's Demurrage Charge

Bridgestone argues that the Department should add demurrage charges contained on one of Guizhou Tyre's U.S. slaes invoices to all of Guizhou Tyre's subject merchandise shipped to the same destination on the same day because information on the record demonstrates that Guizhou Tyre incurred the same demurrage charge for these additional sales. In support of this argument, Bridgestone cites Guizhou Tyre Verification Report and Guizhou Tyre's May 5, 2008, submission.

Guizhou Tyre argues that the Department should add demurrage charges for only the one sale where such charge was incurred. Guizhou Tyre explains that the one-time demurrage charge that it did incur was due to circumstances particular to that specific customer and shipment in question, and that the other containers shipped on the same day that Bridgestone claims also had demurrage charges were shipped to different customers that did not have the same particular circumstance which would have required demurrage. Guizhou Tyre also notes that Department verifiers closely examined TED's trial balance at verification and detected no unreported demurrage charges. In support of this argument, Guizhou Tyre cites Guizhou Tyre Verification Report.

Department's Position: We disagree with Bridgestone's assertion that information on the record indicates that Guizhou Tyre incurred demurrage charges for all of Guizhou Tyre's sales shipped to the same destination on the same day. As Guizhou Tyre notes, the one-time demurrage charge that it did incur was due to circumstances particular to that specific customer and shipment in question, and the other containers shipped on the same day were shipped to different customers that did not have the same particular circumstance which would have required demurrage.[234] Furthermore, we verified TED's trial balance at verification and found no unreported demurrage charges.[235] Accordingly, we have calculated the final margin by including only Guizhou Tyre's one reported demurrage charge in its international freight expenses.

Comment 30: Distance from Guizhou Tyre's Factory to the Guangzhou Warehouse

Bridgestone requests that the Department use the distance by train from Guiyang[236] to Guangzhou provided by Petitioners for the distance between Guizhou Tyre's factory and

[234] *See* Guizhou Tyre Verification Report at Exhibit 29, page 3.

[235] *See* Guizhou Tyre Verification Report at 21-23.

[236] In their case briefs, Petitioners referred to "the City of Guizhou." The Department presumes Petitioners meant to refer to "Guiyang," the city in which Guizhou Tyre's factory is located.

Guizhou Tyre's Guangzhou warehouse, instead of the distance reported by Guizhou Tyre. In support of this argument, Bridgestone cites Guizhou Tyre's May 5, 2008, submission and Petitioners' March 18, 2008, submission.

Guizhou Tyre requests that the Department continue to use the distance Guizhou Tyre reported. Guizhou Tyre notes that it has certified to the accuracy and completeness of its reported data, including this distance. Furthermore, Guizhou Tyre argues that its reported distance is more accurate than the distance submitted by Petitioners because the documentation used to support Petitioners' distance does not reference the specific Guizhou Tyre factory or Guizhou Tyre Guangzhou warehouse locations. In support of this argument, Guizhou Tyre cites Petitioners' March 18, 2008, submission.

Department's Position: We agree with Guizhou Tyre that its reported distance by train between Guizhou Tyre's factory and Guizhou Tyre's Guangzhou warehouse is more accurate than the distance provided by Petitioners. Petitioners' distance is not specific as to the locations of Guizhou Tyre's factory and the Guangzhou warehouse, and there is no record evidence to show that Guizhou Tyre's reported distance is not reliable. Accordingly, we have continued to use Guizhou Tyre's reported distance for the final margin calculation.

Comment 31: Appropriate Unit of Measure for Guizhou Tyre's Reported Water Consumption

Bridgestone argues that, in the preliminary determination, the Department incorrectly converted the source value for water from meters cubed ("M^3") into kilograms ("kg"), because the surrogate value for water was already reported on a kg basis. Accordingly, Bridgestone requests that the Department not convert the surrogate value for water into kg in the final determination. In support of this argument, Bridgestone cites Guizhou Tyre Preliminary Analysis Calculation Memo.

No other parties commented on this issue.

Department's Position: We agree with Bridgestone that the Department incorrectly converted the source value for water from M^3 into kg because no conversion was necessary. However, while Bridgestone argues that both values were originally provided in kgs, the source value for water is reported on a per-M^3-basis,[237] and Guizhou Tyre reported its water usage on a per-M^3-basis.[238] Accordingly, we have not converted the source value for water into kg in our final margin calculations for Guizhou Tyre.

[237] *See* Final SV Memo at 3 and Attachment V.

[238] *See* Guizhou Tyre's DQR at D-14.

Comment 32: Treatment of Guizhou Tyre's Unreported Labor Hours Discovered at Verification

Bridgestone requests that the Department include in its final margin calculation the labor hours for Guizhou Advance Rubber, Co., Ltd. ("GAR") that were discovered at verification and were originally unreported. In support of this argument, Bridgestone cites Guizhou Tyre Verification Report.

No other parties commented on this issue.

Department's Position: On May 5, 2008, pursuant to instructions from the Department, Guizhou Tyre submitted a revised FOP database that included these previously unreported GAR labor hours.[239] Accordingly, the Department has included in its final margin calculation the labor hours for GAR that were discovered at verification and originally unreported.

Comment 33: Classification of Guizhou Tyre's Sales Made to a Certain U.S. Customer

Petitioners argue that the Department should exclude from the final margin calculation the sales made by Guizhou Tyre to a particular U.S. customer because Guizhou Tyre did not export the goods, but merely sold them in China, and the so-called "trading house rule," in which knowledge of ultimate destination controls, does not apply to NME cases. Petitioners request that the Department conduct an independent analysis of Guizhou Tyre's sales to this particular U.S. customer in order to determine a combination rate for the combination of Guizhou Tyre and that particular U.S. customer. In support of this argument, Petitioners rely on *Policy Bulletin 05.1* and Guizhou Tyre's SQR.

Guizhou Tyre argues that it has properly reported its sales to this particular U.S. customer as U.S sales because these sales satisfy the Department's "knowledge test" for NME situations, which is satisfied where the transaction is made directly with an ME entity, transacted in a market-based currency, and the NME producer has constructive knowledge that the merchandise it sold is destined for the United States. In support of this argument, Guizhou Tyre cites *Wonderful Chemical (2003), GSA (1999), Tetrahydrofurfuryl Alcohol 06/18/04*, *Creatine 12/20/99*, *Hand Trucks 10/14/04*, and Guizhou Tyre's SQR. Guizhou Tyre explains that it transacted the subject sales in U.S. dollars with the knowledge that the customer was located in the United States. Accordingly, Guizhou Tyre argues that its sales to this particular U.S. customer are properly classified as U.S. sales. In the event the Department concludes that Guizhou Tyre is not the appropriate exporter for Guizhou Tyre's sales made to this U.S. customer in which the destination identified on the sales documentation and U.S. sales database is not a U.S. location, then Guizhou Tyre requests that the Department only exclude Guizhou Tyre's sales to that particular U.S. customer in which the listed destination is not a U.S. location.

Department's Position: We have continued to treat Guizhou Tyre as the company selling for

[239] Guizhou Tyre's Revised Sales and FOP Data (May 5, 2008).

export to the United States to this particular customer. Specifically, Guizhou Tyre sold for export to the United States subject merchandise by invoicing this particular U.S. customer, which is located in the United States, in U.S. dollars and shipping the merchandise to a bonded warehouse in Shenzhen, China, where the U.S. customer took title and possession. [240] Furthermore, Guizhou Tyre itself identified and reported these sales as U.S. sales. Based on these circumstances, we believe that Guizhou Tyre had knowledge of the destination of these sales. Accordingly, we have continued to include all of Guizhou Tyre's reported sales to this particular U.S. customer as U.S. sales for purposes of calculating Guizhou Tyre's final margin.

Pursuant to *Policy Bulletin 05.1*, Petitioners request that the Department conduct an independent analysis of Guizhou Tyre's sales to this particular U.S. customer in order to determine a combination rate for the combination of Guizhou Tyre and that particular U.S. customer. As explained above, the Department has determined that all of Guizhou Tyre's sales to this particular customer are properly classified as U.S. sales. Therefore, the appropriate combination rate is the one applicable to Guizhou Tyre for any given sale. [241]

Comment 34: Byproduct Offset for Guizhou Tyre

Guizhou Tyre argues that the Department should grant Guizhou Tyre a byproduct offset on all of its byproduct sales, both those to affiliated and unaffiliated companies, because: 1) the Department has a well-established policy of granting respondents a byproduct offset in an NME investigation where the respondent demonstrates that the byproducts are resold; 2) the Department generally refuses to grant byproduct offsets only where there is insufficient evidence on the record to account for the factors involved in recovering the resulting scrap; and 3) Guizhou Tyre does not fall within this exception. Guizhou Tyre argues that, contrary to the Department's decision in the preliminary determination denying Guizhou Tyre a byproduct offset, the Department's established policy does not require that the sales of byproducts be made only to unaffiliated companies. Guizhou Tyre argues that, at a minimum, it is entitled to a byproduct offset for byproduct sales to unaffiliated companies. Guizhou Tyre notes that it revised its FOP database so that the Department can identify which byproduct sales were made to unaffiliated companies. In support of these arguments, Guizhou Tyre cites *Guangdong Chem.(2006), Aspirin 05/25/00, Rebar-PRC 06/22/01, Fish 03/05/03, HFHTs 09/06/05, ISOS-PRC 05/10/05, Silicon Metal-Russia 02/11/03, Mushrooms 07/21/05,* Guizhou Tyre Verification Report, Guizhou Tyre Preliminary Analysis Calculation Memo, and Guizhou Tyre's SQR.

Bridgestone argues that the Department should deny Guizhou Tyre a byproduct offset for Guizhou Tyre's byproduct sales to affiliated companies because Guizhou Tyre has not demonstrated that its byproducts sold to affiliates were reintroduced into the production process.

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[240] *See* section 772(a) of the Act: "The term 'export price' means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or *to an unaffiliated purchaser for exportation to the United States*, as adjusted under subsection (c) of this section" (emphasis added).

[241] The Department's boilerplate cash deposit instructions for Customs is available at: http://ia.ita.doc.gov/download/custboil-nme.htm#5. *See* instructions at 6.B.

Relying on *CLPP 09/08/06*, *Rebar-PRC 06/22/01*, and *ISOS-PRC 05/10/05*, Bridgestone argues that the Department only allows a byproduct offset when a respondent can demonstrate that a byproduct was either: 1) sold to unaffiliated customers; or 2) was of commercial value and had been reintroduced in the production process. In support of this argument, Bridgestone also cites Guizhou Tyre Verification Report and Guizhou Tyre's May 5, 2008, submission.

Department's Position: Section 773(c) of the Act does not mention the treatment of byproducts. However, the Department has interpreted the Act to allow the granting of an offset to costs of production for a byproduct generated in the manufacturing process that is either sold for revenue or has commercial value and is reintroduced into production.[242] Prior cases do not draw clear distinctions between byproduct sales to affiliated versus unaffiliated parties, but rather state that the Department grants a byproduct offset for sales revenue generated from sales of byproducts.[243]

Both Bridgestone's and Guizhou Tyre's reliance on prior cases is misplaced for the following reasons. Bridgestone cites *CLPP 09/08/06*, *Rebar-PRC 06/22/01*, and *ISOS-PRC 05/10/05* for the proposition that the Department only allows a byproduct offset when a respondent can demonstrate that a byproduct was either: 1) sold to unaffiliated customers; or 2) was of commercial value and had been reintroduced in the production process. In *Rebar-PRC 06/22/01*, the Department granted byproduct offsets for the respondent's sales to both affiliated and unaffiliated customers. In that case, the Department granted the byproduct offset for the sales to affiliates citing that the respondent demonstrated that the byproducts in question had commercial value and were reintroduced into the production process of non-subject merchandise. However, in this current investigation, the Department did not request Guizhou Tyre to submit documentation to establish that its byproducts sold to affiliates were either resold to unaffiliated parties or reintroduced into the production process of its affiliates. Rather, we looked to the existence of a market price for the byproduct to support a finding that the byproduct has commercial value, as in our policy cases involving ME countries.[244] Petitioners, Bridgestone, Guizhou Tyre, and Xugong have submitted SV information on the record for Guizhou Tyre's claimed byproducts.[245] We find that reliable SVs for the claimed byproducts demonstrate that

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[242] *See Guangdong Chem.(2006)*, at 1373; *HFHTs 09/06/05* IDM at Comment 8.E.; *Aspirin 05/25/00* IDM at Comment 13; and *Rebar-PRC 06/22/01* IDM at Comment 5.C.

[243] *See ISOS-PRC 05/10*/05 IDM at Comment 18 ("In circumstances where respondents sold their by-products, the Department's practice is to offset production costs with the sales revenue of the recoveries/byproducts."); and *HFHTs 09/06/05* IDM at Comment 8.E. ("The Department will offset production costs with the sales revenue only if the byproduct is either resold or has commercial value and re-enters the respondent's production process.")

[244] In circumstances where the Department is concerned that the Department's practice of granting byproduct offsets is being manipulated via sales to affiliates, the Department reserves the right to request information regarding the affiliates' use or resale of the byproduct at issue.

[245] *See* Guizhou Tyre's DQR at 15 and Exhibit D-6-G; Guizhou Tyre's December 7, 2007, submission, at Exhibit 1; Guizhou Tyre's December 10, 2007, submission, at Exhibit 5; Guizhou Tyre's January 29, 2008, submission, at 33; Petitioner's January 18, 2008 submission, at 13-15 and 38; Bridgestone's April 4, 2008, submission of the Indian HTS; and Xugong 01/09/08 SQR at Exhibit 72.a.

within the marketplace as a whole the byproduct has commercial value. Please refer to the Final SV Memo, at Attachment I, for the SVs used to value Guizhou Tyre's byproducts.

In neither *CLPP 09/08/06* nor *ISOS-PRC 05/10/05* did the Department include in its analysis of the byproduct offset issue any discussion of sales to affiliated versus non-affiliated parties. In *CLPP 09/08/06*, the Department denied the byproduct offset because the respondent had failed to provide sufficient documentation of the byproduct produced and the amount of the byproduct reintroduced into the production process.[246] However, Guizhou Tyre has demonstrated, and Bridgestone and Petitioners have not alleged otherwise, the amounts of each byproduct produced and sold during the POI, as well as a reasonable methodology for allocating the byproducts between subject and non-subject merchandise.[247] Furthermore, Guizhou Tyre is requesting a byproduct offset only for byproducts that were sold, not for byproducts reintroduced into Guizhou's production process.

Guizhou Tyre cites *HFHTs 09/06/05*, *ISOS-PRC 05/10/05*, *Silicon Metal-Russia 02/11/03*, *Aspirin 05/25/00*, and *Rebar-PRC 06/22/01* for the proposition that there is a rebuttable presumption that a byproduct offset should be granted. However, as *Mushrooms 07/21/05* makes quite clear, "{p}arties requesting a byproduct offset have the burden of presenting to the Department not only evidence that the generated byproduct is sold or re-used in the production of the subject merchandise, but also all the information necessary for the Department to incorporate such offsets into the margin calculation."[248] The Department reinforced this position in *CLPP 09/08/*06, stating that "{t}he mere fact that a company demonstrates that it sold [byproducts] has been rejected by the Department in the past as a justification for allowing a [byproduct] offset."[249] In *HFHTs 09/06/05*, *ISOS-PRC 05/10/05*, *Silicon Metal-Russia 02/11/03*, *Aspirin 05/25/00*, and *Rebar-PRC 06/22/01*, the Department did not presume that the byproduct offset should be granted until the respondents submitted the above-quoted requirements of actual sales and/or reintroduction and a reasonable allocation methodology.[250] Based on the submitted record evidence, we find that Guizhou Tyre has met these burdens.

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[246] *CLPP 09/08/06* IDM at Comment 23.

[247] *See* Guizhou Tyre's DQR at D-15 and Attachment D-6-G; and Guizhou Tyre SQR, section D, at 5. *See also HFHTs 09/06/05* IDM at Comment 8.E. (noting that the Department determined that the respondent demonstrated a sufficient link between the recovery and sale of byproducts generated by the production of subject merchandise).

[248] *Mushrooms 07/21/05*, at 42037.

[249] *CLPP 09/08/06* IDM at Comment 23.

[250] *See HFHTs 09/06/05* IDM at Comment 8.E. ("The Department will not grant the offset when the respondent fails to show either that the byproduct was sold, or that it had commercial value and was re-used in the production process); *ISOS-PRC 05/10/05* IDM at Comment 18 ("If the respondent fails to show that the byproduct was sold, or that it had commercial value and was re-used, the then the Department does not allow the byproduct offset"); *Silicon Metal-Russia 02/11/03* IDM at Comment 11; *Aspirin 05/25/00* IDM at Comment 13 (the Department granted a byproduct offset only for the amount of byproducts sold, not for the remaining unsold byproduct); and *Rebar-PRC 06/22/01* IDM at Comment 5.C. (the Department granted certain byproduct offsets only after the respondent submitted sufficient support documentation on the record).

Accordingly, for the final margin calculation we have granted Guizhou Tyre's byproduct offsets for its sales of byproducts to all parties, regardless of affiliation.

Comment 35: Treatment of Guizhou Tyre's International Freight Costs

Guizhou Tyre argues that the Department should calculate Guizhou Tyre's final margin using Guizhou Tyre's ME ocean freight amounts as reported because: 1) the amounts Guizhou Tyre's Chinese ocean freight agent invoiced for ocean freight represented a 100 percent pass-through of the ME carrier's freight charges; and 2) the ocean freight was paid for in U.S. dollars. Guizhou Tyre notes that it uses a Chinese ocean freight agent, not a Chinese broker who would resell freight services at a profit, which is why Guizhou Tyre's ocean freight payments are 100 percent passed through to the ME carriers. Guizhou Tyre argues that its reported freight amounts are acceptable under the Department's established policies because, at verification, the Department examined documentation which demonstrated the full pass-through of payments from Guizhou Tyre to the ME carrier. In support of this argument, Guizhou Tyre cites *Sebacic Acid 08/14/00*, *Apple Juice 04/13/00*, Guizhou Tyre Verification Report, and Guizhou Tyre's SQR.

Bridgestone argues that the Department should reject Guizhou Tyre's reported ME purchase prices and instead value Guizhou Tyre's ocean freight with a surrogate value because: 1) the Department will not use a price paid for an input in an ME currency if the input was sourced through an NME provider, regardless of whether it is a broker or agent; and 2) Guizhou Tyre failed to report prior to verification that it uses a Chinese broker to purchase its international freight. In support of this argument, Bridgestone cites *Bags 06/18/04*, *Pure Magnesium 10/17/06*, and Guizhou Tyre Verification Report.

Department's Position: We have continued to use the ME purchase prices to value Guizhou Tyre's international freight expenses. According to 19 CFR 351.408(c)(1), "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary will use the price paid to the market economy supplier." In its CQR, Guizhou Tyre explained that it had reported the international freight charges purchased in U.S. dollars from ME carriers.[251] At verification, we observed that Guizhou Tyre purchased ocean freight from an ME carrier through the ME carrier's agent in China.[252]

It is the Department's established practice to accept payments for international freight if sourced through a ME carrier if the NME respondent can "establish of link between the prices charged by the market-economy carriers and the prices paid by the respondents."[253] In *Pure Magnesium 10/17/06*, *Sebacic Acid 08/14/00*, *Apple Juice 04/13/00*,and *Aspirin 05/25/00*, which contain fact patterns very similar to those surrounding Guizhou Tyre's ocean freight situation, the

[251] *See* Guizhou Tyre's CQR at C-33.

[252] *See* Guizhou Tyre Verification Report at 3 and Exhibit 12.D.

[253] *See Sebacic Acid 08/14/00* IDM at Comment 8; *see also Tetrahydrofurfuryl Alcohol-PRC 06/18/04* IDM at Comment 4; *HFHTs 09/15/04* IDM at Comment 10; and *Shandong Huarang Machinery (2007)* at *27-29 (affirming the Department's decision in *HFHTs 09/15/04*).

Department used surrogate values for ocean freight charges instead of using the ME purchase prices that respondents reported because respondents did not provide documentation linking the prices charged by the ME carrier and the prices paid by respondents for international freight (*i.e.*, the record in all of those cases only reflected payment documentation between PRC entities).[254]

However, at verification, Guizhou Tyre, unlike the respondents in *Pure Magnesium 10/17/06, Sebacic Acid 08/14/00, Apple Juice 04/13/00*, and *Aspirin 05/25/00*, provided a full document trail demonstrating the link of Guizhou Tyre's U.S. dollar payments to the ME carrier through the ME carrier's agent.[255] Guizhou Tyre's international freight situation is identical to the respondent in *Tetrahydrofurfuryl Alcohol-PRC 06/18/04*.[256] Accordingly, we have calculated Guizhou Tyre's final margin using its reported ME ocean freight amounts.

Comment 36: Appropriate Classification for Certain Guizhou Tyre Material Inputs

Guizhou Tyre submits that the Deparment's conclusion in the *Preliminary Determination* regarding HTS classifications for the following material inputs should be corrected in the final determination: 1) reclaimed rubber 1; 2) reclaimed rubber 3; 3) styrene butadiene rubber 1500 ("SBR1500"); 4) styrene butadiene rubber ("SBR1712"); 5) butyl rubber 1751; 6) polystyrene rubber; 7) rosin; 8) phenolic resin SP-1055; and 9) lignite wax ("Paraffin_MicrocrystalWax"). Guizhou Tyre argues that the record evidence demonstrates that the HTS classifications proposed by Guizhou Tyre provide the correct basis for the surrogate values for these material inputs. In support of this argument, Guizhou Tyre cites Prelim SV Memo, and Guizhou Tyre Verification Report.

Bridgestone requests that the Department reject Guizhou Tyre's arguments regarding the above factor input classifications because: 1) the Department should not rely on the untimely submission of new factor information that Guizhou Tyre first provided at verification; 2) for four of the material inputs in question, Guizhou Tyre has failed to identify invoicing or purchase documentation tying its factors to the industry standards on which Guizhou Tyre's proposed classifications rely; and, as a result 3) Guizhou Tyre has created ambiguity on the record as to how Guizhou Tyre's factors should be classified. Bridgestone argues that the Department should use adverse facts available where there is ambiguity on the record as to Guizhou Tyre's factors by using the highest value classification that fits the factor. Bridgestone also requests that the Department use, as adverse facts available, the second classification proposed by Guizhou Tyre in its March 18, 2008, submission of revised factor data to value lignite wax, rather than the classification proposed by Guizhou Tyre at verification. In support of these arguments, Bridgestone cites *Zenith (1993), Mannesmannrohren-Werke (2000), NSK (1996), Tianjin (1992), Jinan Yipin (2007), Allied Pacific (2006), TRBs-PRC 03/08/02, Live Swine 04/14/97, Pipe*

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[254] *See Pure Magnesium 10/17/06* IDM at Comment 6; *Sebacic Acid 08/14/00* IDM at Comment 8; *Apple Juice 04/13/00* IDM at Comment 3; and *Aspirin 05/25/00* IDM at Comment 8.

[255] *See* Guizhou Tyre Verification Exhibit 12 at 3-10.

[256] *See Tetrahydrofurfuryl Alcohol-PRC 06/18/04* IDM at Comment 4.

Fittings 02/07/03, Tianjin (2004), section 776 of the Act, Prelim SV Memo, Guizhou Tyre Verification Report, Guizhou Tyre Verification Agenda, Webster's Dictionary, the Department's Section D Questionnaire, Guizhou Tyre's DQR, Guizhou Tyre's SQR, Guizhou Tyre's March 18, 2008, submission, Guizhou Tyre's December 7, 2007 submission, and Petitioners' March 26, 2008 submission.

In addition, Petitioners and Bridgestone claim that the Deparment's conclusion in the *Preliminary Determination* regarding HTS classifications for the following material inputs should be corrected in the final determination: 1) BR9000 ("Rubber_BR9000"); 2) synthetic rubber powder ("Rubber_Syn_Powder"); 3) acrylonitrile-butadiene rubber ("NBR"); and 4) petroleum resin C-9. In support of this argument, Petitioners and Bridgestone cite Prelim SV Memo, Guizhou Tyre's December 7, 2007, submission, Guizhou Tyre's March 18, 2008, submission, and Petitioners' December 17, 2007, submission.

Guizhou Tyre argues that the Department should reject Petitioners' and Bridgestone's claims regarding the appropriate HTS classifications for synthetic rubber powder and NBR because: 1) there is no legal basis to apply adverse inferences concerning Guizhou Tyre's reported HTS classifications; 2) Guizhou Tyre provided sufficient descriptions which the Department used to properly classify synthetic rubber powder and NBR. In support of these arguments, Guizhou Tyre cites sections 776 and 782 of the Act, Prelim SV Memo, Guizhou Tyre Verification Report, Guizhou Tyre's SQR, and Guizhou Tyre's March 18, 2008, submission.

Department's Position: Pursuant to section 773 of the Act, the Department's surrogate value determinations must be both reasonable and supported by substantial evidence on the record.[257] Bridgestone is correct that Guizhou Tyre has the burden to supply information on its factors of production such that the Department can determine the appropriate surrogate values.[258] As explained below, Guizhou Tyre has met this burden.

Contrary to Bridgestone's argument, section 776 of the Act, which governs the Department's use of adverse facts available, is not applicable to this situation. First, all information necessary to properly classify and value Guizhou Tyre's factors of production is available on the record. Second, Guizhou Tyre has not withheld information from the Department, failed to provide information in a timely manner (*see below*), impeded this investigation, or provided unverifiable information.

Verification is intended to test the accuracy of data already submitted.[259] Verification is not intended to be an opportunity for respondents to argue their position or submit new factual information.[260] As the Department stated in its verification agenda addressed to Guizhou Tyre:

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[257] *See, e.g., Jinan Yipin (2007); Allied Pacific (2006);* and *TRBs-PRC 03/08/02.*

[258] *See, e.g., Zenith (1993); Mannesmannrohren-Werke (2000); NSK (1996);* and *Tianjin (1992).*

[259] *Tianjin (2004).*

[260] *See, e.g., Live Swine 04/14/97;* and *Pipe Fittings 02/07/03.*

> New information will be accepted at verification only when: (1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record.

We disagree with Bridgestone that Guizhou Tyre submitted its surrogate value information in an untimely manner. All recommendations for the proper Indian HTS classification for Guizhou Tyre's surrogate value information submissions were submitted prior to the deadline for submission of surrogate value information. At any time prior to the deadline for the submission of surrogate value information, Bridgestone could have submitted additional information on the record to rebut Guizhou Tyre's proposed Indian HTS classifications. At verification, and consistent with its standard Department practice, the Department selected as verification exhibits certain information and documentation that the Department believed corroborated, supported and/or clarified surrogate value information already on the record. The Department, not Guizhou Tyre, placed on the record the surrogate value information found in the verification exhibits. Thus, Bridgestone was not denied an opportunity to rebut information submitted by an interested party, pursuant to 19 CFR 351.301(c)(1). In its rebuttal case brief, Bridgestone provided argument based on record evidence to support its position. However, the Department disagrees with Bridgestone's position.

Bridgestone incorrectly argues that, absent invoicing or purchase documentation tying Guizhou Tyre's actual factors to the cited industry standards, the Department has no reliable information on which it can change its classification from the *Preliminary Determination*. In *Shandong Huarong Machinery (2006)*, the CIT upheld the Department's decision to classify and value certain factors of production based on record invoices from the respondent's suppliers that demonstrated that the respondent purchased the relevant factor. Similarly, for the Guizhou Tyre factors in question, the Department has reliable information in the form of Guizhou Tyre's post-*Preliminary Determination* factor descriptions, industry standards, laboratory test results, and invoices from Guizhou Tyre's suppliers, some of which the Department requested and obtained at verification.[261] The evidence on the record clearly supports the HTS classification changes for Guizhou Tyre.[262]

We agree with Bridgestone that the Department should value Guizhou Tyre's factors using the best available information. Accordingly, we have valued the following Guizhou Tyre factors of production as discussed below:

Reclaimed rubber 1:
In the *Preliminary Determination*, the Department classified Guizhou Tyre's reclaimed rubber 1 factor as a butyl rubber under Indian HTS 4002.39.00 ("Synthetic Rubber And Factice Derived From Oils, In Primary Forms Or In Plates, Sheets Or Strip; Mixtures Of Any Product Of

[261] *See Shandong Huarong Machinery (2006)* at 1281: "Here, Commerce's decision is supported by its review of what [the respondent] purchased from its raw materials suppliers."

[262] *See Shandong Huarong Machinery (2006)* at 1280.

Heading 4001 With Any Product Of This Heading, In Primary Forms Or In Plates, Sheets Or Strip - Isobutene-isoprene (butyl rubber (IIR); halo-isobutene-isoprene rubber (CIIR or BIIR): other").[263] For the final determination, we have classified Guizhou Tyre's reclaimed rubber 1 factor under Indian HTS 4003.00.00 ("Reclaimed Rubber in Primary Forms Or In Plates, Sheets Or Strip"). While Guizhou Tyre has submitted multiple proposed HTS classifications for reclaimed rubber 1 throughout this proceeding, at verification Guizhou Tyre demonstrated that reclaimed rubber 1 is primarily made from butyl rubber waste, which meets the description of merchandise classified under Indian HTS 4003.00.00.[264]

Reclaimed rubber 3:
In the *Preliminary Determination*, the Department classified Guizhou Tyre's reclaimed rubber 3 factor under Indian HTS 4003.00.00 ("Reclaimed Rubber In Primary Forms Or In Plates, Sheets Or Strip").[265] For the final determination, we have classified Guizhou Tyre's reclaimed rubber 3 factor under Indian HTS 4004.00.00 ("Waste, Pairings And Scrap Of Rubber (Other Than Hard Rubber) And Powders And Granules Obtained From Waste Rubber"). Guizhou Tyre's description of reclaimed rubber 3 throughout this investigation supports classifying reclaimed rubber 3 under Indian HTS 4004.00.00.[266] Furthermore, at verification Guizhou Tyre demonstrated that reclaimed rubber 3 consists of waste rubber in granular forms, which meets the description of merchandise classified under Indian HTS 4004.00.00.[267]

Styrene butadiene rubber 1500 ("SBR1500"):
In the *Preliminary Determination*, the Department classified Guizhou Tyre's SBR1500 under Indian HTS 4002.19.20 ("styrene butadiene rubber with styrene content exceeding 50%").[268] For the final determination, we have classified Guizhou Tyre's SBR 1500 under Indian HTS 4002.19.90 ("styrene-butadiene rubber (SBR); carboxulated styrene butadiene rubber (ZSBR): . . . Other"). While Guizhou Tyre has submitted multiple proposed HTS classifications for SBR 1500 throughout this proceeding, at verification Guizhou Tyre demonstrated that SBR 1500 contains less than 50 percent styrene content, which meets the description of merchandise classified under Indian HTS 4002.19.90.[269]

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[263] Prelim SV Memo at Attachment II.

[264] *See* Guizhou Tyre Verification Report at 33 and Exhibit 23, pages 8 and 13.

[265] Prelim SV Memo at Attachment II.

[266] *See* Guizhou Tyre's December 7, 2008, submission at Exhibit 1; Guizhou Tyre's December 10, 2008, submission at Exhibit 5; Guizhou Tyre's SQR, section D at Exhibit D-13; and Guizhou Tyre's March 18, 2008, submission at Attachment 1.

[267] *See* Guizhou Tyre Verification Report at 33 and Exhibit 23, pages 14-15.

[268] Prelim SV Memo at Attachment II.

[269] *See* Guizhou Tyre Verification Report at 33 and Exhibit 23, pages 16-17.

Styrene butadiene rubber 1712 ("SBR1712"):
In the *Preliminary Determination*, the Department classified Guizhou Tyre's SBR1712 under Indian HTS 4002.19.20 ("Styrene Butadiene Rubber With Styrene Content Exceeding 50%").[270] For the final determination, we have classified Guizhou Tyre's SBR 1712 under Indian HTS 4002.19.10 ("Oil Extended Styrene Butadiene Rubber"). While Guizhou Tyre has submitted multiple proposed HTS classifications for SBR1712 throughout this proceeding, at verification Guizhou Tyre demonstrated that SBR 1712 is an oil-extended styrene butadiene rubber, which meets the description of merchandise classified under Indian HTS 4002.19.10.[271]

Butyl rubber 1751:
In the *Preliminary Determination*, the Department classified Guizhou Tyre's butyl rubber 1751 under Indian HTS 4002.39.00 ("Synthetic Rubber And Factice Derived From Oils, In Primary Forms Or In Plates, Sheets Or Strip; Mixtures Of Any Product Of Heading 4001 With Any Product Of This Heading, In Primary Forms Or In Plates, Sheets Or Strip - Isobutene-isoprene (butyl rubber (IIR); halo-isobutene-isoprene rubber (CIIR or BIIR): other").[272] For the final determination, we have classified Guizhou Tyre's butyl rubber 1751 under Indian HTS 4002.31.00 ("Isobutene-isoprene (Butyl) Rubber (IIR)"). While Guizhou Tyre has submitted multiple proposed HTS classifications for butyl rubber 1751 throughout this proceeding, at verification Guizhou Tyre demonstrated that butyl rubber 1751 is IIR, which meets the description of merchandise classified under Indian HTS 4002.31.00.[273]

Polystyrene rubber:
In the *Preliminary Determination*, the Department classified Guizhou Tyre's polystyrene rubber under Indian HTS 3903.19 ("polystyrene other than expansible ones").[274] For the final determination, we have classified Guizhou Tyre's polystyrene rubber under Indian HTS 3903.19.90 ("polystyrene other than expansible ones; other than moulding powder"). While Guizhou Tyre has submitted multiple proposed HTS classifications for polystyrene rubber throughout this proceeding, at verification Guizhou Tyre demonstrated that the polystyrene rubber it purchased during the POI was of "good stiffness" and in the shape of granules, which meets the description of merchandise classified under Indian HTS 3903.19.90.[275]

[270] Prelim SV Memo at Attachment II.

[271] *See* Guizhou Tyre Verification Report at 33 and Exhibit 23, pages 16 and 18.

[272] Prelim SV Memo at Attachment II.

[273] *See* Guizhou Tyre Verification Report at 33 and Exhibit 23, pages 16 and 19.

[274] Prelim SV Memo at Attachment II.

[275] *See* Guizhou Tyre Verification Report at 34 and Exhibit 23, pages 20-21.

Rosin:
In the *Preliminary Determination*, the Department classified Guizhou Tyre's rosin under Indian HTS 3906.10.10 ("Acrylic Polymers In Primary Forms - *Poly (methyl methacrylate*) - Binders for pigments or inks").[276] For the final determination, we have classified Guizhou Tyre's rosin under Indian HTS 3806.10.10 ("gum rosin"). While Guizhou Tyre has submitted multiple proposed HTS classifications for rosin throughout this proceeding, at verification Guizhou Tyre demonstrated that the rosin it purchased was gum rosin, which meets the description of merchandise classified under Indian HTS 3806.10.10.[277]

Phenolic resin SP-1055:
In the *Preliminary Determination*, the Department classified Guizhou Tyre's phenolic resin SP-1055 under Indian HTS 3812.10.00 ("Prepared Rubber Accelerators; Compound Plasticisers For Rubber Or Plastics, Not Elsewhere Specified Or Included; Anti-oxidising Preparations And Other Compound Stabilisers For Rubber Or Plastics: Prepared rubber accelerators"), which generally covers a range of prepared rubber accelerators.[278] For the final determination, we have classified Guizhou Tyre's phenolic resin SP-1055 under Indian HTS 3909.40 ("phenolic resins"). While Guizhou Tyre has submitted multiple proposed HTS classifications for phenolic resin SP-1055 throughout this proceeding, at verification Guizhou Tyre demonstrated that the phenolic resin SP-1055 it purchased was phenolic resin, which meets the description of merchandise classified under Indian HTS 3909.40.[279]

Lignite wax ("Paraffin_MicrocrystalWax"):
In the *Preliminary Determination*, the Department classified Guizhou's lignite wax under Indian HTS 2712.90.20 ("Lignite wax").[280] For the final determination, we have continued to classify Guizhou Tyre's lignite wax under Indian HTS 2712.90.20. While Guizhou Tyre has submitted multiple proposed HTS classifications for lignite wax throughout this proceeding, at verification Guizhou Tyre confirmed that the lignite wax it purchased during the POI was in fact lignite wax, which meets the description of merchandise classified under 2712.90.20.[281] Accordingly, Bridgestone's argument that the Department should use adverse facts available to value Guizhou Tyre's lignite wax is without merit.

[276] Prelim SV Memo at Attachment II.

[277] *See* Guizhou Tyre Verification Report at 34 and Exhibit 23, pages 22-25.

[278] Prelim SV Memo at Attachment II.

[279] *See* Guizhou Tyre Verification Report at 34 and Exhibit 23, pages 26-27B.

[280] Prelim SV Memo at Attachment II.

[281] *See* Guizhou Tyre Verification Report at 34 and Exhibit 23, pages 28-31.

BR9000:
In the *Preliminary Determination*, the Department classified Guizhou Tyre's BR9000 under Indian HTS 4002.19 ("styrene butadiene rubber (SBR); carboxylated styrene butadiene rubber (XSBR): other"). [282] Petitioners and Bridgestone's argument that the Department should value Guizhou Tyre's BR9000 as butyl rubber because Guizhou Tyre labeled BR9000 using the prefix "BR" rather than "SBR" is misplaced. Specifically, Guizhou Tyre's description of BR9000 has been "styrene butadiene rubber" throughout this proceeding.[283] Accordingly, for the final determination, we have continued to classify Guizhou Tyre's BR9000 under Indian HTS 4002.19 because Guizhou Tyre's description of BR9000 matches the description of merchandise classified under 4002.19.

Synthetic rubber powder:
In the *Preliminary Determination*, the Department classified Guizhou Tyre's synthetic rubber powder under Indian HTS 4004.00.00 ("Waste, Pairings And Scrap Of Rubber (Other Than Hard Rubber) And Powders And Granules Obtained From Waste Rubber"). [284] Citing notes to the Indian HTS, Petitioners and Bridgestone argue that rubber powder can only be classified under Indian HTS 4004.00.00 if produced from "waste, parings and scrap," and that Guizhou Tyre has failed to submit information on the record that Guizhou Tyre's synthetic rubber powder is in fact produced from waste or scrap. However, as Guizhou Tyre correctly asserts, rubber powder is by definition produced from waste, pairings and scrap rubber.[285] Furthermore, Guizhou Tyre's description of synthetic rubber powder has been "rubber powder" throughout this proceeding.[286] Accordingly, for the final determination, we have continued to classify Guizhou Tyre's synthetic rubber powder under Indian HTS 4004.00.00 because Guizhou Tyre's description of synthetic rubber powder matches the description of merchandise classified under 4004.00.00.

NBR:
In the *Preliminary Determination*, the Department classified Guizhou Tyre's NBR under Indian HTS 4002.51.00 ("acrylonitrile-butadiene rubber (NBR): latex"). [287] Guizhou Tyre has

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[282] Prelim SV Memo at Attachment II.

[283] *See* Guizhou Tyre's December 7, 2007, submission at Exhibit 1; Guizhou Tyre' December 10, 2007, submission at Exhibit 5; Guizhou Tyre's SQR, Section D at Exhibit D-13; and Guizhou Tyre's March 18, 2008, submission at Attachment 1.

[284] Prelim SV Memo at Attachment II.

[285] *See* Petitioner's December 17, 2007 submission at Attachment 4, note 6 to the Indian HTS, which explains that rubber powder is produced from "rubber waste, parings and scrap from the manufacture or working of rubber and rubber goods definitely not usable as such because of cutting-up, wear or other reasons." *See also*, Xugong's Public Verification Report at page 22, which explains that rubber powder is "obtained from a scrapped tire that has been crushed into a powder."

[286] *See* Guizhou Tyre's December 7, 2007, submission at Exhibit 1; Guizhou Tyre's SQR, Section D at Exhibit D-13; and Guizhou Tyre's March 18, 2008, submission at Attachment 1.

[287] Prelim SV Memo at Attachment II.

proposed 4002.51.00, for latex NBR, throughout this proceeding.[288] While Guizhou Tyre's description of NBR in its December 7, 2007, submission was merely "NBR," Guizhou Tyre supplemented this description in its January 11, 2008, SQR and its March 18, 2008, submission, by clarifying that its NBR was latex NBR.[289] Neither Petitioners nor Bridgestone has submitted any information on the record to call into question Guizhou Tyre's description and classification of NBR. Accordingly, for the final determination, we have continued to classify Guizhou Tyre's NBR under Indian HTS 4002.51.00 because Guizhou Tyre's description of NBR matches the description of merchandise classified under 4002.51.00.

Petroleum resin C-9:
In the *Preliminary Determination*, the Department classified Guizhou Tyre's petroleum resin C-9 under Indian HTS 3911.10.10 ("coumarone-indene resins").[290] Throughout this proceeding Guizhou Tyre has described petroleum resin C-9 as falling under the description of the six-digit Indian HTS 3911.10 (covering "petroleum resins, coumarone-indene or coumarone-indene resins, and polyterpenes").[291] Petitioners and Bridgestone correctly note that there is not information on the record sufficient to support the Department's classification of Guizhou Tyre's petroleum resin C-9 under Indian HTS 3911.10.10 because the record does not demonstrate that Guizhou Tyre's petroleum resin C-9 is a coumarone-indene resin. Accordingly, for the final determination, we have classified Guizhou Tyre's petroleum resin C-9 under Indian HTS 3911.10 because Guizhou Tyre's description of petroleum resin C-9 matches the description of merchandise classified under 3911.10.

Comment 37: Calculation of Value of Guizhou Tyre's Carbon Black

Petitioners and Bridgestone argue that the Department should recalculate the value of Guizhou Tyre's carbon black ("Carbon_Black") in the final determination because the preliminary determination calculations were incorrect and based on invalid data. In making this argument, Petitioners cite *AD Methodologies- NME Wages (2006)*, Guizhou Tyre Verification Report, Guizhou Tyre Preliminary Analysis Calculation Memo, Guizhou Tyre's February 25, 2008, submission, and Petitioners and Bridgestone's March 5, 2008, submissions.

No other parties commented on this issue.

Department's Position: We disagree with Petitioners and Bridgestone that the Department's preliminary determination calculations of the value for Guizhou Tyre's carbon black were

[288] *See* Guizhou Tyre's December 7, 2007, submission at Exhibit 1; Guizhou Tyre's SQR, Section D at Exhibit D-13; and Guizhou Tyre's March 18, 2008, submission at Attachment 1.

[289] *See id.*

[290] Prelim SV Memo at Attachment II.

[291] *See* Guizhou Tyre's December 7, 2007, submission at Exhibit 1; Guizhou Tyre' December 10, 2007, submission at Exhibit 5; Guizhou Tyre's SQR, Section D at Exhibit D-13; and Guizhou Tyre's March 18, 2008, submission at Attachment 1.

incorrect. According to the Department's established practice:

> when ME purchases of an input account for less than 33 percent of the total purchases of the input, but such purchases are otherwise valid and meet the Department's existing conditions (*i.e.*, the volume of the market economy input as a share of total purchases from all sources is "meaningful"), the Department will normally weight-average the weighted-average ME purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases.[292]

In accordance with this practice, and as the Department did in the preliminary determination, for the final determination the Department weight-averaged Guizhou Tyre's ME purchases of carbon black from Germany and Malaysia, and then weight-averaged the resulting ME purchase price for carbon black with the surrogate value for carbon black.[293] Nonetheless, as Petitioners correctly note, Guizhou Tyre presented to the Department, as a pre-verification minor correction, an upward revision of its ME carbon black purchase quantities. Accordingly, we have included these additional ME purchase amounts of carbon black in our calculation of the value for Guizhou Tyre's carbon black.

Comment 38: Treatment of Guizhou Tyre's Sales Made Through TED

Guizhou Tyre requests that in the final determination, the Department reclassify as EP sales Guizhou Tyre's U.S. sales made through its U.S. subsidiary TED because: 1) proper focus of the inquiry as to whether sales to unaffiliated U.S. customers constitute CEP or EP sales is the location of the sales transaction, not the party named on the invoice; 2) the negotiation and contract of sale between Guizhou Tyre and unaffiliated U.S. purchasers occurred prior to importation to the United States; and 3) TED's role in concluding unaffiliated U.S. sales is limited to that of a communications link. In making this argument, Guizhou Tyre cites *AK Steel (2000)*, *SS Bar-Germany 07/28/06*, section 772 of the Act, *Corus Staal (2003)*, *Wire Rod-Mexico 05/16/05*, Guizhou Tyre Verification Report, Bridgestone's and Petitioners' December 5, 2007, submissions, Guizhou Tyre's SRA, Guizhou Tyre's CQR, Guizhou Tyre's SQR, and Petitioners' January 18, 2008, submission.

Bridgestone argues that the Department correctly treated Guizhou Tyre's sales through TED as CEP sales in the preliminary determination, and that the Department should continue to treat such sales as CEP sales in the final determination because: 1) TED is the seller in such transactions; and 2) the locus of the transaction is in the United States. In making this argument, Bridgestone cites *AK Steel (2000)*, *Corus Staal (2003)*, *Corus Staal (2007)*, *SS Bar-Korea 01/23/02*, Guizhou Tyre Verification Report, CBP Form 7501 Instructions, Guizhou Tye's SRA, Guizhou Tyre's AQR, Guizhou Tyre's SQR, and *SS Bar-Germany 07/28/06.*

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[292] *See AD Methodologies- NME Wages (2006)* at 61718.

[293] *See* Guizhou Tyre Final Analysis Calculation Memo at Attachment VI; and Guizhou Tyre Preliminary Analysis Calculation Memorandum at 10 and Attachment VIII.

Department's Position: In the preliminary determination, the Department found that, with respect to Guizhou Tyre's sales involving TED, the first sale of subject merchandise to an unaffiliated party occurred in the United States through TED, Guizhou Tyre's U.S. affiliate, and thus CEP methodology was appropriate.[294] For the final determination, we have continued to classify these sales as CEP sales because record evidence demonstrates that TED, rather than GTC, concludes the first sales to unaffiliated customers in the United States. Specifically, the record indicates that the essential terms of such sales are fixed and finalized upon issuance of invoice to the unaffiliated U.S. customer. Such invoices demonstrate that TED, not GTC, is the entity making the sale. Due to the proprietary nature of this issue, please refer to Guizhou Tyre's Final Analysis Calculation Memo for further discussion.

Comment 39: Whether to Include Licenses and Taxes in Guizhou Tyre's Indirect Selling Expense Ratio

Bridgestone argues that the Department should include the line item "Federal Excise Tax ("FET") on tires" in Guizhou Tyre's indirect selling expense ratio because Guizhou Tyre did not present any documentation at verification demonstrating that this line item only encompassed payments of a tax for non-subject merchandise. In support of this argument, Bridgestone cites Guizhou Tyre's January 29, 2008, submission.

Guizhou Tyre argues that it and the Department properly excluded the amount for FET on tires from its reported U.S. indirect selling expenses because the FET on tires only applies to tires used on highway vehicles, *i.e.*, non-subject merchandise. In addition, Guizhou Tyre notes that: 1) it submitted for the record the federal excise tax on tires used on highway vehicles; and 2) at verification, the Department reviewed TED's indirect selling expenses (including the FET expenses that were excluded) and, except for the minor corrections identified by TED, found no discrepancies. In support of this argument, Guizhou Tyre cites Guizhou Tyre Verification Report and Guizhou Tyre's January 29, 2008, submission.

Department's Position: We agree with Guizhou Tyre that the amount for FET on tires only applies to tires used on non-subject merchandise. On January 29, 2008, prior to verification, Guizhou Tyre submitted *IRS Publication 510: Excise Taxes for 2007*,[295] which clearly states that the federal excise tax applies exclusively to tires "of the type *used on highway vehicles* if wholly or partially made of rubber *and if marked according to federal regulations for highway use*"[296] (*emphasis added*). In addition, at verification we reviewed and reconciled TED's reported indirect selling expenses to TED's financial statements and found no inconsistencies.[297] Based

[294] *OTR Tires-PRC-AD 02/20/*08 at 9287.

[295] *See* Guizhou Tyre's January 29, 2008, submission at Exhibit 4.

[296] *Id.*

[297] *See* Guizhou Tyre Verification Report at 23.

on the scope of the investigation, which covers only off-the-road tires,[298] the tires in which Guizhou Tyre incurred the FET costs were all non-subject tires. Accordingly, because FET was not incurred on subject merchandise, we have continued to exclude the amount for FET on tires from Guizhou Tyre's indirect selling expenses ratio in the final margin calculation.

Comment 40: Treatment of Guizhou Tyre's Billing Adjustment for Tubes and Flaps

Guizhou Tyre argues that the Department should adjust Guizhou Tyre's U.S. price in instances where tubes and flaps have been sold with a tire because Guizhou Tyre reported its gross unit prices inclusive of the charge for tubes and flaps and separately reported the billing adjustment for tubes and flaps.

No other parties commented on this issue.

Department's Position: In the preliminary determination, the Department did not adjust Guizhou Tyre's reported gross unit price inclusive of tubes and flaps because the Department included tubes and flaps as material inputs into the production of subject tires.[299] However, the Department has subsequently determined that tubes and flaps, regardless of the manner in which they are sold, are neither subject to the scope of this investigation, nor properly considered as components of finished tires.[300] Accordingly, for the final margin calculation, we have adjusted Guizhou Tyre's reported gross unit price in an attempt to reach a gross unit price reflective of subject merchandise only. *See* Guizhou Tyre Final Calculation Analysis Memorandum at 2.

VI. ISSUES SPECIFIC TO XUGONG

Comment 41: Treatment of Xugong and Its Chinese Affiliates as a Single Entity

Xugong argues that Xugong, Armour Rubber, Hanbang, and Xulun Tyre are affiliated and constitute a single entity. Additionally, Xugong states that it has fully cooperated with the Department by reporting all FOP information for all inputs used in the production of the merchandise under consideration, and all cost reconciliations by each entity. Xugong states that the Department conducts a two-part analysis when determining whether persons or entities should be collapsed into a single entity for purposes of calculating an antidumping duty margin: the first part is to determine whether the persons or entities are affiliated, and the second part is whether the affiliated producers constitute a single entity for the purposes of calculating antidumping margins in antidumping proceedings. To support this argument Xugong cites section 771(31) of the Act, 19 CFR 351.401(f), 19 CFR 351.102(b), Xugong's SRA, Xugong's AQR, Xugong's March 19, 2008 Additional Factual Information, Xugong's CQR, Xugong's DQR, 03/10/08 SQR, 01/09/08 SQR, 01/18/08 SQR, 02/07/08 SQR, and

[298] *See* final determination to be published, dated concurrent with this Memorandum.

[299] *See* Guizhou Tyre Preliminary Analysis Calculation Memo at 4.

[300] *See* Comment 21.

01/31/08 SQR, *SAA, Mushrooms 03/05/04, Mushrooms 09/14/05, NACCO (1997), AD/CVD Final Rule (1997).*

Bridgestone argues that in calculating Xugong's margin, the Department should utilize Xugong's own intermediate inputs database (which includes Xugong's usage rates for the semi-finished rubber transferred from Armour Rubber), rather than the upstream inputs database (which includes Armour Rubber's upstream factors to make the semi-finished rubber). Bridgestone states that, although Xugong argues that it should be collapsed as a single entity with Armour Rubber, the regulatory conditions for such collapsing cannot be satisfied. Even if Xugong and Armour Rubber could be collapsed, however, Armour Rubber's consumption rates for the upstream inputs are unreliable and, therefore, cannot be used in lieu of the semi-finished factors that Armour Rubber supplies to Xugong.

Bridgestone states that the Department discovered at verification that Armour Rubber does not produce tires but, rather, it makes semi-finished rubber from natural rubber (using its "mixing" and "calendaring" operations). According to Bridgestone, Armour Rubber cannot be considered a producer of the subject merchandise as required by the collapsing regulation, nor could Armour Rubber become a producer of the subject merchandise without substantial retooling. Bridgestone asserts that Xugong and Armour Rubber cannot be collapsed as a single entity, and the semi-finished factors supplied by Armour Rubber cannot be considered "self-produced" by Xugong.

Alternatively, Bridgestone submits that even if these two companies were collapsed, the Department should nevertheless begin the direct-material-cost buildup with Xugong's consumption of semi-finished factors (*e.g.*, semi-finished rubber) obtained from Armour Rubber. Bridgestone maintains that, where there are discrepancies or potential inaccuracies in the upstream raw materials, the Department will apply an "intermediate-product valuation methodology" in order to eliminate distortions to normal value. Bridgestone concludes that the use of an intermediate input methodology is warranted because the Department could not tie the calculated usage rates for natural rubber to Xugong's reported FOP database and other discrepancies associated with Xugong's consumption rates. *See* Comment 43. To support this argument Bridgestone cites 19 CFR 351.401(f)(1), Xugong Verification Report, *Garlic 09/27/07, Honey 07/11/07,* and *1677(c)(1).*

Whether Xugong, Armour, and Hanbang are affiliated:
Xugong argues that the record evidence establishes that Xugong and Armour Rubber are affiliated through their common management and cross ownership. Specifically, Xugong states that the director of Armour Rubber is the general manager and sole director for Xulun Tyre, which owns a certain percentage of both Xugong and Armour Rubber. According to Xugong, both Xulun Tyre and the director of Armour Rubber are in a position to legally and operationally exercise restraint or direction over both Xugong's and Armour Rubber's production, pricing, and cost with respect to the merchandise under consideration. Xugong concludes that Armour Rubber and Xugong are affiliated persons pursuant to the statute. To support this argument Xugong cites 771(33) (B), (E), (F), and (G) of the Act, Xugong SRA, 02/07/08 SQR, Xugong AFI, Xugong Verification Report, and 01/09/08 SQR.

Xugong argues that the record evidence establishes that Xugong and Hanbang are affiliated through their common management and the indirect control of more than 5 percent of Xugong's shares by Hanbang. Additionally, Xugong claims that, during the POI, Xulun Tyre was owned by Hanbang through an ownership transfer, which is an additional element for consideration of affiliation due to Xulun Tyre's ownership of Xugong. Xugong concludes that Hanbang and Xugong are affiliated persons pursuant the statute. To support this argument Xugong cites 771(33) (B), (E), (F), and (G) of the Act, Xugong SRA, 02/07/08 SQR, Xugong AFI, Xugong Verification Report, 01/31/08 SQR, 19 CFR 351.402(f)(2), 03/10/08 SQR, and 01/09/08 SQR.

Bridgestone argues that Xugong and Hanbang are not affiliated persons. According to Bridgestone, the fact that both companies have the same director may only establish that this person is affiliated with each company, but it does not establish that the two companies are affiliated with each other. Bridgestone further maintains that Xugong has not identified any evidence to support its assertion that the director of both companies is legally and operationally in a position to exercise restraint or direction over both companies.

Bridgestone asserts that Hanbang does not own, directly or indirectly, 5 percent of Xugong's voting stock based on the ownership share of Hanbang. Bridgestone argues that the new information regarding Hanbang's investment in Xulun Tyres was not on the record and does not corroborate anything that previously had been provided. To support this argument Bridgestone cites 19 CFR 351.401(f), section 771(33)(B), (F), and (G) of the Act, Xugong SRA, 02/07/08 SQR, *SSSS Coils-Taiwan 02/13/06,* Xugong AFI, Xugong Verification Report, Xugong AQR, Xugong Verification Agenda, and *Activated Carbon 03/02/07.*

Xugong argues that the record evidence establishes that Hanbang and Armour Rubber are affiliated through their common management. According to Xugong, the director of Armour Rubber and director/chairman of Hanbang is in a position to legally and operationally exercise restraint or direction over both Hanbang's and Armour Rubber's production, pricing, and cost with respect to the merchandise under consideration. Xugong concludes that Armour Rubber and Hanbang are affiliated persons pursuant to the statute. To support this argument Xugong cites 771(33) (B), (E), (F), and (G) of the Act, Xugong SRA, 02/07/08 SQR, Xugong AFI, DQR, and Xugong Verification Report.

Department's Position: As Xugong correctly notes, before deciding whether to treat multiple entities as a single entity, the Department must first reach a finding of affiliation. Section 771(33) of the Act provides that:

> The following persons shall be considered to be 'affiliated' or 'affiliated persons':
>
> (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
> (B) Any officer or director of an organization and such organization.
> (C) Partners.
> (D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
(G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Statement of Administrative Action (SAA) to the Uruguay Round Agreement Act states the following:

> The traditional focus on control through stock ownership fails to address adequate modern business arrangements, which often find one firm "operationally in a position to exercise restraint or direction" over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.301

Based on the record evidence and consistent with section 771(33)(F) of the Act, we find that Xugong and Armour Rubber are affiliated parties. Xulun Tyres owns a significant percent interest in both Xugong and Armour Rubber. *See* Armour Rubber's business license and Joint Venture Contract in Exhibit 2 of the 02/07/08 SQR, Xugong's business license in Exhibit 4 of Xugong SRA, and revised capital verification report in Exhibit 21 of 01/09/08 SQR. Xugong and Armour Rubber also share common management whereby Xugong's vice general manager and director serves as Armour Rubber's director and general manager, as well as Xulun Tyres' vice manager. *See* Xugong Verification Report at 5, Exhibit 1 of Xugong AFI, Xugong's SRA at 16, and Xugong Verification Report at 5. Additionally, Xulun Tyres' sole director and general manager, who owns greater than 5 percent interest in Xulun Tyres, is also the director of Armour Rubber. *See* Xugong Verification Report at 4, Xugong AFI, 01/09/08 SQR at 12. Xulun Tyres' ownership interest in both Xugong and Armour Rubber combined with the high level positions held by Xulun Tyre's top management in Xugong and Armour Rubber puts Xulun Tyres in a position to exercise restraint or direction over Xugong and Armour Rubber, pursuant to 771(33) (F). Thus, we find Xugong and Armour Rubber to be affiliated under this section of the statute.

Xugong's and Bridgestone's analysis of Xugong's and Armour Rubber's affiliation with Hanbang is based on an inclusion of tubes and flaps in the scope of the merchandise under consideration. Hanbang is a producer of tubes and flaps and Xugong's supplier of tubes and flaps. Xugong argues that, based on its affiliation with Hanbang and subsequent eligibility for collapsing as a single entity, the Department should use Hanbang's FOPs for tubes and flaps in

301 *See* SAA, H.R. Doc. 103-316 (vol. I) at 838.

calculating Xugong's margin. Bridgestone claims that Hanbang is not affiliated with Xugong and the regulatory conditions for collapsing are not satisfied. Therefore, according to Bridgestone, the Department should use SVs for tubes and flaps to value Xugong's FOPs for producing tube-type tires.

For the final determination, however, the Department has determined that tubes and flaps are not covered by the scope of the investigation, regardless of the manner in which they are sold, nor are they properly considered components of finished tires. *See* Comment 21. Thus, the issue of valuation of tubes and flaps for purposes of this final determination is moot. *See* Comment 21 for the discussion of the adjustment to Xugong's gross unit price for tubes and flaps sold together with tube-type tires. However, record evidence demonstrates that, in addition to tubes and flaps, Hanbang also produces tires covered by the scope of this investigation. *See* pages 3-4 and Exhibits 2-4 of Xugong AFI and pages 3-4 of Xugong Verification Report. Thus, the Department finds that, regardless of the exclusion of tubes and flaps, a decision as to whether Hanbang and Xugong are affiliated and whether they should be treated as a single entity for purposes of this final determination is warranted.

Xugong argues that Xugong and Hanbang are affiliated pursuant to section 771(33)(B) of the Act, which provides that "{a}ny officer or director of an organization and such organization" shall be considered affiliated. Specifically, Xugong states that its director and vice general manager ("Xugong's director") is the director chairman of Hanbang. On this basis alone, however, while Xugong's director may be affiliated with Xugong and with Hanbang, Xugong itself cannot be found to be affiliated with Hanbang. *See* Exhibit 1 of Xugong AFI, page 16 of Xugong SRA. While Xugong claims that Xugong and Hanbang are affiliated because Xugong's director is legally and operationally in a position to exercise restraint over both companies, we do not believe this claim is supported by record evidence. As stated by Bridgestone, Xugong's director is only one of Xugong's seven directors and only one of Hanbang's five directors. *See id.* As one director out of a board of five or seven, we do not believe that Xugong's director is able to exercise control and restraint over either company. Thus, while the director himself may be affiliated with both Xugong and Hanbang, his lack of ability to exercise control or restraint over either company does not support a finding that Xugong and Hanbang are affiliated. *See SSSS Coils-Taiwan 02/13/06.* Indeed, we note that Xugong's organizational structure includes a general manager and chairman of the board, neither of which have any connection to Hanbang. *See* page 16 of the Xugong SRA. In addition, Xugong's business license lists a separate individual as the legal representative of the company. *See* Exhibit 4 of Xugong SRA. Although Xugong's director is listed as the chairman director of Hanbang, there is no evidence that the chairman has any greater authority than any other director.

Xugong also argues that Xugong and Hanbang are affiliated pursuant to section 771(33)(E) of the Act, which provides that "{a}ny person directly or indirectly owning, controlling, or holding the power to vote, 5 percent or more of the outstanding voting stock or shares of an organization" is affiliated with that organization. Specifically, Xugong states that Hanbang controls more than 5 percent of Xugong through the collective shares held by two persons, i.e., Xugong's director and the general manager and director of Hanbang ("Hanbang's director"). However, while both Xugong's director and Hanbang's director individually own a significant

percentage of Hanbang, each owns less than 5 percent of Xugong. *See* Exhibit 21 of Xugong 01/09/08 SQR, page of Xugong Verification Report. In fact, apart from Xulun Tyre's shares, no single shareholder owns 5 percent or more of the outstanding voting stock in Xugong as provided by 771(33)(E) of the Act.

Xugong further argues that the fact that Xulun Tyre's investors transferred their ownership from Xulun Tyre to Hanbang is sufficient to find Xugong affiliated with Hanbang, as Hanbang owns Xulun Tyre, which in turn owns a significant portion of Xugong. *See* pages 4-5 of Xugong Verification Report and Exhibit 21 of Xugong 01/09/08 SQR. On this point, however, we agree with Bridgestone that the Xulun Tyre investors' ownership of Hanbang covered only a small portion of the POI and terminated the following year. *See* pages 4-5 of Xugong Verification Report. Pursuant to the "affiliated persons; affiliated parties" definition in 19 CFR 351.102(b), the Department "will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control." Therefore, because Hanbang's ownership of Xulin Tyre was temporal in nature, covering a mere three-month period at the end of 2007, we find this fact an insufficient basis upon which to find Xulong and Hanbang affiliated.

Finally, we examined the question of whether Xugong and Hanbang are affiliated based on a close supplier relationship resulting from Hanbang's supply of tubes and flaps to Xugong. At verification, we examined both Xugong's purchase ledgers and Hanbang's sales ledgers. *See* page 5 of Xugong Verification Report. Hanbang maintains two spreadsheets to track its sales of tubes and flaps, one to affiliated parties, where it lists sales to a subsidiary trading company who, in turn, sold the tubes and flaps to Xugong. The second spreadsheet tracks sales to unaffiliated customers. We found no evidence of an exclusive supplier relationship between Hanbang and Xugong, such that either company is in a position to control the other. We also found that Xugong listed its purchases from Hanbang as "sales from outside," thus, suggesting that Xugong considers Hanbang to be an unaffiliated supplier.

In conclusion, based on the above discussion, we find that Xugong and Hanbang are not affiliated within the meaning of 771(33) of the Act.

Whether Xugong, Armour Rubber, and Hanbang should be treated as a single entity:
Xugong argues that Xugong, Hanbang, and Armour Rubber have similar production facilities and produce similar and identical products that would not require substantial retooling of any facility in order to restructure manufacturing priorities. Xugong claims that although Armour Rubber did not produce the merchandise under consideration during the POI, it is nonetheless in a position to produce similar or identical merchandise. Xugong also claims that Hanbang's production facilities produce similar and identical products that would not require substantial retooling of the facility in order to restructure its manufacturing priorities. Xugong further contends that Hanbang did not export any merchandise to the United States during the POI, supporting the argument that Hanbang and Xugong are a single entity. Xugong states that it produced the merchandise that was sold to the U.S. market, while Hanbang engaged in the production and sales of different products, or of merchandise sold to other markets. To support this argument Xugong cites 19 CFR 351.402(f)(2), Xugong SRA, 02/07/08 SQR, Xugong AFI, AQR, *NACCO (1997),* and Xugong Verification Report.

Bridgestone states that Xugong and Armour Rubber do not have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities. According to Bridgestone, Armour Rubber does not produce any tires but, rather, makes semi-finished rubber from natural rubber. Bridgestone submits that Armour Rubber thus cannot be considered a "producer" of the subject merchandise as required by the collapsing regulation, nor could it become a producer of the subject merchandise without substantial retooling. Responding to Xugong's assertion that, because it owns and controls the equipment and facility utilized by Armour Rubber, and is therefore in a position to terminate Armour Rubber's operations and assume the production {of semi-finished rubber} without retooling or shifting the manufacturing priorities, Bridgestone holds that this point does not address the fact that Armour Rubber has no capability to begin manufacturing off-the-road tires without substantial retooling. Bridgestone claims that such action would merely put Armour Rubber out of business, but would not shift off-the-road tire production from one company to another, as Xugong would remain the only company capable of making the subject merchandise.

Bridgestone also maintains that Xugong has failed to demonstrate that Xugong and Hanbang have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities. Bridgestone maintains that there is no evidence that Hanbang has the capability to produce merchandise that is similar or identical to the merchandise made by Xugong, nor is there any evidence regarding the extent of retooling that would be required for the companies to restructure manufacturing priorities.

Bridgestone argues, moreover, that it is doubtful that Xugong and Hanbang even meet the baseline requirements to be considered affiliated persons, let alone a degree of common ownership sufficient to be considered a single entity. Bridgestone maintains that even if the Department accepts the untimely new factual information regarding Hanbang's temporary ownership of Xulun Tyres, it is undisputed that Hanbang transferred its ownership interest back to the original shareholders in 2007 and, thus Hanbang no longer has any stake in Xulun Tyre (or any indirect stake in Xugong through Xulun Tyre). According to Bridgestone, because the "significant potential for manipulation" standard "focuses on what may transpire in the future,"[302] Hanbang has no current or future ability to control Xugong through any ownership interest. Bridgestone asserts that because this is an investigation, there is no need to consider whether Xugong and Hanbang should be collapsed for assessment purposes and because they are no longer affiliated, Xugong and Hanbang certainly cannot be collapsed for cash deposit purposes going forward. To support this argument Bridgestone cites 19 CFR 351.401(f), *Preamble (1997)*, Xugong Verification Report, *Ironing Tables 03/21/07*, and Xugong AFI.

Bridgestone argues that the fact that a person serves on the board of directors for both companies and is also employed as a manager for Xugong hardly demonstrates that either company is able to control or manipulate the other. Furthermore, Bridgestone asserts, holding

[302] *See* Bridgestone's Rebuttal Brief at 32, quoting *Preamble (*1997), 63 FR at 27346.

a single seat on a board of directors does not, by itself, put one in "a position to exercise restraint or direction" over a company. To support this argument Bridgestone cites Xugong SRA, 02/07/08 SQR, and *SSSS Coils-Taiwan 02/13/06.*

Bridgestone argues that Xugong's claims regarding intertwined operations have no basis in the record evidence, and that the verification report makes no mention of any plan to incorporate Hanbang's operations into the same facility as Xugong. Bridgestone also argues that the Department discovered for the first time at verification that Xugong procures a portion of its tubes and flaps from a different supplier, whose identity Xugong did not disclose. To support this argument Bridgestone cites Xugong Verification Report, Xugong DQR,

Department's position: Pursuant to 351.401(f) of the Department's regulations, if the condition of affiliation is satisfied, the Department will proceed to the second part of the analysis for collapsing affiliated parties into a single entity. We have determined that there is no basis on which to collapse Xugong and Hanbang because we found that Xugong and Hanbang are not affiliated. Thus, we will address the remaining collapsing criteria solely with respect to Xugong and Armour Rubber.

Section 351.401(f) of the Department's regulations outlines the criteria for treating affiliated producers for purposes of calculating antidumping in antidumping proceedings--

> (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.(2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
>
> > (i) The level of common ownership; (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

Our analysis of the record evidence indicates that Xugong and Armour Rubber do not pass the first criterion for treating affiliated producers as a single entity. Armour Rubber is not a producer of merchandise under consideration; it is a processor of natural rubber into semi-finished rubber. *See* Exhibit D-(1) 1 and D-(1) 2 and page D-2 of Xugong DQR, where Xugong states that Armour Rubber "is involved in the first two steps of production of the subject merchandise." Our verification of Xugong confirmed that Armour Rubber neither produces tires nor has the capacity to produce finished tires. *See* Xugong Verification Report at 3. At verification, we toured both Armour Rubber's and Xugong's plants and observed the mixing and calendaring stages at Armour Rubber and the tire building and curing stages at Xugong. *See* Xugong Verification Report at 12. Xugong cites page 12 of Xugong Verification Report as evidence that we had an opportunity to visit Xugong's, Hanbang's, and Armour

Rubber's newly constructed production facility. However, page 12 of the Xugong Verification Report describes our tour of Armour Rubber's and Xugong's plant A and plant B, which are the plants where the subject tires were produced during the POI, as described above. In fact, nowhere does the Xugong Verification Report mention that we visited the newly constructed plant.

Xugong argues that the scope of Armour Rubber's business license states that it can engage in the production and sale of off-the-road radial and other high performance tires. We agree with Bridgestone that, even if Armour Rubber is permitted under Chinese law to produce off-the-road tires, it does not necessarily mean that it actually has the facilities to produce those tires and, in fact, as explained above, our observations during verification were that it does not have the capability to produce tires. Armour Rubber's business license cannot serve as evidence that Armour Rubber actually produces tires or has the production facilities to do so. We agree with Xugong's statement that Armour Rubber leases the space and equipment to produce semi-finished rubber inputs from Xugong, which is the extent of Armour Rubber's production capacity. The fact that Xugong is in a position to terminate Armour Rubber's operations does not support a finding to collapse; rather, as Bridgestone points out, merely indicates that Xugong would have the capability to perform the full range of production operations upon such termination.

Next we examined whether substantial retooling would be required in order for Armour Rubber to be able to produce merchandise identical or similar to that produced by Xugong. Record evidence indicates that substantial retooling would be necessary, given the distinct nature of Armour Rubber's production facilities. Xugong cites to *Mushrooms 03/05/04,* to support its argument that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and that other factors unique to the relationship of the business entities may lead the Department to determine that collapsing is warranted. However, as Armour Rubber does not engage in the sale of subject merchandise, the salient fact in considering whether to collapse Xugong with Armour Rubber is whether Armour Rubber has the ability to produce identical or similar products without substantial retooling. Unlike the facts before us in this case, in *Mushrooms 03/05/04*, the collapsed entities all produced preserved mushrooms during the POR. The Department stated that "the first and the second collapsing criteria are met here because these companies are affiliated … and all have production facilities for producing similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities." *See Mushrooms 03/05/04.* Thus, we do not find *Mushrooms* to be instructive in this case. With respect to Xugong's argument that Armour Rubber is a producer of similar products, *i.e.*, intermediate rubber inputs, we disagree. First, we find that intermediate rubber, an input in the production of the merchandise under consideration, is not identical or similar to finished OTR tires. The equipment necessary for the tire-building process (*e.g.*, drums, molds, etc) and the curing process (curing press, molds) performed by Xugong, are entirely different from the equipment used in the mixing and calendaring processes performed by Armour Rubber. Armour Rubber's production of semi-finished rubber is far removed from a capability to make a tire. Armour Rubber lacks the necessary equipment, including drums and molds, for various production stages of tire production.[303] Furthermore, based on our observations during the plant

[303] *See* Xugong Verification Report at 12 ("We observed production stages for rubber mixing and calendering at Armour Rubber, and for tire building and curing at {Xugong's} plants A and B").

tour at verification, Armour Rubber would need additional factory space before it could even install the equipment required for the stages of tire production not currently performed by Armour Rubber, necessitating additional substantial restructuring of Armour Rubber's facility. Moreover, the equipment required to process semi-finished rubber includes mixers and ovens that cannot be easily transformed into tire-making equipment, such as drums and molds due to their different functions.

Citing to *NACCO (1997),* Xugong argues that the CIT recognized that the AD statute and the Department's general practice is to treat affiliated parties as a single entity where there exists a possibility for manipulation of the prices and costs used in the dumping analysis, or where such treatment is otherwise necessary in order to accurately calculate such prices and cost. However, *NACCO (1997)* also states that "the underlying rationale for this practice is the recognition that sales prices between parties may not reflect arm's length transactions or related parties may otherwise shift costs." *NACCO (1997).* Because Armour Rubber is neither a producer nor an exporter of the subject merchandise under consideration, we find that the normal circumstances that lead the Department to an analysis of whether a significant potential for manipulation of price or production exists are not present in this case.

Because we find that the second criterion of collapsing is not satisfied, i.e., Armour Rubber cannot produce identical or similar merchandise without substantial retooling, and because Armour Rubber does not export subject merchandise, we do not reach the issue of whether a potential for manipulation of price or production exists with respect to Xugong and Armour Rubber. In sum, for the reasons stated above, we find that treating Xugong and Armour Rubber as a single entity is not warranted in this case.

Use of the Armour Rubber's natural rubber FOPs, and Hanbang's flap and tube FOPs:
Xugong states that because in the preliminary determination the Department found that Xugong's production was integrated with Armour Rubber, it should continue to find that Xugong and Armour Rubber are an integrated single entity for the purposes of calculating the antidumping duty margin. Xugong maintains that for the final determination the Department should use the last submitted factors of production database, XGFOPNAT_05202008, dated May 20, 2008, which reports the natural rubber inputs. To support this argument Xugong cites Xugong Analysis Memo.

Xugong argues that in the preliminary determination, the Department did not provide any explanation or support for its decision not to use the reported flap and tube factors of production provided by Hanbang. Xugong maintains that for the final determination, the Department should use the last submitted flaps and tubes factors of production database, XGFOPFT_05202008 dated May 20, 2008, which reports the factors of production inputs for flaps and tubes.

Bridgestone argues that in its factor buildup, the Department should continue to use the tubes and flaps that Xugong acquired from Hanbang, rather than Hanbang's usage rates for the upstream inputs consumed to make those tubes and flaps. Xugong's argument for the valuation of upstream inputs is based on the premise that the Department should treat it as a "single entity" with Hanbang under the collapsing regulation (which would mean the tubes and flaps

were "self-produced" by Xugong). Bridgestone claims that Xugong cannot demonstrate that the regulatory conditions for "collapsing" have been satisfied.

Department's position: As we discussed in Comment 43, we have used Xugong's upstream inputs database and Armour Rubber's factors for further processing of the raw materials to value semi-finished rubber, because Xugong itself purchases and owns the majority of inputs into these products and because the discrepancies found at verification with respect to these data were corrected in Xugong's May 20, 2008, upstream inputs database.

We have not relied on Hanbang's tubes and flaps database because we determined that tubes and flaps are not covered by the scope of the investigation nor are they properly considered inputs into finished tires. *See* Comment 21. Therefore, there is no need to value tubes and flaps for purposes of this final determination. However, we recognize that Xugong sold tube-type tires that are covered by the scope of the merchandise under consideration and that tubes and flaps were included in the price of such subject tires. In order to adjust the gross unit price of Xugong's tube-type tires for the tubes and flaps, as facts available, we reduced the gross unit price of all sales of tube-type tires in Xugong's U.S. sales by the percentage by weight that the tube and/or flap represented of the total weight of direct materials used to produce the finished tire for each individual CONNUM. For example, if the tube and flap represented 10 percent of the weight of the direct materials of CONNUM A, we reduced the gross unit price of all sales of CONNUM A by 10 percent. *See* Xugong Final Analysis Memo. To confirm the reasonableness of this methodology, we examined other respondents' invoices and packing lists containing a tube, flap, and tire as a set, but itemized separately, and found a distinct correlation between the price and the weight of the tube and the flap in relation to the price and the weight of the tire. Finally, because the inputs used in producing tubes and flaps are nearly identical as the inputs used in producing tires, we further find that the use of weight in calculating this adjustment is reasonable.

Comment 42: Treatment of Xugong's Sales to API

Xugong claims that in the preliminary determination, the Department overlooked the fact that it determined that Xugong and Armour Rubber are integrated producers for the purposes of calculating the AD margin. Xugong further argues that because these two companies represent a single entity, and Armour Rubber is directly affiliated with API, API is affiliated with Xugong. Finally, Xugong states that, based on API's affiliation with Xugong, the Department should treat all sales to API as CEP sales for purposes of calculating the AD margin for the final determination. To support this argument Xugong cites to Xugong Prelim Analysis Memo, section 771(33) of the Act, Xugong's 01/31/08 SQR, and *China Steel (2003).*

Bridgestone argues that Armour Rubber and Xugong cannot be collapsed as a single entity. Bridgestone asserts that even if the Department ultimately uses Armour Rubber's FOPs for other reasons, there is no basis to conclude that Armour Rubber is affiliated with Xugong on a collapsing theory. According to Bridgestone, even if API is affiliated with Xulun Tyre through their common control of Armour Rubber, that would not establish that API is also affiliated with Xugong. Bridgestone concludes that the Department should continue to treat all sales to API as

EP sales. To support this argument Bridgestone cites to section 771(33) of the Act and 19 CFR 351.401(f).

Department's Position: As we determined in Comment 41, Xugong and Armour Rubber are affiliated, but we did not find that they should be treated as a collapsed single entity.

Xugong cites to *China Steel (2003)* to support its argument that once Xugong and Armour Rubber are collapsed into a single entity, API, as Armour Rubber's affiliate, will be treated as an affiliate of the collapsed entity, which includes Xugong. Unlike in *China Steel (2003)*, where the CIT agreed with the Department that "collapsed companies constitute a single entity and therefore affiliates of either company are affiliates of the collapsed entity," we find that there is no basis to collapse Xugong and Armour Rubber into a single entity, as explained in Comment 41. There is no other basis under section 771(33) of the Act to find affiliation between API and Xugong. *See* Comment 41. We do not agree that Xugong is affiliated with API through their respective affiliations with Xulun Tyres and Armour Rubber. While API is affiliated with Armour Rubber under section 771(33)(E) of the Act based on API's ownership of 5% or more of Armour Rubber, and Xugong is affiliated with Xulun Tyres based on Xulun Tyres' ownership and control over Xugong, this does not establish affiliation between Armour Rubber and API. As API is not affiliated with Xugong, we cannot treat any of its sales to API as CEP sales. Therefore, for the final determination, we will continue to treat Xugong's sales to API as EP sales.

Comment 43: Use of Xugong's Upstream Inputs

Comment 43.A: Rejection of Armour Rubber's Upstream Inputs

Bridgestone argues that the Department should utilize Xugong's intermediate inputs database (which includes Xugong's usage rates for the inputs transferred from Armour Rubber), rather than the upstream inputs database (which includes Armour Rubber's factors used to make the intermediate inputs).

Alternatively, Bridgestone argues that the factors transferred from Armour Rubber should not be considered "self produced" by Xugong, because Xugong and Armour Rubber do not qualify for "collapsing" as a single entity. Bridgestone argues that the Department's practice does not support using the upstream inputs merely because of Armour Rubber's limited tolling function. Bridgestone further contends that the reported consumption factors for the upstream inputs – particularly for natural rubber – are unverified and inaccurate. According to Bridgestone, the Department must begin its cost buildup with the intermediate factors for which it has verified and reliable consumption data. To support this argument Bridgestone cites Xugong's 01/31/08 SQR, Xugong Verification Report, 19 CFR 351.401(f), Xugong's 03/10/08 SQR, *HSLW 05/17/05* IDM at Comments 2 and 4, *Garlic 05/01/08*, *Honey 07/11/07* IDM at Comment 2, section 773 of the Act, *Bags 09/10/07*, *Bags 03/17/08*, and Xugong Verification Exhibit 9.

Xugong argues that the Department should use Armour Rubber's inputs to value Xugong's FOPs because these two companies constitute a single entity by virtue of the fact that they are 1) affiliated entities; 2) share production facilities, 3) share directors and common owners; and

4) their operations are intertwined through numerous intra-company transfers and personnel. Xugong further argues that Armour Rubber is not a "tolling supplier," but rather an integrated producer.

Xugong contends that its FOPs based on Armour Rubber's upstream inputs were verified and accurate, with the exception of an inadvertent error, which overstated Xugong's natural rubber consumption. Xugong refutes Bridgestone's assertion that that the Department should apply the intermediate methodology because a significant cost element was not accounted for in the overall factors build-up. Xugong counters by stating that it has fully reported every significant cost element used in the production of the merchandise under consideration. To support this argument Xugong cites 19 CFR 351.401(f), Xugong's 01/09/08 SQR, Xugong Verification Report, *AD/CVD Final Rule (1997),* Xugong's 01/31/08 SQR, Xugong Preliminary Analysis Calculation Memo, Xugong's February 14, 2008, Clerical Mistakes Allegation, Xugong SRA, Xugong's AQR, Xugong's 02/07/08 SQR, Xugong's 01/22/08 SQR, *Honey 07/11/07* IDM at Comment 2, *Garlic 05/01/08.*

Department's Position: As an initial matter, the Department agrees with Bridgestone that Armour Rubber should not be collapsed with Xugong because Armour Rubber is neither a producer nor an exporter of subject merchandise. *See* our discussion of collapsing at Comment 41.

Regarding Armour Rubber's status as a toll supplier or subcontractor to Xugong, we disagree with Bridgestone. Xugong stated that it subcontracted to Armour Rubber for the production of semi-finished rubber produced from Xugong's purchases of natural rubber materials. *See* Xugong's 01/31/08 SQR at 2. However, Bridgestone argues that the Department should not use Armour Rubber's upstream inputs because, for the nylon pressing stage of production, Armour Rubber owns the material inputs. Therefore, Bridgestone submits, Armour Rubber is not a toller, and Bridgestone argues further that few material inputs are actually owned by Xugong. As noted above, we disagree with Bridgestone, as we confirmed at verification that "Armour Rubber owns only the materials used in nylon pressing because Armour Rubber purchases those materials directly. Other materials, such as the raw rubber, are owned by Xugong."[304] Bridgestone mistakenly interprets this to mean that Xugong owns only the raw rubber; however, raw rubber, while the most important major input into semi-finished rubber production, is only mentioned as an example of "other materials," *i.e.*, materials not used in nylon pressing, that are owned by Xugong.

Xugong's upstream inputs database includes FOPs for all stages of semi-finished rubber production. For example, if Xugong adds chemicals in the curing process, they are reported in the upstream inputs FOP database. Because natural rubber is the most important major input into tire production and because the natural rubber along with the majority of other inputs used in the production of semi-finished rubber, with the exception of those used in the nylon pressing stage, are owned by Xugong, we find it appropriate to rely on Xugong's upstream inputs database, as submitted by Xugong on May 20, 2008, for purposes of valuing semi-finished rubber.

[304] *See* Xugong Verification Report at 3.

Bridgestone cites to *HSLW 05/17/05* IDM at Comments 2 and 4 to argue that the Department does not treat semi-finished factors transferred from tolling subcontractors as "self-produced" inputs, and that it "would not normally value the factors of production consumed by subcontractors." However, in *HSLW 05/17/05*, while the respondent at issue claimed to be "mandating the purchasing of materials" used by the subcontractor and "determining the plating process," there was no evidence that the respondent owned the major inputs used in the plating process. Thus, we do not find *HSLW 05/17/05* instructive with respect to the facts of this case.

Xugong's situation here differs in that it has not purchased an input from a supplier who sells out of inventory. In this case, Xugong purchases the major inputs necessary for producing semi-finished rubber and retains title to those inputs and the resulting semi-finished rubber. *See* page 3 of Xugong's 01/31/08 SQR. Armour Rubber thus does not own the natural rubber that it processes for Xugong, but rather provides the further processing as contracted by Xugong. Xugong provided its subcontractor agreement with Armour Rubber and invoices for purchases of natural rubber from ME countries. *See* Exhibit 5 of Xugong's 01/31/08 SQR and Exhibit 63.- Thus, we find that Xugong is properly considered the producer of the semi-finished rubber.

We disagree with Bridgestone that the upstream inputs database contains inaccuracies or discrepancies that would warrant the use of an intermediate product valuation methodology. Bridgestone argues that the Department should resort to an intermediate methodology as it did in *Garlic 05/01/08* and *Honey 07/11/07*. However, we find that the facts of those two cases differ significantly from the facts pertaining to Xugong. In *Garlic 05/01/08,* inaccuracies inherent in the garlic industry, including unaccountability of labor hours and yield losses between the growing, tending, and harvesting periods led to the Department's decision to employ an intermediate product valuation methodology to the garlic producers. In *Honey 07/11/07*, the Department explained the circumstances under which the Department may modify its standard FOP methodology, and apply an SV to an intermediate input:

> 1) when the intermediate input accounts for an insignificant share of total output, and the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all of the parties to the proceeding; or 2) when valuing the factors used in a production process yielding an intermediate product may lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup.[305]

In the instant investigation, we find that the input at issue, semi-finished rubber, represents a significant share of total output, *i.e.* semi-finished rubber is the most important and major input in the tire production. We also find that valuing the factors used in the production process of semi-finished rubber does not lead to an inaccurate result, as discussed below.

[305] *See Honey 07/11/07* IDM at Comment 2.

With respect to Bridgestone's argument that Xugong's natural rubber consumption rates are tainted by different inaccuracies, we disagree. At Xugong's verification, we found no discrepancies in Xugong's reporting methodology in terms of semi-finished rubber production, and found that all relevant inputs into this product were accurately captured. Indeed, we explained that "we found Xugong's calculations to be accurate, and we were able to tie the information used in those calculations to Xugong's and Armour Rubber's books and records."[306] We did find that Xugong mistakenly reported its ME purchase prices for the natural rubber inputs in its FOP database. Xugong asserts that at verification it explained that it had inadvertently reported the ME purchase price instead of the quantity consumed for the RSS1, RSS3 and SIR20 inputs. Xugong states that it corrected this error in its May 20, 2008, upstream inputs database. Xugong argues that if the Department decides to use the database submitted on March 10, 2008, it needs only to divide the reported ME costs for RSS1, RSS3, and SIR20 by the ME purchase prices reported in Xugong's FOP spreadsheet. To support this argument, Xugong cites to Xugong Verification Report, Xugong's DQR, Xugong's 05/20/08 FOP database, and Xugong's 02/07/08 SQR. We note, however, that because we are relying on Xugong's May 20 database, with the corrected consumption rates, there is no need to adjust the rates contained in the March 10, 2008, database.

With respect to Bridgestone's argument regarding Xugong's raw material usage rates being less than the weight of the finished product, Bridgestone is comparing the weight of the direct materials reported in the FOP database to the weight of the products sold as reflected in the sales database. This is not an apples-to-apples comparison. The weight of the products as reported in the U.S. sales database is standard weight based on Xugong's specification sheets. The weights in the FOP database represent actual material consumption rates after application of variance adjustments that Xugong applies to standard consumption when tracking its actual usage rates.[307] At verification we weighed multiple sample tires for several CONNUMs and found insignificant differences in weight between tires of the same CONNUM.

We also verified Xugong's factors reconciliation, including the two stages at which it applies variances to adjust for differences between standard and actual consumption rates for natural rubber consumption and for semi-finished rubber consumption. Then we reviewed at verification Xugong's allocation methodology between subject and non-subject tires. We are satisfied that Xugong correctly reported all consumption rates for merchandise produced during the POI, and we find its allocation methodology to be reasonable. Further, we found no pattern of underreporting the weight of the inputs consumed.

Comment 43.B: Adjustments of Xugong's Upstream Inputs

Bridgestone contends that, in the event that the Department uses Armour Rubber's upstream inputs, it must make an adjustment to the reported consumption factors. Bridgestone maintains that its analysis of the integrated FOP database revealed that Xugong reported a greater quantity

[306] *See* Xugong Verification Report at 21.

[307] *See* Xugong Verification Report at 20.

of finished merchandise produced than inputs consumed. Bridgestone argues that in similar situations, the Department has increased the reported consumption factors to ensure that input weights are not less than output weights. To support this argument Bridgestone cites *Bags 09/10/07*, *Bags 03/17/08,* and Xugong's 05/20/08 SQR.

Xugong argues that Bridgestone's analysis regarding the total quantity of inputs consumed and total finished weight of the product is flawed. Xugong explains that the consumption weight is based on the actual consumption whereas the weight of the finished product is a standard weight. Xugong argues that in some instances it over-reported the finished product weight. Xugong states that if the Department adjusts the under-reported usage rate, then it should adjust the over-reported usage rates as well. To support this argument Xugong cites to Xugong's 11/23/07 SQR and Xugong Verification Report.

Department's Position: Based on the discussion above, we have not adjusted Xugong's FOP usage rates for any difference between the total weight of the direct materials of each CONNUM and the reported weight for the same CONNUM as reflected in Xugong's U.S. sales database. With respect to Bridgestone's assertion that the Department should adjust the consumption weight consistent with its past experience, we disagree. In *Bags 03/17/08,* cited by Bridgestone, the Department did not verify the respondent, and relied on the respondent's supplemental responses to explain the reasonableness of its reporting methodology. *See Bags 03/17/08* IDM at Comment 8. However, as explained above, we verified Xugong's reporting and allocation methodology with respect to subject merchandise and found no discrepancies; therefore, we have not adjusted Xugong's reported upstream inputs for the final determination.

Comment 44: Valuation of Xugong's FOPs from Intermediate Inputs Database

As discussed in Comment 43, Bridgestone argues that in the final determination the Department should value the semi-finished factors that Xugong purchased from Armour Rubber. Domestic Producers argue that because Xugong opted not to provide complete information about these factors, however, the Department should use facts available to select the HTS classifications and to calculate the SVs. Domestic Producers have provided HTS classifications to value Xugong's semi-finished rubber, rubber fabric, solvent, and adhesive. To support this argument, Domestic Producers cite to Xugong 01/31/08 SQR, 02/04/08 SQR, 05/20/08 SQR, and Bridgestone's 04/04/08 SV Factual Submission.

Xugong argues that there is no basis for not using Xugong's upstream inputs database. Xugong maintains that the Department cannot use an intermediate inputs database since the Department has not developed its record with respect to this information. Xugong argues that with only two weeks before the preliminary determination, the Department made its first reference to Xugong's semi-finished "intermediate" rubber inputs and requested that Xugong provide the FOP data. According to Xugong, after finding that Xugong and Armour Rubber were a single "collapsed" entity in the preliminary determination, the Department never issued any further supplemental questionnaires about Xugong's semi-finished "intermediate" rubber and, therefore, the Department must continue to use Xugong's upstream inputs for the final determination. To support this argument Xugong cites to Xugong 01/31/08 SQR and 05/20/08 Revised Databases.

Department's Position: As stated in Comment 43, the Department has continued to rely on Xugong's upstream inputs for semi-finished goods purchased from Armour Rubber and used in the production of subject merchandise. Thus, the issue of how to value the semi-finished inputs is moot. We note, however, that the basis of the Department's decision to rely on the upstream inputs is not a lack of information with which to value the semi-finished goods, as suggested by Xugong, but rather because Xugong itself purchased the majority of the upstream inputs used in the production of the semi-finished goods, as noted in our discussion in Comment 43. While Armour Rubber served as a toller for Xugong with respect to these semi-finished products, as the owner of the material inputs, Xugong, rather than Armour Rubber, is properly considered the producer of the semi-finished goods. As a result, we find it appropriate to rely on the upstream inputs provided by Xugong in combination with the factors for the tolling services provided by Armour Rubber (as the latter does not lend itself to surrogate valuation). Moreover, we note that, contrary to Xugong's claim, in the preliminary determination, the Department made no determination to "collapse" Xugong and Armour Rubber. In sum, in the light of the above, we conclude that valuing the upstream inputs and the inputs used by Armour Rubber in providing the tolling services more accurately reflects the experience of Xugong in producing subject merchandise.

Comment 45: Valuation of Xugong's FOPs from Upstream Inputs Database

Domestic Producers argue that if the Department continues to value Armour Rubber's inputs, as opposed to the semi-finished products that Armour Rubber supplied to Xugong, the Department should make the following changes in the final determination. To support this argument, Domestic Producers cite Xugong Verification Report, Petitioners' 3/18/08 Pre-Verification Comments, Xugong's 01/22/08 SQR, and Prelim SV Memo.

Gasoline 120:
Domestic Producers argue that because Xugong specifically described its input as "Gasoline 120," and the Department verified that this factor is gasoline, the Department should use the more specific tariff classification HTS 2710.11.20 (covering "Natural gasoline liquid (NGL)") in place of the six-digit subheading 2710.11 that covers several kinds of "Light oils and preparations," that the Department used in the preliminary determination.

Xugong argues that the Department verified Xugong's gasoline input and found no discrepancy with the description. Xugong claims that Domestic Producers did not provide any explanation for why its classification is more accurate than Xugong's or the Department's classification. Xugong maintains that for the final determination the Department should not use Domestic Producers' suggested HTS classification for Gasoline 120.

Department's Position: We have not separately valued Xugong's factor for "Gasoline 120." Therefore, the discussion of the HTS category for Gasoline 120 is moot. Due to the proprietary nature of this argument, see Xugong Final Analysis Memo for a detailed discussion regarding the exclusion of "Gasoline 120" for the purposes of Xugong's final margin calculation.

PCTP:
Domestic Producers claim that based on the information provided by Xugong, HTS 3812.20.90 constitutes the best available information to value Xugong's "PCTP." Domestic Producers maintain that the other subheading within 3812.20 covers "Phthalate plasticisers," and that Xugong's factor is "Pentachlorothiophend." Domestic Producers further maintain that for other respondents that reported rubber plasticisers, the Department used Indian HTS 3812.20.90 to value the factor in the preliminary determination. Domestic Producers state that HTS 3812.20.90 covers "Prepared Rubber Accelerators; Compound Plasticisers For Rubber Or Plastics, Not Elsewhere Specified Or Included; Anti-Oxidising Preparations And Other Compound Stabilizers For Rubber Or Plastics - *Compound plasticisers for rubber or plastics* --- Other." Domestic Producers argue that instead of using the six-digit classification, which contains a plasticizer that Xugong's information demonstrates is not applicable to its FOP, the Department should use the "Other" classification, as it did for Starbright and TUTRIC's rubber plasticisers.

Xugong argues that there is no reason for the Department to use the same classification for PCTP as it did for the other respondents. Xugong maintains that for the final determination the Department should not use Domestic Producers' suggested HTS classification for PCTP.

Department's position: We have not valued Xugong's factor for "PCTP;" therefore, the discussion of the HTS category for PCTP is moot. Due to the proprietary nature of this argument, see Xugong Final Analysis Memo for a detailed discussion regarding the exclusion of "PCTP" for the purposes of Xugong's final margin calculation.

Comment 46: Treatment of Sales with Improperly Reported Tread Code

Bridgestone argues that the Department should apply partial AFA with respect to Xugong's improperly reported tread codes. Bridgestone states that, as the Department found at verification, Xugong misclassified eight tread codes. According to Bridgestone, even after the Department gave Xugong an opportunity to correct this error after verification, Xugong failed to do so (other than the pre-selected sale). Bridgestone maintains that, because this error applies to other CONNUMs as well, and because Xugong failed to act to the best of its ability to correct this error, the Department should apply partial AFA. To support this argument, Bridgestone cites Xugong Verification Report, 04/29/08 Memorandum to the File, and Xugong's 05/02/08 revised databases.

Xugong argues that there is no basis to apply partial AFA to CONNUMs with improperly reported tread codes. Xugong contends that, at verification, the Department made no other findings with respect to the other CONNUMs. Xugong contends that, at verification, it did not attempt to withhold any of this information and cooperated with all of the Department's requests. Xugong argues that if the Department continues to attempt to reconstruct all CONNUMs by using the tread code key, there is no basis for applying AFA. Xugong further states that there is no need to correct any of the tread codes for the misreported CONNUMs, since all such CONNUMs identified by Bridgestone are unique, and do not affect or overlap with any other CONNUM. To support this argument Xugong cites Xugong Verification Report, 04/29/08 Memorandum to the File, 05/16/08 Memorandum to the File, section 776(b) of the Act, and Xugong's 05/02/08 revised databases.

Department's Position: Due to the proprietary nature of Bridgestone's argument, we have addressed parts of the argument in Xugong's Final Analysis Memo. In general, we disagree with Bridgestone that facts available with an adverse inference is warranted with respect to Xugong's improperly reported tread codes. Xugong stated in its CQR that it reported its tread codes according to the Department's description of this field. *See* Xugong CQR at C-19. However, as we found at verification, in one of its preselected sales Xugong classified the tread code for this product under the wrong numeric designation. *See* Xugong Verification Report at 17. Our further analysis of the record shows that there were additional tread codes that were similarly mislabeled affecting additional U.S. sales. However, in our post-verification instructions, we did not instruct Xugong to correct its databases to reflect all incorrect tread codes; instead, we instructed Xugong to correct only the tread code pertaining to the preselected sale. *See* 04/29/08 Memorandum to the File. Nor in our follow-up memorandum regarding necessary database revisions did we instruct Xugong to correct the remaining incorrect tread codes. *See* 05/16/08 Memorandum to the File. As Xugong did correct the incorrect tread code for the preselected sale, we conclude that Xugong did not fail to act to the best of its ability in responding to the Department's instructions with regard to improperly reported tread codes. Thus, we have determined that an adverse inference is not warranted.

Because, however, the record does not contain the correct tread codes for certain additional U.S. sales, we find that facts available is appropriate pursuant to section 776(a) of the Act, as the "necessary information is not available on the record." For the additional U.S. sales with improperly reported tread codes, as facts available, we have applied the weighted-average margin calculated for all sales with properly reported tread codes. *See* Xugong Final Analysis Memo.

Comment 47: Treatment of Xugong's Factor as Wood Tar or Pine Oil

Xugong claims that due to its own translation error, it inadvertently reported for the preliminary determination that it used wood tar as an input in the production of the merchandise under consideration. Xugong argues that it discovered the actual translation should have been "pine oil," and has submitted information on the record to support this finding. To support this argument Xugong cites to Xugong Verification Report and Xugong AFI.

Bridgestone argues that the dictionary definition that Xugong provided for wood tar translates to "wood" and "burned oil," which is the Chinese expression for "tar." Bridgestone disagrees that the Department concluded at verification that wood tar was the incorrect description for the pine oil input. According to Bridgestone, the Department instead confirmed that the input name on Xugong's invoice included "burned oil," which confirms that Xugong purchased "tar," rather than "oil." To support this argument Bridgestone cites to Prelim SV Memo, Xugong AFI, and Xugong Verification Report.

Department's Position: Based on our findings at verification, we have determined that the appropriate term for Xugong's input is pine oil. Prior to the preliminary determination, Xugong described its factor as "wood tar" and we applied an SV for wood tar. *See* Exhibit D-3 of Xugong DQR. However, after the preliminary determination Xugong argued that it had made a

translation error in describing its factor, and submitted a copy of an invoice and its accounting ledger with a translation of the factor as pine oil. *See* page 4 and Exhibit 9 of Xugong AFI. While Bridgestone disagrees, at verification Xugong demonstrated that the input is literally translated as "burned oil packed in a bag," which was confirmed by our interpreter. *See* page 22 of Xugong Verification Report. Furthermore, the Rubber Dictionary translates the Chinese characters as "Pine tar (oil)," which matches those on the invoices, submitted in Exhibit 9 of Xugong AFI and examined at verification. Therefore, for the final determination, we have valued Xugong's pine oil using HTS 38052000. *See* Xugong Final Analysis Memo.

VII. ISSUES COMMON TO STARBRIGHT AND TUTRIC

Comment 48.A: Whether TUTRIC and GPX are Affiliated

Starbright and TUTRIC argue that TUTRIC and GPX are affiliated because GPX exercised operational control over TUTRIC's sales of subject merchandise to the United States, and that GPX alone determines what products are produced for the U.S. market and in what quantities. According to Starbright and TUTRIC, the totality of evidence on the record of this investigation supports a finding that TUTRIC and GPX are affiliated. Furthermore, Starbright and TUTRIC assert that, if the Department finds TUTRIC and GPX to be affiliated, TUTRIC and Starbright meet the Department's criteria for collapsing, and should be collapsed for purposes of the antidumping investigation.[308]

Petitioners state that the Department addressed this issue in the preliminary determination and found that Starbright and TUTRIC should not be treated as affiliated persons within the meaning of the statute. According to Petitioners, TUTRIC has failed to demonstrate that its working relationship with GPX is sufficiently close to make them affiliates, and there is no basis for the Department to find differently than it did in the preliminary determination. In support of their argument, Petitioners cite Starbright-TUTRIC Preliminary Affiliation Memo and Petitioners' January 22, 2008, submission.

Department's Position: The Department analyzed all aspects of TUTRIC's and GPX's relationship and all of the information on the record and preliminarily determined that TUTRIC and GPX are not affiliated. Starbright and TUTRIC have provided no new information in support of their claims of affiliation; therefore, for the same reasons articulated in the preliminary determination, we continue to find that TUTRIC and GPX are not affiliated within the meaning of section 771(33) of the Act.

The Preliminary Determination:
In comments filed before the preliminary determination, Starbright and TUTRIC argued extensively that the Department should find TUTRIC affiliated with GPX based on a close

[308] In support of their argument, Starbright and TUTRIC cite *CTL Plate-Germany 09/11/06; Crawfish (2007); Jinfu (2006);* Starbright-TUTRIC Preliminary Affiliation Memo; *Preamble (*1997); *AD/CVD Proposed Rule (1996); SAA; Reiter (1979); SS Wire Rod-Korea 07/29/98; SS Wire Rod-Korea 08/16/07; PET Film-India 2/17/05; Live Swine 03/11/05; Canned Pineapple Thailand 12/13/02; Rebar-Latvia 06/22/01; Stainless Steel Pipe 07/14/97; Ammonium Nitrate 01/07/00 Wire Rod-Mexico 08/30/02; Honey 07/06/05; Carpenter (2007); Cased Pencils 12/07/06; Pipes and Tubes-Thailand 10/16/97; SSSS Coils-Germany 08/08/06; Mushrooms 09/09/04; OCTG-Japan (09/07/99).*

supplier relationship. The Department analyzed all aspects of TUTRIC's and GPX's relationship in making the preliminary determination that they are not affiliated. However, Starbright and TUTRIC now argue that, in the preliminary determination, the Department improperly focused on only one narrow aspect of its affiliation test and claim that, in doing so, the Department failed to realize the extent to which GPX exercises operational control over TUTRIC's production of subject merchandise for sales to the United States.

Starbright and TUTRIC argue that the statutory test for affiliation specifically includes situations where one company is in a position to exercise restraint or direction over another company. According to Starbright and TUTRIC, the Department in the preliminary determination did not address this facet of the statutory test and, thus, overlooked key facts on the record of this investigation. We disagree, however, with Starbright's and TUTRIC's interpretation of the Department's preliminary analysis. First, the Department explained that section 771(33) of the Act states that control exists when one person is "legally or operationally in a position to exercise restraint or direction over the other person."[309] We next explained that the preamble of the Department's regulations established that the Department will consider on a case-by-case basis, among other things: (1) whether the relationship in question has the potential to impact decisions concerning the production, pricing or cost of the subject merchandise or the foreign like product under investigation; and (2) all relevant factors, including the control indicia enumerated in the regulatory definition.[310] Finally, we explained that the Department has stated in past cases that the term "affiliated parties," as defined in the preamble to our proposed regulations, which states that "business and economic reality suggest that these relationships must be significant and not easily replaced," suggests that the Department must find significant indicia of control.[311] "With this in mind, we considered whether TUTRIC or GPX is reliant on the other, and whether there are significant indicia of control such that we should find them affiliated by virtue of a close supplier relationship.[312]" Our analysis of the facts of this case led to the determination that there is no basis on which to find GPX and TUTRIC affiliated.

Close Supplier Relationship:

In this final determination, we again considered GPX's purchases of OTR tires from TUTRIC as a percentage of its purchases from all PRC suppliers as well as TUTRIC's sales to GPX as a percentage of all sales. We found that the majority of GPX's purchases of OTR tires from the PRC are from suppliers other than TUTRIC, and that "TUTRIC sells the majority of its products to customers other than GPX."[313] This fact pattern is akin to the circumstances in *Bags-PRC 06/18/04*, where the Department also found parties to be unaffiliated after applying the same test. There, the Department stated that "Hang Lung and the U.S. customer are unaffiliated" because

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[309] *See* Starbright-TUTRIC Preliminary Affiliation Memo at 3.

[310] *See Preamble (*1997), 62 FR 27296, 27297-8.

[311] *See SS Wire Rod-Korea 07/29/98*, 63 FR 40404, 40410.

[312] *See* Starbright-TUTRIC Preliminary Affiliation Memo at 8.

[313] *See* Starbright-TUTRIC Preliminary Affiliation Memo at 11.

> {t}he petitioners' claim that this customer accounts for a majority of Hang Lung's sales is correct only for Hang Lung's U.S. sales. At verification we found that this customer did not account for a majority of Hang Lung's sales when considering its sales in the home market and third-country markets.[314]

Put simply, despite Starbright's and TUTRIC's claim that the Department should only consider TUTRIC's sales to the United States, and that its home market and third-country sales are "legally and factually irrelevant,"[315] the Department disagrees. In the instant investigation, the Department applied its long-standing practice in the preliminary determination when it considered whether GPX was reliant on TUTRIC or *vice versa*, and, consistent with *Ammonium Nitrate-Russia 01/07/00*, *Rayon Yarn-Austria 08/15/97*, and *LNPPs-Japan-07/23/96*, discussed in detail below, where the Department applied the same methodology, the Department determined that the parties were not affiliated. Neither GPX nor TUTRIC is reliant on the other; therefore, they are not affiliated by virtue of a close supplier relationship under section 771(33) of the Act.

Prior to the Department's preliminary determination, Starbright and TUTRIC emphasized the importance of their "exclusivity agreement" in arguing affiliation. However, in the briefing stage, citing *Honey-PRC 07/06/05*, Starbright and TUTRIC acknowledge that exclusive supplier agreements alone are not sufficient to establish close supplier relationships.[316] Starbright and TUTRIC now state that "the existence (or absence) of written agreement memorializing the manner in which TUTRIC and GPX conduct business should not have a material impact on the Department's ultimate determination on this issue."[317] As a factual matter, the Department agrees with Starbright and TUTRIC that neither the existence nor absence of a written exclusive supplier agreement is dispositive in determining whether a close supplier relationship exists.

In sum, Starbright and TUTRIC make no new arguments and present no new facts beyond those analyzed by the Department in making its preliminary determination. Thus, we continue to find that GPX and TUTRIC are not affiliated under section 771 (33) of the Act.

Verification Report:
Starbright and TUTRIC claim that findings at verification further support a conclusion that GPX and TUTRIC are affiliated. The Department, however, disagrees with this interpretation of the verification findings.

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[314] *See Bags-PRC 06/18/04* IDM at Comment 15.

[315] *See* Starbright's and TUTRIC's joint case brief at 15.

[316] The Department stated that "{t}he Court of International Trade has held that, even where there are exclusive sales contracts, the Department has properly found that such contracts alone were insufficient to support an affiliation finding." *See Honey-PRC 07/06/05*, 70 FR 38873 and IDM Memo at Comment 11.

[317] *See* Starbright's and TUTRIC's joint case brief at 22, n. 22.

Starbright and TUTRIC state that Robert Sherkin, GPX's co-CEO, and Domenic Mazzola, GPX's chief engineer, "both spent considerable time at the TUTRIC verification supporting the TUTRIC verification effort, and both clearly played important roles in that process on behalf of TUTRIC, thereby demonstrating first-hand the close, continuing and intertwined relationship among GPX, Starbright and TUTRIC."[318] In support of these statements, Starbright and TUTRIC cite Attachment II of the TUTRIC Verification Report, which contains a list of verification participants. The Department disagrees, however, that the participation of Messrs. Sherkin and Mazzola in the TUTRIC verification is an indication of their having played "important roles," nor does it in any way demonstrate the "continuing and intertwined relationship among GPX, Starbright and TUTRIC."

Next, Starbright and TUTRIC claim that in the Starbright Verification Report, the Department noted that "Starbright maintains a close relationship with {TUTRIC} in terms of production and product development." However, in citing the verification report, Starbright and TUTRIC excluded the beginning of that sentence, which actually states: "Company officials stated that Starbright maintains a close relationship with {TUTRIC} in terms of production and product development."[319] Starbright and TUTRIC claim as evidence of affiliation the fact that Mr. Sherkin was a co-founder of TUTRIC in 1986,[320] and suggest that he is a "*de facto* board member" of TUTRIC.[321] The first point bears no relevance to the factual situation during the POI; the second point is unsupported by record evidence. TUTRIC's actual board members are listed in TUTRIC's September 28, 2007, separate rate application (at 17). Mr. Sherkin's name is not among them; indeed, no individual connected with GPX is listed among them.

Whether GPX Controls TUTRIC:

In support of their claim of affiliation, Starbright and TUTRIC list several items which, they argue, demonstrate GPX's control over TUTRIC. For example, Starbright and TUTRIC claim that GPX shares its proprietary compounding formulas with TUTRIC, GPX trains TUTRIC engineers in its proprietary design methodology, GPX engineers "constantly communicate with their counterparts at TUTRIC,"[322] senior GPX personnel often visit TUTRIC, and GPX advises TUTRIC on machinery purchases. The Department fully considered these factors when making our preliminary determination, and we found the above to be acts of commercial cooperation that would take place between any two unaffiliated entities engaged in a business relationship, particularly a business relationship that involves large sums of money and buyers with very specific needs. This determination is consistent with the Department's finding in *Candles-PRC 03/15/04*, where the Department explained that it

[318] *See* Starbright and TUTRIC joint brief at 23.

[319] *See* Starbright Verification Report at 4.

[320] *See* Starbright and TUTRIC joint case brief at 23.

[321] *See* January 10, 2008, submission from Starbright and TUTRIC.

[322] *See* Starbright's and TUTRIC's joint case brief at 28.

> discovered at verification that the importers established a mechanism for assuring paraffin wax was properly heated, and that the importers are able to veto the retail-oriented design of candle packaging. This information is relevant to the question of whether the importers control Fay Candle, but leads only to a conclusion that was well-supported in the preliminary results: that the importers provide a substantial amount of assistance to Fay Candle in the production of candles and are responsible for ensuring that the U.S. retail customers are satisfied. However, it does not lead us to change our conclusion that while this type of information "does suggest a high level of cooperation between Fay and the U.S. importers, the respondents have failed to satisfy their burden of demonstrating any actual reliance on the part of the companies that would demonstrate control." [323]

We would expect to find a high level of cooperation between GPX and TUTRIC, given that the two companies conduct substantial business together. Thus, we find that these acts of cooperation and coordination do not support a conclusion of control or affiliation under section 771(33) of the Act.

Many of the acts that Starbright and TUTRIC mention, such as GPX providing specific guidance on product design and quality control, technical expertise concerning production, and other assistance with meeting the specific demands of important end-users such as GPX's customers, seem to be a natural result of a foreign supplier conducting business with a large U.S. distributor. This is particularly true when the importer is especially knowledgeable about the U.S. market and is in constant contact with the U.S. market. However, as noted above, acts of cooperation such as these -- that constitute good business practice -- do not necessarily amount to one party being in a position "to exercise restraint or direction" over another person, as required by section 771(33)(G) of the Act. These acts do not amount to control, but are merely cooperative efforts that a customer and supplier in such a situation would be expected to undertake in order to conduct business. In sum, in making our preliminary determination, we considered GPX's and TUTRIC's relationship in terms of its "business and economic reality," and reached the conclusion that there is nothing atypical about this relationship that would suggest that GPX has more influence over TUTRIC than the typical buyer over the typical supplier doing a large amount of business together. Rather, many of the facts cited by Starbright and TUTRIC as evidence of control are merely business practices that one would expect in such a relationship.

[323] *See Candles-PRC 03/15/04* IDM at Comment 1.

Reference to Past Decisions:
Starbright and TUTRIC reference *Jinfu (2006), Crawfish (2007),* and *CTL Plate-Germany 09/11/06* to support the notion that ownership is not required for a finding of affiliation.[324] We agree with Starbright and TUTRIC on this point and noted such in our preliminary determination.[325] However, in considering the question of affiliation, we find that the facts surrounding GPX's and TUTRIC's relationship are easily distinguishable from the facts in any of the cases cited by Starbright and TUTRIC in which the Department has found affiliation. A case in point is the aforementioned *CTL Plate-Germany 09/11/06*, where the Department found affiliation because

> both Dillinger and AIA's financial statements are consolidated into Arcelor, S.A.'s financial statements. One of the criteria Arcelor, S.A. uses to determine consolidation is that the group holds significant influence if the group holds 20 percent or more of the voting rights. In other words, the controlling entity within a consolidated group has the ultimate power to determine the capital structure and financial costs of each member in the group.[326]

GPX's and TUTRIC's financial statements are not consolidated, either with each other, or together as part of a larger group. There is no record evidence to suggest that either company has any voting rights in the other, or that either company has any say whatsoever in determining the other's capital structure and/or financial costs, as was the clearly the case in *CTL Plate-Germany 09/11/06*.

Starbright and TUTRIC list several cases in which, they claim, the Department found affiliation in the absence of ownership. According to Starbright and TUTRIC, the Department has made its decisions on a case-by-case basis, after determining that the totality of the evidence supports finding that one party controls another in light of "business and economic reality." Starbright and TUTRIC also acknowledge that each of the items they list in support of their affiliation claim is not sufficient evidence of affiliation by itself; however, according to Starbright and TUTRIC, the items considered together, support a finding of affiliation.

We disagree. The cases cited where the Department did find affiliation are distinguishable from the facts in the instant investigation. Missing from TUTRIC's and GPX's relationship are any circumstances similar to those that led to findings of affiliation in the cited cases. Where there are circumstances in GPX's and TUTRIC's relationship that are arguably similar to circumstances in the cases cited by Starbright and TUTRIC, those circumstances were only

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[324] Starbright and TUTRIC quote *CTL Plate-Germany 09/11/06*, where the Department stated that "the legislative history also makes clear that the statute does not require majority ownership for a finding of control, but rather encompasses both legal and operational control."

[325] *See*, generally, Starbright-TUTRIC Preliminary Affiliation Memo, where the Department analyzed all aspects of GPX's and TUTRIC's relationship, not only the question of ownership.

[326] *See CTL Plate-Germany 09/11/06*, 71 FR 53382, 53384.

tangentially related to the Department's finding of affiliation in the other cases. In each of the cases, the Department analyzed the totality of the evidence on the record, and where it found compelling evidence of control, the Department determined that parties were affiliated. In the instant investigation we examined the totality of record evidence in the preliminary determination and found no convincing evidence of affiliation. The facts have not changed since the preliminary determination.

Starbright and TUTRIC reference *SS Wire Rod Korea 08/16/07*; however, the cited notice does not support Starbright's and TUTRIC's conclusions with respect to the facts of the case. The Department actually explained in a footnote that it "collapsed Changwon and Dongbang in the less-than-fair-value investigation and in every subsequent review of this order because we found a close supplier relationship between the entities." In *SS Wire Rod Korea 7/29/98*, the Department found affiliation based on "a close supplier relationship in which POSCO/Changwon is operationally in a position to exercise restraint or direction over Dongbang."[327] The Department found that, "not only is POSCO/Changwon the sole supplier and Dongbang the sole Korean buyer of black coil (the major input in the production of finished SSWR), but that Dongbang, by its own admission, has been unable to develop an alternative source of supply of black coil."[328] The instant investigation is distinguishable because, as explained below, GPX has many PRC suppliers of subject merchandise, and TUTRIC has many customers other than GPX.

Referring to *Live Swine-Canada 03/11/05* (at Comment 50), Starbright and TUTRIC argue that the Department found affiliation because an agreement by the buyer to provide information to its suppliers resulted in "considerable control over the production process of its suppliers," and because there was an "exclusive agreement to sell the suppliers' isoweans that are created from KPA genetics in the United States."

The Department's finding of affiliation in *Live Swine-Canada 03/11/05* was based on the fact that "Excel exercises effective control over the production and pricing of the subject merchandise by its producers/suppliers through its role as the exclusive supplier of genetically engineered breeding swine and boar semen sold by Excel's affiliate, KPA."[329] The Department explained that "U.S. customers seek to buy Excel isoweans that are created from KPA genetics, and rely on Excel to identify the Canadian supplier who will supply those isoweans." Therefore, it was more than an exclusive agreement, as characterized by Starbright and TUTRIC; rather, because the customers sought Excel isoweans created from KPA genetics, they were necessarily restricted to purchasing from the only supplier that could provide such isoweans.

Record evidence in the instant investigation demonstrates no such exclusivity in the relationship between GPX and TUTRIC. As we stated in Starbright-TUTRIC Preliminary Affiliation Memo (at 9), "with regards to sourcing from the PRC alone, GPX acknowledges that it purchases the

[327] *See* 63 FR 40404, 40405.

[328] *See SS Wire Rod Korea 7/29/98*, 63 FR 40404, 40410.

[329] *See Live Swine-Canada 03/11/05* at Comment 50.

same types of subject tires from producers other than TUTRIC." Moreover, we noted that, according to GPX, "Starbright produces 'all of the critical tires in the GPX range (including many of the tires made at TUTRIC),'" and that "it is GPX's intention to produce many of the same products at both Starbright and TUTRIC. . . ."[330] GPX has explained that it sources subject tires from many PRC suppliers beyond Starbright and TUTRIC,[331] and "TUTRIC sells the majority of its products to customers other than GPX."[332] Therefore, any suggestion of exclusivity in the relationship between GPX and TUTRIC is not supported by the evidence on the record.

Starbright and TUTRIC cite *Canned Pineapple-Thailand 12/13/02* IDM at Comment 12, claiming that the Department found affiliation because the vendor was "dependent upon {the buyer's} business;" the buyer "had the potential to control" the vendor "and to impact the price, production, and other decisions impacting the subject merchandise;" and the vendor "has been doing a substantial amount of business with {the buyer} for forty years." Here, Starbright and TUTRIC rely on selective passages from the Department's explanation for its finding that respondent Thai Pineapple Industry Corp., Ltd. ("TPC") was affiliated with Mitsubishi Corporation ("MC"), Princes Foods, B.V. ("Princes"), and Mitsubishi International Corp. ("MIC"). A more complete evaluation of the facts in that case is revelatory. First, the Department explained that, in its case brief, "TPC states that MC can theoretically control TPC because MC owns some of TPC's shares."[333] Then, as the Department further explained, TPC recognized that MIC was owned by MC, and that Princes was wholly owned by Princes Ltd., which was, in turn, wholly owned by MC, and TPC conceded that MC controlled MIC and Princes under section 771(33)(E) of the Act.[334] As the Department further explained,

> the Department also finds that TPC is under the control of MC. Even though MC's equity ownership in TPC was lower than in previous reviews, **its equity position was significant during the POR**. MC, via its role as a substantial buyer (**through its wholly owned subsidiaries MIC and Princes**), had the potential to control TPC and to impact the price, production, and other decisions impacting the subject merchandise. TPC is dependent upon MC's business.[335] (Emphasis added.)

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[330] *Id.*

[331] *See* Starbright-TUTRIC Preliminary Affiliation Memo at 9.

[332] *Id.* at 11.

[333] *See Canned Pineapple-Thailand 12/13/02* IDM at Comment 12.

[334] *See Canned Pineapple-Thailand 12/13/02* IDM at Comment 12.

[335] *Id.*

The Department further explained its finding that MC and TPC were affiliated in a proprietary memorandum. However, from the public discussion above, it is clear that circumstances differ factually in the instant investigation, where there is no equity ownership between GPX and TUTRIC, nor any history of equity ownership.

Starbright and TUTRIC claim that in *Rebar-Latvia 06/22/01*, the Department determined that "the relationship of LM and the trading company is far closer than that of the typical steel producer and an unaffiliated trading company customer" because LM "provide{d} sensitive business information" to the trading company, and because the "top managers of LM had visited the United States in the company of top managers of the trading company, for purposes of meeting with U.S. customers."[336]

Again, Starbright and TUTRIC fail to note certain factual information from the referenced case that was critical to the Department's analysis in finding affiliation. Such factual information is noticeably absent from the instant investigation. For example, in *Rebar-Latvia 06/22/01*, IDM at Comment 1, the Department explained that

> Beyond the contractual relationship that the preliminary determination cited, there is evidence of (a) negotiations between the respondent, the trading company, and the trading company's parent bank to finance a major overhaul of the respondent's production facilities, requiring that LM share sensitive financial information and business plans; (b) the provision of a large line of credit to finance the production of rebar for sale to the United States through the trading company . . . .

There is no evidence of any such financing of TUTRIC by GPX in the instant investigation. On the contrary, record evidence shows that GPX has committed substantial investment in Starbright during the POI,[337] but no evidence whatsoever of any investment in TUTRIC.

Referencing *Stainless Steel Pipe-Taiwan 07/14/97*, Starbright and TUTRIC suggest that the Department found affiliation between a buyer and a vendor for reasons as simple as the fact that the buyer had access to its vendor's computer system, management personnel moved from one company to the other, and meetings were held between the vendor's president and the buyer's customers.

The Department's decision to find affiliation between respondent Ta Chen and its customer ("Company B") in that case was based on far more complex facts than the scenario presented by Starbright and TUTRIC. For instance, the Department determined that "Ta Chen's physical custody of Company B's signature stamp . . . is *prima facie* evidence that it either exercised, or

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[336] Starbright and TUTRIC cite the *Federal Register* notice; however, the quoted passages appear in the I&D Memo at Comment 1.

[337] *See, e.g.*, Starbright's and TUTRIC's joint case brief at 163 ("Starbright essentially rebuilt its facilities and undertook substantial additional investment in the facilities.").

was in a position to exercise, control over Company B's disbursements."[338] Where Starbright and TUTRIC mention that the buyer had access to the vendor's computer system, the Department found that Ta Chen had a dedicated connection to Company B, such that the Department declared that "the full-time and unlimited access to Company B's computer system afforded Ta Chen a far more invasive mechanism for monitoring than would be expected between unaffiliated parties." The Department added that "Ta Chen officials stated . . . that Company B maintained no security system or passwords with which to limit or terminate Ta Chen's access to its records; Ta Chen's access to Company B's accounting system was complete."[339] Finally, the Department found that

> Company B unilaterally, and without consideration, assigned its entire inventory and accounts receivable directly to {Ta Chen International}'s bank to facilitate a loan for {Ta Chen International}. That Company B would accept this risk without any consideration -- without even a written agreement memorializing the terms and duration of the agreement – does not comport with the commercial realities of dealings between unaffiliated companies.[340]

Nothing on the record of the instant investigation suggests that such a situation exists between TUTRIC and GPX.

Starbright and TUTRIC quote a single sentence from *Ammonium Nitrate-Russia 01/07/00*, where the Department stated that it "has also determined a close supplier relationship may occur when a majority of sales are made to one customer."[341] That statement was made in reference to the very test conducted by the Department in making its preliminary determination that GPX and TUTRIC are not affiliated, and which Starbright and TUTRIC are claiming is inappropriate and irrelevant. Starbright's and TUTRIC's reliance on this case undermines their claim that the Department's analysis was inappropriate; on the contrary, this case, and others cited therein, demonstrate that our preliminary determination analysis, in which we considered the totality of TUTRIC's sales, is consistent with the Department's long-standing practice. As the Department stated in *Ammonium Nitrate-Russia 01/07/00*:

> in examining reliance, we have considered comparative sales statistics of both companies, *e.g.*, the proportion of sales made by the producer through the trading company *vis-vis* the trading company's total sales, as well as the proportion of sales made by the producer through the

[338] *See Stainless Steel Pipe-Taiwan 07/14/97*, 62 FR 37543, 37549.

[339] *Id.*

[340] *Id.*

[341] *Ammonium Nitrate-Russia 01/07/00*, 65 FR 1139, 1143, citing *Rayon Yarn-Austria 08/15/97*.

> trading company to the total sales made by the producer.[342]

The Department's conclusion after conducting its analysis was that "the various proportions of sales (of subject merchandise and of all products), both with respect to Nevinka's sales to Transammonia and Transammonia's sales of Nevinka's product, are insufficient to support a determination of reliance."[343]

The Department stated in *Ammonium Nitrate-Russia 01/07/00* that this analysis was in accordance with *LNPPs-Japan-07/23/96*, where the Department considered

> the proportion of sales made by MHI through the trading company to the number of total sales made by the trading company as well as the proportion of sales made by MHI through the trading company to the total sales made by MHI (*i.e.*, comparative dependence data), basing the trading company's figures on publicly available trade data.[344]

Further, in *Rayon Yarn-Austria 08/15/97*, also referenced in *Ammonium Nitrate-Russia 01/07/00*, the Department conducted the same type of analysis. There, the Department explained that "Borckenstein's financial records indicate that Beavertown's purchases account for only a small portion of Borckenstein's total sales revenue . . . . Therefore, Borckenstein is not reliant on Beavertown, and we find no close supplier relationship in this case." As a result, the Department declared that the two parties were not affiliated under section 771(33) of the Act.

For all of the foregoing reasons, and based on an analysis of the totality of record evidence, we continue to find that GPX and TUTRIC are not affiliated within the meaning of section 771(33) of the Act.

Comment 48.B: Whether TUTRIC and Starbright Should be Collapsed

The information on the record of this proceeding demonstrates that TUTRIC and GPX are not affiliated within the meaning of section 771(33) of the Act, in that they do not have a close supplier relationship such that either party is reliant upon the other, nor does either company have operational control over the other company. Pursuant to 19 CFR 351.401(f), three requirements must be met in order for the Department to collapse two (or more) entities. The first requirement under this section is that the entities must be affiliated. Given that the record evidence does not support finding TUTRIC and GPX affiliated, there is no basis to support a finding of affiliation between TUTRIC and Starbright, GPX's wholly owned affiliate. Consequently, we find that there is no need to consider further the question of Starbright's and TUTRIC's claim that the Department should collapse them for purposes of this investigation.

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[342] *See Ammonium Nitrate-Russia 01/07/00*, 65 FR 1139, 1143.

[343] *Id.*

[344] *See LNPPs-Japan-07/23/96*, 61 FR 38139, 38157.

Comment 49: Surrogate Value Sources for Scrap Rubber, Reclaimed Rubber, Rubber Powder and Wire

Scrap Rubber, Reclaimed Rubber and Rubber Powder

Bridgestone and Petitioners contend that the Department should have used HTS 4004.00.00 to value scrap rubber, and HTS 4003.00.00 to value reclaimed rubber, in the preliminary determination, rather than vice versa. Bridgestone and Petitioners argue that the descriptions in the Indian tariff schedule indicate that HTS 4004.00.00 applies to scrap rubber and HTS 4003.00.00 to reclaimed rubber. Further, Bridgestone and Petitioners claim that Starbright and TUTRIC have provided no evidence to demonstrate that they produced rubber powder from rubber waste, parings, or scrap. Rather, Bridgestone and Petitioners contend that Starbright and TUTRIC reported that rubber powder was made of a mixture of various rubbers and additives. Thus, Bridgestone and Petitioners argue that the Department should value rubber powder as a compound rubber under Indian HTS 4005.

Starbright and TUTRIC argue that the input that they used for scrap rubber closely resembles "reclaimed rubber in primary form or in plates, sheets or strips" classified in HTS 4003.00.00, and the inputs reported as reclaimed rubber and rubber powder most closely resemble the "powders and granules" provided for in HTS 4004.00.00. Starbright and TUTRIC claim that there is no clear dividing line between the scope of these two HTS headings, and that the headings selected by Starbright and TUTRIC constitute the most accurate description of the actual input used in production. Thus, for the final determination, Starbright and TUTRIC argue, the Department should value these inputs as it did in the preliminary determination.

Wire

Bridgestone and Petitioners claim that the Department used the HTS classification covering bars and rods, to value wire when record evidence demonstrates Starbright and TUTRIC use coated wire, not wire rod, to produce tire cord. Therefore, Bridgestone and Petitioners argue that the Department should value wire using HTS 7217.30.30, HTS 7217.30.20, or 7217.30.10.

Starbright and TUTRIC contend that for the final determination, the Department should continue to use HTS 7213.91.90, rather than HTS 7217.30.30, to value steel wire in this investigation because the HTS description for HTS 7213.91.90 includes "tire cord-quality steel wire rod," which is the input it used in the production of subject merchandise.

Department's Position:

Scrap Rubber, Reclaimed Rubber and Rubber Powder

Record information as provided by Starbright and TUTRIC appears to be contradictory with respect to these respondents' scrap rubber. Starbright's and TUTRIC's questionnaire responses each state that the only by-products or co-products resulting from the production process are scrap tires.[345] Similarly, Starbright's FOP Verification Report states that, "Starbright reported no by-products or co-products, other than "some minor amount of scrap tires . . . Company officials

[345] *See* Starbright and TUTRIC joint DQR at D-14; TUTRIC DQR at D-13. In addition, *see* generally, Starbright FOP Verification Report and TUTRIC Sales and FOP Verification Report.

explained that, prior to selling its scrap or rejected tires, Starbright "slices" them in order to destroy their usability as a finished tire, thereby protecting Starbright's brand reputation."[346] Therefore, Starbright's statements in the DQR and at verification contradict the statements made in Exhibit 48 of its 1st SQR, which defines scrap as "reclaimed rubber in primary form."[347] Similarly, TUTRIC's statement in its DQR contradicts its statement in Exhibit 47 of its 1st SQR, which defines scrap as reclaimed rubber. Our understanding from verification is that reclaimed rubber is a type of recycled rubber that needs to be broken down chemically prior to use in the production process.[348] Therefore, for the final results, we have valued Starbright's and TUTRIC's scrap using HTS 4004, "waste, parings and scrap of rubber (other than hard rubber) and powders and granules," which is appropriate as an offset for tires sold as scrap rubber. We have valued Starbright's and TUTRIC's reclaimed rubber using HTS 4003, "reclaimed rubber in primary form," which is appropriate for reclaimed rubber as an input. Furthermore, we have continued to value TUTRIC's rubber powder using HTS using HTS 4004 for the final determination. TUTRIC described rubber powder as "waste, parings and scrap of rubber (other than hard rubber) and powders and granules" in its responses.[349] There is no evidence on the record to contradict its statements.[350] In addition, we selected HTS 4004 as the appropriate value for rubber powder for all respondents in our preliminary determination and continue to do so in this final determination.[351]

Wire

Nothing on the record contradicts Starbright's and TUTRIC's statements that the wire they consumed consists of "irregularly wound iron rod coils of circular cross-section measuring less than 14 mm in diameter; not electrode or cold heading quality; no indentations, ribs, grooves or other deformations."[352] Therefore, we have continued to value wire using HTS 7213.91.90 for the final determination.

[346] *See* Starbright FOP Verification Report at 21.

[347] *See* Starbright 1st SQR at Exhibit 48.

[348] *See* Xugong Verification Report at 22.

[349] *See* TUTRIC 1st SQR at Exhibit 47.

[350] S*ee* TUTRIC Sales and FOP Verification Report at 20-23.

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

[352] *See* Starbright 1st SQR at Exhibit 48 and TUTRIC Starbright 1st SQR at Exhibit 47.

Comment 50: The Application of AFA for Sales of Tires Greater Than 39 Inches for Starbright and TUTRIC

Petitioners contend that the Starbright CEP Verification Report indicates that:

- Starbright did not report sales of subject tires during the POI which had rim diameters that exceed 39 inches;
- Starbright did not report such sales because it understood that such tires are outside the scope of reportable goods;
- During the POI, GPX made sales of tires which had rim diameters that exceed 39 inches; and,
- The Department collected evidence of these sales at verification.

Petitioners contend that the scope of the investigation limits the exclusion of tires whose rim diameter exceeds 39 inches to mining and/or construction tires that have at least 16 plies and weigh a minimum of 1500 pounds. Thus, Petitioners argue that the scope of the investigation covers tires larger than 39 inches unless they meet the specific exclusion criteria. As a result, Petitioners contend that Starbright applied an incomplete test in determining which sales to report to the Department.

Because Starbright and TUTRIC initially filed a joint section C response, Petitioners argue that TUTRIC may have used the same reporting methodology. Therefore, Petitioners contend that TUTRIC should provide a statement for the record identifying whether it sold any subject OTR tires in the United States during the POI with rim diameters that exceed 39 inches. If TUTRIC made such sales, Petitioners argue that the Department should apply AFA to TUTRIC's entire U.S. database for the final determination.

Starbright contends that the statements in the Starbright CEP Verification Report that Starbright did not believe that OTR tires with rim diameters exceeding 39 inches were included in the scope of the investigation are factually inaccurate. Starbright contends that GPX, Starbright and TUTRIC have understood at all times that agricultural OTR tires with rim diameters of 39 inches or greater constitute subject merchandise. Starbright claims that it did not report any sales of 39 inch or greater tires because during the POI, neither Starbright nor TUTRIC produced or sold to GPX agricultural OTR tires with rim diameters 39 inches or greater. Further, Starbright contends that GPX did not resell any agricultural OTR tires with rim diameters 39 inches or greater in the United States during the POI.

Starbright further argues that at the CEP verification, the Department examined a list of all GPX's sales of subject merchandise with a rim diameter exceeding 39 inches and reconciled them to its audited financial statements. Starbright claims that the list, contained in Verification Exhibit 4 of the Starbright CEP Verification Report, demonstrates that GPX did not fail to report any sales of subject merchandise (*i.e.*, agricultural tires) with rim diameters of 39 inches or greater in its U.S. sales database. Starbright claims further that the list does not include any merchandise produced by Starbright and that the TUTRIC-produced merchandise does not represent agricultural tires, because the TRA Handbook records tires of such dimensions in Section 4 "Off-the-Road Tires" and not in Section 5 "Agricultural Tires." Thus, Starbright

claims, it demonstrated that GPX did not fail to report any sales of subject merchandise (*i.e.*, agricultural tires) with rim diameters 39 inches or greater in its U.S. sales database.

Similarly, Starbright argues that during the FOP verification, the Department examined a complete list of the subject and non-subject merchandise that Starbright produced and sold, and determined that Starbright properly classified all products as subject or non-subject merchandise. As a result, Starbright contends that the Department verified that it did not improperly exclude any subject merchandise from its database.

TUTRIC concedes that GPX sold certain models of TUTRIC-produced tires that have rim diameters exceeding 39 inches that meet other criteria for inclusion in the scope of the investigation. However, TUTRIC contends that at the CEP Verification, the Department confirmed that GPX properly reported all re-sales of subject merchandise produced by Starbright and TUTRIC during the POI. Similarly, TUTRIC claims that in the TUTRIC Sales and FOP Verification Report, the Department stated that it examined the "two tires which TUTRIC shipped to the United States as not subject to the scope" and found that "they were not within the scope of the investigation." Thus, TUTRIC claims that the Department should reject Petitioners' allegation that it failed to report all sales of subject merchandise.

Department's Position: Our FOP verification of Starbright did not reveal that Starbright produced or sold tires with rim diameters greater than 39 inches during the POI.[353] However, at Starbright's CEP verification, we learned that GPX sold tires with rim diameters that exceed 39 inches during the POI.[354] Our analysis of the evidence presented at verification revealed that Starbright did not produce the tires at issue.[355] Therefore, Starbright appropriately did not report these sales in its section C database. As a result, we have made no changes to our margin calculations for the final determination with respect to this issue.

We have determined that GPX and TUTRIC are not affiliated, and therefore, we have not collapsed them for the purposes of the antidumping duty investigation.[356] Therefore, we are not analyzing GPX's sales during the POI of subject merchandise produced by TUTRIC. As a result, we have not considered any information with respect to GPX's sales during the POI of tires produced by TUTRIC, including those sales of OTR tires with rim diameters exceeding 39 inches. Finally, we found no evidence at the TUTRIC FOP and sales verification that TUTRIC may have failed to report U.S. sales of subject merchandise 39 inches or greater during the POI. Consequently, we made no changes to Starbright's or TUTRIC's U.S. databases with respect to this issue for the final determination.

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[353] *See* Starbright FOP Verification Report at 2.

[354] *See* Starbright CEP Verification Report at 2, 12 and Verification Exhibit 4.

[355] *Id.* at Verification Exhibit 4.

[356] *See* Comments 48A and 48B of this memorandum.

VIII. ISSUES SPECIFIC TO STARBRIGHT

Comment 51: Start-Up Adjustment for Starbright

Starbright acknowledges that the Department has never considered a start-up adjustment in the context of an NME case, but contends that the Department should make a start-up adjustment for its costs during the POI. Starbright argues that it was in a start-up situation during the POI because: 1) it purchased the assets of Hebei Tire and commenced its new operations at the end of July 2006; 2) the old equipment and facilities at Hebei Tire were in terrible shape and required substantial rebuilding and substantial additional investment; 3) for several months following its start-up, Starbright operated on a trial basis; 4) many old production lines were terminated; and 5) new products were tested and produced in small quantities on a product-by-product trial basis to determine the quality levels, and to determine whether the existing equipment could be used to produce those new products, or whether Starbright would need to purchase new equipment for that purpose. Starbright claims that the technical factors associated with this trial basis resulted in limited production levels and artificially increased costs.

Starbright contends that this start-up phase of production lasted until the end of February 2007, when the technical factors were resolved and production stabilized. Starbright states that the Department verified that Starbright was in a start-up situation, and that the Department witnessed this transformation first hand and through photographs. Further, Starbright submits that the Department should grant a start-up adjustment under ME rules in accordance with section 773(f)(1)(C)(i) of the Act, which requires such an adjustment to costs incurred during the POI that are affected by start-up operations, and which reflects U.S. obligations under Article 2.2.1.1 of the Antidumping Agreement.[357]

Petitioners argue that the Act does not contemplate start-up adjustments in NME cases. Petitioners maintain that the start-up provision in section 773(f) of the Act contains special rules applicable to calculating (i) "cost of production" under section 773(b) of the Act, and (ii) "constructed value" under section 773(e) of the Act, whereas the NME "normal value" provision is covered under section 773(c) of the Act. Therefore, Petitioners claim that the special rules for start-up adjustments do not apply in this investigation.

Department's Position: The Department calculates NV in NME cases pursuant to section 773(c) of the Act, which contains no provision for allowing a start-up adjustment to NV. Petitioners note correctly that start-up adjustments, as contemplated by the Act under 773(f)(1)(C), are only applicable to calculations of COP and CV calculated pursuant to sections 773(b) and 773(e) of the Act, respectively. To elaborate, section 773(b) of the Act only applies when NV is being calculated pursuant to section 773(a) of the Act, which explains the determination of NV, based on home market or third country prices, in ME proceedings. Because section 773(f) of the Act stipulates that it contains special rules "{f}or purposes of subsections (b) and (e) of this section," it necessarily also applies only to ME proceedings, where

[357] Starbright cites the SAA at 165-167, and numerous Department cases involving this methodology. Because we are not evaluating Starbright's NV using ME methodology, we do not address this argument here. *See* Department's Position, below.

there are insufficient prices above the COP for purposes of determining NV using the home market or third country prices and where the Department must use a constructed value to compare NV to export price.[358] Section 773(c) of the Act, on the other hand, discusses the determination of NV in NME cases. This subsection of the statute specifies that it is used when "(A) the subject merchandise is exported from a nonmarket economy country, and (B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined under subsection (a)."[359] Section 773(c) of the Act contains no provision for a start-up adjustment to NV in NME proceedings.

Similar to its argument with respect to COS and LOT adjustments, Starbright references several cases in support of its claim that the Department must calculate margins as accurately as possible.[360] According to Starbright, the CAFC has emphasized that section 773(c) of the Act provides little guidance and, thus, the Department has broad authority to construe section 773(c) of the Act liberally,[361] provided that the Department's chosen methodology is "based on the best available information and establishes antidumping margins as accurately as possible."[362]

We agree with Starbright that the Department must use the best available information to calculate margins as accurately as possible. However, we do not agree with Starbright that a start-up adjustment, based on Starbright's costs, would allow the Department to determine a more accurate dumping margin. The Department does not use the respondents' costs in an NME country because we have determined that such costs are unreliable and do not reflect market principles. As we stated in the preliminary determination,

> Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a)of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.[363]

Starbright has failed to explain how its costs that are not used in the Department's NV calculation could have impacted the calculation or resulted in an overstated margin.

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[358] *See* Sections 773(b) and (e) of the Act.

[359] *See* Section 773(c) of the Act.

[360] *See, e.g., Lasko (1994), Shakeproof (2001), Dorbest (2006),* and *Sichuan Changhong (2006).*

[361] *See* Starbright and TUTRIC joint case brief at 159-161.

[362] Starbright cites *Shakeproof (2001), Anshan (2003),* and *Hebei Metals (2005).*

[363] *See OTR Tires-PRC-AD 02/20/08* at 9288.

Thus, the issue of whether Starbright's costs in the NME were impacted during the POI by any type of start-up operations is irrelevant to the Department's NV calculations.

Further, we do not agree with Starbright that applying a start-up adjustment in the application of NME methodology complies with the Department's normal practice for calculating start-up adjustments. The Department clearly does not have a practice that involves employing a start-up adjustment to NME methodology. Starbright's NV is calculated pursuant to the factors-of-production methodology set forth in section 773(c) of the Act. As this methodology does not rely on the manufacturer's costs, it logically does not provide for an adjustment to such costs. In the absence of a statutory provision directing the Department to make a start-up adjustment, such an adjustment is not warranted when calculating NV under section 773(c) of the Act. Further, Starbright's argument that, because it 1) is a Chinese company wholly owned by an American company and, 2) uses Western cost accounting systems and management standards, it warrants a start-up adjustment, is without merit. Regardless of its ownership or accounting systems, Starbright remains a company operating in an NME where there still exist government controls on various aspects of the economy that render internal Chinese prices and costs invalid for purposes of calculating a dumping margin.[364]

Starbright claims that it has met the statutory criteria and provided a "reasonable adjustment," using "normal Department market economy methodologies."[365] Petitioners rebut this claim and, citing 19 CFR 351.407(d), contend that Starbright has not demonstrated that it is entitled to a start-up adjustment, because it has not demonstrated that it essentially constructed a new facility or undertook a complete retooling of an existing plant, and because it is producing essentially the same tires as those produced by its predecessor. Because we have determined that it is not appropriate to apply a start-up adjustment for Starbright in this investigation for the reasons stated above, we have not evaluated Starbright's claims that it meets the statutory requirements (as articulated under ME methodology), or its claims regarding the reasonableness of the calculation of its proposed adjustment. For the same reason, we have also not evaluated Petitioners' contentions that Starbright does not meet the statutory criteria for such an adjustment. Moreover, while we agree with Petitioners that the Department did not verify the information related to Starbright's claims regarding start-up costs, we also need not address this issue, because we are not granting the adjustment on other grounds.[366]

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[364] *See, e.g*., China's NME Status Memo (2006)

[365] *See* Starbright and TUTRIC joint case brief at 166, citing: *Rebar-Turkey 09/10/99* at Comment 11; *Softwood Lumber 04/02/02* IDM at Comment 32; *Brass Sheet and Strip 01/06/00; and ISOS-Spain 05/10/05* IDM at Comment 9.

[366] Petitioners argue that, before granting a start-up adjustment to cost, the Department's practice is to verify all information relevant to the claims surrounding the requested adjustment. They cite *Pipe-Romania 02/11/05* IDM at Comment 12 and *Brass Sheet and Strip-Netherlands 01/06/00* (where an adjustment was granted only after detailed review and verification).

Comment 52: Starbright Argues that the Department Should Adjust Normal Value for a CEP Offset and Differences in Circumstances of Sale

Starbright and TUTRIC argue that it is appropriate to adjust NV by deducting from the Indian financial ratios: 1) indirect selling expenses incurred in India capped by the amount of expenses deducted from Starbright's and TUTRIC's U.S. sales starting price, in accordance with section 773(a)(7)(B) of the Act; and 2) certain selling expenses, normally deducted from NV in market economy proceedings as "circumstances of sales" ("COS"), in accordance with section 773(a)(6)(C)(iii) of the Act. According to Starbright and TUTRIC, the Department is required by law to calculate margins as accurately as possible based on the best information on the record, and this mandate applies to NME cases in the same manner it applies to market-economy proceedings. Starbright maintains that record evidence demonstrates that the surrogate Indian tire producers undeniably sold tires to their Indian customers at a level of trade ("LOT") far removed from the LOT of sales from Starbright and TUTRIC to GPX. In support of its argument, Starbright and TUTRIC cite *Lasko (1994)*, *Shakeproof (2001)*, *Dorbest (2006)*, *Sichuan Changhong (2006)*, *Anshan (2003)*, *Hebei Metals (2005)*, *Alloy Piping (2008)*, *Smith Corona (1984)*, *SS Pipe Fittings 11/20/06*, *ISOS-PRC 05/10/05*, *Shrimp 09/12/07*, *PSF 04/19/07*, *Roofing Nails 08/10/99*, *Shop Towels 10/30/96*, *WBF 11/17/04*, *Ball Bearings 03/06/03*, *Carboxymethylcellulose 08/07/07*.

Petitioners assert that the Department refrains from making CEP and COS adjustments in NME cases in order to avoid serious imprecision, and because verifying claimed amounts is virtually impossible. Petitioners argue that the Department should not change its practice. According to Petitioners, in order to perform an offset analysis, the Department would need the respective listings of selling activities in the two respective markets (Indian and U.S.) in order to identify levels of trade and compare one market with the other, and nothing in the record approaches that.

Further, Petitioners claim that the same evidentiary problems exist regarding the claims for COS adjustments. According to Petitioners, none of the Indian financial statements itemize all direct selling expenses, as distinct from indirect, much less provide information on which sales incurred the expenses. Petitioners assert that even if the Indian reports itemized the relevant expenses, the reports would not be adequate to predicate any adjustments. In support of their argument, Petitioners cite *Ball Bearings 03/06/03*, *Bicycles 04/30/96*, *OTR Tires-AD 02/20/08*, *Honey 07/06/05*, *CTL Plate-Romania 01/12/01*, *Indigo 05/03/00* IDM at Comment 13, *HFHTs 09/10/03*, and *Shandong Huarang Machinery (2007)*.

Department's Position: As the Department explained in the preliminary determination, in response to Starbright's request that the Department grant it a CEP offset for differences in level of trade between its U.S. sales and those of the surrogate producers, the Department calculates NV in NME cases pursuant to section 773(c) of the Act, whereas NV for ME cases is determined under a different subsection of the statute. The subsection of the statute regarding NV in NME cases contains no provision for making either a level-of-trade adjustment or, by extension, a CEP offset. To elaborate, section 773(a) of the Act explains the determination of NV, and includes level of trade, CEP offsets, and COS adjustments. Section 773(c) of the Act, on the other hand, discusses the determination of NV in NME cases, where the Department has determined that it is unable to determine NV under section 773(a) of the Act. This subsection of the statute specifies that it is used when "(A) the subject merchandise is exported from a nonmarket economy

country, and (B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined under subsection (a)."[367] As noted in the preliminary determination, section 773(c) contains no provision for a level-of-trade adjustment or a CEP offset or, for that matter, a COS adjustment. *See Preliminary Determination* at 9290.

Starbright and TUTRIC reference several cases in support of their claim that the Department must calculate margins as accurately as possible.[368] Starbright and TUTRIC argue further that in the preliminary determination the Department applied a too-narrow interpretation of the statute. According to Starbright and TUTRIC, the CAFC has emphasized that the Department has "broad authority to liberally construe {s}ection 773(c),"[369] provided that the Department's chosen methodology is "based on the best available information and establishes antidumping margins as accurately as possible."[370] We agree in principle with Starbright and TUTRIC, that the Department must use the best available information to calculate margins as accurately as possible. We do not agree, however, that the Department "has broad authority to liberally construe" the statute to the extent suggested by Starbright and TUTRIC. The discretion afforded the Department in the cited cases has to do with the proper valuation of factors of production in calculating NV in accordance with section 773(c) of the Act. For instance, the courts have viewed the statute as a guideline to assist the Department in the process of calculating NV for a producer in an NME country, explaining that "this section also accords Commerce wide discretion in the valuation of factors of production in the application of those guidelines."[371] The CIT also explained that "this Court and the Court of Appeals for the Federal Circuit have repeatedly upheld Commerce's broad discretion in valuing factors of production."[372] This does not equate to giving the Department the authority to apply methodologies that are not part of that section of the statute. The statute directs the Department to make level of trade, CEP offset and COS adjustments in the determination of NV for ME cases pursuant to section 773(a) of the Act, but is silent about such adjustments in the determination of NV using the NME methodology pursuant to section 773(c) of the Act. Therefore, in the absence of statutory provisions for such adjustments in the application of NME methodology, the Department does not believe that such adjustments are warranted.

Starbright and TUTRIC cite certain cases (*e.g., SS Pipe Fittings 11/20/06* and *Carboxymethylcellulose 08/07/07*) that reference the Department's level-of-trade analysis and

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[367] *See* section 773(c) of the Act.

[368] *See, e.g., Lasko (1994), Shakeproof (2001), Dorbest (2006),* and *Sichuan Changhong (2006).*

[369] *See* Starbright and TUTRIC joint case brief at 135.

[370] Starbright and TUTRIC cite *Shakeproof (2001).*

[371] *See Nation Ford (1999)* at 1377.

[372] *See Fuyao Glass (2003)* at 22.

application of CEP offset. The cases discuss the Department's determination of NV pursuant to section 773(a) of the Act. Therefore, they are not relevant to the Department's determination of NV in NME situations, in accordance with section 773(c) of the Act.

Starbright and TUTRIC cite a number of cases to support their contention that the Department has an established practice of selecting surrogate financial statements of companies that are "at a comparable level of integration"[373] to that of the respondent, and "of rejecting financial statements of surrogate producers whose production processes are not comparable to the respondent's production process when better information is available."[374] According to Starbright and TUTRIC, these same principles also apply to calculating surrogate general expenses. In other words, Starbright and TUTRIC claim that the Department must recognize that the financial ratios should reflect the same level of trade as the respondent company.

We do not disagree with Starbright and TUTRIC regarding the Department's practice of selecting surrogate financial statements that, to the extent possible, reflect the experience of the PRC respondents. However, we disagree with Starbright and TUTRIC regarding their claim that there is sufficient record evidence to determine the level of trade for sales made by the surrogate Indian producers, much less calculate a CEP offset or COS adjustment, even if the statute were to provide for such adjustments in the NME context. We also do not agree that information from the surrogate companies' web sites provides sufficient information that would allow the Department to conduct a level-of-trade analysis, or to determine the expenses associated with various functions.

In that regard, we find that the record of this case does differ substantially from the records of other NME cases where parties have requested that the Department calculate CEP offsets and/or COS adjustments. Notwithstanding Starbright's and TUTRIC's claims to the contrary, the selling expenses in NV that would be subject to these adjustments are represented in an aggregate level in the SG&A of the surrogate producers' financial statements, and it is not possible to accurately break out selling expense details to make an accurate adjustment. In *Honey-PRC 07/06/05*, the Department, explaining why it cannot make COS adjustments in NME cases, stated that it "has noted in prior cases that it is not possible to deconstruct surrogate financial ratios at the level of detail that would be necessary to make such adjustments, because it is not known whether there is an exact correlation between the NME producer's and the surrogate producer's expenses."[375] Consequently, any attempt at calculating the requested adjustments would require so many inferences and so much speculation that it could actually lead to less accurate determinations.

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[373] *See* Starbright's and TUTRIC's joint case brief at 139, citing *ISOS-PRC 05/10/05.*

[374] *Id.* citing *ISOS-PRC 05/10/05* IDM Comment 3.

[375] *See Honey-PRC 07/06/05*IDM at Comment 3.

Although Starbright and TUTRIC argue that the sales made by the Indian surrogate companies were at a more advanced level than Starbright's and TUTRIC's sales to the United States, the record evidence does not support their claim. Further, as much as the Department strives to select surrogate financial statements that representative of the experience of the respondent, we have stated many times, including in the preliminary determination, that it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding, as the Department has no authority to either ask questions or verify the information from the surrogate company. *See Preliminary Determination* at 9290; *see also, e.g., WBF 12/06/06* IDM at Comment 5.

Contrary to Starbright's and TUTRIC's claims, the record evidence does not support the requested adjustments, even if the statute allowed for them. Furthermore, the court recently upheld the Department on its decision to not make COS adjustments in an NME case. As the court explained, the Department is authorized to make COS adjustments to NV to account for differences in expenses, including differences in direct selling expenses, incurred in the U.S. and foreign markets, "{i}n the market economy context."[376] Further, we face the same constraints in the instant investigation, in spite of Starbright's and TUTRIC's assertions to the contrary. As explained in *Shandong Huarong Machinery(2007)*, the level of detail in the surrogate financial statements does not allow us to separate indirect selling expenses from direct selling expenses, nor indirect selling expenses from general or administrative expenses. Consequently, even if the statute allowed for a level-of-trade analysis, CEP offset, and COS adjustment in an NME context, the Department cannot accurately determine the specific indirect selling expenses incurred on sales reflected in the surrogate financial statements. Thus, we would have no way of knowing whether such offsets would result in unintended distortions.

As a result, for the final determination, we have not adjusted NV for either CEP offsets or for COS adjustments because the section of the statute under which the Department determines NV in an NME context does not provide for such adjustments. Moreover, even if the statute contemplated such adjustments in NME cases, in most cases, including this one, we are precluded from making them because the data necessary to calculate such adjustments cannot be accurately derived from the surrogate financial statements, and it is not possible for the Department to further dissect the surrogate financial statements as if the surrogate company were an interested party to the proceeding.

Comment 53: Investigation of Starbright's Sales Below Cost Should the Department Determines that Starbright Warrants MOE Treatment

Petitioners contend that if the Department determines that Starbright warrants MOE treatment, its sales-below-cost allegation would become relevant, and the Department should conduct a sales-below-cost investigation of Starbright third-country sales in accordance with section 773(b) of the Act.

[376] *See Shandong Huarong Machinery (2007)* at 30.

Department's Position: As explained above, we have not evaluated Starbright's MOE status, as we currently have no procedures or standards in place to do so.[377] In applying the NME Methodology, we are not using Starbright's costs, consequently the Petitioners' sales-below-cost allegation is moot and we have not addressed it here.

Comment 54: Treatment of Unreported Sales of Subject Merchandise

Petitioners maintain that Starbright systematically excluded sales of subject merchandise. As a result, Petitioners contend that the Department should reject Starbright's entire response and apply AFA. Petitioners contend that verification exhibits 4 and 9 from the FOP verification demonstrate that Starbright mischaracterized the specifications of one or more tire models produced and sold during the POI, and thus, failed to report them to the Department. Further, Petitioners maintain that the verification exhibits contain information submitted for the record for the first time which Starbright could have used to obtain official guidance concerning whether the models were included in the scope of the investigation.

Starbright contends that it reported all of its sales of subject merchandise during the POI. Starbright contends that the Department reviewed GPX's methodology for selecting sales of subject merchandise at both the Starbright and GPX verifications, and confirmed that either: 1) Starbright and TUTRIC did not produce the products in question during the POI; and/or 2) GPX did not sell the relevant models during the POI. Starbright contends that the Department reconciled the sales reported in the section C database to GPX's audited financial statements and examined sales of subject merchandise to third countries that Starbright excluded from the U.S. sales listing. Further, Starbright contends that some merchandise remained in inventory and that it did not sell it in the United States during the POI. Thus, Starbright disagrees with Petitioners' contention that its methodology for creating the section C database was inaccurate, overly broad or that the Department should reject its response.

Department's Position: During Starbright's FOP verification, we tested Starbright's selection of subject merchandise and found that Starbright properly classified all products as subject merchandise with the exception of one model.[378] We further examined Starbright's production records for this model and found that Starbright began production of this model after the POI.[379] Similarly, during the CEP verification, we traced the quantity and value of sales from the section C database to GPX's audited financial statements,[380] and conducted numerous completeness tests.[381] We did not find that Starbright had excluded any sales of subject merchandise during

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[377] *See CFS-PRC-CVD 10/25/07* IDM at Comment 1.

[378] *See* Starbright FOP Verification Report at 8.

[379] *Id.*

[380] *See* Starbright CEP Verification Report at Verification Exhibit 1.

[381] *See* Starbright CEP Verification Report at 11-13.

the POI from its section C database. Therefore, for the final determination, we have continued to base our calculations on Starbright's section C database as confirmed at verification.

Comment 55: Reliability of Starbright's Reported U.S. Sales Prices

Petitioners contend that Starbright compromised the overall reliability of its reporting methodology for U.S. sales prices when it explained at verification that it had reported average prices rather than actual prices for certain transactions, because it believed the prices recorded in its in-house electronic database were abnormally low. Petitioners argue that Starbright's treatment of these transactions calls into question its entire reporting methodology because it is not possible to check the validity of each reported sales price. Petitioners state that verifications are brief one-week procedures where the Department can only perform spot checks of the relevant data. Therefore, because it is not possible to ascertain the extent to which Starbright made such revisions during the limited time available at verification, Petitioners argue that the Department should reject the entire database.

Starbright claims that Petitioners' assertion that GPX and Starbright inappropriately revised U.S. prices to apply a reporting methodology that warrants rejection of the entire U.S. sales databases ignores extensive record evidence to the contrary. Starbright claims that throughout this proceeding, it reviewed its databases to identify observations that appeared to be out of range, and investigated the data to ensure accurate reporting. Starbright claims that prior to the deadline for the submission of new information in this case, GPX identified two CEP observations where the price for the reported tire appeared significantly out of range. GPX revised the prices to reflect that which it was charging for the identical tires during the POI, and reported the revision to the Department in its March 18, 2008 revised NME U.S. CEP database submission. According to Starbright, GPX explained to the Department prior to the deadline for the submission of factual information that it discovered a minor error in the gross unit price reported for two separate invoices. Starbright contends that while preparing for verification, GPX discovered that the correction that it made for these invoices was actually in error, and the original prices were correct. Therefore, Starbright argues, it presented this reversal as a minor correction prior to verification.

Starbright disagrees with Petitioners' contention that verifications are spot checks that do not establish the veracity of a response. Rather, Starbright contends that the Department relies on spot-checks to test and confirm the accuracy of the response and to establish the veracity of a respondent's data and information. Furthermore, Starbright maintains that if the Department did find errors or discrepancies in its response, the errors that are not substantial do not affect the integrity of a response.

Starbright argues that at verification, the Department found no discrepancies with respect to numerous sales traces and invoices that tied directly to the section C database. Moreover, Starbright claims that the Department did not find any discrepancies in the quantity and value reconciliation. Therefore, Starbright contends that the record in this case confirms the accuracy and appropriateness of Starbright's reported prices in the U.S., so that for the final determination, the Department should accept GPX's U.S. sales database as reported.
Starbright used the following sources to support its position:

Starbright cites the following cases to support its argument: *Bomont (1990)* ("A verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness"); *Tatung (1994)* ("The issue is not the value of the errors as a percentage of total U.S. sales, or the number of instances of errors. Rather the issue is the nature of the errors and their effect on the validity of the submission."); and *Ferrosilicon-Brazil 11/22/96*.

Department's Position: We agree with Starbright that the minor corrections presented at verification with respect to these two sales do not call into question the veracity of Starbright's entire section C database. Starbright presented these errors to the Department as a minor correction prior to verification.[382] The corrections pertain to two invoices containing a very small number of tires.[383] We conducted completeness tests to confirm the integrity of the sales reported in the section C database.[384] We did not otherwise find substantive errors with the prices reported in Starbright's U.S. sales database.[385] Although we agree with Petitioners that the time provided for verification permits only spot checks of the information provided in the questionnaire response, we cannot presume that systemic errors exist when there is no evidence to support that conclusion. Therefore, following the principles articulated in *Bomont (1990)* and *Tatung (1994)*, we have determined to use Starbright's post-verification section C database for the final determination.

Comment 56: Treatment of Starbright's Early Payment Discounts

Petitioners contend that Starbright's revised reporting of early payment discounts, presented as a minor correction prior to verification, is not a minor correction but rather, a major methodological change based on further analysis of its accounts and which attempts to explain accounting information. Thus, Petitioners allege that this revised methodological reporting constitutes new information, which is untimely. Petitioners further contend that Starbright's alleged new methodology is inaccurate and, unlike its previous methodology, eliminates the possibility of over reporting any adjustments derived from discounts that Starbright cannot tie to a specific sale. Thus, Petitioners contend that Starbright's revised methodology does not yield accurate results. Consequently, Petitioners argue that the Department should reject the minor corrections presented at verification and use the previously submitted data. Alternatively, Petitioners contend that the Department should resort to facts available and apply the highest re-calculated rate to all of Starbright's U.S. sales.

Starbright disagrees with Petitioners' allegation that the revised early payment discounts presented at the CEP verification as minor corrections are imprecise and reflect a major

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[382] *See* Starbright's letter, "GPX CEP Pre-Verification Minor Corrections: Antidumping Investigation of New Pneumatic Off-The-Road Tires from the People's Republic of China" (April 18, 2008) at 1.

[383] *Id.* at Exhibit II.

[384] *Id.* at 9-13.

[385] *See* Starbright CEP Verification Report at 2.

methodological change that rises to the level of new information. Starbright contends that, in its 2nd SQR, it revised its early payment discount reporting methodology at the Department's request in order to trace early payment discounts back to GPX's financial statements. Starbright states that it originally based its reporting methodology on the assumption that all sales eligible for an early payment discount received an early payment discount if the customer paid promptly. However, Starbright contends that this methodology resulted in reporting discounts that it did not grant. Consequently, Starbright claims that it could not trace the reported discounts to GPX's accounts and audited financial statements.

Starbright claims that it made a comprehensive attempt to trace its early payment discounts to GPX's audited financial statements. Starbright claims however, that the complexity of the undertaking prevented GPX from identifying all necessary revisions. Therefore, Starbright claims that it acted to the best of its ability to complete the analysis and present any additional refinements as a minor correction at verification. As a result, Starbright contends that its minor corrections to its early payment discounts do not constitute new information. In addition, Starbright argues that it analyzed the difference between the total value of its original early payment discounts and the ones reported at verification and found that the difference was very small.

Starbright contends that the Department verified both the reasonableness of its methodology and the accuracy of its reporting at verification. Further, Starbright contends that the Department verified that, in order to trace to the accounts to the financial statements, a certain degree of over-reporting is necessary because GPX's accounts do not separately identify early payment discounts from short-payments. Thus, Starbright contends that contrary to Petitioners' assertion that GPX self-servingly revised its methodology to eliminate over-reporting; the record confirms that the revised method also generates over-reporting, thus lowering U.S. prices even with respect to sales to which an early payment discount definitely does *not* apply. As a result, Starbright argues that the Department should accept the accuracy of Starbright's early payment discount as reported for the final determination.

Starbright also contends that the Starbright CEP Verification Report at 15-16 incorrectly states that GPX's early payment discounts are reported in the BILLADJ1U and BILLADJ2U fields. Starbright contends that GPX reported all early payment discounts under the EARLPYU variable, which Starbright contends that the Department properly described on page 10 of the Starbright CEP Verification Report. Starbright maintains that BILLADJ1U and BILLADJ2U contain post-sale price adjustments, which the Department correctly describes in its CEP verification report. No other party provided comments on this issue.

Department's Position: Starbright demonstrated at verification that GPX's accounting system does not allow for tracing of early payment discounts and/or other types of payment shortfalls back to the relevant invoices. Therefore, we agree that Starbright's methodology, of applying the total value of all unattributed discounts and payment shortfalls to the relevant customer, is reasonable. We were satisfied at verification that Starbright comprehensively, systematically and accurately accounted for its early payment discount and similar types of invoice adjustments, based on the data it maintains in its internal books and records. Therefore, we have made no changes to our margin calculation for the final determination.

We agree with Starbright that the Department erroneously stated that Starbright reported its early payment discounts in the fields BILLADJ1U and BILLADJ2U. Starbright reported early payment discounts in the field EARLYPU in its section C database.[386] The Department did not find any discrepancies with respect to Starbright's reporting of early payment discounts at verification. Therefore, we have made no changes to our calculation with respect to this issue for the final determination.

Comment 57: Treatment of Tanggu Warehouse Expenses as an Adjustment to U.S. Price

Petitioners argue that Starbright's factory in Xingtai, Hebei Province represents the original place of shipment for Starbright's U.S. sales. As a result, Petitioners argue that any expenses incurred in the Tanggu warehouse, in Tianjin, represent movement expenses within the meaning of 19 C.F.R. 351.401(e)(2). Petitioners contend that 19 C.F.R. 351.401(e)(2) directs the Department to treat warehousing expenses incurred after the subject merchandise leaves the original place of shipment as movement expenses. Therefore, for the final determination, Petitioners propose that the Department apply a warehouse-expense adjustment to all of Starbright's sales shipped through the Tanggu warehouse based on AFA. Petitioners propose, as AFA, that the Department value the Tanggu warehousing expense at twice the level of the warehousing expense incurred in the United States for CEP sales.

Starbright argues that the Department should not make an adjustment for Tanggu warehousing because such an adjustment would result in double counting the expense. Starbright argues that GPX classifies U.S. warehousing expenses as operating (distribution) expenses, not as freight expenses in its audited financial statements and argues there is no evidence that the Indian surrogate companies do not do the same.[387] Accordingly, Starbright maintains that such warehousing expenses would be captured by the surrogate financial ratios, as they do not fall within the various categories for movement expenses that the Department would normally exclude from its surrogate ratio calculations. In the event that the Department determines to

[386] *See* Starbright's CQR at C-24 and Exhibit C-2.

[387] Starbright cites the following cases to support its position: *Furfuryl Alcohol-PRC 05/08/95* at Comment 10 ("We confirmed that the process necessary to produce hydrogen is accounted for in the surrogate value for factory overhead and that to value the company's input separately would involve double counting. Therefore, we have not assigned a separate value to hydrogen in our calculations for the final determination"); *FHT-PRC 09/10/03* IDM at Comment 16 ("Therefore the question then becomes whether or not the surrogate value for brokerage and handling includes port charges. As noted in Comment 12, there is no evidence that the brokerage and handling surrogate does not include port charges. Therefore, we did not include a separate expense for port charges in the net U.S. price calculation for the final results"); *HFHTs-PRC 03/10/04* IDM at Comment 6 ("Absent evidence to the contrary, it is reasonable to assume that the brokerage and handling surrogate value captures these costs . . . Therefore, as it is likely that the brokerage and handling surrogate value used in the *Preliminary Results* includes these miscellaneous handling expenses, to avoid possible double counting**,** we have not included the additional handling expenses identified by the petitioner in our calculation of net U.S. price and only deducted foreign brokerage and handling"); and, *Shrimp-Vietnam 69 FR 71005* IDM at Comment 5B ("Adding this fee to the related ME ocean freight expense would result in double counting for brokerage and handling for the two sales in question. Therefore, the Department will not add these handling fees to international freight in the final margin calculation program").

adjust U.S. price for the Tanggu warehousing expenses, Starbright disagrees that the Department should determine surrogate value to be twice the value of GPX's U.S. warehouse expenses. Starbright argues that the wage bill for its U.S. warehouses is 16 times greater than the surrogate value for wages in the PRC. Therefore, Starbright argues that the Department should reduce the labor portion of any such adjustment to account for the dramatic difference in wages. Finally, Starbright argues that if the Department makes an adjustment for warehousing expense in the PRC, it should only apply the adjustment to those sales recorded in section C database with a CHANNEL_FLAG OF "T_DIRECT," which indicates that the sales were shipped through the Tanggu warehouse.

Petitioners disagree that: 1) the Tanggu warehouse expenses represent a COS adjustment; or that, 2) the financial ratios capture comparable expenses, so that a deduction from U.S. price double-counts the expense. Petitioners maintain that COS adjustments within the meaning of 19 C.F.R. 351.410 account for differences in "direct selling" and "assumed" expenses and thus do not apply to expenses such as the Tanggu warehouse expense. Petitioners further argue that the Department excluded movement expenses such as freight and forwarding expenses from the surrogate financial ratios, thereby eliminating any possibility of a double count.

Department's Position: Pursuant to 19 CFR 351.401(e)(2), the Department "will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses." Therefore, Starbright's Tanggu warehousing expense represents movement expenses within the meaning of 19 CFR 351.401(e)(2). Furthermore, section 772(c)(2) of the Act, instructs the Department to reduce EP or CEP by "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." Therefore, consistent with the Department's practice we are adjusting Starbright's U.S. price by an amount for warehousing at the Tanggu warehouse.[388]

The cases that Starbright cited in support of its position do not address the facts of this situation. *Furfuryl Alcohol-PRC 05/08/95* at Comment 10 addresses whether the production of an indirect material should be classified as a manufacturing or overhead expense. *HFHT-PRC 09/10/03* IDM at Comment 16 and *HFHTs-PRC 03/10/04* IDM at Comment 6 both refer to the classification of certain freight handling expenses as either brokerage or ocean freight expenses. In these cases, we agreed with the respondent that the expenses at issue were already included in the surrogate value for brokerage and handling expenses, and declined to make an additional adjustment. In *Shrimp-Vietnam 69 FR 71005* IDM at Comment 5B, the Department agreed that the handling charge at issue was included in the SV for brokerage and handling. However, in this instance, we disagree that the surrogate financial ratio for overhead captures the value of off-site warehousing expense, since it is not possible to determine whether any off-site warehousing expenses are included in the Indian surrogate financial statements. Therefore, for the final determination, we have calculated a warehousing adjustment for Starbright, using a surrogate value based on a daily inventory rate obtained from the Board of Trustees of Jawaharlal Nehru

[388] *See*, e.g., *WBF 11/17/04* IDM at Comment 48; *HFHTs 03/10/04* at 11381; *Malleable Pipe Fittings 12/23/05* at 76238.

Port.[389] However, we did not request or obtain the number of days in inventory for the Tanggu warehouse on the record of this investigation. Therefore, in accordance with Section 776(a)(1) of the Act, as FA, we used the days in inventory reported for GPX's U.S. sales.[390]

Comment 58: Minor Correction to Freight-In Expenses

Starbright contends that the Department's CEP verification report incorrectly states that the freight-in minor correction precipitated a revision to the INLFWCU field. Starbright contends that GPX explained at verification that the revisions for freight-in impact the INTNFRU, ENTVALUE, USBROKU, and USDUTY variables. Starbright maintains that its minor corrections to freight-in has no impact on INLFWCU because INLFWCU contains GPX's freight-out expenses to U.S. customers, which Starbright claims the Department verified is a separate expense.

Department's Position: The description of Starbright's freight-in expense provided on pages 3 and 4 of the Department's Starbright CEP Verification Report briefly summarized our understanding of Starbright's description of this issue in its minor corrections submission:

> These corrections also impact the second part of GPX's freight-in methodology ***for sales out of U.S. inventory***. (***Emphasis added***.) Because GPX cannot link a sale from inventory back to its specific container, it used product-specific weighted-average freight costs based on the freight-in costs incurred for all containers carrying the product during the POI. . . ." [391]

Our verification report stated:

> 2) a computer programming error failed to link specific container numbers to the applicable reported sales. As a result, Starbright not only erroneously omitted the expenses applicable to these shipments from the calculation of INTNFRU, ENTVALUE, USBROKU and USDUTY, but also erroneously included them in the freight-in expenses for U.S. inventory sales. As a result, Starbright revised the product-specific weighted-average freight-in expenses for sales made from U.S. inventory (INLFWCU).[392]

We agree with Starbright. Our verification report inartfully explained our understanding of Starbright's correction: that is, that its freight-in expense influenced the inland-freight expense applied to sales made from U.S. inventory, and did not apply to the U.S. inland

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[389] *See* Final SV Memo; *see also HFHTs 03/10/04*, at 11381; *Malleable Pipe Fittings 12/23/05*, at 76238.

[390] *See*, Starbright CEP Verification Report at 20 and Verification Exhibit 13. *See also*, Starbright 1st SQR at Exhibit SS-39.

[391] *See* Starbright Minor Corrections at 2.

[392] *See* Starbright CEP Verification Report at 4.

freight expense from the warehouse to the customer, which, as Starbright explained, we verified as a separate expense. Therefore, we have made no changes to our calculations for the final determination with respect to this issue.

Comment 59: The Nature of WARR2U

Starbright contends that, in its verification report, the Department incorrectly identifies GPX's "Warranty 2" field as containing allocated amounts. Starbright contends that GPX, in response to the Department's specific instructions, revised its WARR2U to reflect invoice- and product-specific warranty adjustments in Starbright's 2nd SQR. Thus, Starbright contends that there is no methodological difference between the WARR1U and the WARR2U fields and that both reflect actual, invoice-specific warranty expense adjustments. Starbright argues that it retained the WARR2U variable as a separate field solely for administrative purposes to preserve the distinction between those warranty credit memos for which it was able to make a direct link back to the original invoice electronically from those for which it made the link manually. Starbright contends that at the CEP verification, the Department verified the exact documents provided and the identical methodology described in its March 3, 2008 response, which explained that the WARR2U expense reports contain invoice- and product-specific warranty expenses. No other party provided comments on this issue.

Department's Position: We agree that Starbright revised its WARR2U expenses, analyzing them and attributing them to individual invoices. Page 10 of the Starbright CEP Verification Report states:

> Company officials explained that they similarly analyzed all credit notes issued for warranties, *i.e.*, and identified those credit notes that could be applied to a specific invoice, and which could not. Starbright reported warranties traceable to a specific invoice in the variable "Warranty1U." Starbright reported the rest in "WARRANTY2U." It applied the value of these credit notes against all POI sales of subject merchandise, by customer.

However, Page 18 of the Starbright CEP Verification Report more fully describes our understanding of WARR2U as follows:

> Company officials explained that Warranty 2 is essentially the same as Warranty 1. . . . . Company officials reported that, in order to locate Warranty 2 payments, they manually searched for the two credit memos attributable to the invoice because the computerized accounting system did not automatically link them to the invoice in the sales sub-ledger. We found no discrepancies. *See* Verification exhibit 7.

Therefore, we are aware that Starbright did not allocate any warranty expenses incurred during the POI on a customer-specific basis.

However, although, the Department has accepted warranty expenses reported on a invoice-

specific and/or customer-specific basis in the past,[393] the Department recognizes that by their nature, warranty expenses are unknown and unforeseeable at the time of sale.[394] Therefore, in evaluating expenses that are inherently unpredictable at the time of sale, the Department tries to account for warranty expenses on a model-specific basis.[395] Where such model-specific allocation is not possible within the constraints of the company's books and records, the Department's preference is for warranty expenses to be allocated across all sales of merchandise to the market in question. Because Starbright reported its warranty expenses on a transaction-specific basis, which the Department has rejected in recent cases, for this final determination, we have re-allocated Starbright's warranty expense by dividing the total verified value of GPX's warranty expenses applicable to subject merchandise during the POI[396] by the total value of subject merchandise during the POI.

Comment 60: Expenses Included in U.S. Duty

Starbright contends that the Department's verification report erroneously states that GPX calculated duty by multiplying the entered value by the merchandise-processing fee of 0.21 percent and the harbor maintenance fee of 0.125 percent. Starbright argues that its 1st SQR reported that USDUTYU includes the merchandise-processing fee, the harbor maintenance fee, and U.S. Customs duties, where applicable. No other party provided comments on this issue.

Department's Position: We agree with Starbright's characterization of the expenses reported in the variable USDUTYU in its section C database. The description provided in Starbright's CEP verification report "Company officials explained that they calculated the duty by multiplying the entered value by the merchandise-processing fee of 0.21 percent and the harbor maintenance fee of 0.125 percent"[397] does not imply that the Department intends to increase Starbright's reported USDUTYU by that amount. Therefore, we have made no changes with respect to this issue for the final determination.

Comment 61: U.S. Warehousing Expenses

Petitioners contend that prior to verification, Starbright claimed that U.S. warehousing expenses did not apply to transactions related to a certain customer, although they had originally applied warehousing expenses to that customer. Petitioners contend that, for the final determination, if Starbright inappropriately allocated expenses to the particular sales in question, the Department should then reallocate the expenses to sales that did incur the expense.

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[393] *See, e.g., CR Flat Products-Korea 10/03/0* IDM at Comment 11 and *GOES – Italy 03/14/01* IDM at Comment 6.

[394] *See HR Flat Products-Netherlands 05/22/07* IDM at Comment 7.

[395] *Id. See also,* Department's Original Questionnaire at C-32-33; and *Honey-Argentina 05/04/06* IDM at Comment 1.

[396] *See* Starbright CEP Verification Report at Verification Exhibit-2.

[397] *See* Starbright CEP Verification Report at 13.

Starbright contends that its reported minor correction with respect to this specific customer was the result of its inadvertent application in its databases of the GPX warehousing expense to sales in the database that were not warehoused in a GPX warehouse. Starbright contends that GPX reported, and the Department verified, that GPX's warehousing expense calculation includes in the numerator only those expenses incurred at GPX warehouses and includes in the denominator only those sales shipped out of its warehouses.

Starbright maintains that: 1) the sales in question did not enter GPX's inventory; and 2) GPX did not ship them from a GPX warehouse. As a result, Starbright contends, it did not allocate any warehouse expenses to them. Thus, for the final determination, Starbright contends that the Department should not revise Starbright's reported warehousing expenses for this customer.

Department's Position: We agree with Starbright that the sales in question did not enter GPX's inventory, and thus did not incur any U.S. warehousing expenses.[398] The Department did not identify any errors or omissions in the warehousing expenses reported in the section C database.[399] Therefore, we have made no changes with respect to this issue for the final determination.

Comment 62: Dutiable Assists

Petitioners allege that Starbright may have inappropriately provided customs "assists" in contemplation of customs value law to Hebei Tire, Starbright's precursor. Specifically, Petitioners argue that in customs law, dutiable assists include, *inter alia*, tools, dies, molds, and similar items used in the production of imported merchandise, as specified in 19 U.S.C. 1401a(h)(1)(A)(ii). According to Petitioners, such assists are part of dutiable value whether Customs appraises the imports on the basis of "transaction value" or "computed value" in accordance with 19 U.S.C. 1401a(b)(1)(C) ("transaction value") and 1401a(e)(1)(C) ("computed value"). Therefore, Petitioners allege that if GPX provided assists to Starbright for use in producing subject merchandise, *i.e.*, by replacing or refurbishing manufacturing equipment, then appropriate amounts must be allocated to imports during the period of review, and Starbright must increase the reported customs duties for all subject merchandise, and deduct the amount from U.S. price.

Petitioners argue that the Department should consult with the CBP to determine whether GPX provided inappropriate customs assists to Starbright, and to determine the value of any such assists. In addition, Petitioners argue that the Department should not reward Starbright for its failure to declare the amount of such assists to CPB at the time of importation.

Starbright contends that Petitioners' allegation is without merit because there is no record evidence that GPX understated the dutiable value of its imports. Thus, Starbright argues that

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[398] *See* Starbright CEP Verification Report at 2 and Verification Exhibit 11.

[399] *See* Starbright CEP Verification Report at 2.

Petitioners' allegation is based on conjecture and should be dismissed.

Department's Position: The determination of dutiable value under the provisions of the statute cited by lies outside the jurisdiction and authority of the Department. Therefore, we are not addressing this issue for the final determination. There is no evidence on the record to indicate that Starbright did not properly report U.S. customs duties to the Department under section 772(c)(2)(A) of the Act.

Comment 63: Direct Labor Hours

Petitioners contend that Starbright was unable to substantiate its reported labor hours at verification. Petitioners contend that Starbright calculated its labor hours by multiplying the daily attendance rate by seven, claiming that the Starbright FOP Verification Report states that the Department was unable to check the number of hours for which Starbright paid employees because Starbright pays its workers in part on the number of tires produced. Thus, Petitioners contend that the Department should apply partial AFA to Starbright's labor hours in accordance with section 776 of the Act because Starbright did not cooperate to the best of its ability in reporting its labor hours and justifying its methodology. Petitioners maintain that if Starbright's record-keeping system did not allow it to reconcile labor hours to actual salaries or wages paid or to other company records, it had the responsibility of informing the Department *prior to verification* and seeking instructions on how to proceed.[400]

Petitioners further maintain that if the Department determines not to apply adverse inferences in this situation, it should still apply FA, by calculating labor expenses based on standard eight-hour workdays (including breaks), and increasing Starbright's reported labor hours by 12.5% (the difference between a seven and an eight hour work day). Petitioners cite *Steel Beam-Korea 07/05/03* IDM at Comment 3 (*stating,* "We recalculated labor expenses based on eight-hour workdays instead of six-and-a-half-hour workdays" because employees were on site for eight hour days, although they worked six-and-a half-hour shifts). Petitioners additionally relied on the following documents to support their position: *NSK (2001)* and *SAA.*

Starbright disagrees with Petitioners' contention that the Department should apply AFA to Starbright's labor consumption factors, claiming that Petitioners miscast the Department's statement in the Starbright FOP and Sales Verification Report that they were "unable to check the number of hours for which employees were paid." Rather, Starbright contends that the Department reviewed with company officials the daily attendance sheets by workshop and observed that these sheets list the employees assigned to the workshop and record the days worked by the employee each month. Starbright claims that the procedures performed by the verifiers allowed them to link the daily attendance sheets to each worker and each worker to the

[400] Petitioners cite *Nachi-Fujikoshi (1995),* (*stating* "respondents have the burden of creating an adequate record to assist Commerce's determinations" (*citing Tianjin (1992*)); *NSK (2001); SAA* (stating adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully"). Citing *WBF 08/22/07* (*stating* "the Department is continuing to apply as partial AFA the highest labor values as reported by {respondent} for any CONNUM"), Petitioners argue that the Department should apply to all CONNUMs, as partial AFA, the highest labor hours reported by Starbright for any reported CONNUM.

amount paid, which, in turn, reconciled to the financial statements. Further, Starbright contends that the Department did not cite any discrepancies with respect to the number of labor hours at any point in its verification report. Thus, Starbright claims that Petitioners' allegation is without merit.

Department's Position: Page 21 of the Starbright FOP Verification Report describes the procedures that the Department officials used to test the accuracy of Starbright's reported factor consumption rate for labor. The Department noted the fact that Starbright maintained its labor records on a daily attendance basis, and also noted, that as a result, it was not possible to check the total number of hours for which employees were paid, because employees were paid on a piece work basis.[401] The Department's statement that it was not possible to check the total number of hours that employees worked was intended to contrast Starbright's records with other types of accounting systems where labor hours are maintained on an hourly basis during the normal course of business, not to suggest that there was a problem with the validity or accuracy of the numbers that Starbright reported. Therefore, we have no basis to determine that Starbright did not cooperate to the best of its ability in responding to the Department's request for information, and thus, have no basis for making adverse inferences in this instance. As a result, we have accepted Starbright's verified direct-labor-hour consumption rate for the final determination.

Comment 64: Starbright's Indirect Labor Hours

Petitioners contend that the Department discovered that Starbright failed to report indirect labor hours from certain workshops (*e.g.*, quality control, supervisors) normally included in overhead because Starbright believed that the Department's surrogate financial ratio for overhead captures such labor expenses. Petitioners further contend that the Department required Starbright to include these missing labor hours in a new database, which it did on May 5, 2008. Petitioners argue that for the final determination, the Department should value all of Starbright's labor hours, regardless of whether Starbright classifies some of its labor as indirect overhead. Petitioners maintain that the Department calculates labor as a percentage of the total ML&E costs because the Indian surrogate financial statements group all labor costs together without splitting them between direct labor and overhead expenses.

Starbright contends that the factors of production, in general, represent the quantitative expression of the actual costs of the company. Hence, Starbright claims that it should include in its reported labor consumption rates only the labor that it pays for. Starbright claims that if it pays its workers for each day of work, then, it pays the workers in good faith for the time they were on site. However, if Starbright pays workers on an hourly basis, or on a per-piece basis (as is the case at Starbright), then Starbright argues that the amount paid corresponds only to the hours actually worked. Based on this rationale, Starbright claims that it reported the actual time its workers are engaged in production activities, excluding meal and break times. Starbright used the following source to support its position: *CLPP-PRC 09/08/06* IDM at Comment 10.

[401] *See* Starbright FOP Verification Report at 21.

Department's Position: We agree with Petitioners that Starbright under reported its indirect labor in its initial questionnaire response. The Department's Original Questionnaire stated, "Report the indirect labor hours required to produce a unit of the merchandise under consideration. Indirect labor includes all workers not previously reported who are indirectly involved in the production of the merchandise under consideration."[402] Our verification revealed that Starbright failed to report the required indirect labor.[403] Starbright provided a revised section C database on May 5, 2008, pursuant to instructions from the Department that captured the previously unreported labor.[404] Therefore, following the Department's standard FOP calculation methodology, we have revised our calculations for the final determination to incorporate Starbright's indirect labor.

Comment 65: Ministerial Errors With Respect to U.S. Credit Expenses

Petitioners claim that they alleged and the Department admitted that it made ministerial errors in defining and calculating Starbright's U.S. credit expense in the Preliminary Determination. Petitioners argue that the Department should correct these errors for purposes of the final determination. Starbright states that it assumes that the Department will correct any errors found in the preliminary determination for the final determination.[405]

Department's Position: We agree with Petitioners and Starbright that the computer program for the preliminary determination contained an error in the equation for U.S. credit expenses.[406] We corrected it in the calculations released with the Department's targeted dumping analysis.[407] Therefore, we have incorporated this change in the calculations for the final determination.

Comment 66: Marine Insurance

Starbright agrees with statements in the Starbright CEP Verification Report that it did not include all of the expenses described in its marine insurance contract in the variable reported for marine insurance in its section C database. Starbright claims that it reported its marine insurance in the manner described in the CQR based on consultations with its insurance broker. Starbright admits that its marine insurance policy can be understood to include the additional expenses that the Department identified in the Starbright CEP Verification Report. However, Starbright

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[402] *See* the Department's Original Questionnaire at D-8.

[403] *See* Starbright FOP Verification Report at 2, 6 and Verification Exhibit 9.

[404] *See* Letter from Starbright, "GPX's and Starbright's Post-Verification Submission of Databases Requested by the Department: Antidumping duty Investigation of New Pneumatic Off-The-Road Tires from the People's Republic of China" (May 5, 2008).

[405] *See* Ministerial Error Memorandum at 8.

[406] *Id.*

[407] *See* Starbright Targeted Dumping Analysis at Attachment I, line 1394.

contends that the application of the revised methodology will have no practical impact on the per-unit value of marine insurance reported in the section C database or on its margin.

Petitioners note that Starbright concedes that the Department found at verification that Starbright did not account for all relevant charges in reporting per-unit marine insurance in its section C database, and argues that the amount is insignificant. Petitioners contend that the size of the deficiency is irrelevant, and that the Department should make the appropriate correction for the final determination.

Department's Position: We determined at verification that Starbright failed to report the value of its marine insurance in accordance with the terms of its insurance policy.[408] Therefore, for the final determination, we have accounted for these expenses in our margin calculation and have calculated marine insurance in accordance with the terms GPX's marine insurance policy.

Comment 67: Correct Names for Certain Separate Rates Parties for Customs Instructions

Certain parties have alleged that the Department's federal register notice for the preliminary determination misspelled the names of a number of the separate rates parties.

Department's Position: We corrected the names before we issued the customs instructions for the preliminary determination and have incorporated those changes in the final determination. We have listed the original and revised names of the companies whose names we misspelled in the *Preliminary Determination* below:

PRELIM		FINAL	
EXPORTER	**PRODUCER**	**EXPORTER**	**PRODUCER**
Xuzhou Xugong Tyre Company Limited *	Xuzhou Xugong Tyre Company Limited	Xuzhou Xugong Tyres Company Limited *	Xuzhou Xugong Tyres Company Limited
Qingdao Sinorient International Ltd. *	Tenzhou Broncho Tyre Co., Ltd	Qingdao Sinorient International Ltd. *	Tengzhou Broncho Tyre Co., Ltd.
Shandong Taishan Tyre Co., Ltd *	Shandong Taishan Tyre Co., Ltd	Shandong Taishan Tyre Co., Ltd. *	Shandong Taishan Tyre Co., Ltd.
Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.) *	Shandong Xingda Tyre Co. Ltd.	Techking Tires Limited *	Shandong Xingda Tyre Co. Ltd.
Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.) *	Shandong Xingyuan International Trade Co. Ltd.	Techking Tires Limited *	Shandong Xingyuan International Trade Co. Ltd.
Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.) *	Shandong Xingyuan Rubber Co. Ltd.	Techking Tires Limited *	Shandong Xingyuan Rubber Co. Ltd.

[408] *See* Starbright CEP Verification Report at 16-17 and Verification Exhibit 12.

Comment 68: Time Period for Measuring Starbright's U.S. Indirect Selling Expenses

Petitioners contend that in its 1st SQR, Starbright used inappropriate methods to determine the pool of ISEs for both the fourth quarter of 2006 and the first quarter of 2007. Petitioners note that Starbright provided actual data for these time periods in its original CQR. Petitioners allege that Starbright excluded certain expenses, which it believes should have been included in the calculation. Petitioners contend, therefore, that the Department should revise Starbright's ISE calculation to eliminate the impact of Starbright's quarterly calculations, and to include the expenses that they believe were inappropriately excluded. Petitioners provided a detailed proprietary explanation of their allegation and proposed remedy for Starbright's ISE calculation.[409]

Petitioners further argue that the Department should include DTC marketing and sales expenses in Starbright's ISE calculation. Petitioners argue that, even though DTC is located in Canada, the record clearly indicates that GPX conducts certain of its worldwide operations there. Petitioners argue that in *Wire Rod-Canada 08/30/02* IDM at Comment 3, that Department stated that "under 19 CFR 351.402(b), we deducted indirect selling expenses related to U.S. economic activity 'no matter where or when paid.'"

Starbright contends that it provided documentation supporting ISE expenses incurred during the last three months of the POI in its 1st SQR at exhibit SS-40. Starbright contends that these expenses reconciled to GPX's interim financial statement for January to September 2007. Further, Starbright claims that this ratio was the same as the ratio calculated for the calendar year 2006. In addition, Starbright claims that GPX provided additional information in TUTRIC's 2nd SQR for the 2006 period.

Starbright contends that it explained to the Department that the audit of its 2007 financial statements was not complete. As a result, Starbright contends that the Department did not examine the 2007 statements but rather focused its verification on the 2006 statements. However, Starbright maintains that Verification Exhibit 11 provides a detailed analysis of its 2007 ISEs at the same level of detail as its reported expenses for 2006. Thus, Starbright contends that it fully complied with all requests for documentation and the Department erroneously stated that it did not include expenses from the first quarter of 2007 in its ISE calculations.

Department's Position: We agree with Starbright that it provided all the appropriate information to calculate an ISE adjustment for both the fourth quarter of 2006 ("4Q06") and the first quarter of 2007 ("1Q07"). The Department examined these expenses carefully at verification. In addition, we examined Starbright's methodology for determining the 4Q06 and 1Q07 expenses. We stated that, "because the financial statements for the fourth quarter (which was in the POI) include year-end adjustments for all four quarters, Starbright divided the net value of ISE expenses by four to obtain a quarterly ISE ratio representing the fourth quarter in

[409] *See* Starbright Final Analysis Memorandum for further discussion of this issue.

2006."[410] In addition, we found that it used a similar methodology for 1Q07, dividing the total value of expenses incurred during the first three quarters of 2007 by 3 to obtain a quarterly amount representing 1Q07.[411] We believe that these calculations were reasonable given that the POI fell in the last quarter of one fiscal year and the first quarter of a second fiscal year. Therefore, we have made no changes to our calculations for the final determination with respect to this issue.

We disagree that Starbright inappropriately omitted the expenses Petitioners referred to in the proprietary discussion of this issue. Please see the proprietary Starbright Final Analysis Calculation Memorandum for a detailed discussion of this issue. Finally, we disagree with the accuracy of Petitioners' statement that Starbright excluded any of DTC's G&A expenses from its ISE calculation. DTC's expenses are clearly included in the calculation for the ISE's for 4Q06 and 1Q07.[412] Therefore, we have made no changes to our calculations for the final determination with respect to this issue.

Comment 69: Inclusion of Post-POI Credit Notes in the Section C Database

Starbright contends that the Department's CEP verification report erroneously stated that GPX did not determine whether post-POI credit notes for Starbright-produced merchandise were applicable to sales during the POI.

Starbright claims that it reported that the GPX electronic accounting system does not automatically tie credit notes to original invoices. As a result, Starbright explains that GPX engaged in a complex and time-consuming undertaking to trace all possible credit notes to the original invoice. Starbright contends that it reported adjustments for all direct matches for subject merchandise during the POI in the fields for BILLADJ1U and/or WARR1U. Starbright explained that when it was unable to trace a credit note to the original invoice, it assumed that the credit note was applicable to subject merchandise during the POI, and reported BILLAJD2U or WARR2U, as applicable, on a customer-specific basis. Thus, Starbright argues that GPX's reporting methodology for credit notes is inherently conservative, and any further changes to this methodology would be burdensome and unreasonable.

Starbright claims that the Department allows respondents to utilize non-distortive, reasonable methods of reporting expenses and adjustments when the burden of manually tracing and reporting such adjustments/expenses exceeds the potential impact on the margin analysis. Starbright contends that tracing post-POI credit notes back to invoices issued during the POI would likely result in a very high rate of full cancellations, which are not to its advantage. Thus, Starbright contends that its over inclusion of some billing adjustments issued during the POI balances the exclusion of the post-POI period from its reporting methodology.

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[410] *See* Starbright CEP Verification Report at 19.

[411] *See* Starbright CEP Verification Report at Verification Exhibit 11.

[412] *Id. See, also*¸ Starbright's CQR at Exhibit8, Starbright's 1st SQR at 79 and Exhibit 40, Starbright's 2nd SQR at 7 and Exhibit S2QR-7.

Starbright cites the following two cases in support of its position: *Gas Turbo-Compressor Systems 05/05/97* ("We excluded from this price any post-POI price amendments, in accordance with our standard practice."); and *Pasta 11/29/05* at Comment 9 ("Additionally, a price adjustment based on post-sale, post-POR payments is not warranted, because Pagani has failed to demonstrate that these payments are part of Pagani's standard business practice…. Finally, these payments were made subsequent to the period subject to this review. We, therefore, have not included the interest/exchange revenue claim in our calculations of the U.S. price").

Petitioners contend that Starbright admits that it did not attempt to analyze credit notes issued after the POI to determine whether they applied to the sales during the POI. Further, Petitioners contend that Starbright contradicts itself by stating that it did not analyze credit notes issued after the POI because it requires a time consuming process, and also stating that it can run reports from its electronic data system at any time. Petitioners contend that the Department did not describe the specific difficulties that Starbright had in analyzing its credit notes, and therefore, Starbright did not allay Petitioners' concerns about its reporting methodology.

Department's Position: We disagree that Starbright's reporting methodology for credit notes is conservative, accurate, reasonable, or consistent with longstanding Department practice. Starbright stated at verification that it analyzed all the credit notes during the POI, determined how to classify them for antidumping reporting purposes, then eliminated those credit notes that did not apply to the POI. In doing so, Starbright eliminated a significant number of credit notes issued during the POI but which applied to sales prior to the POI.[413] However, while Starbright eliminated credit notes that applied to sales made prior to the POI, it did not make a similar effort to include credit notes applicable to POI sales but issued after the POI. Consequently, Starbright's reported billing adjustments and warranty expenses may be significantly understated.

We disagree with Starbright's contention that it notified the Department on numerous occasions to indicate that it limited its credit note reporting to those notes that were issued in the POI and only relevant to sales made during the POI. There is no record evidence that Starbright clearly stated that it analyzed its credit notes for the purpose of excluding expenses relevant to sales made prior to the POI without attempting to identify the appropriate adjustments/expenses related to sales made during the POI but reflected in credit notes issued after the POI.

While the Department requires billing adjustments involving discounts, errors in price, etc., to be reported on a transaction-specific basis wherever possible, warranty expenses are inherently unpredictable, and often are incurred long after completion of sale. Consequently, the Department's practice requires respondents to allocate all warranty expenses incurred during the POI/POR to the sales during that same period.[414] However, if the Department believes that a respondent's warranty expenses in a given POI/POR are not reflective of its historical

[413] *See* Starbright CEP Verification Report at Verification Exhibit 2, pages -2. *See also* CQR at Exhibit 15 pages 22-23.

[414] *See* the Department's Original Questionnaire at C-33-34.

experience, the Department may rely on an annual average of respondent's historical warranty expenses incurred over a three-year period.[415] Starbright neither reported its expenses as requested in the Department's questionnaire nor availed itself of an acceptable, alternative methodology for more accurately reporting its expenses during the POI. In this case, Starbright attempted to identify certain warranty expenses incurred for sales made during the POI. However, it only attempted to do so with respect to warranty expenses incurred during the POI, not actually all warranty expenses associated with all sales made during the POI. Consequently, we do not find this to be a reasonable methodology.

We disagree that Starbright's cite to *Gas Turbo-Compressor Systems 05/05/97* at 24395 supports its position. The post-POI price amendments referenced in *Gas Turbo-Compressor Systems 05/05/97* at 24395 refer to changes to the contract for the purchase of extremely complex machinery negotiated subsequent to the POI.[416] In *Pasta 11/29/05* at Comment 9 the Department rejected respondent's claim for a price adjustment based on revenue after the POI because the respondent could not substantiate its claim. Therefore, both cases represent instances where the Department did not accept claims that the company could not substantiate with proof of payment during the POI. Moreover, as noted above, other types of price amendments and billing adjustments are treated differently from warranty expenses due to the unique nature of warranty expenses, i.e., their unpredictability and the often significant time lag between sale and incursion of expense.

In sum, we find that Starbright did not properly account for all of its billing adjustments and warranty expenses incurred during the POI and, thus, understated such in its section C database. Therefore, for the final determination, for billing adjustments we have determined, as facts available, to include all of the credit notes issued during the POI that Starbright omitted from its section C database and allocate them over sales during the POI. Similarly, with respect to warranty expenses and consistent with the Department's practice, we have utilized all expenses incurred during the POI and allocated such across all POI sales using a value-based allocation methodology.

Comment 70: Purchases of Market-Economy Inputs from PRC Trading Companies as Market Economy Purchases

Starbright argues that the Department should treat as market-economy inputs all inputs of synthetic rubber and styrene butadiene rubber purchased from ME sources through PRC trading companies. Starbright contends that through multiple remands, the courts have required the Department to consider the prices of market economy purchases made through PRC trading companies. Starbright maintains that 19 C.F.R. 351.408(c)(1) directs the Department to value inputs sourced from market-economy suppliers in significant quantities and paid for in market economy currencies at the actual price paid for those inputs. Starbright argues that its prices paid

[415] *Id.*

[416] *See Gas Turbo-Compressor Systems 05/05/97* at 24395. *See also, LNPP-Germany 07/23/96* at Comment 2.

for materials imported from ME countries through PRC trading companies constitute the best available information for the valuation of its material inputs.

Starbright contends that Verification Exhibit 8 of the Starbright FOP Verification Report demonstrates that Starbright purchased imported rubber through Chinese trading companies that are registered in bonded areas considered to be outside the customs territory of China, in the same circumstances that govern GPX's operation of the Tanggu warehouse. Starbright maintains that these trading companies purchase from foreign suppliers or dealers and resell the material to Starbright in bond at purchase prices that are higher than the trading company's purchases directly from the foreign suppliers. Thus, Starbright argues, the Chinese trading companies act as middlemen in the transaction; and that Starbright must undergo the customs formalities to import the material for use in production. Thus, Starbright argued that the U.S. dollar prices that Starbright pays are actual, contemporaneous, market-based, international rubber market prices.

Starbright contends that that *Shakeproof (2001)* requires the Department to use the best available information to determine the value of non-market goods reasoning that "the purpose of the statutory provisions {sections 773(c)(1) and (4)} is to determine antidumping margins 'as accurately as possible.'" Starbright contends that this principle of accuracy has become a basic tenet of the antidumping law supported by *Rhone Poulenc (1990)* and *Olympia (1998)*. Starbright further contends that the CAFC held in *Shakeproof (2001)* (quoting *Lasko 1994)* that "using surrogate values when market-based values are available would, in fact, be contrary to the intent of the law." Therefore, Starbright argues that the Department is required by law to accept Starbright's market economy purchases as the best information available and use them in the final determination.

Starbright relies on the following sources to substantiate its position; *Olympia, Olympia (1998), Olympia (1999), Luoyang Bearing (2002), Luoyang Bearing (2003), Luoyang Bearing (2004), Shakeproof (2001), Rhone Poulenc (1990) and Lasko (1994).*

Department's Position: We disagree that we should value Starbright's inputs of synthetic rubber and styrene butadiene rubber using the prices paid for these inputs. 19 C.F.R. 351.408(c)(1) states:

> The Secretary normally will use publicly available information to value factors. However, where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier.

The facts of this case demonstrate, as Starbright explained above, that Starbright did not purchase the ME inputs named above from a ME supplier, but from a Chinese trading company. Therefore, the trading company, rather than Starbright, purchased the inputs from an ME supplier and paid for them in ME currencies. The trading company then engaged in a separate sales transaction with Starbright, its unaffiliated customer. As a result, Starbright did not

purchase synthetic rubber and styrene butadiene rubber from a ME supplier.[417] Therefore, in accord with our standard practice, we have valued synthetic rubber and styrene butadiene rubber using publicly available WTA data.[418]

We disagree with that the location of Starbright's NME supplier in a bonded area has any relevance to this issue, or alters that fact that Starbright purchased material inputs through a Chinese trading company located in the PRC. In addition, we distinguish Starbright's situation from the Department's practice with respect to international freight from ME carriers sourced through NME parties. In those instances where we have accepted such prices,[419] including with Guizhou Tyre in the instant investigation,[420] the PRC party represented an agent acting on behalf of the ME freight carrier, and the respondents provided full document traces demonstrating the link between the U.S. dollar payments to the ME carrier through the ME carrier's agent and *vice versa*.[421] There is no evidence with respect to Starbright's inputs at issue that the Chinese trading company was acting not on its own behalf but on behalf of an ME supplier, nor has Starbright argued that that is the case. Rather, in Starbright's case, record evidence demonstrates that the trading company buys and sells on its own account, and therefore, does not represent the ME supplier or its interests. As Starbright explained in its case brief, "these trading companies purchase from foreign suppliers or dealers and resell the material . . . " at a profit. As a result, we have not used Starbright's purchases from Chinese trading companies to value the inputs at issue in the final determination.

We disagree with Starbright that the successive litigation in *Olympia* and *Luoyang* apply. In *Olympia (1999)*, after two remands, the CIT upheld the Department's decision that the price paid through the PRC trading company was aberrational and unreliable. Similarly, *Luoyang Bearing (2004)* upheld the Department's decision not to accept prices paid through a PRC trading company for ME inputs because the ME supplier's prices were subsidized.

We do not find *Rhone Poulenc (1990)*, *Lasko (1994)* or *Shakeproof (2001)*, applicable to this case. Although *Rhone Poulenc (1990)* establishes the principle of using the "best information available" to calculate margins as "accurately as possible," it also establishes authority for the Department to select among options and determine the "best information" in the face of deficient responses. *Lasko (1994)* establishes the principle that the Department does not have to use a single valuation method in the determination of surrogate value, reiterating the Department's position in the underlying investigation that "[w]here we can determine that a NME producer's

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[417] *See* Starbright FOP Verification Report at Verification Exhibit 8.

[418] *See CFS-PRC-AD 10/25/07* IDM at Comment 12.

[419] *See Sebacic Acid 08/14/00* IDM at Comment 8; *see also Tetrahydrofurfuryl Alcohol-PRC 06/18/04* IDM at Comment 4; *HFHTs 09/15/04* IDM at Comment 10; and *Shandong Huarang Machinery (2007)* at *27-29 (affirming the Department's decision in *HFHTs 09/15/04*).

[420] *See* Comment 26.

[421] *See* Guizhou Tyre Verification Exhibit 12 at 3-10.

input prices are market determined, accuracy, fairness, and predictability are enhanced by using those prices."[422] As we explained above, the purchases from a Chinese trading company do not meet the Department's standard for using respondents' actual input purchases. Finally, whereas *Shakeproof (2001)* established the principle that that the actual price paid for inputs imported from a market-economy in meaningful quantities was the best available information and promoted accuracy in the dumping calculations, Starbright fails to account for the fact that the respondent in the underlying investigation also imported directly from a market-economy country. In addition, the CAFC distinguished *Shakeproof (2001)* from *Olympia (1999)* on that basis.

In addition, we note that Starbright purchased one of its inputs exclusively from a country known to maintain non-specific export subsidies (*i.e.*, Indonesia, India, South Korea or Thailand). Therefore, even if Starbright had purchased the material directly from a ME supplier in those countries, the Department would not have used market-economy purchase price to value this input.[423] Therefore, we made no changes to our margin calculation for the final determination with respect to this issue.

Comment 71: Allocation Methodology for U.S. Indirect Selling Expenses

Petitioners contend that Starbright's allocation of GPX's G&A expenses between U.S. selling activities and corporate management by headcount is flawed and inaccurate. Citing *SSSS Coils-Korea 01/31/07* IDM at Comment 3, Petitioners contend that the Department normally allocates U.S. G&A expenses by sales value. Further, Petitioners argue that the same cite also states that that Department has departed from this practice only in instances where the respondent provides a sufficient reason to do so. Thus, Petitioners argue that, for the final determination, the Department should reallocate Starbright's ISE expense between U.S. selling activities and corporate management based exclusively on sales.

Starbright contends that it reported its ISEs in a reasonable and non-distortive manner, separately classifying selling and G&A expenses, which the Department traced to the audited financial statements and found no discrepancies. Starbright argues that GPX, unlike the U.S. selling arms of many companies that participate in antidumping duty investigations, is responsible for GPX's worldwide operations, which include manufacturing operations in Serbia, China and the United States – in addition to U.S. sales. Starbright contends that to allocate G&A expenses only on the basis of sales value ignores the significantly greater time, effort and expense required to support its worldwide manufacturing than to support U.S. sales.

Starbright claims that GPX reported the combined ISEs for GPX and DTC, a Canadian corporation, because the two companies have consolidated certain support functions, so that activities that support U.S. sales are recorded on DTC's financial statements. Thus, Starbright

[422] *See Fans-China 10/25/91* at Comment 1.

[423] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

explains that it allocated its total G&A expense equally between manufacturing and sales by: (1) determining the percentage of total GPX revenue and total GPX employees attributable to each GPX company; (2) averaging the two percentages; and (3) applying this average to total G&A expenses.

Starbright contends that the reporting methodology for selling expenses and G&A expenses does not have to be the same. Thus, Starbright contends that in the past, the Department has calculated selling and/or G&A expenses over a company's consolidated financial statements in order to avoid distortive results. Thus, Starbright argues that it allocated its total G&A expenses based on an average of headcount and sales and relied on fiscal year (rather than fourth-quarter) 2006 expenses in order to avoid distortive results. Starbright claims that the following cases do not require U.S. companies to allocate indirect selling expenses based on sales revenue alone: *Steel Beam-Korea 07/05/00* IDM at Comment 14; *SSB – Spain 05/20/02* IDM at Comment 12; *Mushrooms – India 07/11/03* IDM at Comment 6; *RBs – Japan 11/17/98* at Comments 2 and 3; *DRAMS-Korea 05/06/96* at Comment 1; *PRCBs-Thailand 06/18/04* at Comment 1; and, *HR Carbon Flat Products- Romania 05/30/06* IDM at Comment 6. In addition, Starbright claims that the ISE adjustment should not include expenses associated with manufacturing activity in the United States. Thus, Starbright argues that the Department should accept its methodology for determining its ISE ratio for the final determination.

Department's Position: We recognize that: 1) GPX is the U.S. headquarters of a corporation that has manufacturing activities in the United States, Serbia and the PRC; 2) GPX and DTC have consolidated some of the functions so that DTC and GPX both support U.S sales and manufacturing activities from Canada and the United States; and 3) some of the G&A expenses incurred in the United States (and Canada) support GPX's global manufacturing activities. Therefore, we agree in principle that none of GPX's manufacturing expenses incurred in the U.S. or Canada should be included in the calculation of U.S. ISEs.[424] In addition, we agree that Starbright appropriately based its ISEs for U.S. sales on the expenses incurred in both the U.S. and Canada.[425] We further agree that Starbright's methodology for determining quarterly ISE expenses (*i.e.*, dividing the total annual ISE expense by four to determine the fourth quarter 2006 expenses; and dividing the total ISE expense for the first nine months of 2007 by three to obtain

[424] However, as a matter of practicality, it is often impossible to separate G&A expenses applicable to manufacturing. For example, employee payroll is a G&A expense which often supports manufacturing, SG&A and sales. Starbright has argued neither that its G&A expenses do not support U.S. selling activity nor that they should be excluded from the calculation of ISE in the United States. In addition, there is no evidence on the record that indicates GPX's G&A expenses incurred in the U.S. do not support its U.S. sales activity. Therefore, the situation that Starbright cites in *PRCBs-Thailand 06/18/04* at Comment 1 and *HR Carbon Flat Products- Romania 05/30/06* IDM at Comment 6 (in which the Department verified that the reported U.S. G&A expenses did not support selling functions) does not reflect the fact pattern that Starbright presented with respect to GPX in this investigation.

[425] We agree in principle with the principles articulated in *Mushrooms – India 07/11/03* IDM at Comment 6, in which the Department cumulated the ISEs and sales in two different markets and allocated those expenses across all markets of the respective two entities. However, we also note that this comment refers to the calculation of ISEs in the U.S. and home market for the purpose of determining a commission offset in a ME case. Because we have determined that MOE treatment for Starbright is not warranted, we find any reference in this calculation with respect to a commission offset inapplicable.

the first quarter 2007 expenses) was reasonable. Because the POI equally straddles fiscal year 2006 and 2007, we agree that it would not be reasonable to base ISEs for the first half of the POI solely on GPX's fourth-quarter expenses because they include the 2006 year-end adjustments and are not representative of the cost experience of the company. In addition, we also agree that GPX appropriately excluded selling and/or G&A expenses for non-subject merchandise or non-U.S sales, from the numerator of its ISE calculation, when it separately incurred those expenses and recorded them in its books and records.

However, Starbright determined the total amount of ISEs applicable to the U.S. by multiplying a sales ratio and headcount ratio based on GPX's worldwide operations. Although it is at times appropriate to allocate some expenses based on sales, and some based on headcount, Starbright has not demonstrated the reasonableness of multiplying the two ratios by each other.[426] We further disagree that it is reasonable to allocate the G&A expenses incurred in the U.S. and Canada over the world-wide headcount, implying that GPX's G&A expenditures in the United States have some relationship with, *e.g.*, the number of factory workers abroad. In addition, we have determined that GPX's allocation of the total value of its U.S. selling expenses over worldwide sales of subject and non-subject merchandise, after excluding expenses pertaining to non-subject sales and foreign sales from the numerator of its equation significantly understates its reported ISE adjustment.[427] In our first supplemental questionnaire, we stated that "{I}t is the Department's practice to include all of the indirect selling expenses recorded on the unconsolidated financial statement of the U.S. entity in its calculation of indirect selling expenses, with the exception of an allocated amount of interest expense."[428,429] We also asked GPX to describe in detail how it determined the allocation for each of its U.S. expenses between sales, U.S. manufacturing and foreign operations.[430] The Department was not satisfied with Starbright's response and requested further analysis of each of the line items in its U.S. and Canadian G&A expenses consolidating financial statement.[431] Nevertheless, Starbright

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[426] We agree with the premise expressed in *DRAMS-Korea 05/06/96* at Comment 1 that the Department does not require ISEs to be allocated based sales in every instance. However, the allocation has to be reasonable and reflect the cost experience of the company. Starbright did not demonstrate either that its calculation was reasonable or related to the expenses incurred by the company.

[427] *See* Starbright CEP Verification Report at Verification Exhibit 1 and Verification Exhibit 11.

[428] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review,* 71 FR 2517 (January 17, 2006), and accompanying Issues and Decision Memorandum at Comment 11; *Stainless Steel Plate in Coils From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 66 FR 64017 (December 11, 2001), and accompanying Issues and Decision Memorandum at Comment 4.

[429] *See* letter to Starbright, "Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Hebei Starbright Tire Co., Ltd: First Supplemental Questionnaire for the Separate-Rates Application and Sections A, C and D Questionnaire Response" (December 26, 2007) at 33.

[430] *Id.* at 33-34.

[431] *See* letter to Starbright, "Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Hebei Starbright Tire Co., Ltd.: Second Supplemental Questionnaire" (February 12, 2008) at 2-3 and Attachment I.

continued to allocate its U.S. sales and G&A expenses by multiplying the ratios for sales value and headcount without providing an alternative allocation methodology.[432] Therefore, for this final determination, as facts available, we have allocated the total value of GPX's U.S. and Canadian ISEs, as reported and verified,[433] over the total value of GPX's sales to the U.S. customs territories and Canada.[434] Starbright failed to provide a more reasonable methodology than headcount to allocate G&A expenses to non-U.S. operations. Therefore, we agree with Petitioners that it is reasonable and appropriate to allocate GPX's ISEs between U.S. and non-U.S. entities by sales value.[435]

We disagree with Starbright that *Steel Beam-Korea 07/05/00* IDM at Comment 14 is applicable to the facts of our case. This comment pertains to the inclusion of certain G&A expenses incurred by two separate entities in the home market and allocated between U.S. and export sales, and between manufacturing, sales and G&A. The respondent argues that the Department should exclude certain G&A expenses from ISEs, and the Department agreed with the respondent as a result of verification. However, in this instance, we disagreed with Starbright's allocation methodology and specifically requested that it provide an alternate methodology.[436] In

[432] *See* Starbright's 1st SQR at 78 – 83, and Starbright's 2nd SQR at S2QR-7.

[433] *See id.* at 19 and 20. Starbright cites *SSB – Spain 05/20/02* IDM at Comment 12, in which the Department explained that it normally bases its ISE calculations on the unconsolidated financial statements of the U.S. entity, rather than using financial statements at a higher level of consolidation. This is a statement of our general practice. However, in this case, as Starbright explained, both the U.S. and Canadian entities share the G&A functions for both the U.S. and Canadian production and sales. Therefore, we based our ISE calculations on the sum of the expenses reported in the unconsolidated financial statements for GPX in the U.S. and DTC in Canada. In this way, in contrast to the statement in *SSB – Spain 05/20/02* IDM at Comment 12, we are basing our calculations on a higher level of consolidation, but not on the consolidated financial statements for GPX's global entity. We agree in principle with the principles articulated in *Mushrooms – India 07/11/03* IDM at Comment 6, in which the Department cumulated the ISEs and sales in two different markets and allocated those expenses across all markets of the respective two entities. However, we also note that this comment refers to the calculation of ISEs in the U.S. and home market for the purpose of determining a commission offset in a ME case. Because we have determined that MOE treatment for Starbright is not warranted, we find any reference in this calculation with respect to a commission offset inapplicable.

[434] *See* Starbright CEP Verification Report at Verification Exhibit 1.

[435] *See SSSS Coils-Korea 01/31/07* IDM at Comment 3, where the Department stated that: 1) it is the Department's normal practice to base the ISE ratio calculation on total sales value; 2) we have accepted other allocations in the past, but we have departed from our practice only where the respondent provides a sufficient reason to do so; and, 3) we would accept an allocation basis other than relative sales value provided the methodology was reasonable). We cited the following precedents in support of our position: *Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Indonesia*, 70 FR 13456 (Mar. 21, 2005) and IDM at Comment 4; *Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 67 FR 11976 (Mar. 18, 2002), IDM at Comment 1; *Stainless Steel Wire Rod* from Spain; Final Results of Antidumping Duty Administrative Review, 66 FR 10988 (Feb. 21, 2001), IDM at Comment 2. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 20216, 20217 (May 6, 1996).

[436] *See* the Department's first supplemental questionnaire and second supplemental questionnaire.

each instance, Starbright replied that that another allocation was not warranted.[437] Therefore, we have allocated Starbright's expenses by sales using the verified total value of sales for each of GPX's entities recorded on the consolidating income statement.[438]

Starbright cites *TRBs – Japan 11/17/98* at Comments 2, and *CRCR Flat Product Korea 03/14/05* as instances in which the Department accepted a variety of allocation methods for allocating ISEs based on various factors, such as number of employees working in the offices responsible for sales to the different markets. We agree with the principles expressed in these positions. Because of the detailed, company-specific and proprietary nature of each company's cost structure, the Department cannot always publicly discuss the facts underlying a company's detailed allocations. It is apparent in these cases that respondents allocated G&A expenses using a different methodology for each expense, *e.g.*, basing personnel expenses on headcount, rent on square footage, *etc.* In addition, each case explicitly states that the respondent's methodology had been verified and determined to be reasonable. That is not the fact pattern of this case. Starbright did not attempt to re-allocate its ISEs on any other bases except for the combination of sales and headcount, despite the Department's repeated requests for information. In fact, in its second supplemental questionnaire, the Department explicitly requested Starbright to provide the allocation basis for each of its G&A expenses.[439] However, in its response, Starbright explained that allocating GPX's expenses "in the manner implicitly suggested by the Department . . . leads to an ISE deduction which does not accurately reflect the structure of GPX, its overall expenses and what these expenses really represent."[440] Thus, while Starbright provided an extensive explanation of its expense structure, it did not provide an allocation basis for its expenses or revise its response.[441]

In addition, to the calculations above, we also adjusted Starbright's reported expenses for certain items that it excluded from its calculation, and offset interest expense incurred in the United States by imputed credit. *See* Comment 72 below.

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[437] *See* Starbright's 1st SQR at 78; *see also* Starbright's 2nd SQR at 7-13 and Exhibit S2QR-7.

[438] *See* Starbright CEP Verification Report at Exhibit 11.

[439] *See* Letter to Starbright, "Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Hebei Starbright Tire Co., Ltd.: First Supplemental Questionnaire for the Separate-Rates Application and Sections A, C and D Questionnaire Response " (December 26, 2007 at 35-37). *See also*, letter to Starbright, "Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Hebei Starbright Tire Co., Ltd.: Second Supplemental Questionnaire" (February 12, 2008) at 2 - 3 and Attachment I.

[440] *See* Starbright's 2nd SQR at 7 and Exhibit S2QR-7.

[441] *See* Starbright 2nd SQR at 78. In addition, we note that Starbright cites *CR CS Flat Products – Korea 03/14/05* at Comment 3, where the Department accepted an allocation of sales by headcount. As we explained earlier, the Department cannot always publicly discuss the facts underlying a company's detailed allocations. Based on the information submitted on the record of this investigation, we cannot address the specific facts of *CR CS Flat Products – Korea 03/14/05* which the Department determined ISEs warranted an allocation based on headcount. However, unlike the instant proceeding, the Department verified that an allocation by headcount was reasonable.

Comment 72: Expenses Excluded from the Calculation of ISE

Starbright argues that GPX did not include certain non-operating expenses and interest expenses in its ISE, and believes that it is not appropriate to include these expenses in the calculation of ISE.

Starbright contends that it is the Department practice to exclude from ISE any non-operating expenses which relate to investment activity. Starbright cites the following cases which it claims constitute clear and controlling precedent for the exclusion of GPX's non-operating expenses from the ISE calculation: *OCTG-Korea 03/06/07* IDM at Comment 2, *Salmon 06/09/98* IDM at Comment 38, *Flat-Rolled CQ Steel 05/31/2000* at Comment 11, *Wire Rod-Canada 04/20/94* at Comment 9, and *Wire Rod-Canada 08/30/02* at Comment 12.

In addition, Starbright provides a proprietary discussion explaining why it believes the following expenses should be excluded from the ISE calculation: procurement fees, royalty fees, royalty expense, stock based compensation, amortization of intangibles, gain/loss on sale of equipment, foreign exchange transaction (gain) or loss, re-measurement, management bonuses, other expenses, swap expenses, miscellaneous transactions brokerage charges, various adjustment, other income and interest expense. Thus, Starbright contends that, as a matter of law, the Department cannot include these expenses in the calculation of ISE for the final determination.

Further, Starbright contends that the Department should exclude interest expense incurred in the U.S. citing *OCTG-Korea 03/06/0,* in part: (We find that including both imputed credit expenses and interest expenses in the indirect selling expense calculation would result in the double counting of credit expenses. . . Therefore, in order to prevent double counting of interest expenses, the Department will continue to exclude actual interest expenses from the indirect selling expense calculation for the final result.).

Petitioners contend that Starbright failed to justify the expenses it excluded from its reported ISE in the United States. They argue that the Department should reject some of Starbright's exclusions, and include at least some of the expenses in question in Starbright's ISE pursuant to the Department's obligation to calculate dumping margins as accurately as possible on the basis of evidence appropriately on the record.

Petitioners contend that the Department recognizes that some non-operating expenses are reportable ISE, so that the fact that a company classifies an item as a non-operating expense does not necessarily justify exclusion.

Petitioners further claim that Starbright has provided inadequate and incomplete descriptions of the many expenses it seeks to exclude, and that these explanations do not explain why the Department should exclude relevant expenses from calculation of Starbright's ISE in the United States. Therefore, for the final determination, Petitioners contend that the Department should act on the statements it made in the verification report concerning the incompleteness of Starbright's reporting of ISE.

Petitioners relied on the following sources to support its position: *Magnesium Metal-Russia 02/24/05* at Comments 10 and 24.

Department's Position: Although Starbright argues that it is the Department's practice to exclude from ISE any non-operating expenses that relate to investment activity, all of the cites which it claims constitute clear and controlling precedent for the exclusion of GPX's non-operating expenses from the ISE calculation, in fact refer to the calculation of a G&A ratio for constructed value in the home market under the Department's ME methodology. The Department uses G&A expenses to determine the cost of producing of subject merchandise in the home market in the calculation of COP for CV in the home market, and therefore, excludes expenses that do not pertain to production of the subject merchandise. In the U.S., however, the Department uses G&A expenses incurred in the U.S. market to determine the cost of selling merchandise in the United States. It is our practice to base U.S. ISEs on all the expenses incurred in the U.S. market that respondents have not reported as direct expenses.[442] Therefore, it is reasonable to include certain non-operating expenses incurred in the U.S. market, because, all expenses incurred by a company in the U.S. support its sales.

We have evaluated each of the expenses that Starbright enumerated in its comment, and disagree that its reporting has been inadequate or incomplete. Based on our analysis of Starbright's proprietary explanation of the other income and expenses, we have determined to include the following expenses in ISEs for the final determination: procurement fees, royalty fees, royalty fee expense, stock-based compensation, amortization of intangibles, management bonuses, one proprietary expense, swaps and other income.[443] We have determined to exclude the following expenses from our calculations because they do not pertain to subject merchandise: gain/loss on sales of equipment, remeasurement, miscellaneous expenses and miscellaneous brokerage expenses.[444] Please see the Starbright Final Calculation Analysis Memorandum at 5-9 and Attachment VI for a proprietary discussion of these expenses.

Finally, we agree with Starbright's statement that *OCTG-Korea 03/06/0* expresses the Department's current practice with respect to interest expenses incurred in the U.S. market. As a result, for the final determination, we have offset interest expense incurred in the United States with the value of imputed credit reported in the Starbright's section C database, capping the adjustment at the total value of the interest expenses recorded on GPX's audited financial statements for the POI, if applicable.[445]

Comment 73: Starbright's U.S. Inland Freight Expense

Petitioners contend that Starbright's methodology for determining U.S. inland freight expense is unfair because Starbright based its U.S. inland freight expense on invoices received during the

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[442] *See, e.g.*, the Department's Original Questionnaire at C-34.

[443] *See* Starbright Final Calculation Analysis Memorandum at 5-9 and Attachment VI.

[444] *See Id.*

[445] *See* Starbright Final Calculation Analysis Memorandum at Attachment VI.

POI and applicable shipments during the POI but did not take into account any invoices received after the POI for shipments made during the POI. Petitioners argue that the Department should adjust Starbright's U.S. inland freight to account for the missing invoices. Petitioners suggest that the Department increase the reported U.S. inland freight by one sixth of the POI total pool of expenses, and allocate the addition to all reported sales. Alternatively, Petitioners argue that the Department could require Starbright to analyze post-POI invoices and report the results to the Department.

Starbright claims that the Department misinterpreted the methodology that GPX used to calculate U.S. inland freight. Starbright claims that GPX included in its inland freight numerator all invoices received during the POI, which it received from its vendors at or about the time of shipment. Thus, Starbright argues, there is no reason for GPX to include in its freight numerator invoices issued by vendors after the POI, since such invoices would not pertain to merchandise shipped during the POI. Further, Starbright claims that in order to ensure that its inland freight numerator is consistent with its denominator, GPX included in the numerator post-POI general ledger postings through September 2007. Starbright provides proprietary information from the Starbright CEP Verification Report at Exhibit 9 showing that GPX reported at least some invoices received after the POI that apply to merchandise shipped during the POI. Thus, Starbright maintains, GPX analyzed invoices received after the POI to determine whether they were applied to shipments made during the POI.

In response to the Department's comment that GPX excluded freight for direct shipments from the PRC or non-U.S. sales, Starbright contends that GPX incurred no freight-out for direct shipments, since such expenses are included in ocean freight for transportation of the merchandise from the PRC to the final destination in the United States. Thus, Starbright explains that GPX omitted direct shipments from both the numerator and the denominator of its calculation of inland freight. Starbright also agrees with the Department that sales outside the United States should not be included in the denominator of the U.S. inland freight calculation.

Finally, Starbright argues that all of its sales to a certain U.S. customer consist of direct shipments from China, for which it incurred no freight-out to report. Starbright also claims that, in contrast to statements in the Starbright CEP Verification Report, GPX capture the minimal amount of freight-out expenses on inventory sales to this certain customer in its U.S. inland freight expenses. Thus, Starbright argues that there is no reason to revise GPX's Section C database for additional freight-out expenses.

In rebuttal, Petitioners argue that Starbright chose to exclude expenses invoiced during the POI that applied to shipments before the POI, but chose a different approach for same basic pattern at the end of the POI. Petitioners contend that a respondent cannot employ a methodology that adjusts one end of the period but completely ignores the other. Petitioners further contend that such a methodology is unfair and that the Department should make appropriate corrections for the final determination.

Department's Position: We agree with Petitioners that Starbright excluded expenses invoiced during the POI that applied to shipments before the POI, but chose a different approach for the same fact pattern at the end of the POI. However, further evaluation of the information on the

record indicates that Starbright demonstrated that it paid virtually all of its invoices for U.S. inland freight within six months of the month of shipment.[446] It accounted for all of the invoices applicable to sales of subject merchandise during the POI,[447] and accounted for the payment of merchandise shipped during the POI, including those payments made after the POI. Therefore, we have not adjusted U.S. inland freight for the final determination.

Comment 74: The Adequacy of Starbright's Reported Material Consumption Standards, Variance Calculations and FOP Consumption Rate

Petitioners maintain that Starbright inappropriately relied on standard consumption rates to report the FOPs for certain CONNUMs, and that it further departed from those standards without providing details on such departures on a product-by-product basis, or without quantifying the materials added or subtracted in specific production batches. Petitioners also allege that Starbright applied variances on a company-wide basis without providing evidence that variances are uniform between products or between scope and non-scope merchandise. Thus, Petitioners allege that Starbright's standard consumption rates do not provide a fair basis for determining NV. Consequently, Petitioners argue that the Department should reject Starbright's reported FOPs, and restate all of Starbright's consumption rates using the highest reported tolerance level plus two percent, and apply to all FOPs the highest reported variance rate observed during the POI.

Petitioners contend that for some CONNUMs sold but not produced during the POI, Starbright reported *only* standard consumption rates, unadjusted by variances. Petitioners contend, as it did for TUTRIC in Comment 82, that such reporting is inappropriate and conflicts with the Department's long-standing practice of refusing to accept unadjusted standard values in calculating NV. Thus, for the final determination, Petitioners argue that for those products for which Starbright reports only the standard consumption rate, the Department should adjust the reported CONNUM using the highest positive variance reported for any other CONNUM. In addition, Petitioners propose that the Department apply the highest tolerance level plus two percent to the consumption of all inputs to account for the fact that Starbright departs from its standard consumption recipes.

Starbright's position is identical to that it expressed in its response to Petitioners' allegations with respect to the verification of TUTRIC's raw material consumption rates and variances.[448] .Starbright contends that the Department satisfactorily verified all of Starbright's consumption rates and variances, including its reporting methodology for product sold during the POI, but produced prior to the POI. (See TUTRIC's rebuttal in Comment 82. Thus, for the final determination, Starbright contends the Department should not adjust its reported material factors and reject all AFA remedies proposed by Petitioners.

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[446] *See* Starbright CEP Verification Report at Verification Exhibit 9.

[447] *Id.*

[448] *See* TUTRIC's rebuttal in Comment 82.

Department's Position: We disagree with Petitioners that Starbright's reported FOPs are distorted by its reporting methodology. The Starbright Sales and FOP Verification Report demonstrates that the Department examined Starbright's reporting methodology for reporting its FOPs.[449] We traced total material consumption through Starbright's general ledger accounts to its cost of goods sold ("COGs").[450] We traced total production to Starbright's finished goods inventory.[451] We spot checked specification sheets for products that Starbright produced during the POI against Starbright's reported raw material consumption to determine their accuracy.[452] We traced the total consumption amounts for 20 material inputs to the total consumption amount for each material input reported in the COGs build-up.[453] We traced the inventory reports from the workshops to Starbright's general ledger, which tied the value to its COGs, and found no discrepancies.[454] We reviewed the POI production of all subject and non-subject products, and reviewed monthly receiving records from the finished goods warehouse. We found no discrepancies.[455] We weighed samples of several models of subject merchandise, and found the weights to be consistent with the weights reported in Starbright's responses.[456] We examined the finished goods ledger for five CONNUMs that Starbright sold during the POI, but produced in a prior period.[457] We tested the reported consumption against the compounding formulas shown in the electronic specification sheets and found no discrepancies.[458] We examined Starbright's yield losses, which Starbright allocated across all products that used a particular material input.[459] Starbright explained that it allocated raw material consumption according to standards, based on the weight of the finished products.[460]

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[449] *See* Starbright Sales and FOP Verification Report at 16-18.

[450] *See Id.* at 17.

[451] *Id.*

[452] *Id.*

[453] *Id.*

[454] *Id.*

[455] *Id. See also¸ Id* at 16 and Verification Exhibit 6B.

[456] *Id* at 18.

[457] *Id. See also,* Verification Exhibit-5.

[458] *Id*. at 15.

[459] *Id.* at 17.

[460] *Id. See also,* Verification Exhibit-6A.

We are satisfied with the evidence presented at verification that Starbright accurately reported its FOPs during the POI based on its standard accounting methodology, and that its variances were reasonable, and did not distort the reported factors between subject and non-subject merchandise. However, Starbright reported unadjusted standard factor consumption rates for the products produced prior to the POI and sold during the POI. Therefore, for the final determination, we adjusted Starbright's reported factor values for these models by the variances reported for the relevant inputs during the POI.

Comment 75: Market-Economy Methodology for Starbright

Starbright contends that if the Department does not collapse Starbright and TUTRIC for the final determination, it should treat Starbright as an MOE and calculate Starbright's margin using its ME methodology, and TUTRIC's margin using its NME methodology.

Starbright argues that the Georgetown Steel Memorandum issued in the CVD investigation of CFS from the PRC states, "{T}he features and characteristics of China's present-day economy also suggest that modification of some aspects of the Department's current NME antidumping policy and practice may be warranted, such as the conditions under which the Department might grant an NME respondent market economy treatment." Starbright contends that record evidence in this investigation demonstrates that it is entitled to market-economy treatment. Starbright argues that the Department should calculate a margin using ME methodology by basing NV on third-country sales. Starbright contends that the Department has verified the relevant ME data.

Starbright used the following sources to support its position: *SS Wire Rod-Korea 04/12/04* at 19154, "Section 201 safeguard duties"; WTO SCM Agreement at articles 1, 2, 14, 19, *CFS-PRC – CVD 04/09/07,* sections regarding "Grant Programs," "Income Tax Program," "VAT and Duty Exemptions," and "Domestic VAT Refunds for Companies Located in the Hainan Economic Development Zone" (where the Department measured benefit using internal values derived in China).

Petitioners contend that the Department appropriately rejected Starbright's claim for treatment as an MOE enterprise. Petitioners argue that such a claim would involve a new practice and construction of the law and the Department is currently considering the issue within the context of a possible rulemaking procedure, but has not yet reached a conclusion. Therefore, Petitioners claim that it would be unnecessary and inappropriate to rush the development of a new rule with potentially far-reaching implications merely to accommodate Starbright's claim.

Petitioners relied on the following sources as support for their argument: *AD Methodology/ MOE (May 2007)*; *Mittal Steel (2007)* (a party urged the Court to instruct Commerce to reconsider a long-standing practice regarding certain drawback adjustments in U.S. price calculations.); *Duty Drawback (2006).*

Bridgestone disagrees that Starbright is entitled to ME treatment, arguing that Starbright operates in an NME and that U.S. law currently does not provide for the possibility that a company could operate on purely market principles in such a system. Bridgestone contends that in the absence

of any statutory authorization, criteria, or policies regarding MOEs, the Department correctly rejected Starbright's request and should continue to do so in the final determination.

Bridgestone relied on the following sources for its position: Starbright MOE Memorandum; *AD Methodology/ MOE (May 2007); CFS-PRC-CVD 10/25/07* IDM; *WBF-PRC 11/17/04,* wherein the Department explains that the similar test for a market oriented industry requires a detailed and time-consuming analysis involving the full participation of all interested parties. The Department cannot, as the GOC requests, skip the analysis of whether China meets the criteria for a market economy under the statute; *Pipe-PRC 06/05/08* IDM at Comment 1 ("there is no category of NME companies defined as MOEs and there are no criteria that qualify a company as an MOE such that we would use the ME methodology for a NME company"; and *CLPP-PRC – Memo 08/30/2006* IDM at4.

Department's Position: We agree with Petitioners and Bridgestone that it is inappropriate to treat Starbright as an MOE in this investigation. As stated in *Pipe-PRC 06/05/08*, "{u}nder our current practice, there is no category of NME companies defined as MOEs and there are no criteria that qualify a company as an MOE such that we would use the ME methodology for a NME company."

On May 8, 2008, the Department issued a memorandum concerning Starbright's MOE request, stating that the Department did not have a methodology or procedure in place at this time, and therefore, would not grant Starbright MOE status.[461] There have been no changes in our procedure or policy since the date of that memorandum. As a result, under our current practice, there is no category of NME companies defined as MOEs and there are no criteria that qualify a company as an MOE such that we would use the ME methodology for a NME company. Instead, under the NME methodology, companies are presumed to be part of the PRC-wide entity unless it is established that they are entitled to a separate rate by demonstrating a lack of state control with regard to their export activities.[462]

With respect to Starbright's argument that the Department's application of CVD law to the PRC should lead the Department to reverse the presumption that the PRC is an NME, we disagree and have addressed this issue fully in our position to Comment 1. Starbright's reference to the Department's statement in *Wire Rod-Czechoslovakia 05/04/84*, that "bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), cannot be found in

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[461] *See* Starbright MOE Memorandum at 2-3.

[462] Finally, we disagree that we should make a MOE determination with respect to Starbright just because the Department has made determinations with respect to novel issues within the time period of a single investigation as Starbright claimed it did in *SS Wire Rod-Korea 04/12/04, Dutydrawback (2005) and CFS-Korea 10/25/07.* Petitioners noted that in *Mittal Steel (2007)*, the court sustained the Department's refusal to resolve a contentious issue (duty drawback procedures) in the course of a single review, although it would have been to the immediate benefit of the party in question. Moreover, we disagree that Starbright has a presumptive right to MOE treatment, unless proven otherwise, and the Department's statements with respect to the advances in the Chinese economy in the *Georgetown Steel Memorandum, the CLPP-PRC –Memo 08/30/2006* have not established that an MOE exists in the PRC. *See CFS-PRC-AD 10/25/07* IDM at Comment 1.

nonmarket economies," was superseded by the analysis and decisions articulated in *The Georgetown Steel Memorandum¸ CFS-PRC-CVD 10/25/07 and CFS-PRC-AD 10/25/07*.

Furthermore, as Bridgestone noted, in 2004, we specified the conditions under which an industry could be considered a MOI, and included, among other criteria that the MOI claim must cover all or virtually all of the producers in the industry in question. *See CTVs-PRC 04/16/04* at Comment 1.

Comment 76: Time Period For Determining ICC For Starbright's Retail Stores

Starbright agrees with statements in the Department's CEP Verification Report that GPX based its calculation of ICC for retail stores on a monthly average inventory for two months, rather than obtaining an average based on six monthly inventory totals. Starbright contends that reliance on data for only two months of the POI is reasonable and non-distortive. Starbright claims that because of: (1) the minimal quantity of retail sales during the POI; (2) the *de minimis* impact of these expenses on Starbright's margins; (3) the reasonableness of the results; and (4) the fact that adding data for four additional months to calculate the average monthly inventory would not result in the average being materially different than the average calculated by GPX, the Department should not modify its reported CEP adjustment for ICC for retails for the final determination.

Petitioners allege that Starbright's calculations are actually based on data for January 31, 2006, December 31, 2006, and January through December 2006, *i.e.*, data covering the nine months prior to the POI, and do not include any 2007 data. Thus, Petitioners contend that Starbright could have developed better data based POI calculations. Therefore, Petitioners contend that for the final determination, the Department should make appropriate corrections to Starbright's ICC calculations.

Department's Position: We agree with Starbright that the information that we examined at verification covered two months during the POI: the periods December 2006 and January 2007, as stated in our verification report.[463] We found no discrepancies with respect to the information presented at verification and the information presented in Starbright's CQR[464] and supported by its 1st SQR.[465] Therefore, we have made no changes to our calculations for the final determination.

[463] *See* Starbright CEP Verification Report at 20.

[464] *See* Starbright's CQR at Exhibit 12.

[465] *See* Starbright 1st SQR at Exhibit 44.

IX. ISSUES SPECIFIC TO TUTRIC

Comment 77: TUTRIC's Eligibility for a Separate Rate

Domestic Producers argue that TUTRIC is not eligible for a separate rate because the Tianjin Dolphin Rubber Group Co. Ltd. ("Dolphin Group"), as a state assets management company, has broad legal authority to exercise *de facto* control over TUTRIC, including selecting management, distributing profits, and influencing production and pricing decisions. In support of their argument, Domestic Producers cite *Brake Rotors-PRC 05/09/05*, *POS Cookware-PRC 04/26/06*, *Shrimp-PRC 12/21/07*, *Woven Sacks-PRC 01/31/08*, *Sawblades-PRC 12/29/05*, and *Potassium Permanganate-PRC 05/23/94*.

TUTRIC asserts that it satisfies all of the *de jure* and *de facto* criteria for a separate rate, and that the Department's preliminary determination to grant TUTRIC a separate rate should be confirmed in the final determination. According to TUTRIC, the Department should reject Domestic Producers' arguments that, because of state ownership, TUTRIC should be denied a separate rate. In support of its argument, TUTRIC cites *Sparklers-PRC 05/06/91*, *Silicon Carbide-PRC 05/02/94*, *Drawer Slides-PRC 10/24/95*, *Brake Rotors-PRC 05/29/01*, *Allied-Signal (1993)*, *Borden (1998)*, *Mannesmannrohren-Werke (1999)* and TUTRIC Verification Report.

Department's Position: In NME AD investigations, respondents must affirmatively demonstrate their entitlement to a separate rate by showing "an absence of central government control, both in law and in fact, with respect to exports."[466] The Department subsequently clarified its policy regarding the level of government control that is relevant to the separate rates analysis, and explained that government control of companies in NMEs "is not limited strictly to central government control, but can also include levels of sub-national government, including provincial, township or village government.[467] In the preliminary determination, the Department found that TUTRIC had demonstrated an absence of *de facto* and *de jure* government control over its export activities, and preliminarily granted separate-rate status to TUTRIC. For the final determination, we continue to find that TUTRIC is eligible for a separate rate.

First, Domestic Producers state that the SRA requires that an applicant disclose "each intermediate and ultimate shareholder entity" as well as whether these shareholders have any "significant relationship" with the PRC government at any level.[468] Further, according to Domestic Producers, the Department noted in *POS Cookware-PRC 04/26/06* that "it is fundamental that the Department be presented with all the details of a respondent's corporate structure to adequately determine whether the entity qualifies for a separate rate."[469]

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[466] *Shandong Huanri (2007)* at 1357 (quoting *Sigma (1997)* at 1405); and *Tianjin (1992)* at 1013-14.

[467] *See Brake Rotors-PRC 05/09/05*, 70 FR at 24388.

[468] Domestic Producers cite SRA Section IV. A.

[469] Domestic Producers cite *POS Cookware-PRC 04/26/06* IDM at Comment 1, claiming that the Department did not grant a separate rate because the exporter "did not fully report all of its ultimate owners".

Domestic Producers state that in its SRA, TUTRIC identified the Dolphin Group as a part owner, and also stated that neither the Dolphin Group, nor any other TUTRIC shareholder "has any significant relationship" with the PRC at any level. Domestic Producers next state that in its January 11, 2008, SQR, TUTRIC admitted that a particular entity is a state-owned enterprise entrusted by the Tianjin State Assets Committee to oversee the Dolphin Group, and that another shareholder was owned by a government entity, but that TUTRIC claimed these did not represent "significant relationships."[470] Domestic Producers claim that the term as defined by the Department in the SRA explicitly includes ownership relationships, and because TUTRIC failed to disclose these relationships until just prior to the Department's preliminary determination, the entire separate rates investigation process was compromised. Domestic Producers maintain that the Department should deny TUTRIC's SRA on this basis alone. Domestic Producers argue that the Department has also held that SRAs must be complete prior to expiration of the 60-day deadline for filing, citing *Sawblades-PRC 12/29/05*.

Domestic Producers argue further that, while TUTRIC failed to disclose such information in its supplemental response, record evidence indicates that the ultimate owner of TUTRIC appears to be a government entity.[471] As a result of incomplete and tardy disclosures by TUTRIC, no investigation was made of this entity's control of TUTRIC. For this reason, the Department could not meaningfully verify any aspect of TUTRIC's relationship with this entity and, therefore, should deny TUTRIC's separate-rates application.

In response, TUTRIC claims that Domestic Producers' arguments, based simply on the claim that because of state ownership TUTRIC should be denied a separate rate, should be rejected.

The proper analysis for considering *de facto* government control is based upon: 1) whether the respondent sets its own export prices independent of the government, and without approval of the government authority; 2) whether the respondent retains proceeds from its sales and makes independent decisions regarding dispositions of profits/losses; 3) whether the respondent has authority to negotiate and sign contracts; and 4) whether the respondent has autonomy from the government regarding the selection of management.[472] In arguing that TUTRIC has failed to demonstrate an absence of *de facto* government control over TUTRIC's export activities, Domestic Parties focus on the issue of TUTRIC's ownership.

As an initial matter, we note that the mere existence of government-owned shares in the producer is not a basis for denying separate rate status. The Department has previously granted separate rate status to both wholly state-owned exporters[473] and exporters whose stock was partially

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[470] Domestic Producers cite TUTRIC First SQR (January 11, 2008) at 8 and Exhibit 23.

[471] Domestic Producers cite TUTRIC First SQR at Exhibit 23.

[472] *Shandong Huanri (2007)* at 1359; *see Silicon Carbide 05/02/94* at 22587; and *Sparklers 05/06/91* at 20589.

[473] *See, e.g., TRBs-PRC 02/11/97* and *HR Carbon Flat Products–PRC 05/03/01* at 22188.

owned by a government state assets management company.[474] The Department looks beyond ownership in considering whether there is *de facto* government control. For instance, in *Potassium Permanganate-PRC 05/23/94*, the Department denied a separate rate to a company where the Department found that the company "was controlled by municipal authorities." Specifically, the Department explained that the company "was subject to guidance from municipal authorities regarding output in terms of value and production, and was not allowed to enter into contracts with foreign entities or to export directly."[475]

With respect to Domestic Producers' argument that TUTRIC should be denied separate-rate status because it withheld information related to its ownership structure, we note that in *Shrimp-PRC 12/21/07*, "the Department was unable to determine the actual owners of" the respondent.[476] Furthermore, the Department explained that the respondent in that case withheld information regarding a company that provided the respondent with a significant amount of its initial investment, and "because discrepancies regarding {the respondent's} reported corporate structure were not discovered until verification, the Department was not able to ask supplemental questions or consider this undisclosed entity's potential relationship with the PRC government."[477]

Additionally, in *POS Cookware-PRC 04/26/06*, the Department stated that it could not verify the information submitted by the respondent regarding its formation and ownership and, consequently, that information could not serve as the basis for the Department's determination regarding the company's eligibility for a separate rate. The Department explained further that it reviews a company's corporate formation documents and its corporate structure to confirm the source, amount, and date of a company's initial capitalization and to determine who, in fact, owns and controls the company. If the Department cannot verify a company's corporate structure documents or its formation, it cannot verify the true owners and/or who has control over day-to-day operations. In addition, in that case, the Department also found that, despite numerous requests by the Department, both in its questionnaires and at verification, the respondent chose not to disclose the existence of an affiliate, and it only discovered that information in the middle of the company's one-week verification. Therefore, the Department was unable to fully question and consider this affiliate's possible relationship with the PRC government.

In the instant investigation, the Department was able to obtain the relevant information from TUTRIC prior to verification. Therefore, the circumstances which led the Department to deny separate-rate status in the aforementioned cases do not exist in this case. The Department had the relevant information prior to verification, and we are able to analyze TUTRIC's eligibility for a separate rate accordingly.

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[474] *See, e.g., Sawblades 05/22/06* IDM at Comment 16.

[475] *See Potassium Permanganate-PRC 05/23/94* at Comment 1. *See also Hand Truck-PRC 01/14/08*, 73 FR 2214, 2219.

[476] *See Shrimp-PRC 12/21/07* IDM at Comment 1.

[477] *Id.*

In considering whether TUTRIC sets its export prices independent of government involvement, at verification, the Department examined records of price negotiation between TUTRIC and its U.S. customer. *See* TUTRIC Verification Report at 9-10. TUTRIC maintains a price list for sales to this customer, but demonstrated that there are occasions when the parties negotiate price changes. There was no evidence that any party other than TUTRIC and its customer are involved in price negotiation, or in approving changes from the listed prices.

Concerning the question of whether TUTRIC retains the proceeds from its sales and makes independent decisions regarding the disposition of profits/losses, during verification, the Department "reviewed copies of TUTRIC's foreign currency bank notes sub-ledger, and observed that the company may retain earnings obtained in foreign currency."[478] The Department found no evidence that anyone other than designated TUTRIC officials has access to TUTRIC's bank accounts.

With respect to TUTRIC's ability to negotiate and sign contracts, the Department reviewed documents related to sales contracts between TUTRIC and its U.S. customer, as well as contracts for the purchase of equipment and a service contract with an engineering firm.[479] There was no evidence of any involvement in the negotiating process or of any review of the contracts by any other party. The contracts reviewed during verification also served as further substantiation of TUTRIC's use of foreign currency, as these particular contracts were for the purchase of foreign-origin equipment, and for the services of a foreign engineering firm.[480]

Finally, the Department reviewed the manner in which TUTRIC's management is selected. In its SRA (at Exhibit 8), TUTRIC provided appointment letters and minutes of board meetings at which management was selected. TUTRIC reported that its management is selected through a quasi-democratic process that permits the workers and staff of the company to voice their opinion concerning management. At verification, the Department reviewed "copies of management evaluations conducted by union representatives," which served to demonstrate "one of the company's internal methods for evaluating its management."[481] Record evidence also indicates that TUTRIC's managers were long-time TUTRIC employees promoted to management positions with no evidence of government direction over their selection.

Accordingly, for the final determination, we have continued to find that TUTRIC is eligible for a separate rate because it has affirmatively demonstrated an absence of both *de jure* and *de facto* government control over its export activities.

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[478] *See* TUTRIC Verification Report at 8.

[479] *See* TUTRIC Verification Report at Exhibit 4A.

[480] *Id.*

[481] *See* TUTRIC Verification Report at 8.

Comment 78: TUTRIC's Sales to GPX Delivered to the Tanggu Warehouse

Petitioners contend that TUTRIC should not have reported any of its sales to the United States through the Tanggu, PRC, warehouse because GPX, and not TUTRIC, is the exporter of record for all sales made through the Tanggu warehouse. Consequently, Petitioners argue that for the final determination, the Department should exclude all of TUTRIC's sales to GPX through the Tanggu warehouse from the margin calculations, and base the final determination on TUTRIC's direct export sales to the United States alone. Petitioners maintain that because GPX did not apply for, and is not entitled to, a separate rate, all of TUTRIC's sales to the United States through the Tanggu warehouse should be subject to the PRC-wide rate.

In the alternative, if the Department determines not to exclude TUTRIC's sales through the Tanggu warehouse from the margin analysis, Petitioners recommend that the Department reject TUTRIC's entire sales listing because TUTRIC failed to report all of its sales through the Tanggu warehouse. Petitioners argue that TUTRIC's claim that it did not know the final destination of certain sales made through Tanggu warehouse is not persuasive, because of TUTRIC's original affiliation claim with Starbright, and because Starbright and TUTRIC filed a joint section C response. Therefore, Petitioners argue that if the Department accepts TUTRIC's section C database, it should apply an AFA rate to any sales that TUTRIC failed to report.

TUTRIC disagrees that the Department should exclude its sales to GPX through the Tanggu warehouse from the margin calculations, or that the Department should reject TUTRIC's entire U.S. sales database due to its failure to report these sales in the first instance. TUTRIC claims that it submitted all of its sales records at verification. It claims that during the sales reconciliation, the Department determined that TUTRIC failed to report certain of its sales to GPX's Tanggu warehouse for which TUTRIC claimed that it lacked knowledge of the ultimate destination. TUTRIC further argues that because the Tanggu warehouse, which is the destination of these sales, is in a bonded area, the unreported sales represented export sales for TUTRIC's purposes, but not necessarily export sales to the United States.

Nevertheless, TUTRIC notes that the Department reviewed these sales at verification, and requested TUTRIC to report them in a post-verification database, which it did in a timely fashion according to the Department's requirements. Thus, TUTRIC argues that it would be inappropriate to apply FA or AFA either to TUTRIC's entire U.S. sales database or to the previously unreported sales through the Tanggu warehouse. TUTRIC claims that the Department verified its U.S. sales database, with or without inclusion of the Tanggu warehouse sales. Thus, TUTRIC contends that the Department should base its margin for the final determination on the verified section C database as reported, with or without the sales through the Tanggu warehouse.

Department's Position: We disagree with the premise that TUTRIC should not have reported the sales it made for export to GPX, a U.S. customer, notwithstanding that the place of delivery for some of these sales was the Tanggu warehouse in the PRC. TUTRIC reported that it made all of its U.S. sales to GPX,[482] a U.S. entity located in the United States, with sales terms of FOB

[482] *See*, TUTRIC CQR at C-16.

Chinese port,[483] where GPX took title to the merchandise. Thus, TUTRIC's sales to GPX constitute EP sales within the meaning of section 772(a) of the Act, regardless of whether TUTRIC delivered the subject merchandise to GPX at the Tanggu warehouse in the PRC or to GPX at the port of disembarkation.

At verification, the Department discovered that TUTRIC failed to report a number of sales to GPX delivered to the Tanggu warehouse in its U.S. sales database.[484] TUTRIC claimed that it did not report these sales because, as it delivered them to GPX at the Tanggu warehouse in the PRC, it did not know the ultimate destination of the shipments.[485] The Department requested that TUTRIC provide the PRC Customs invoices that TUTRIC had completed for purposes of obtaining a VAT refund and found that these invoices all recorded the destination as USA.[486] Because TUTRIC had filled out the Customs/VAT invoices identifying the destination of these export sales as the United States, we requested TUTRIC to report these sales in a post-verification database and to include copies of the commercial and Customs/VAT invoices for each of the respective sales.[487] Subsequent to verification, upon reviewing the record in response to TUTRIC's claims of affiliation with GPX, we reviewed in detail its sales agreement with GPX. [488] Due to the proprietary nature of the terms of the agreement, we are unable to address this issue further in this public memorandum; however, it is relevant to this issue. Therefore, for further discussion of this issue please see TUTRIC's Final Analysis Calculation Memo.

Based on the above, we disagree with TUTRIC's contention that it did not know the destination of the sales in question and determine that it should have included these sales in its U.S. sales database. Therefore, we determine that TUTRIC knew the destination of these sales and should have reported them in its original database. Accordingly, we have included these sales in

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[483] *See* TUTRIC CQR at C-19.

[484] *See* TUTRIC Sales and FOP Verification Report at 16 and Verification Exhibit 7.

[485] *Id.* at 16.

[486] *Id.*

[487] *See* Memorandum to the File, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Submission of Revised Databases, Verification-Related Corrections" (May 1, 2008). TUTRIC provided the requested information in its Post-Verification Submission of May 5, 2008.

[488] *See* TUTRIC's submission, "Factual Information and Legal Analysis in Support of TUTRIC's and Starbright's Affiliation and the Necessity to Collapse Their Sales; Antidumping Duty Investigation of New Pneumatic Off-The-Road Tires from China" (January 10, 2008) ("TUTRIC Affiliation Claim") at Exhibit F. *See, also,* TUTRIC's submission "TUTRIC Separate Rate Application: Antidumping Duty Investigation of New Pneumatic Off-The-Road Tires from China" (September 28, 2007) at Exhibit 7. *See also* TUTRIC's submissions: "TUTRIC's Post-Verification Submission of Supplemental Information and Databases Requested by the Department: Antidumping Duty Investigation of New Pneumatic Off-The-Road Tires from the People's Republic of China" (May 6, 2008); "Missing Pages from TUTRIC's Post-Verification Submission of Supplemental Information and Databases Requested by the Department: Antidumping Duty Investigation of New Pneumatic Off-The-Road Tires from the People's Republic of China" (May 6, 2008).

TUTRIC's margin analysis for the final determination. The issue of whether GPX has applied for a separate rate is not relevant to the determination that these are TUTRIC's sales for export to the United States. Because we have determined the sales in question to be TUTRIC's sales for export to the United States, we need not address the Petitioners' comments with respect to GPX. Although TUTRIC failed to report these sales in its U.S. sales database, we are not applying AFA to any of TUTRIC's unreported sales because TUTRIC, pursuant to the Department's request after the verification, timely filed a revised U.S. sales database containing the unreported sales. The information regarding the unreported sales is now on the record and we are using that available information in TUTRIC's margin analysis.

Comment 79: Sales and FOPs for Tubes and Flaps for TUTRIC

Petitioners contend that TUTRIC failed to report its U.S. sales and FOPs of tubes and flaps. Therefore, Petitioners argue that the Department should ensure that TUTRIC fully complied with the Department's post-verification request for information. In addition, Petitioners contend that TUTRIC may have double-counted the value of tubes and flaps in the post-verification section C database. Petitioners contend that TUTRIC's first supplemental response stated that the reported gross unit price includes tubes and flaps. However, Petitioners maintain that after verification, TUTRIC added to the reported gross unit price the additional value of the tubes and flaps. Petitioners maintain that if the Department cannot ascertain whether TUTRIC properly reported its sales of tubes and flaps, then 1) the accuracy of its entire section C database is called into question, and 2) the Department should ignore the discrepancy and proceed on the assumption that tubes and flaps are part of the gross unit price. Petitioners also maintain that TUTRIC has not reported the relevant FOPs consumed in producing tubes and flaps. Finally, Petitioners contend that Starbright's and TUTRIC's argument that that tubes and flaps should be excluded from the scope of this investigation should have been made in the scope briefs.

Bridgestone maintains that TUTRIC and Starbright have not demonstrated that the surrogate value for tubes is aberrational or that flaps have been misclassified.

As an initial matter, TUTRIC argues that its tubes and flaps do not constitute subject merchandise within the scope of this investigation. Nevertheless, TUTRIC contends that Petitioners' assertion that TUTRIC double-counts tubes and flaps by increasing the reported gross unit price reflects a misunderstanding of both the issue and the data. TUTRIC claims that the record demonstrates that TUTRIC's reported gross unit prices do not include the value of tubes and flaps. TUTRIC claims that the Department verified that when TUTRIC sold a set to GPX, it recorded the tubes and flaps included as part of the set as separate line items on the invoice, thus demonstrating that TUTRIC's reported gross prices do not already include the value of the tube and the flap.

TUTRIC further disagrees with Petitioners' assertion that it did not report FOPs for tubes and flaps as the Department requested. TUTRIC claims that its case brief explains that the Department can derive the FOP for a tube by dividing the weight of the tube by the weight of the tire. Likewise, TUTRIC argues, to derive the FOP for a flap, the Department can derive the FOP for a flap by the weight of a tire.

Department's Position: The Department has determined that tubes and flaps are not subject to the scope of this investigation and should not be considered in the FOP build-up for subject merchandise, regardless of the manner in which they are sold.[489] Therefore, the Department has not valued tubes and flaps in the context of TUTRIC's calculations. With respect to TUTRIC's reporting of these items, at verification the Department observed that TUTRIC prices the tubes and flaps separately on its invoices. See TUTRIC Verification Report at 12. Therefore, we have determined that TUTRIC has not included the prices of the tubes and flaps in its reported tire prices. As a result, we have not made any adjustments in the final determination to TUTRIC's reported tire prices to account for the value of tubes and flaps. Accordingly, the issues related to the surrogate values used for tubes and flaps in the Preliminary Determination are no longer relevant and we have not addressed them here.

Comment 80: Treatment of Indirect Labor Hours for TUTRIC

Petitioners contend that the Department should adjust TUTRIC's indirect labor hours to account for the labor hours which it believes correspond to salaries discovered in the "Other - People" account that the Department examined at verification. Petitioners provided a proprietary description of the remedy that it believes the Department should apply to TUTRIC's reported indirect labor hours to rectify the alleged reporting error discovered at verification.

TUTRIC disagrees that it excluded the labor hours associated with the "Other - People" account from its reported labor hours. TUTRIC contends that the line item "Other - People" refers to additional compensation (such as meals allowances) granted to certain employees and does not refer to a pool of employees for whom it did not report labor hours. TUTRIC contends that the Department analyzed the details contained in Verification Exhibit 19 of the TUTRIC Sales and FOP Verification Report, crosschecked them to other company documents and found no discrepancies.

Department's Position: We agree with TUTRIC that the presence of the title "Other—People" does not indicate that TUTRIC failed to report any labor hours with respect to that account.[490] Rather, our verification report indicates that the Department reconciled TUTRIC's reported labor consumption hours to its audited financial statements.[491] Therefore, for the final determination, we have made no changes to TUTRIC's reported labor hours in the calculation of the FOPs and NV.

Comment 81: Additional Calculation Errors With Respect to TUTRIC

TUTRIC claims that the Department made the following errors in its margin calculations for the preliminary determination.

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[489] See the Department's Position to Comment 21, Tubes and Flaps above.

[490] *See* TUTRIC Sales and FOP Verification Report at 25-26.

[491] *Id.* and Verification Exhibit 19.

Sigma Distance:
TUTRIC claims that the Department inadvertently based TUTRIC's *Sigma* distance, *i.e.*, the shorter of the distance from the domestic supplier to the factory, in the freight-in calculation using Starbright's reported distances.

Department's Position: We agree with TUTRIC and have corrected our calculations for the final determination.

Clerical Error in the TANGGUO1 Database:
TUTRIC claims that it made a clerical error in reporting the sales date of one invoice in the TANGGU01 database that the Department requested after verification. TUTRIC claims that because the revised date of sale falls outside the POI, the Department should remove this sale from the margin calculations for the final determination.

Department's Position: We agree that the date of sale for the referenced invoice falls prior to the POI.[492] As a result, we have removed this sale from our calculations for the final determination.

Date of Sale When Shipment Precedes the Invoice Date:
TUTRIC contends that the Department should apply its standard practice and set the date of sale as the shipment date in those instances where the date of shipment precedes the sale date (*e.g.*, invoice date), and exclude all sales prior to the POI from the calculation of the margin. TUTRIC contends that this is the Department's standard practice and cites the following cases as its authority: *Steel Nails-United Arab Emirates 01/23/08* (DW reported invoice as the date of sale. However, our review of the sales data indicates that, in some cases, the reported shipment date precedes the reported invoice date. In such circumstances, the Department normally uses the earlier of invoice date or shipment date as the date of sale.); *SSSS Coils-Korea 04/10/06* (Accordingly, we used the earlier of the reported shipment date or reported sale date (*i.e.*, invoice date) for determining the date of sale."), remaining unchanged in the final *SSSS Coils-Korea 01/31/07*.

Department's Position: As stated in each of the three cases that TUTRIC cited, it is the Department's general practice to use the earlier of shipment date or invoice date as the date of sale because this date best reflects the date on which the material terms of sale were established.[493] Therefore, we have revised the computer program to reflect shipment date as the date of sale in all instances where shipment date preceded invoice date. As a result, we did not include any sale with a revised date of sale that preceded the POI in our margin analysis.

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[492] *See* TUTRIC Sales and FOP Verification Report at Verification Exhibit 17; *see also* letter from TUTRIC, "TUTRIC's Post-Verification Submission of Supplemental Information and Databases Requested by the Department: Antidumping Investigation of New Pneumatic Off-The-Road Tires from the People's Republic of China," (May 5, 2008), at PVS Exhibit 3B.

[493] *See SSSS Coils-Korea 01/31/07* IDM at Comment 4.

U.S. Interest Rate Used to Determine U.S. Credit and ICC:
TUTRIC argues that the Department should recalculate GPX's credit expense and ICC adjustments to the U.S. sales price by using the verified interest rate, rather than the slightly higher rate originally reported in TUTRIC's questionnaire responses.

Department's Position: We have not collapsed GPX and TUTRIC for this final determination; therefore, we are not basing TUTRIC's margin on CEP sales. As a result, this issue is moot since we do not calculate U.S. credit or ICC in EP calculations. *See* Sections 772(a) and (d) of the Act.

Comment 82: The Adequacy of TUTRIC's Reported Material Consumption Standards, Variance Calculations and FOP Consumption Rate

Petitioners argue that the Department should reject TUTRIC's reported FOPs because they believe that TUTRIC's reporting methodology is distortive. Petitioners contend that TUTRIC based its variance adjustments on company-wide data, and did not demonstrate that variances are relatively uniform among products, or between subject and non-subject merchandise. Petitioners allege that TUTRIC often departs from its standards, or reports only standard consumption rates, unadjusted by any variances. Petitioners contend that this reporting conflicts with long-standing Department policy of refusing to accept unadjusted standard values in calculating normal values as expressed in *Ferrovanadium 11/29/02* at Comment 6 (recalculating reported standard consumptions to develop more accurate actual consumptions); *PVA 03/29/96* at 14061. Thus, Petitioners contend that the Department should reject TUTRIC's section D response.

Alternatively, Petitioners argue that if the Department accepts TUTRIC's reported FOPs, it should apply the following remedies to TUTRIC's section D database:[494] 1) reject all unexpected variances; 2) apply a punitive variance rate to the consumption of all FOPs to offset the uncertainty concerning the instances where TUTRIC departed from its standards; and 3) apply a punitive variance rate to the consumption of all FOPs used when TUTRIC based its reporting methodology on unadjusted standards.

TUTRIC claims that the Department verified every aspect of its reported factors of production, and had the full cooperation of TUTRIC personnel, who addressed every request and detailed inquiry to the verifiers' satisfaction. TUTRIC claims that the TUTRIC Sales and FOP Verification Report provides a concise description of the procedures performed by the verifiers and concludes that, "no discrepancies were found." TUTRIC claims that the Department investigated its variance adjustments, instances where the actual consumption rate varied from product specifications, and situations where TUTRIC reported standard consumption amounts for merchandise sold but not produced during the POI. TUTRIC believes that its reported standards and variances are reasonable and within tolerance.

TUTRIC disagrees with Petitioners' remedies because Petitioners suggest rejecting negative variances, but applying the positive ones, or alternatively using the highest tolerance level.

[494] All of Petitioners' remedies contained proprietary information. Therefore, the remedies listed here have been expressed in a non-proprietary manner that is not indicative of the level of detail contained in the proposed remedy.

TUTRIC argues that because there is nothing in the verification report that indicates that TUTRIC failed to address the Department's concerns or to comply with its requests for information, Petitioners' proposed remedies are inappropriate and the Department should reject them for the final determination.

Department's Position: We disagree with Petitioners that TUTRIC's reported FOPs are distorted by its reporting methodology. The TUTRIC Sales and FOP Verification Report demonstrates that the Department examined TUTRIC's FOPs reporting methodology thoroughly.[495] We examined TUTRIC's detailed production instruction charts and product specification sheets.[496] We examined how TUTRIC used these sheets to determine the total standard consumption of each material input for the POI.[497] We traced the reported production quantities into TUTRIC's inventory and production reports.[498] We compared the standard consumption values to the actual consumption of each of the direct materials to calculate the difference between the standard and actual consumption during the POI for each FOP.[499] We reviewed the specification/recipe documents in effect during the POI for all of the pre-selected CONNUMs, including, and where applicable, changes in the specifications for these products during the POI.[500] We reviewed the same documentation for four non-subject tires and found similar trends between subject and non-subject merchandise in the changes that occurred in each successive change to the specifications.[501] We asked company officials to explain why certain production runs might vary from the product specification/recipe, and were satisfied based on their replies that the reasoning did not lead to inaccuracies or distortions.[502]

Finally, we examined TUTRIC's reporting methodology for products that it sold, but did not produce, during the POI. TUTRIC reported the factor consumption rates for products produced prior to the POR using unadjusted standard values. TUTRIC explained that it did not adjust these values claiming that the most similar products reflected such a large size variance from the tire in question that they were not similar enough to serve as the basis for reporting FOPS.[503]

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[495] *See* TUTRIC Sales and FOP Verification Report at 20-22.

[496] *Id.* at Verification Exhibits 6 and 12.

[497] *Id.* at 20.

[498] *Id.* at 20. *See, also* Verification Exhibit 10.

[499] *Id.* at 21.

[500] *Id.*

[501] *Id.*

[502] *Id.*

[503] *Id.* at 22. *See, also,* TUTRIC Sales and FOP Verification Report at Exhibit 18.

Nevertheless, the Department believes that all standard consumption should be adjusted by a variance that reflects the actual use of the input during the period of production. Therefore, for the final determination, we adjusted TUTRIC's factor consumption rates for these CONNUMs using the variances for each relevant input during the POI.

RECOMMENDATION

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

_____ _____

Agree Disagree

David M. Spooner
Assistant Secretary
for Import Administration

_____

Date

APPENDIX I

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
Where references in the body of the document include the accompanying Issues and Decision Memorandum, the cite will contain the phrase "IDM at Comment X" to identify the reference.	Cases are listed alphabetically by product (with the exception that if the product name begins with "Certain" we have left off the word for purposes of alphabetizing the cases.)
Short Cite	**Administrative Case Determinations**
	Activated Carbon-PRC
Activated Carbon-PRC 10/11/06	*Certain Activated Carbon from the People's Republic of China*, 71 Fed. Reg. 59,721 (Dep't Commerce)(Oct. 11, 2006) (preliminary determination of sales at less than fair value)
Activated Carbon-PRC 03/02/07	*Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 Fed. Reg. 9508(Mar. 2, 2007)
	Antifriction Bearings-Germany
AFBs-Germany 05/03/89	*Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992 (May 3, 1989)
	Artist Canvas-PRC
Artist Canvas-PRC 03/30/06	*Artist Canvas from the People's Republic of China*,71 FR 16116 (March 30, 2006)
	Automotive Replacement Glass-PRC
ARG-PRC 02/12/02	*Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 67 FR 6482 (Feb. 12, 2002)
ARG-PRC 10/21/04	*Automotive Replacement Glass Windshields From the People's Republic of China*, 69 FR 61790 (Oct. 21, 2004)
	Ball Bearings, and Parts Thereof-PRC
Ball Bearings-PRC 03/06/03	*Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings, and Parts Thereof from China*, 68 FR 10,685 (March 6, 2003)
	Bicycles-PRC
Bicycles-PRC 04/30/96	*Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996)
	Brass Sheet and Strip-Netherlands
Brass Sheet and Strip-Netherlands 01/06/00	*Brass Sheet and Strip from the Netherlands*, 65 FR 742 (January 6, 2000) (final results admin. review)
	Brake Rotors-PRC

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
Brake Rotors-PRC 01/08/01	*Brake Rotors From the People's Republic of China,* 66 Fed. Reg. 1301 (January 8, 2001) (Prelim AR)
Brake Rotors-PRC 05/16/01	*Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001)
Brake Rotors-PRC 05/29/01	*Brake Rotors from the People's Republic of China*, 66 FR 29080 (May 29, 2001)
Brake Rotors-PRC 05/09/05	*Brake Rotors from the People's Republic of China*, 70 FR 24382 (May 9, 2005)
Brake Rotors-PRC 01/25/06	*Brake Rotors from China: Final Results of the Twelfth New Shipper Review*, 71 FR 4112 (January 25, 2006
Brake Rotors-PRC 08/02/07	*Brake Rotors from the People's Republic of China : Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review*, 72 FR 42386 (Aug. 2, 2007
Brake Rotors-PRC 06/10/08	*Brake Rotors from the People's Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review*, 73 FR 32678 (June 10, 2008)
	Bulk Aspirin-PRC
Aspirin-PRC 05/25/00	*Bulk Aspirin from the People's Republic of China*, 65 FR 33,805 (May 25, 2000)
Aspirin-PRC 02/10/03	*Bulk Aspirin from the People's Republic of China*, 68 FR 6710 (February 10, 2003)
	***Canned Pineapple Fruit**-Thailand*
Canned Pineapple-Thailand 12/13/02	*Canned Pineapple Fruit from Thailand*, 67 FR 76,718, 76,720 (Dec. 13, 2002)
	Carbazole Violet Pigment 23-PRC
CVP-PRC 11/17/04	*Carbazole Violet Pigment 23 from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 67304 (Nov. 17, 2004)
CVP-PRC-CVD 11/17/04	*Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 From India*, 69 FR 67321 (Nov. 17, 2004)
	Carbon and Alloy Steel Wire Rod – Trinidad & Tobago
Wire Rod-Trinidad & Tobago 08/30/02	*Certain Carbon and Alloy Steel Wire Rod from Trinidad and Tobago*, 67 Fed. Reg. 55,788 (Dep't Commerce)(Aug. 30, 2002)(final determination of sales at less than fair value)
	Carbon and (Certain) Alloy Steel Wire Rod - Canada
Wire Rod-Canada 04/20/94	*Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18,791 (Apr. 20, 1994)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
Wire Rod-Canada 08/30/02	*Final Determination of Sales at Less Than Fair Value; Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 55782 (August 30, 2002)
Wire Rod-Canada 05/10/07	*Carbon and Certain Alloy Steel Wire Rod from Canada*, 72 Fed. Reg. 26591 (May 10, 2007)
	Carbon and Certain Alloy Steel Wire Rod - Mexico
Wire Rod-Mexico 08/30/02	*Final Determination SLTFV: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 67 FR 55,800, 55,802 (Aug. 30, 2002)
Wire Rod-Mexico 05/16/05	*Carbon and Certain Alloy Steel Wire Rod from Mexico,* 70 FR 25,809 (May 16, 2005)
	Carbon Steel Butt-Weld Pipe Fittings*-Thailand*
Pipe Fittings-Thailand 02/07/03	*Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 68 FR 6409 (February 7, 2003) (Final AR)
	Carbon Steel Wire Rod
Wire Rod-Czechoslovakia 05/04/84	*Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination*, 49 Fed. Reg. 19,370 (May 7, 1984)
	Cased Pencils-PRC
Cased Pencils-PRC 12/07/06	*Certain Cased Pencils from China; Preliminary Results of Administrative Review*, 71 FR 70,949 (Dec. 7, 2006)
	CLPP-India
CLPP-India-CVD 08/08/06	*Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006)
	CLPP-PRC
CLPP-PRC 09/08/06	*Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China***,** 71 FR 53079 (September 8, 2006)
	Chlorinated Isocyanurates-PRC
ISOS-PRC 05/10/05	*Notice of Final Determination of Sales at Less than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24,502 (May 10, 2005)
ISOS-PRC 01/02/08	*Chlorinated Isocyanurates from the People's Republic of China*, 73 FR 159 (January 2, 2008) (Final AR)
	Chlorinated Isocyanurates-Spain
ISOS-Spain 05/10/05	*Chlorinated Isocyanurates from Spain: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 24,50.6 (May 10, 2005)
	Chrome-Plated Lug Nuts-PRC
Lug Nuts-PRC 09/10/91	*Chrome-Plated Lug Nuts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 56 Fed. Reg. 46,153 (Sept. 10, 1991)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
	Circular Welded Carbon Quality Steel Pipe-PRC
CWP-PRC 06/05/08	*Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances* , 73 FR 31970 (June 05, 2008)
	Circular Welded Non-Alloy Steel Pipe*-Korea*
Pipe-Korea 09/17/92	*Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 57 FR 42,942 (Sept. 17, 1992)
	Coated Free Sheet Paper-Korea
CFS-Korea 10/25/07	*Coated Free Sheet Paper from Korea* 72 FR 60630 (October 25, 2007)
	Coated Free Sheet Paper-PRC
CFS-PRC – AD 04/09/07	*Coated Free Sheet Paper from People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17,484 (April 9, 2007)
CFS-PRC-AD 10/25/07	*Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60630 (October 25, 2007)
CFS-PRC-CVD 10/25/07	*Coated Free Sheet Paper from China*, 72 FR 60645 (October 25, 2007) (final CVD)
	Cold-Rolled and Corrosion-Resistant Carbon Steel*-Korea*
CR Carbon Steel-Korea 04/15/97	*Certain Cold-Rolled and Corrosion-Resistant Carbon Steel from Korea*, 62 FR 18404 (Apr. 15, 1997)
	Cold-Rolled Carbon Steel Flat Products*-Korea*
CR Flat Products-Korea 10/03/02	*Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124 (October 3, 2002)
	Cold-Rolled Flat Rolled CQ Steel-Taiwan
Flat Rolled CQ Steel-Taiwan 05/31/00	*Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan*, 65 FR 34658 (May 31, 2000)
	Collated Roofing Nails-Taiwan
Roofing Nails-Taiwan 08/ 10/99	*Collated Roofing Nails from Taiwan: Preliminary Results of Antidumping*, 64 FR 43,344, 43,345 (Aug. 10, 1999)
	Color Television Receivers- Korea
CTVs-Korea 09/02/98	*Color Television Receivers from the Republic of Korea; Final Results of Changed Circumstances Antidumping Duty Review*, 63 FR 46,759 (Sept. 2, 1998)
	Color Television Receivers-PRC

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
CTVs-PRC 04/16/04	*Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers from the PRC*, 69 FR 20,594 (Apr. 16, 2004)
	Creatine Monohydrate-PRC
Creatine-PRC 12/20/99	*Creatine Monohydrate from the People's Republic of China*, 64 Fed. Reg. 71,104 (Dep't Commerce)(Dec. 20, 1999)(notice of final determination of sales at less than fair value)
Creatine-PRC 11/06/03	*Creatine Monohydrate from the People's Republic of China Preliminary Results of Antidumping Administrative Review*, 68 FR 62767 (November 6, 2003) (prelim. results admin. review)
Creatine-PRC 01/13/04	*Creatine from the People's Republic of China*: *Final Results of Antidumping Duty Administrative Review*, 69 FR 1970 (January 13, 2004)
	Cut-to-Length Carbon Steel Plate-Germany
CTL Plate-Germany 09/11/06	*Certain Cut-to-Length Carbon Steel Plate from Germany: Preliminary Results of Administrative Review*, 71 FR 53,382 (Sept. 11, 2006)
	Cut-to-Length Carbon Steel Plate-Romania
CTL Plate-Romania 01/12/01	*Cut-to-Length Carbon Steel Plate from Romania*, 66 Fed. Reg. 2879 (January 12, 2001) (final results of admin. rev.)
CTL Plate-Romania 03/15/05	*Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescissio of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005)
	Cut-to-Length Carbon Steel Plate-Russia
CTL Plate-Russia 01/27/03	*Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 68 FR 3,859, 3,862 (Jan. 27, 2003)
	Cut-to-Length Steel Plate-PRC
CTL Plate-PRC 08/10/06	*Cut-to-Length Steel Plate from the People's Republic of China*, 71 FR 45768 (August 10, 2006)
	Diamond Sawblades and Parts Thereof-PRC
Sawblades-PRC 12/29/05	*Diamond Sawblades and Parts Thereof from the People's Republic of China*, 70 FR 77121 (December 29, 2005)
Sawblades-PRC 05/22/06	*Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006)
	Disposable Lighters-PRC
Lighters-PRC 05/05/95	*Disposable Lighters from the People's Republic of China*, 60 FR 22359 (May 5, 1995)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
	Dynamic Random Access Memory Semiconductors of One Megabit or Above -Korea
DRAMS-Korea 05/06/96	*Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 20216 (May 6, 1996)
	Engineered Gas Turbo-Compressor Systems- Japan
Gas Turbo-Compressor Systems-Japan 05/05/97	*Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394 (May 5, 1997)
	Ferrosilicon-Brazil
Ferrosilicon-Brazil 11/22/96	*Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review*, 61 FR 59407 (November 22, 1996)
	Ferrovanadium-PRC
Ferrovanadium-PRC 11/29/02	*Ferrovanadium from the People's Republic of China*, 67 FR 71137 (November 29, 2002)
	Floor-standing Metal-top Ironing Tables and Certain Parts Thereof-PRC
Ironing Tables-PRC 03/12/07	*Floor-standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 72 FR 13239 (March 12, 2007) ((final AR)
	Folding Metal Tables and Chairs-PRC
FMTCs-PRC 12/20/04	*Folding Metal Tables and Chairs from the People's Republic of China*, 69 Fed. Reg. 75,913 (Dec. 20, 2004)(final results of administrative review)
FMTCs-PRC 01/18/06	*Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905, January 18, 2006
FMTCs-PRC 12/17/07	*Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 75,913 (December 17, 2007)
	Fresh Atlantic Salmon-Chile
Salmon-Chile 06/09/98	*Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998)
	Fresh Garlic-PRC
Garlic-PRC 06/16/04	*Fresh Garlic from the People's Republic of China*, 69. Fed. Reg. 33626 (June 16, 2004) (final results admin. review and new shipper reviews)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
Garlic-PRC 06/22/07	*Fresh Garlic from the People's Republic of China*, 72 Fed. Reg. 34,438 (Dep't Commerce)(June 22, 2007)(final results of administrative review)
Garlic-PRC 09/27/07	*Fresh Garlic from the People's Republic of China*, 72 FR 54896 (September 27, 2007) (final AR)
Garlic-PRC 05/01/08	*Fresh Garlic from the People's Republic of China*, 73 FR 24042 (May 1, 2008) (Prelim AR)
	Fresh Tomatoes-Mexico
Fresh Tomatoes-Mexico 11/01/96	*Fresh Tomatoes from Mexico*, 61 FR 56,607 (Nov.1, 1996)
	Freshwater Crawfish Tailmeat-PRC
Crawfish-PRC 08/01/97	*Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tailmeat from the People's Republic of China*, 62 FR 41437 (August 1, 1997)
Crawfish-PRC 04/24/01	*Freshwater Crawfish Tailmeat from the People's Republic of China*, 66 FR 20634 (Apr. 24, 2001)
Crawfish-PRC 04/22/02	*Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 Fed. Reg. 19,546 (Dep't Commerce)(Apr. 22, 2002)(final results of administrative review)
Crawfish-PRC 04/17/07	*Freshwater Crawfish Tailmeat from the People's Republic of China: Final Results of Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007)
	Frozen and Canned Warmwater Shrimp-PRC
Shrimp-PRC 12/08/04	*Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997 (Dec. 8, 2004)
Shrimp-PRC 09/12/07	*Certain Frozen Warmwater Shrimp from the People's Republic of China*, 72 FR 52,049 (September 12, 2007) (final AR & NSR)
Shrimp-PRC 12/21/07	*Certain Frozen Warmwater Shrimp from the People's Republic of China*,72 FR 72668 (December 21, 2007)
Shrimp-PRC 02/04/08	*Certain Frozen Warmwater Shrimp from the People's Republic of China*,)
	Frozen and Canned Warmwater Shrimp-Thailand
Shrimp-Thailand 12/23/04	*Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004)
	Frozen and Canned Warmwater Shrimp-Vitenam
Shrimp-Vietnam 12/08/04	*Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Vietnam*, 69 FR 71005 (December. 8, 2004)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
	Frozen Concentrated Apple Juice-PRC
Apple Juice-PRC 04/13/2000	*Notice of Final Determination of Sales at Less Than Fair Value: Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19,873 (Apr. 13, 2000)
	***Frozen Fish Fillets**-Vietnam*
Fish-Vietnam 01/31/03	*Notice of Preliminary Determination of Sales at Less Than Fair Value: Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003)
Fish-Vietnam 03/05/03	*Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 10,440 (Mar. 5, 2003)
Fish-Vietnam 06/23/03	*Frozen Fish Fillets from the Socialist Republic of Vietnam*, Fed. Reg. 37116 (June 23, 2003) (final LTFV determ.)
Fish-Vietnam 03/21/06	*Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 71 Fed. Reg. 14,170 (Dep't Commerce)(Mar. 21, 2006)(final results of administrative review)
Fish-Vietnam 03/21/07	*Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative Review*, 72 FR 13242 (March 21, 2007)
	Furfuryl Alcohol -PRC
Furfuryl Alcohol-PRC 05/08/95	*Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from China*, 60 FR22544 (May 8, 1995)
	Glycine-PRC
Glyccine-PRC 01/31/01	*Glycine from the People's Republic of China*, 66 FR 8383 (Jan. 31, 2001)
Glyccine-PRC 08/12/05	*Glycine from the People's Republic of China*, 70 FR 47,176 (Aug. 12, 2005)(final results of administrative review)
	Grain-Oriented Electrical Steel -Italy
GOES-Italy 03/14/01	*Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Administrative Review*, 66 FR 14887 (March 14, 2001)
	Hand Trucks-PRC
Hand Trucks-PRC 10/14/04	*Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 Fed. Reg. 60,980 (Dep't Commerce)(Oct. 14, 2004)(final results)
Hand Truck-PRC 05/15/07	*Hand Trucks from the People's Republic of China*, 72 FR 27287 (May 15, 2007)
Hand Trucks-PRC 01/14/08	*Hand Trucks and Certain Parts Thereof from the People's Republic of China; Preliminary Results, Partial Intent to Rescind and Partial Rescission of the 2005-06 Administrative Review*, 73 FR 2214 (January 14, 2008)
	Heavy Forged Hand Tools With or Without Handles-PRC

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
HFHT-PRC 09/10/03	*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 Fed. Reg. 53347 (Septembe 10, 2003)
HFHTs-PRC 03/10/04	*Heavy Forged Hand Tools From the People's Republic of China*, 69 FR 11371 (March 10, 2004)
HFHTs-PRC 09/15/04	*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, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part*, 69 FR 55581 (Sept. 15, 2004)
HFHTs-PRC 09/19/05	*Heavy Forged Hand Tools from the People's Republic of China*, 70 FR 53,897 (Sept. 19, 2005)
	Helical Spring Lock Washers-PRC
HSLW-PRC 03/15/04	*Certain Helical Lock Washers from the People's Republic of China*, 69 FR 12119 (March 15, 2004)
HSLW-PRC 11/09/04	*Certain Helical Spring Lock Washers from China*, 69 FR 64903 (November 9, 2004)
HSLW-PRC 05/17/05	*Certain Helical Lock Washers from the People's Republic of China*,70 FR 28274 (May 17, 2005)
HSLW-PRC 01/24/08	*Helical Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*,73 FR 4175 (January24, 2008)
	Honey - Argentina
Honey - Argentina	*Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 71 FR 26333 (May 4, 2006)
	Honey-PRC
Honey-PRC 10/04/01	*Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001)
Honey-PRC 07/06/05	*Honey from the People's Republic of China*, 70 Fed. Reg. 38873 (Dep't Comm. July 6, 2005) (final results admin. rev.)
Honey-PRC 06/06/06	*Honey from the People's Republic of China: Preliminary Rresults of New Shipper Review*), 71 Fed. Reg. 32,923 (June 6, 2006)
Honey-PRC 06/16/06	*Honey from the People's Republic of China: Rescission oand Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
Honey-PRC 10/04/06	*Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty New Shipper Reviews*, 71 FR 34893 (June 16, 2006)
Honey-PRC 07/11/07	*Honey from the People's Republic of China*, 72 FR 37713 (July 11, 2007) (AR final)
	Hot-Rolled Carbon Steel Flat Products-India
HR Carbon Flat Products-India 10/03/01	*Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 50406 (October 3, 2001)
	Hot-Rolled Carbon Steel Flat Products - Netherlands
HR Flat Products-Netherlands 05/22/07	*Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 72 FR 28676 (May 22, 2007)
	Hot-Rolled Carbon Steel Flat Products-PRC
HR Carbon Flat Products – PRC 05/03/01	*Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 22,183 (May 3, 2001)
HR Carbon Flat Products – PRC 09/28/01	*Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001)
	Hot-Rolled Carbon Steel Flat Products-Romania
HR Carbon Flat Products-Romania 05/30/06	*Certain Hot-Rolled Carbon Steel Flat Products from Romania:Final Results of Anditumping Duty Administrative Review and Rescission in Part of Administrative Review*, 71 FR 30656 (May 30, 2006)
	Iron-Metal Castings- India
Iron-Metal Castings- India 11/12/99	*Certain Iron-Metal Castings From India: Preliminary Results and Partial Recission of Countervailing Duty Administrative Review*, 64 FR 61592 (November 12, 1999) (unchanged in final results)
	Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled-Japan
LNPPs-Japan-07/23/96	*Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan*, 61 FR 38139 (July 23, 1996)
	Laminated Woven Sacks-PRC
Woven Sacks-PRC 01/31/08	*Laminated Woven Sacks from the People's Republic of China*, 73 FR 5801 (January 31, 2008)
	LWRP - PRC

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
LWRP - PRC 01/30/08	*Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR. 5500 (Jan. 30, 2008)
	Lined Paper Products-PRC
CLPP-PRC –Memo 08/30/2006	*Commerce Department Decision Memorandum, re: China's Status as a Non-market Economy* prepared for AD investigation of *Certain Lined Paper Products from the People's Republic of China*, dated August 30, 2006
CLPP-PRC 09/08/06	*Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic o China,* 71 Fed. Reg. 53079, (September 8, 2006)
	Lemon Juice-Argentina
Lemon Juice- Argentina 04/26/07	*Lemon Juice from Argentina: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances* 72 FR 20820, April 26, 2007
	Light-Walled Rectangular Pipe and Tube-PRC
LWR-PRC 06/24/08	*Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652 (June 24, 2008)
	Live Swine-Canada
Live Swine-Canada 04/14/97	*Live Swine From Canada,* 67 Fed. Reg. 18087 (April 14, 1997) (final CVD AR)
Live Swine-Canada 03/11/05	*Final Determination of Sales at Less Than Fair Value, Live Swine From Canada,* 70 FR 12181 (Mar. 11, 2005)
	Low Enriched Uranium-France
LEU-France 08/03/04	*Low Enriched Uranium From France,* 69 FR 46501 (August 3, 2004) (final AR)
	Magnesium Metal-Russia
Magnesium Metal-Russia 02/24/05	*Magnesium Metal from the Russian Federation,* 70 FR 9041 (Dep't Comm. February 24, 2005) (final LTFV determ.)
	Malleable Iron Pipe Fittings-PRC
Malleable Pipe Fittings-PRC 12/23/05	*Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 70 FR 76234 (December 23, 2005)
Malleable Pipe Fittings-PRC 06/29/06	*Malleable Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 37,051 (June 29, 2006)
	Manganese Metal-PRC
Manganese Metal-PRC 11/06/95	*Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
Manganese Metal-PRC 03/13/98	*Manganese Metal from the People's Republic of China,* 63 Fed. Reg. 12,441 (Dep't Commerce)(Mar. 13, 1998)(final determination of sales at less than fair value)
Manganese Metal-PRC 09/13/99	*Manganese Metal from the People's Republic of China,* 64 FR 49447 (September 13, 1999)
	New Pneumatic Off-the-Road Tires-PRC
Initiation Notices	*Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China,* 72 FR 43591 (August 6, 2007), and *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 72 FR 44122 (August 7, 2007)
OTR Tires-PRC-CVD 12/17/07	*Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71,374 (Dec. 17, 2007)
OTR Tires-PRC-AD 02/20/08	*Certain New Pneumatic Off-The-Road Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 9278 (February 20, 2008)
OTR Tires-PRC-AD 04/21/08	*Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Affirmative Preliminary Determination of Critical Circumstances,* 73 Fed. Reg. 21312 (Apr. 21, 2008) (AD)
OTR Tires-PRC-CVD 04/22/08	*Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Notice of Preliminary Negative Determination of Critical Circumstances,* 73 Fed. Reg. 21588, (April 22, 2008) (CVD)
	Oil Country Tubular Goods- Canada
OCTG-Canada 09/04/90	*Final Determination of Sales at Less Fair Value: Oil Country Tubular Goods from Canada,* 55 FR 50739 (December 10, 1990)
	Oil Country Tubular Goods- Japan
OCTG-Japan 09/07/99	*Oil Country Tubular Goods from Japan: Preliminary Results of Administrative Review,* 64 FR 48,589 (Sept. 7, 1999)
	Oil Country Tubular Goods-Korea
OCTG-Korea 06/28/95	*Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea,* 60 FR 33561 (June 28, 1995)
OCTG-Korea 03/06/07	*Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Administrative Review*, 72 FR 9,924 (Mar. 6, 2007)
	Open-End Spun Rayon Singles Yarn-Austria

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
Rayon Yarn-Austria 08/15/97	*Notice of Final Determination of Sales at Less Than Fair Value: Open-End Spun Rayon Singles Yarn From Austria***,** 62 FR 43701 (August 15, 1997)
	Orange Juice-Brazil
OJ-Brazil 01/13/06	Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: *Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006)
	Oscillating Fans and Ceiling Fans-PRC
Fans-PRC 10/25/91	*Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China*, 56 FR 55271 (October 25, 1991)
	Pasta-Italy
Pasta-Italy 06/14/96	*Notice of Final Determination of Sales at Less Than .Fair Value: Certain Pasta from Italy,* 61 FR 30,326 (June 14, 1996)
Pasta-Italy 11/29/05	*Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part,* 70 Fed. Reg. 71,464 (Nov. 29, 2005)
	Persulfates-PRC
Persulfates-PRC 02/10/03	*Persulfates from the People's Republic of China,* 68 FR 6712 (Feb. 10, 2003)
Persulfate-PRC 02/02/05	*Persulfates from the People's Republic of China*, 70 Fed. Reg. 6,836 (Dep't Commerce)(Feb. 2, 2005)
	Petroleum Wax Candles-PRC
Candles-PRC 03/15/04	*Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 69 FR 12121 (March 15, 2004)
	Polyester Staple Fiber-PRC
PSF-PRC 04/19/07	*Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007)
	Polyethylene Retail Carrier Bags-PRC
Bags-PRC 06/18/04	*Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China*, 69 Fed. Reg. 34125 (June 18, 2004)
Bags-PRC 03/19/07	*Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Administrative Review*, 72 FR 12762 (March 19, 2007)
Bags-PRC 09/10/07	*Polyethylene Retail Carrier Bags from the People's Republic of China*, 72 FR 51588 (September 10, 2007)
Bags-PRC 03/17/08	*Polyethylene Retail Carrier Bags from the People's Republic of China,* 73 FR 14216 (March 17, 2008) (final AR)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
	Polyethylene Retail Carrier Bags-Thailand
Bags-Thailand 06/18/04	*Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 34122 (June 18, 2004)
	Polyethylene Terephthalate Film, Sheet, and Strip-India
PET Film-India 2/17/05	*Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results Administrative Review*, 70 FR 8,072 (Feb. 17, 2005)
	Polyethylene Terephthalate Film, Sheet, and Strip-Korea
PET Film-Korea 04/03/08	*Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea*, 73 FR 18259 (April 3, 2008)
	Polyvinyl Alcohol-PRC
PVA-PRC 03/29/96	*Polyvinyl Alcohol from the People's Republic of China*, 61 FR 14057 (March 29, 1996)
PVA-PRC 05/15/06)	*Polyvinyl Alcohol from the People's Republic of China: Final Results of Administrative Review*, 71 FR 27991 (May 15, 2006)
	Porcelain-on-Steel Cooking Ware-PRC
POS Cookware-PRC 12/22/05	*Porcelain-on-Steel Cooking Ware from the People's Republic of China*, 70 FR 76027 (December 22, 2005)
POS Cookware-PRC 04/26/06	*Porcelain-on-Steel Cooking Ware from the People's Republic of China*, 71 FR 26441 (April 26, 2006)
	Potassium Permanganate-PRC
Potassium Permanganate-PRC 05/23/94	*Potassium Permanganate from the People's Republic of China*, 59 FR 26625 (May 23, 1994)
	Preserved Mushroom-India
Mushrooms-India 07/11/03	*Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 68 FR 41303 (July 11, 2003)
	Preserved Mushroom-PRC
Mushrooms-PRC 08/27/01	*Notice of Final Results of New Shipper Review: Certain Preserved Mushrooms from China*, 66 FR 45006 (August 27, 2001)
Mushrooms-PRC 03/05/04	*Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10414 (Mar. 5, 2004)
Mushrooms-PRC 09/09/04	*Certain Preserved Mushrooms from China: Final Results of New Shipper Review and Final Results Administrative Review*, 69 Fed. Reg. 54,635 (Sept. 9, 2004)
Mushrooms-PRC 07/21/05	*Certain Preserved Mushrooms from the People's Republic of China*, 70 FR 42,034 (July 21, 2005)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
Mushrooms-PRC 09/14/05	*Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 70 FR 54361 (Sept. 14, 2005)
Mushrooms-PRC 08/09/07	*Certain Preserved Mushrooms from the People's Republic of China*, 72 FR 44827 (August 9, 2007) (final AR)
Mushrooms-PRC 04/23/08	*Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 73 FR 21904 (April 23, 2008)
	Pure Magnesium-PRC
Pure Magnesium-PRC 09/27/01	*Pure Magnesium in Granular Form: Final Determination of Sales at Less Than Fair Value*, 66 FR 49345 (September 27, 2001)
Pure Magnesium-PRC 10/17/06	*Pure Magnesium from the People's Republic of China*, 71 FR 61019 (October 17, 2006)(final AR)
	Purified Carboxymethylcellulose-Finland
Carboxymethylcellulose-Finland 08/07/07	*Purified Carboxymethylcellulose from Finland; Preliminary Determination Administrative Review*, 72 FR 44,106 (Aug. 7, 2007)
	Refined Antimony Trioxide-PRC
Antimony Trioxide-PRC 02/28/92	*Refined Antimony Trioxide from the People's Republic of China*, 57 Fed. Reg. 6801 (February 28, 1992) (final LTFV determ.)
	Residential Door Locks And Parts Thereof-Taiwan
Door Locks-Taiwan 12/27/89	*Final Determination of Sales at Less Than Fair Value: Certain Residential Door Locks And Parts Thereof from Taiwan*, 54 FR 53153 (Dec. 27, 1989)
	Saccharin-PRC
Saccharin-PRC 11/15/94	*Saccharin from the People's Republic of China*, 59 Fed. Reg. 58,818 (Dep't Commerce)(Nov. 15, 1994)(final determination of sales at less than fair value)
	Sebacic Acid-PRC
Sebacic Acid-PRC 08/14/00	*Sebacic Acid from the People's Republic of China*. 65 FR 49,537 (Aug. 14, 2000)
	Shop Towels-Bangladesh
Shop Towels-Bangladesh 10/30/96	*Shop Towels from Bangladesh; Final Results of Antidumping Duty Administrative Review*, 61 FR 55,957 (Oct. 30, 1996)
	Silicomanganese-Brazil
Silicomanganese-Brazil 03/24/04	*Notice of Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 69 FR 13813 (March 24, 2004)
	Silicon Carbide*-PRC*

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
Silicon Carbide-PRC 05/02/94	*Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994)
	Silicon Metal-Brazil
Silicon Metal-Brazil 02/13/06	*Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*: 71 FR 7517 (February 13, 2006)
Silicon Metal-Brazil 02/15/00	*Silicon Metal from Brazil,* 65 FR 7497 (Feb. 15, 2000)
Silicon Metal-Brazil 08/06/98	*Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 42001 (August 6, 1998) (Unchanged in final)
	Silicon Metal-PRC
Silicon Metal-PRC 10/16/07	*Silicon Metal from the People's Republic of China,* 72 FR 58641 (October 16, 2007) and
	Silicon Metal-Russia
Silicon Metal-Russia 02/11/03	*Silicon Metal from the Russian Federation*, 68 FR 6885 (Feb. 11, 2003)
	Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe-Romania
Pipe-Romania 06/23/00	*Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 39125 (June 23, 2000)
Pipe-Romania 02/11/05	*Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania*, 70 Fed. Reg. 7237 (February 11, 2005) (final results admin. review)
	Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe-Germany
C&A Pipe-Germany 06/19/95	*Certain Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany*, 60 FR 31974 (June 19, 1995)
	Sodium Hexametaphosphate-PRC
Sodium Hex-PRC 02/04/08	*Final Determination of Sale at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China*, 73 FR 6479 (February 4, 2008)
	Softwood Lumber Products-Canada
Softwood Lumber-Canada 04/02/02	*Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada,* 67 FR 15539 (April 2, 2002)
Softwood Lumber-Canada 12/20/04	*Certain Softwood Lumber Products from Canada*, 69 FR 75,917 (Dec. 20, 2004)
	Solid Fertilizer Grade Ammonium Nitrate-Russia
Ammonium Nitrate-Russia 01/07/00	*Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation,* 65 FR 1,139, 1,143 (Jan. 7, 2000)
	Sparklers-PRC

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table	
Sparklers-PRC 05/06/91	*Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991)
	Stainless Steel Bar-Germany
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WBF-PRC 11/17/04	*Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) (final LTFV)
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WBF-PRC 08/22/07	*Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 46957 (Aug. 22, 2007) (amended Final AR & NSR)

APPENDIX II

ACRONYM AND ABBREVIATION TABLE *All cites in this table are listed alphabetically by acronym/abbreviation*	
Acronym/Abbreviation	**Full Name**
Act	Tariff Act of 1930, as amended
AFA	Adverse Facts Available
AMS	Automated Manifest System
API	American Pacific Industries, Inc.
Apollo	Apollo Tyres Ltd.
AQR	Response to Section A of the Antidumping Questionnaire
Armour Rubber	Xuzhou Armour Rubber Co., Ltd. (Xuzhou Xulun Rubber Co., Ltd)
Balkrishna	Balkrishna Industries Limited
BILLADJ1U	Billing Adjustment 1
BILLADJU	Billing Adjustments
Bridgestone	Bridgestone Americas Holding, Inc. and Bridgestone Firestone North American Tire, LLC.
CAFC	Court of Appeals for the Federal Circuit
CBP	U.S. Customs and Border Protection
CEA	Central Electricity Authority
CEAT	CEAT Limited
CEP	Constructed Export Price
CFR	Code of Federal Regulations
CIL	Coal India Limited
CIT	Court of International Trade
CMA	China Manufacturers Alliance LLC
COGS	Cost of Goods Sold
COM	Cost of Manufacture
CONNUM	Control Number
COP	Cost of Production
CQR	Response to Section C of the Antidumping Questionnaire
CVD	Countervailing Duty
Department	Department of Commerce
DEPB	Duty Entitlement Passbook Scheme
Domestic Producers	Petitioners and Bridgestone (Collectively)
DQR	Response to Section D of the Antidumping Questionnaire
ENTVALUE	Entered Value
EP	Export Price
EQR	Response to Section E of the Antidumping Questionnaire
FA	Facts Available
Falcon	Falcon Tyres Ltd.
FOP(s)	Factor(s) of production
GAAP	Generally Accepted Accounting Principles
G&A	General and Administrative Expenses
GAMC	Guizhou State Assets Management Company

ACRONYM AND ABBREVIATION TABLE *All cites in this table are listed alphabetically by acronym/abbreviation*	
GAR	Guizhou Advance Rubber Co., Ltd
GNI	Gross National Income
Goodyear	Goodyear India Limited
Govind	Govind Rubber Limited
GPX	GPX International Tire Corporation
GTC	Guizhou Tyre Co., Ltd.
GTCIE	Guizhou Tyre I/E Corp.
Guizhou Tyre	Guizhou Tyre Co., Ltd. ("GTC"), Guizhou Tyre I/E Corp. ("GTCIE"), Guizhou Advance Rubber Co., Ltd ("GAR"), Tire Engineering & Distribution Inc. ("TED"), and their affiliates (collectively)
Hanbang	Xuzhou Hanbang Tyres Co., Ltd.
Hebei Tire	Hebei Tire Co., Ltd.
HTS	Harmonized Tariff Schedule
ICC	Inventory Carrying Costs
IEA	International Energy Agency
ILO	International Labor Organization
INLFWCU	Inland Freight from the Warehouse to the Customer
INTNFRU	International Freight
ISE(s)	Indirect Selling Expense(s)
ITC	U.S. International Trade Commission
JK Industries	JK Industsries Ltd.
JV	Joint Venture
Kaier	Xuzhou Kaier Machinery Co., Ltd.
LTFV	Less than fair value
Malhotra	Malhotra Rubbers Ltd.
ME	Market economy
MEPs	Market economy purchases
MFR	MFR Tyres Ltd.
ML&E	Materials, labor and energy
MOE	Market Oriented Enterprise
NME	Non market economy
NV	Normal value
OEM	Original Equipment Manufacturer
OH	Overhead
OTR Tires	New pneumatic off-the-road tires
Petitioners	Titan Tire Corporation, a subsidiary of Titan International, Inc. ("Titan"), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC ("USW")
Pidilite	Pidilite Industries Ltd.
POI	Period of Investigation
POR	Period of Review

ACRONYM AND ABBREVIATION TABLE ***All cites in this table are listed alphabetically by acronym/abbreviation***	
PRC	People's Republic of China
Q&V	Quantity and Value
RBI	Royal Bank of India
SASAC	State-owned Assets Supervision and Administration Commission
SG&A	Selling, general and administrative expenses
SQR	Supplemental Questionnaire Response
SRA	Separate rate application
Starbright	Hebei Starbright Tire Co., Ltd.
SV	Surrogate Value
TED	Tire Engineering & Distribution Inc.
TERI Data	Tata Energy Institute's Energy Data Directory and Yearbook
TUTRIC	Tianjin United Tire & Rubber Co., Ltd
TVS	TVS Srichakra Limited
USBROKU	U.S. Brokerage Expense
USDUTY	U.S. Duty
Valmont	Valmont Industries Inc.
WARR1U	Warranty Expense 1
WARR2U	Warranty Expense 2
WARRU	Warranty Expenses
WPI	Wholesale Price Index
Xugong	Xuzhou Xugong Tyres Co., Ltd.
Xulun Tyre	Xuzhou Xulun Tyre Materials Trading Co., Ltd.
YLS	Yearbook of Labour Statistics published by the International Labor Organization

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