A-570-827
POR: 12/1/2006-11/30/2007
Public Document
Office 1: DL, AJM & JS

DATE: July 6, 2009

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

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

SUBJECT: Issues and Decision Memorandum for the 2006-2007 Administrative Review of Certain Cased Pencils from the People's Republic of China

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China ("PRC"). As a result of our analysis, we have made certain changes in the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we received comments and rebuttal comments by parties:

Comment 1: Collapsing Analysis
Comment 2: Three Star's Responses and Application of Adverse Facts Available
a. Market Economy Purchase Claims
b. Alleged Failure to Report Certain Information Warrants Application of AFA
Comment 3: Appropriate Labor Rate
Comment 4: Surrogate Values
a. Slats
b. Cores and Lacquer
c. Castor Oil, Kaolin Clay, and Packing
d. Steam Coal
Comment 5: Adjustment of the Pencil Slat Surrogate Value to Account for Wood Loss
Comment 6: Whether Certain World Trade Atlas ("WTA") Data Are Aberrational
Comment 7: Correction of Clerical Errors
Comment 8 Use of Wrong Surrogate Value for "Shell Card"

BACKGROUND

On January 7, 2009, the Department of Commerce ("Department") published the preliminary results of this review in the Federal Register.[1] The following events occurred after the Department published the Preliminary Results. On January 12, 2009, the Department sent supplemental questionnaires to China First, Three Star, and Rongxin, and received responses from China First and Three Star on February 2, 2009, and a response from Rongxin on January 29, 2009, and an addendum to that response on February 18, 2009. The Department sent a supplemental questionnaire to Three Star on February 20, 2009, and received a response on February 23, 2009. The Petitioners submitted comments on Three Star's February 23, 2009, supplemental response, on February 25, 2009. Additional supplemental questionnaires were sent to Rongxin, China First, and Three Star on March 25, and April 21, 2009, respectively, and responses were received from Rongxin on April 3, 2009, and from China First and Three Star on April 28, 2009. China First, Three Star, and Petitioners, Sanford L.P., Musgrave Pencil Company, RoseMoon Inc., and General Pencil Company ("Petitioners") submitted surrogate value comments on February 10, 2009. On February 9, and February 10, 2009, Petitioners submitted factual information, and China First and Three Star issued a rebuttal to that factual information on February 12, 2009.

From February 16 through February 28, 2009, we conducted verification of the questionnaire responses submitted by China First and Three Star. The Department released its verification reports for China First and Three Star to interested parties on May 22, 2009. On June 2, 2009, Petitioners, and the respondents, China First, Three Star, and Rongxin submitted case briefs. On June 8, 2009, Petitioners, China First, Three Star, and Rongxin submitted rebuttal briefs. None of the parties requested a hearing.

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received, we made the following changes in calculating the dumping margins: (1) we adjusted the surrogate value for slats to reflect wood loss in producing slats from lumber; (2) we corrected the WTA data, which we used as surrogate values, for certain exclusions and errors made in the Preliminary Results; (3) we made corrections to certain clerical errors. In addition, we have calculated separate antidumping margins for China First and Three Star. See Comment 1 below. For further details, see "Analysis for the Final Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Shanghai Three Star Stationery Industry Co., Ltd.," "Analysis for the Final Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: China First Pencil Co., Ltd.," "Analysis for the Final Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Shandong Rongxin Import & Export Co." and "2006-2007 Antidumping Duty Administrative

[1] See Certain Cased Pencils from the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 673 (January 7, 2009) ("Preliminary Results").

Review of Certain Cased Pencils from the People's Republic of China: Factor Valuation for the Final Results" memoranda, all dated July 6, 2009.

DISCUSSION OF THE ISSUES

Comment 1: Collapsing Analysis

Petitioners' Affirmative Comments:
Petitioners argue that in the Preliminary Results, the Department properly determined that China First and Three Star are affiliated and should remain collapsed as a single entity for antidumping purposes. Petitioners explain that the Department first collapsed these companies in the 1999-2000 administrative review based on Shanghai Light Industry's ("SLI's") order number 005 instructing China First to merge with Three Star, absorb all of Three Star's capital, form a group company that would include Three Star, and manage Three Star and coordinate its sales and purchases. See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum at 36 ("1999-2000 Final Results"). According to Petitioners, the Department additionally found in that administrative review that: 1) China First issued loans to Three Star; 2) China First exercised its leadership role through review of Three Star's financial statements and managerial oversight; and 3) China First renamed itself a Group Company, which reflected the terms of SLI's order number. Petitioners note that China First's and Three Star's failure to provide information about their relationship also factored into the Department's decision to collapse in the 1999-2000 review. Petitioners stress that the Court of International Trade ("CIT") affirmed the Department's determination in the 1999-2000 Final Results.[2]

Since the 1999-2000 review, Petitioners point out that the Department has collapsed China First and Three Star in four successive administrative reviews. In the 2001-2002 review, the Department concluded that China First and Three Star had not presented information demonstrating that their intertwined relationship had changed or that SLI's order number 005 had been revoked or rejected by China First's board.[3] Petitioners note that the Department stated in that review that evidence of actual control is not required, just the ability to control, and evidence indicated SLI was in a position to direct both China First and Three Star. In the 2002-2003 and 2003-2004 reviews, the Department used partial adverse facts available to determine the companies' relationship, and concluded the companies were affiliated and continued to collapse them.[4]

Petitioners allege that the facts in this current review remain substantively unchanged from the

[2] See Kaiyuan Group Corp. v. United States, 391 F. Supp. 2d 1317, 1323-25 (2005) ("Kaiyuan Group v. U.S.").
[3] Petitioners note that the Department's finding was again upheld by the CIT. See China First Pencil Co., Ltd. v. United States, 427 F. Supp. 2d 1236 (2006).
[4] See Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 42301 (July 22, 2005) and accompanying Issues and Decision Memorandum at Comment 1 ("2002-2003 Final Results"); Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 38366 (July 6, 2006) and accompanying Issues and Decision Memorandum at Comment 7 ("2003-2004 Final Results");

previous review. The sole change, Petitioners assert, is the transfer of oversight responsibility from SLI to Huangpu District State Assets and Supervision Committee ("HSAAO"). Petitioners argue that this does not affect the relationship underpinning the previous affiliation and collapsing determinations as the Department found HSAAO maintains the same role regarding China First and Three Star that SLI had. Petitioners allege that SLI order number 005 was never revoked. Petitioners assert that the affidavit of their consultant, submitted to the Department on February 10, 2009, provides further corroboration that China First and Three Star remain under common control.[5] Petitioners note that the consultant conducted research regarding the relationship between the two companies, and China First and Three Star did not contest the accuracy of the consultant's statements.

Petitioners assert that the Department correctly recognized in the Preliminary Results that the fundamental facts regarding this issue remain unchanged and the transfer of oversight responsibility from SLI to HSAAO did nothing to alter the companies' relationship. Petitioners note that having determined China First and Three Star to be affiliated, the Preliminary Results also properly collapsed the companies, finding that HSAAO's ownership and supervisory function met the common control criteria, China First's and Three Star's production of pencils met the identical production requirement, and there is significant potential for manipulation of price or production (given SLI order number 005, the order's implementation by the parties, and the parties ongoing relationship with HSAAO). Petitioners conclude with a reminder that in past reviews China First and Three Star did not fully cooperate with regard to the Department's investigation into their relationship.

China First and Three Star Affirmative Comments:
China First and Three Star argue that they are not affiliated and/or should not be collapsed. China First and Three Star allege that there were factual inaccuracies in the Department's Preliminary Collapsing Memo,[6] including: 1) the 1997 merger, referenced by the Department at page 4 of the Preliminary Collapsing Memo, never took place; 2) despite the Department's statement that China First and Three Star have common ownership as demonstrated by HSAAO's administrative oversight over both, HSSAO has no ownership in China First or Three Star except in trust on behalf of "all the people," and administrative oversight by HSAAO cannot and does not give rise to affiliation; 3) contrary to the Department saying that SLI's relationship with China First and Three Star is unchanged from the previous review, SLI gave its oversight responsibilities to HSAAO in late 2005; and 4) although the Department said that the person appointed by China First as president of Three Star continued in that capacity, China First did not appoint any management or personnel to Three Star, and the general manager of Three Star was nominated by SLI but was approved and appointed by Three Star's Employee Representative Committee.

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[5] See Letter from Petitioners, dated February 10, 2009, entitled "Submission of Factual Information to Rebut, Clarify, or Correct Factual Information Submitted by Other Interested Parties" ("Petitioners' Rebuttal Factual Information Submission").
[6] See Memorandum from Alexander Montoro to Susan Kuhbach, entitled "Whether to Continue to Collapse China First and its Subsidiaries with Three Star," December 30, 2008 ("Preliminary Collapsing Memo").

China First and Three Star argue that based on the current facts of this case (and the past facts, properly evaluated) the Department should find that the two companies are not affiliated. China First and Three Star acknowledge that they are affiliated in a technical sense because Three Star is a state-owned factory and a bloc of China First's shares is held in trust for the state. Thus, they liken themselves to other Chinese companies that are part of the Department's presumed "China-wide entity." According to China First and Three Star, what sets them apart from the other companies that are part of the PRC-wide entity is that both China First and Three Star are under the same state-ownership entity, the HSAAO (and previously SLI).

China First and Three Star point out that the Department has acknowledged the "unique relationships which arise in non-market economies ("NME") between individual companies and the government," in applying its separate rates policy and allowing companies like China First and Three Star to be viewed as distinct from the PRC-wide entity. However, in treating China First and Three Star as affiliated because of HSAAO's administrative oversight of the two companies, the Department is finding affiliation on the basis of common ownership, according to China First and Three Star. These companies claim that Chinese law and regulations demonstrate that ownership and operational control are separate and that the distinction and distance between ownership and operational control have permitted the Department in other proceedings to assign separate rates to companies that are state- or commonly owned.

China First and Three Star assert that at verification the Department learned that the function of HSAAO is supervise state assets by preventing fraud and embezzlement while leaving the actual business operations to the company manager. In addition, they assert that HSAAO officials stated that Chinese law separates ownership rights from operational rights, such that the state-owned assets supervision and administration authority should not interfere in company production and operations activities. Therefore, according to China First and Three Star, the Department verifiers concluded there was no indication of direct HSAAO involvement in China First's business operations

China First and Three Star further assert that the documents reviewed by the Department clearly establish that no merger occurred between the two companies. While China First shareholders took up and made a resolution in May 1997 to change the name of the company to incorporate the word "Group," the reference to including Three Star among 16 companies to form a loose, association-like group appears in a general, non-resolution introduction to the document, but it was not formally presented nor made a resolution, according to China First and Three Star.

China First and Three Star contrast China First's alleged merger with Three Star with China First's the purchase of Shanghai Yibeide Industry Co., Ltd. The latter event was reflected in corporate governance documents published in the newspaper and in China First's annual report and financial statements. China First and Three Start assert that if a merger had occurred between them, it would have been similarly reflected in China First's annual report.

China First and Three Star assert that record evidence shows their relationship was not derived from cross-ownership, but from a limited contractual relationship. They argue that China First performed certain consultancy-like administrative functions on behalf of SLI, including sanitation, worker safety, and yearbook requirements. They assert that while the verification report states that none of the documents related to these services establishes the duration of the consulting contract, the report is incorrect. China First claims that it demonstrated the limited duration of reporting in its monthly publication, thus showing that reporting only continued until January 2001 (with the contract concluding at the end of 2000). In addition, according to China First and Three Star, the other notion of non-ownership control, via China First's loans to Three Star, was also shown to be of limited duration, with Three Star paying off the loans in 2003.

China First and Three Star also assert that China First's outside corporate lawyers, after undertaking a review of China First's corporate records and the applicable law, issued a legal opinion in May 2004 and concluded no merger could have occurred and none did. China First and Three Star assert that the lawyers suggested that China First address the question of the efficacy of SLI's order number 005 directly to SLI and request that the order officially be rendered ineffective and withdrawn. China First and Three Star note that in June 2004, the China First board of directors asserted the SLI order number 005 was never implemented, or in any way acted upon, and requested SLI to state the order was never enforced. According to China First and Three Star, SLI replied that it had agreed to stop implementing the order, that mergers shall be done by companies themselves, that China First's management consulting services were limited, and that SLI decided to rescind order number 005 effective retroactively to the original issuance date.

China First and Three Star argue that the Department has ruled against collapsing where the factors in favor of manipulation are stronger than here. They assert that in Ball Bearings from France, et al., the Department found, and the CIT agreed, that a respondent and its affiliate should not be collapsed because under the totality of circumstances there was insufficient evidence to warrant collapsing the two companies.[7] China First and Three Star also assert that in the instant case, the Department should also find that regardless of affiliation, the totality of the circumstances show that China First and Three Star operate independently and there is no significant potential to manipulate prices or production of the other.

According to China First and Three Star, a recent International Trade Commission ("ITC") report strongly supports the finding that HSAAO would not and could not exercise common control over China First and Three Star.[8] They state that the ITC China Report notes that the purpose of the State-Owned Asset Supervision and Administration Commission ("SASAC") was to consolidate functions that other government agencies previously provided, and the SASAC's operating guidelines limit its management of the production and operational activities of state sector firms. In addition, they note that the ITC China Report makes clear that the Chinese government created the SASACs in order to facilitate corporate autonomy, not to exert greater

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[7] See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 70 FR 54711 (Sept. 16, 2005) and accompanying Issues and Decision Memorandum at Comment 10 ("Ball Bearings From France, et al."); Koyo Seiko Co., Ltd. v. United States, 415 F. Supp. 2d 1323, 1346 (Ct. Int'l Trade 2007). According to China First and Three Star, the affiliate owned a minority share in Koyo, the two companies shared "non-stationed" auditors, but the companies did not share employees.

[8] See China: Description of Selected Government Practices and Policies Affecting Decision Making in the Economy, USITC Pub. No. 3978, at 25 (Dec. 2007) ("ITC China Report").

state control over them.

China First and Three Star further assert that the Department has previously indicated that common "ownership" by a SASAC entity is insufficient and cannot stand alone as proof that the two companies are affiliated.[9] China First and Three Star argue that in Steel Plate, the Department emphasized that the company arguing for non-affiliation must prove autonomy from the government under four de facto control factors. They assert that they have made such a showing in this review and ever since the case was filed in 1994. Moreover, according to China First and Three Star, Steel Plate stands for the proposition that the burden of proof lays with the Petitioners to show evidence that the state-assets commission exercised control over China First and Three Star.

China First and Three Star also reference LWTP from the PRC, in which the Department granted separate rate status to Guanhao, which the petitioner alleged was controlled by the government.[10] In that case, China First and Three Star assert that in finding no de facto or de jure control, the Department held that circumstantial evidence suggesting the respondent is under de facto control is insufficient.[11] According to China First and Three Star, Petitioners have made only inferences that China First in controlled by government entities, but they have not submitted specific proof. China First and Three Star noted that while Steel Plate and LWTP from the PRC deal with separate rate status and not necessarily affiliation, they provide analysis of government control, a fundamental premise of the Department's prior findings that China First and Three Star are affiliated.

Petitioners' Rebuttal Comments:

Petitioners assert that China First's and Three Star's arguments do not hinge on any new information presented in this review. Petitioners argue that China First and Three Star have not addressed the rationales set forth in the previous determinations regarding collapsing them. Petitioners assert that the Department provided a summary of the factual bases underlying the affiliation and collapsing determination in the Remand Results pursuant to the Kaiyuan Group v. U.S. CIT case.[12] Petitioners recapped much of this history in their affirmative presentation summarized above. Petitioners assert that the Department provided a similar recap in the 2001-2002 Final Results.[13] Petitioners argue that in 2001-2002 Final Results, the Department rejected

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[9] See Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Preliminary Results of New Shipper Review, 73 FR 67124, 67125 (Nov. 13, 2008) ("Steel Plate") ("consistent with long-standing policy and practice, we find that ownership by a government entity such as the Hunan SASAC or central SASAC, in and of itself, is not germane to Valin Xiangtan's eligibility for a new shipper review").

[10] See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (Oct. 2, 2008) and accompanying Issues and Decision Memorandum at Comment 7 ("LWTP from the PRC").

[11] In LWTP from the PRC, the Department rejected a claim that respondent Guanhao was controlled by the government for the simple reason the company's chairman also served on a board of a government entity.

[12] See "Final Results Of Redetermination Pursuant to Court Remand Kaiyuan Group Corp., et al v. United States And Pencil Section Writing Instrument Manufacturers Ass'n, et al.," Court No. 02-00573," Sept. 30, 2004 ("Remand Results").

[13] See Certain Cased Pencils From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 29266 (May 21, 2004) and accompanying Issues and Decision Memorandum at 17 ("2001-2002 Final Results").

the same formalistic arguments raised in the current review, i.e., the Chinese law provided certain notification requirements for mergers and, regardless of the formalities that should have been followed, that China First and Three Star entered into a relationship reflective of the merger directive in SLI order number 005. Petitioners repeat that the Department reiterated these findings in the 2002-2003 and 2003-2004 administrative reviews. Petitioners summarize the Department's findings by noting that the Department concluded that the facts demonstrated SLI's ability to direct the two companies' activities and that the companies' operations were intertwined. Petitioners assert that China First and Three Star did not acknowledge in their case brief that an HSAAO official advised the Department at verification that SLI's responsibilities regarding the oversight of the state assets in China First and Three Star were not different than those currently held by HSAAO.[14] Thus, Petitioners conclude that the factual premises for the Department's affiliation finding have not been modified in this review.

Petitioners rebut China First's and Three Star's arguments that the Department should not collapse them because of restrictions placed on HSAAO's involvement in the companies it supervises pursuant to Chinese law, the lack of evidence that HSAAO interfered in their operations in the current review, and questions concerning whether the Department can make a collapsing determination in an NME economy case. Petitioners assert that these arguments have been addressed by the Department several times. Petitioners argue that the Remand Results provided a thorough discussion of the collapsing factors' application to the facts of the China First-Three Star relationship. Petitioners note that the Remand Results stated that China First and Three Star overcame the presumption of common governmental control as it relates to their export activities, but this does not rule out other types of common control, and record evidence from the 1999-2000 review indicates that China First and Three Star acted in concert with direction given them by SLI. Petitioners assert that SLI exercised its supervisory powers to direct a merger through order number 005, that China First and Three Star acted in accordance with the order, and that SLI's power reflects the issue of the ability to control, upon which the Department focuses in such inquiries. Petitioners argue that since HSAAO has the same relationship and control authority with these companies as SLI did, the issue of whether HSAAO exercised that control authority in the current review is beside the point, as the fact of the control authority itself is the crucial point. Petitioners assert that the other collapsing factors are met: both companies produce identical merchandise and the control that China First exercised over Three Star at SLI's direction poses significant potential for the manipulation of price and production.

Petitioners note that although China First and Three Star provide certifications which address affiliation between NME companies for separate rates analyses, the Department has specifically distinguished the separate rates and collapsing inquiries in an NME context.[15] Petitioners assert that while China First and Three Star argue the Petitioners carry the burden of demonstrating that these companies should be collapsed, they overlook the fact that Petitioners already did so in the 1999-2000 administrative review. Petitioners conclude by noting that the Department has consistently placed the burden on China First and Three Star to demonstrate that the collapsing

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[14] See "Verification of Sales and Factor Response of China First Pencil Co., Ltd. in the Antidumping Administrative Review of Certain Cased Pencils from the People's Republic of China, Public Version," May 22, 2009, at 14 ("China First Verification Report").

[15] See Remand Results at 4-6 and 2001-2002 Final Results at 18-19.

decision should be reversed.

China First and Three Star Rebuttal Comments:
China First and Three Star counter that it would be improper for the Department to impute whatever lack of cooperation they exhibited in the 1999-2000 review (or any other review) on the current review. China First and Three Star assert that the Department's treatment of "affiliation" in Chinese cases, particularly those involving companies with whole or partial state ownership, has been confusing, and the kinds of Chinese company policies that gave rise to this issue do not fit the normal paradigm of affiliation and collapsing. China First and Three Star reiterate their view of the facts of the case. China First and Three Star assert that they have demonstrated SLI order number 005 was never implemented as written, and whatever its status in 1997 or 2002, it was not in force over the last several years inclusive of the period of review ("POR").

China First and Three Star note that whatever the findings of the Department in the past, in this review for the first time, a concerted effort was made to interview and discuss with government officials (HSAAO) the precise nature of the affiliation and connections between companies under administrative oversight by the same government entity. China First and Three Star note that the Department found no indication of direct HSAAO involvement in China First's business operations in its review of China First's corporate structure, its meeting with HSAAO, and its subsequent review of China First's management of its sales and production.[16]

China First and Three Star assert that in considering this issue in the past, the Department sometimes appeared to be relying on common control of the companies by SLI, and at other times, it seemed the Department was relying on China First's purported control over Three Star by virtue of the supposed merger. China First and Three Star assert that they have consistently acknowledged the miniscule number of transactions between them (relating to supply of certain inputs from China First-related affiliated suppliers), but how their operations were intertwined has never been elucidated by the Department, especially not in the Preliminary Results for the current case. China First and Three Star emphasize that the Department found at verification that there was no other evidence (other than proposals to form a group company) that China First coordinated its selling and pricing activities with Three Star or any other exporters not reported as subsidiaries during the POR.[17] According to China First and Three Star, the Department similarly found at the Three Star verification no evidence that government entities were involved in negotiating prices, setting prices or sales targets, appointing management, financing losses, or making other decisions affecting the company's export operations and found nothing in the review of the sales process and sales traces indicating Three Star coordinates sales activities with other exporters.[18] China First and Three Star note that the only interaction between them identified by the Department was purchases of inputs by Three Star from certain China First subsidiaries that Three Star reported in its response.[19]

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[16] See China First Verification Report at 12.
[17] See China First Verification Report at 20.
[18] See "Verification of Sales and Factor Response of Shanghai Three Star Stationery Industry Co., Ltd in the Antidumping Administrative Review of Certain Cased Pencils from the People's Republic of China," May 22, 2009, at 13 ("Three Star Verification Report").
[19] See Three Star Verification Report at 8.

China First and Three Star note that the Department examined in depth China First employment, management, and payroll records to ascertain the status of Three Star's general manager, a former manager of one of China First's subsidiary companies. They explain that the Department confirmed that this manager was on China First's subsidiary's books in 1997, but he was not found in China First's records after that.

China First and Three Star argue that each review period stands on its own and that facts and circumstances change with time. China First and Three Star assert that the Department has reviewed many cases where even current managers are involved in two companies simultaneously, and has still found a lack of common control.[20] China First and Three Star cite to section 351.102(b)(3) of the Department's regulations describing how the Department determines whether control over another person exists. They note that the CIT has interpreted this regulation to mean that the Department must weigh the nature of entities' contacts over time, and must determine how such contacts potentially impact each entity's business decisions with recognition that sporadic or isolated contacts between entities, absent significant impact, would be less likely to lead to a finding of control.[21] China First and Three Star conclude that the very factors that drive the finding of the potentiality for two companies to manipulate price or production, as required by section 351.401(f)(1) of the Department's regulations, are entirely absent in this case. China First and Three Star assert that even if two Chinese companies with state ownership can be found to be affiliated outside the context of a separate rates analysis, the Department should find China First's and Three Star's operations are not so intertwined to render them collapsible under the Department's regulations and long-standing practice.

Department's Position:
We agree with China First and Three Star that a basis no longer exists to collapse these two companies pursuant to section 351.401(f) of the Department's regulations because the facts on the record no longer support a finding that there is a significant potential for manipulation of price or production between the two companies.

Section 351.401(f) of the Department's regulations state that the Department "will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products … and the Secretary concludes that there is a significant potential for the manipulation of price or production." Section 351.401(f)(2) of the regulations goes on to provide that the factors the Department may consider when determining whether there is a "significant potential for manipulation" include: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) 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. See also Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 12764, 12774 (March 16, 1998), and Notice of Final Determination of Sales at Less Than

[20] See, e.g., Honex Enterprises, Inc. v. United States, 27 CIT 272, 248 F. Supp. 2d 1323 (2003) ("Honex Enterprises").
[21] See Honex Enterprises, 27 CIT at 296, 248 F. Supp. 2d at 1344.

Fair Value: Collated Roofing Nails From Taiwan, 62 FR 51427, 51436 (October 1, 1997).

Petitioners and China First and Three Star appear to agree that HSAAO's role and function with respect to Three Star and China First is no different than the previous SLI's role and function, although they disagree on the nature of that role and function. The Department also agrees that the role and function is unchanged, but only with respect to HSAAO in the POR and not necessarily with respect to other State-Owned Assets Supervision and Administration Commissions ("SASAC").

SASACs are relatively new, and the Department does not have much understanding of their de facto functions and roles, which appear to be evolving over time, with respect both to the State-Owned Enterprises ("SOEs") under their jurisdiction and other PRC government agencies. On the one hand, SASAC's mandate is to act as conservator of the government's shareholdings and to maximize returns on those assets. On the other hand, SASAC is responsible for overseeing SOE investments and ensuring that they are consistent with state industrial policies. The apparent tension between these two goals raises questions about how SASAC's de facto role and function will evolve over time, particularly with respect to the nature and scope of any control that SASAC exercises over day-to-day management of the SOEs under its jurisdiction.

In this administrative review, HSAAO and China First and Three Star company officials reiterated HSAAO's de jure role as conservator of state assets charged with maximizing investment returns.[22] Those officials emphasized that HSAAO does not have and did not exercise control over day-to-day management or operations at either Three Star or China First.[23] The verification team found no evidence of such control either at HSAAO or the two companies.[24] For this reason, the Department has determined that there is no reason in this administrative review to collapse Three Star and China First on the basis of HSAAO's ownership of the two companies alone. Nevertheless, given the Department's limited knowledge and understanding about the role and function of SASACs in general and how it will likely evolve over time, the Department plans to closely follow developments in this area and carefully analyze relevant facts and information that are placed on the record in future antidumping proceedings and future segments of this proceeding.

The Department now turns to the question of whether there are other bases for collapsing Three Star and China First in this administrative review. Assuming, arguendo, that China First and Three Star could be found to be affiliated, and given that both companies have production facilities for identical products, we focus our analysis on the question of whether there is a significant potential for the manipulation of price or production between the two companies. Petitioners argue that none of the circumstances that formed the basis of the Department's original collapsing determination have changed. China First and Three Star, on the other hand, hold that the basis to collapse never existed in the first place. The Department does not agree with either position and has instead determined that there has been a change in the factual

[22] See China First Verification Report at 12-14. See also China First Second Supplemental Questionnaire Response, February 2, 2009 at 2-6 ("China First Second SQR")
[23] See id.
[24] See China First Verification Report at 4-21 and Three Star Verification Report at 3-14.

circumstances giving rise to its previous decisions to collapse.

The Department originally collapsed China First and Three Star in the 1999-2000 administrative review.[25] In the Department's collapsing analysis for that review, the focus of the discussion was on whether the two companies' operations were intertwined.[26] The Department cited as evidence for the existence of intertwined operations and shared management in 1999-2000 the following information provided by Petitioners:[27]

1) A contract for China First to assume "indirect advising responsibility" for Three Star in safety, sanitation, and yearbook issues (i.e., the management consulting arrangement).

2) The issuance of the 1997 SLI order number 005 instructing the two companies to merge.

3) China First loans to Three Star starting in 1997.

4) Information that China First reviews Three Star's financial statements and stamps them with the China First Seal.

5) The appointment of the China First president to be concurrent president of Three Star in 1997.

6) China First's name change to "China First Pencil Group Co., Ltd." in 1997.

7) Photographs from a trade fair which Petitioners argue showed the two companies conducted joint marketing operation.

In discussing this merger order in the context of the 1999-2000 Final Results, we stated that "the degree of interaction between the two companies is far greater than we previously believed and the form this action takes corresponds very closely to order 005 as it was issued by the SLI, indicating that the order may have been effectively implemented."[28] We also stated that the record did not indicate that the 1997 SLI order number 005 had been revoked. In those final results, the Department made clear that it was skeptical about the respondents' arguments regarding the merger issue in part because China First and Three Star had been less than forthcoming in providing relevant information on this issue. With reference to documents on China First-Three Star relations submitted by Petitioners, the Department stated that "it does not appear plausible that all these documents could be overlooked by a respondent that was making a good faith effort to respond to the Department's inquiries on a central case issue while at the same time actively rebutting evidence the Petitioners had uncovered and submitted on the record."[29]

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[25] See 1999-2000 Final Results at Comment 12.
[26] See id.
[27] See id.
[28] See id.
[29] See id.

The Department's collapsing decision for the 1999-2000 POR was upheld by the CIT in Kaiyuan Group v. U.S.[30] The evidence to support the Department's collapsing decision in the Remand Results corresponded to the evidence used in the initial final results of the 1999-2000 review with some clarifications.[31] On one key point concerning shared management, the Remand Results elaborated that "Three Star itself dismissed Mr. Hu {the president of China First who served concurrently as president of Three Star in 1997} from his position at Three Star and appointed Mr. Huang Zhenmin, the President and Chairman of one of China First's subsidiaries, to the position of President of Three Star, a position he retains to this date."[32]

In four subsequent administrative reviews in which China First and Three Star were the respondents, the Department based its decisions in favor of collapsing on determinations that China First and Three Star had not provided evidence to demonstrate that the facts on which the Department based its collapsing determination for the 1999-2000 POR had changed.[33] In the most recent review in which the collapsing issue was briefed, the Department stated it was basing its decision to collapse the two companies on the determination that the respondents have not presented any new evidence and that their arguments were identical to previous review in which the Department had treated China First and Three Star as a single entity."[34] Also in the 2003-2004 Final Results, we referenced the discovery of the Announcement of the "Decision (or "Resolution") made by the 2nd Section of the Second Session of the China First Pencil Co., Ltd. Shareholders' Meeting" ("May 27 Announcement") in which China First shareholders supported a proposal whereby China First would head a group of similar manufacturers which included Three Star.[35] Due to the Department's determination that the respondents failed to provide adequate evidence that the relationship of the two companies had changed, the Department continued in large part to model its collapsing decisions on the analysis from the 1999-2000 period.[36] In the most recently completed administrative review (2004-2005 Final Results), even though the Department took note of record information that Three Star had repaid its loans from China First and that SLI order number 005 had been formally rescinded by the SLI in 2004, the Department decided to continue collapsing the two companies based on ongoing joint oversight by the SLI as well as evidence of interaction between the two companies first considered in the 1999-2000 review.[37]

In this review, the Department, following the precedent of previous reviews, preliminarily found

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30 See Remand Results at 19-21.
31 See id.
32 See id. at 19.
33 See Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review 72 FR 27074 (May 14, 2007) ("2004-2005 Final Results"); 2003-2004 Final Results at Comment 7; 2002-2003 Final Results at Comment 1; 2001-2002 Final Results at Comment 6. In Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 43082 (July 21, 2003) ("2000-2001 Final Results") China First and Three Star were not respondents. No administrative review was completed for Pencils in for the 2005-2006 period.
34 See 2003-2004 Final Results at Comment 7.
35 See id.
36 See id.
37 See Memorandum from The PRC Pencils Team to James Maeder, Jr., entitled "Whether to Continue to Collapse CFP with Some or All of its Affiliated Companies," December 1, 2006 ("2004-05 Collapsing Memo"). This document was placed on the record of this review as an attachment to the Preliminary Collapsing Memo.

that the "potential manipulation" criterion of section 351.401(f) of the Department's regulations was satisfied, because China First and Three Star were subject to common ownership under joint HSAAO administrative oversight and also due to the "documented 1997 merger." On this basis, we decided preliminarily to collapse the two companies, stating that the Department intended to obtain additional information on the relationship of these companies for consideration in the final results.[38]

Since the Preliminary Results, the Department has reexamined information on the companies' relationship and obtained information through supplemental questionnaire responses.[39] We reviewed and clarified record information on this issue at verification.[40] We find that the facts on the record do not support a finding that there is a significant potential for manipulation of price or production between China First and Three Star.

As detailed above, the Department found in previous reviews that specific forms of interaction between the two companies demonstrated that they were complying with SLI's directive to merge. In this review, the verified changes in certain factual circumstances have led us to conclude that SLI order number 005 is no longer being implemented even on an ad hoc basis. We recognize that some of the same information regarding changes in the relationship of China First and Three Star, which we identify as significant in this review, were placed on the record of the 2004-2005 review.[41] However, in previous reviews, the Department determined it lacked sufficient timely information to support a finding that the two companies were not operationally intertwined and, therefore, continued to apply our original collapsing analysis.[42] In this review, we consider the totality of changes of facts concerning the two companies' relationship with the advantage of a longer historical view and a verification of the status of the two companies' relations in the current POR.

With regard to potential for manipulation stemming from the "documented 1997 merger," we have reviewed the history of this exercise and attempted to clarify the actual impact of the merger initiative on the de facto relationship of the two companies. Our objective in revisiting this history in the current review was to determine if there was a basis for finding, based on record information, that the merger initiative of 12 years ago still had any sort of legal or practical impact on relations between the two companies.

We find that the following changes indicate that there are no longer grounds to treat the two companies as a single entity.

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[38] See Preliminary Results, 74 FR at 674-676.
[39] See China First Second SQR and Three Star Second Supplemental Questionnaire Response, February 2, 2009 ("Three Star Feb. 2 SQR").
[40] See China First Verification Report and Three Star Verification Report.
[41] See, e.g., 2004-05 Collapsing Memo.
[42] See id., 2003-2004 Final Results at Comment 7 ; 2002-2003 Final Results at Comment 1; and 2001-2002 Final Results at Comment 6.

1. The management consulting arrangement in which China First assumed "indirect advising responsibility" for Three Star in safety, sanitation, and yearbook issues was terminated at the beginning of 2001. [43]
2. Three Star repaid its China First loans by mid-2003 and has had no loans or other financial arrangement with China First since it repaid the loans. [44]
3. We found no evidence of China First oversight of Three Star's financial statements in the POR. [45]
4. We found no China First or Three Star managers or board members working at both companies. We verified in personnel and payroll records that Huang Zhenmin, the current general manager of Three Star, had severed formal ties with China First at the end of 1997. (Huang is referenced in the Remand Results as proof of crossover management). [46]
5. We documented that China First dropped its China First Pencil Group Co., Ltd. name in December 1998. [47]
6. We reviewed the May 29, 1998 Work Report of the Directors that stated that "{t}he notion proposed in the 2nd Shareholders meeting that inviting Three Star and other companies of the industry to form a trade association – China Pencil Group – is suspended due to lack of positive action by the companies in the industry like Three Star." [48] This would appear to support the respondents' assertion that the two companies never merged in any formal sense pursuant to the SLI order number 005 and May 27 Announcement.

In the current review, we have not found any reference to the original "merger" or evidence of any practical effect stemming from the merger initiatives in the record information regarding the companies' POR operations which we corroborated at verification. Most importantly, we found no evidence in the POR that any of the written provisions of SLI order number 005 were still being implemented in contrast to what we found in the 1999-2000 POR.[49] For example, a key point in SLI order number 005 was the provision that China First "should absorb Shanghai Three Star Stationery Industry (Three Star) implement capital reconstruction and to prepare for the establishment of Pencil Group." [50] This capital reorganization provision provides a common thread between the SLI order number 005 and the China First Shareholders May 27 Announcement which stated that "{s}etting up China Pencil Group would reorganize capitals {sic}." [51] The Department argued in the Kaiyuan v. U.S. litigation covering the 1999-2000 POR

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43 See China First Verification Report at 10-11.
44 See China First Verification Report at 15-16 and Three Star Verification Report at 9-10.
45 See China First Verification Report at 4-21 and Three Star Verification Report at 4-14.
46 See China First Verification Report at 7, 16-17 and Verification Exhibit 4; and Three Star Verification Report at 6, 10-11 and Verification Exhibit 2C.
47 See China First Verification Report at 10 and Verification Exhibit 6
48 See id.
49 See Three Star Post-Verification Supplemental Questionnaire Response, April 28, 2009 at Exhibit 1 (copy of SLI order number 005) ("Three Star Post-Verification SQR"). As a resolution of the shareholders assembly of a publicly listed company, the Stock Exchange Authority required that the resolution be publicly announced. Although the May 27 Announcement appears to support what we understand to be the basic proposition of the SLI order number 005, we found no specific reference to this SLI directive in the May 27 Announcement.
50 See Three Star Post-Verification SQR at Exhibit 1.
51 See translation of the May 27 Announcement in the Department's January 12, 2009 Post-Prelim (3rd) Supplemental Questionnaire (attachment).

that loans provided by China First to Three Star in the 1997 to 2000 period established that China First was implementing the provisions of SLI order number 005 and the May 27 Announcement regarding capital reorganization.[52] At verification in the current review, the Department confirmed that Three Star had repaid all of the loans provided by China First by the middle of 2003, and no new intercompany loans were provided after that date.[53] We found no other evidence of a financial relationship between the two companies in the POR.

The Department also cited to certain oversight responsibilities taken on by China First with respect to Three Star as support for collapsing in the 1999-2000 period.[54] In the verification for the current review, we established that during the period 1998 up through the beginning of 2001, there was an active arrangement for China First to provide management consulting services to Three Star at the behest of the SLI.[55] China First characterized these activities as a service-for-fees arrangement in which it provided advice and inspections on the control of materials in and around production areas in order to improve worker safety and increase efficiency in the production process through improvements in handling materials and ensuring that Three Star's annual yearbook, including financial statements, was properly filed with the government authorities.[56] At verification, we found no evidence that this arrangement continued after 2000 or 2001.[57] China First and Three Star are correct in pointing out that the December 25, 1998 contract confirmation from SLI to China First specified a "three year indirect supervision fee" for the services that China First agreed to provide starting on February 28, 1998, contrary to the statement in the verification report.[58] In any event, we found that this management consulting arrangement ended no later than early 2001, and no evidence exists to suggest that another arrangement ever took its place.

The Department also supported its collapsing decision in the Remand Results with evidence that the companies had common management.[59] In the Remand Results, we noted that the chairman of China First's board of directors served simultaneously as Three Star's legal representative or president in 1997, but left the Three Star post at the end of that year.[60] At the end of 1997, the general manager of one of China First's subsidiaries, Mr. Huang Zhenmin, became general manager of Three Star, a fact that the Department also interpreted as evidence of implementation of the merger order.[61] During verification at both China First and Three Star for the current review, we established from our review of both personnel records and corporate structure and

[52] See Remand Results at 19-21.
[53] See China First Verification Report at 15-16 and Three Star Verification Report at 9-10.
[54] See Remand Results at 19-21.
[55] See Three Star Supplemental Questionnaire Response, October 16, 2008 at Exhibit S-3, "Notice Regarding Delegating to China First Pencil Company Limited Indirect Advising of Shanghai Three Star Stationery Company" (February 25, 1998), China First Pencils Board of Directors' agreement to participate and provision of terms (February 28, 1998), and SLI agreement to China First Terms (December 25, 1998) ("Three Star Oct 16 SQR"). See also China First Verification Report at 10-11 and Three Star Verification Report at 7-8.
[56] See Three Star Oct 16 SQR at S-3.
[57] See China First Verification Report at 11.
[58] See Three Star Oct 16 SQR at S-3 and China First Verification Report at 10.
[59] See Remand Results 19-21.
[60] See id.
[61] See id.

governance at both companies that Mr. Huang had not worked for, or reported to, China First since his resignation from its subsidiary at the end of 1997.[62] We found no other evidence of shared management between the two companies.

We also reexamined a 2004 letter from China First's Board of Directors to the SLI requesting formal rescission of SLI order number 005 and a copy of the SLI rescission issued in response to this request, which was retroactive to January 21, 1997, the date that the original order was issued.[63] These documents had originally been submitted by China First in the 2004-2005 administrative review. The SLI order rescission document claims that no action was ever undertaken as a result of the SLI order number 005. The SLI also claims that China First's Board of Directors challenged SLI's legal authority to order a merger and, in response, the SLI stopped implementation. It also stated that the Three Star Employee Representative Committee rejected the order. The SLI also claimed that it engaged China First to provide management consulting services after it was clear SLI order number 005 would not be followed. While it is difficult to determine what weight to give the 2004 SLI rescission notice in our collapsing analysis, its description of events corresponds to the respondents' general story, and it affirms that that the municipal government itself was willing to publicly announce in 2004 that no formal arrangement existed between the two companies. The SLI's declaration by itself, however, is not an independent basis for changing our collapsing analysis which instead is based on the documented changes in the level of interaction between the two companies which we have just described.[64]

In the Affidavit of Petitioners' consultant at paragraphs 37-39, Petitioners offered proprietary information purporting to document certain facts about the relationship between China First and Three Star.[65] As this information is purely hearsay, we do not consider it in our collapsing analysis. It does not correspond to any other record evidence or to what Department analysts confirmed at verification.

In our previous reviews in this proceeding, the combined elements of the intercompany loans, the China First management consulting arrangement, and the presumption of some cross-over management supported the proposition that the 1997 merger order was being implemented and, as a result, a de facto finding of intertwined operations. Having removed these three factual elements in the current POR, we determine that the factual bases required to satisfy the "potential manipulation" criteria of section 351.401(f) of the Department's regulations no longer exist. Therefore, for purposes of calculating the margins of Three Star and China First in these final results, we will treat Three Star and China First as separate entities.

As noted above, the regulations specifically identify three factors that Department may consider in deciding whether there is a potential between or among affiliates to manipulate prices or production. The weight given to different factors depends on the circumstances of the case. In this review we find the extent to which China First and Three Star share managerial employees or

[62] See China First Verification Report at 16-17 and Three Star Verification Report at 10-11.
[63] See China First Second SQR at Exhibit 2S-1.
[64] See China First Verification Report at 4-17 and Three Star Verification Report at 3-11.
[65] See Petitioners' Rebuttal Factual Information Submission at Attachment A.

board members, and whether their operations are intertwined as factors where circumstances have demonstrably changed. We find that the evidence of changes in shared management and intertwined operations is so overwhelming that even if we were to find a level of common ownership in this review, we would not have sufficient bases to collapse the two companies in the 2006-2007 POR.

Comment 2: Three Star's Responses and Application of Adverse Facts Available

A. Market Economy Purchase Claims

Petitioners' Affirmative Comments:
Petitioners argue that Three Star's claims of market economy purchases were "entirely false" and, as a consequence of the company's "deliberate dishonesty," the Department should apply total adverse facts available ("AFA") in determining Three Star's dumping margin.[66] Petitioners highlight Three Star's inability to provide bills of lading for the purported market economy purchases. They assert that the market economy purchase claims are based on an elaborate series of presentations to the Department, which are unsupported by the facts. They cite to specific findings in the Affidavit of Petitioners' consultant ("Consultant Affidavit") which, according to Petitioners, demonstrate that certain information provided by Three Star to support its market economy inputs claims is false.[67] They maintain that since Three Star has not contested any of the statements in the Consultant Affidavit, this indicates that the supporting record for the reported market economy transactions is falsified. They state that when Three Star was presented with "proof of its false submissions," it simply took the position that it was abandoning its claims that certain material factors should be valued using market economy prices. Petitioners contend that Three Star has conceded it has no records to corroborate any aspect of the explanations it provided regarding its reported market economy purchases, and, specifically, no records to corroborate the origin of the purchased material in question. Petitioners conclude that the inconsistencies in Three Star's market economy input claims are not a mere reporting error and Three Star was "engaged in an elaborate scheme to deceive the Department for the purpose of lowering its dumping margin by claiming market economy status."

Petitioners argue that "deliberate dishonesty" in Three Star's reporting of its market economy purchases calls for application of full AFA to determine Three Star's dumping margin. Petitioners contend that the prerequisites for applying full AFA set forth in Section 776 of the Act are present in this review based on Three Star's submission of false information and documents. They claim that the Department recently took this position in Metal-Top Ironing Tables, a case which Petitioners maintain presented a very similar situation to the instant case.[68] Petitioners note that in that review, a Chinese exporter claimed to have purchased market economy materials and submitted certain documentation to support its claim. They observe that the exporter in that case was unable to provide additional documentation requested by the

[66] Petitioners' Business Proprietary Case Brief (June 3, 2009, Final Bracketing) ("Petitioners' Case Brief") at 13-23.
[67] See Petitioners' Rebuttal Factual Information Submission at Attachment A.
[68] See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 11085 (March 16, 2009) and accompanying Issues and Decision Memorandum at Comment 1("Metal-Top Ironing Tables").

Department. When confronted with the apparent falsehoods in the Metal-Top Ironing Tables responses, the exporter blamed a third party. Petitioners state that in Metal-Top Ironing Tables, the Department determined that the exporter in question significantly impeded the proceeding by providing false information, falsely certifying the accuracy and completeness of its submissions, and failing to provide a credible explanation for discrepancies in its information. In that review, the Department ultimately found the entire questionnaire response was unreliable and determined that the exporter was part of the non-cooperative PRC-wide entity.

Petitioners argue that Three Star has engaged in the same type of behavior as the exporter in Metal-Top Ironing Tables by providing incomplete and unreliable information to support its claims of market economy purchases. Petitioners assert that Three Star does not contest the information that Petitioners have submitted to demonstrate the documentation was unreliable. They contend that because the Department cannot corroborate the accuracy of the invoices, it cannot corroborate the accuracy of the data in the accounting records that is taken from these invoices.

Petitioners assert that, like the exporter in Metal-Top Ironing Tables, Three Star has failed to provide correct information to the Department and has submitted "regulatory documents" that "are clearly not used by the regulatory agency responsible." They claim that, like the Metal-Top Ironing Tables exporter, Three Star has provided accounting records that "reflect unreliable and inaccurate information" from "now-discredited" commercial documentation submitted to the Department. Petitioners argue that, as with the exporter in Metal-Top Ironing Tables, Three Star's failure to produce documentation required for imported merchandise, such as the bills of lading and certificates of origin, is implausible. Petitioners argue that Department should consider Three Star's abandonment of its market economy purchase claims as an acknowledgement that the claims were false. Petitioners contend that the market economy claims are not legal argument, but are factual representations to the Department no different than other factual information presented in the questionnaire responses.

Petitioners recognize that the Department used only one of Three Star's four claimed market economy purchase values in its normal value calculation for the Preliminary Results because the other market economy purchases did not satisfy the Department's volume threshold requirements.[69] However, Petitioners argue that the one claimed market economy purchase value that the Department did use was based on false information. They assert that the fact that the Department did not use the other market economy purchases does not diminish the seriousness of Three Star's behavior or allow it to sidestep a finding that Three Star impeded the investigation. Petitioners maintain that Three Star clearly intended to affect the calculation of normal value with its submission of the market economy purchase information.

Petitioners claim that with regard to its market economy purchase claims, Three Star has successfully engaged in the same behavior in the two preceding reviews. They express a concern that the data presented by Three Star and used by the Department in the two most recent reviews

[69] Petitioners' Case Brief at 21.

"was as false as the information that Three Star presented in this review" and aver that Three Star has subverted the integrity of both this and the two preceding reviews.

Petitioners conclude that, as in Metal-Top Ironing Tables, the appropriate remedy for Three Star's submission of false information is to apply the PRC-wide rate as AFA.

Three Star's Rebuttal:

Three Star counters that the application of AFA to calculate Three Star's margin is not warranted in an administrative review in which Three Star has shown complete cooperation and in which, Three Star asserts, "literally every piece of information submitted to the Department by Three Star was verified." Three Star argues that Petitioners' version of events leading up to Three Star's abandonment of its market economy purchase claims is nothing more than an effort to obfuscate the facts as they are presented to the Department at this stage of the review. Three Star contends that Petitioners have glossed over the overwhelming body of case law recognizing the limited circumstances in which total AFA may be appropriately applied. Three Star argues in some detail that Petitioners have failed to demonstrate that the factors required for the application of either total or partial AFA have been met as a result of Three Star's abandonment of its market economy claims. Three Star maintains that it provided complete responses and demonstrated the accuracy of its submissions in a successful verification.

Three Star asserts that there are no facts on the record that demonstrate that documents submitted by Three Star were deliberately falsified, that Three Star acknowledged such, and that Three Star was complicit in the scheme. Three Star contends the following "facts" demonstrate the opposite:

1) Three Star has never acknowledged that the documents submitted were false. It argues that there is a critical distinction between the inability to substantiate a document, on one hand, and the concession that the document submitted is a forgery.[70]

2) After receiving Petitioners' Rebuttal Factual Information Submission, Three Star undertook a detailed review of documents and recognized they contained certain anomalies. Three Star repeatedly attempted to obtain the documents requested by the Department, but to no avail. [71]

3) Given Three Star's inability to substantiate the support for its initial claim, Three Star abandoned its market economy claim prior to verification. [72]

4) Despite Petitioners' Rebuttal Factual Information Submission contesting the market economy claim, after the Department received the Feb. 23 SQR explaining the abandonment, Three Star was subjected to a complete verification.

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[70] See Three Star's Rebuttal to and Responsive Information Concerning Petitioners' February 9 Letter (February 12, 2009) ("Feb 12 Letter") at 4-5; Three Star's Response to Department's February 20, 2009 Supplemental Questionnaire (February 23, 2009) ("Feb. 23 SQR") at 1-2; Three Star Verification Report at 33.

[71] See Feb. 23 SQR at 1; Three Star Verification Report at 32, 34.

[72] See Feb 12 Letter at 4; Feb. 23 SQR at 1.

5) The Department found no discrepancies during its verification.

6) Regarding its inability to obtain certain documents and obtain cooperation of other parties, Three Star provided a reasonable and detailed explanation in its Feb. 23 SQR and at verification.[73]

Three Star argues that based on the totality of the circumstances in this review, the preponderance of the evidence demonstrates Three Star's complete cooperation throughout the review and its continuing efforts to remedy any conceivable inconsistency in submitted information. It maintains that the verification demonstrated that all of Three Star's information tied to reliable financial statements and a reliable accounting system. It contends, therefore, that neither total or partial AFA is warranted, citing the example of Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 19.

Three Star argues that total AFA is an extraordinary remedy that as a matter of law can only be applied in certain narrowly prescribed circumstances, a position that it claims the CIT recently upheld.[74] Three Star posits that application of total AFA is not even absolute in circumstances where a respondent has failed verification, citing Fujian Machinery and Equipment Import & Export Corp. v. United States, 25 CIT 1150, 1177 (Ct. Int'l Trade 2001) ("Fujian Machinery") Three Star notes that in Fujian Machinery, the CIT stated that:

> Commerce must show that {a respondent} had the ability to comply but did not do so. Although Commerce…need not find willful or deliberate noncompliance, where it cannot demonstrate such willfulness, it must tread especially carefully….The more complex the review, the greater the need for such restraint.[75]

Three Star argues that total AFA is typically limited to situations where the respondent fails to respond to questionnaires or totally fails verification due to gross neglect of its statutory obligations.[76] In this review, Three Star contends that "{i}t is beyond dispute that Three Star was unable to provide documents to substantiate its market economy claim." Three Star asserts that it acknowledged its inability prior to verification, and the Department accepted this acknowledgement and conducted a full verification. In this situation, Three Star argues that the application of surrogate values for the inputs in question is appropriate as neutral facts available. Three Star maintains that the inability to provide certain requested documents is insufficient, standing alone, to justify the application of adverse facts available (emphasis is Three Star's),

[73] See Three Star Verification Report at 33-34.
[74] See Ad Hoc Shrimp Trade Action Comm. v. United States, Slip Op. 09-42 at 21-22 (Ct. Int'l Trade May 13, 2009)
[75] See Fujian Machinery at 1177.
[76] See, e.g., NSK, Ltd. v. United States, 346 F. Supp. 2d 1312 (Ct. Int'l Trade 2004), Branco Peres Citrus, S.A. v. United States, 25 CIT 1179 (Ct. Int'l Trade 2001), Heveafil Sdn. Bhd. v. United States, 58 Fed. Appx. 843 (Fed. Cir. 2003).

regardless of whether other documents related to the market economy claims contain discrepancies. Instead, Three Star argues, adverse inferences are only permitted where the Department makes an additional finding that a party failed to cooperate by not acting to the best of its ability, as provided under Section 776(b) of the Act, and even where the Department demonstrates that the respondent had the ability to comply and did not, the Department still typically requires something more to apply total AFA. Three Star observes that often total AFA is a response to evidence of a "pattern of unresponsiveness" or that "strongly indicates a specific intent on the part of the respondent to evade {the Department's} requests for information."[77] It notes that the CIT has stated that, ultimately, the Department must "explain why the absence of information is of significance to the progress of its investigation."[78] Three Star argues that none of the aggravating circumstances are present in this case to warrant AFA.

Three Star argues that it cooperated to the best of its ability throughout the administrative review by filing an original and two supplemental questionnaire responses and undergoing a complete verification. It contends that while the application of partial AFA is less extraordinary, the standard for application is no lower. It maintains that Three Star's demonstration that it cooperated to the best of its ability is equally applicable to the analysis of total and partial AFA. Three Star contends that when it was unable to provide certain documents requested by the Department, it explained that multiple attempts had been made to obtain the documentation from a third party. Three Star states that in response to Petitioners' submissions noting inconsistencies and potential problems with support documentation related to Three Star's market economy claims, Three Star reviewed the records, recognized certain inconsistencies, and, after several unsuccessful attempts to obtain additional information concerning the market economy purchase issues, submitted a letter to the Department withdrawing its market economy claim. Three Star asserts that it explained the abandonment of its claims prior to verification, making it clear that the Department would still be able to verify the quantities and prices of the reported transactions in Three Star's normal books and records.[79] Three Star states that based on this response, the Department agreed to conduct the verification and highlights that it was completely prepared and cooperative throughout this verification. It states that the Department's verification report noted no discrepancies in the responses other than pre-verification corrections discovered by Three Star. In its rebuttal brief, Three Star summarizes a number of findings from the Three Star Verification Report, including the Department's consideration of the market economy purchases,[80] and reiterates that the Department found no inconsistencies in any of Three Star's submissions at verification.[81] Three Star argues that while it "unknowingly provided inconsistent documents," this does not mean that it did not cooperate to the best of its ability. Three Star maintains that the courts have made clear that acting to the best of one's ability does not establish an absolute requirement for perfection, but rather means that a company should make its best effort to do what is required."[82] Three Star claims that once the inconsistencies in the documents were discovered, it "did everything in its power to resolve the deficiencies and ultimately did so

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[77] See Nippon Steel Corp. v. United States, 25 CIT 377, 146 F. Supp. 2d 835, 840 (Ct. Int'l Trade 2001).
[78] See Nippon Steel Corp. v. United States, 22 CIT 1158, 118 F. Supp. 2d 1366, 1378 (Ct. Int'l Trade 2000).
[79] See Feb. 23 SQR at 1-2; Three Star Verification Report at 32, 34.
[80] See Three Star Verification Report at 35.
[81] See China First and Three Star Rebuttal Brief (June 8, 2009) at 16-17.
[82] See NTN Bearing Corp. v. United States, 74 F.3d 1204, 1208 (Fed. Cir. 1995).

by abandoning the market economy input claim. It argues that this abandonment had no effect on the data already submitted and no effect on the reliability of Three Star's accounting system and financial statements which Three Star maintains is evidenced by the Department's verification. Three Star concedes it was not perfect, but insists that the company exerted the maximum effort possible.

In addition to arguing that it cooperated to the best of its ability, Three Star also contends that the information that is lacking (the origin of certain inputs) represents an insignificant portion of the overall data submitted by Three Star and is unnecessary for the margin calculation. Three Star asserts that it is the Department's practice not to apply total AFA in circumstances where only minor issue is involved. In this regard, Three Star cites to Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review, 74 FR 17160 (April 14, 2009), and accompanying Issues and Decision Memorandum at Comment 1 ("CLPP Final Results"), in which, according to Three Star, the Department refused to apply AFA where "the necessary information for calculating a margin is available on the record." It also finds support in Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009), and accompanying Issues and Decision Memorandum at Comment 9 ("Frontseating Service Valves"), which concluded that "after valuing the unreported inputs found at verification, the information on the record is sufficient to serve as a reliable basis for determining dumping margins for {respondent} in this investigation". Three Star claims, in addition, that in the CLPP Final Results, the Department declined to impose AFA on a respondent where the respondent had submitted detailed responses. According to Three Star, in that case, the Department concluded that '{w}hile the companies' accounting practices are not ideal, this failure does not evince a lack of cooperation on their part, and does not warrant the application of AFA." [83] Three Star also notes that in Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 8 ("Wire Garment Hangers"), the Department declined to apply AFA because the respondents were "able to demonstrate that their books and records reconciled to their reported {factors of production} ("FOP") data." According to Three Star, the Department also concluded in Wire Garment Hangers that the inconsistencies in the respondents' accounting records do not impugn the accuracy and reliability of the respondents' reported quantity and value because we were able to verify these figures to the key source documents for sales, such as invoices and inventory outslips. Three Star also refers to Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007), and accompanying Issues and Decision Memorandum at Comment 2, where the Department did not apply AFA and decided that "{w}ith a few minor exceptions (e.g., under-reported consumption ratios or over-reported denominator), QVD and other companies provided useable FOPs and U.S. sales data, in a timely manner, which the Department was able to verify."

[83] See CLPP Final Results at Comment 1.

Three Star asserts that this administrative review of pencils involves "a minor inconsistency even more remote from the accurate calculation of dumping margins than the above-cited cases." Three Star reiterates that all elements of its response were verified. It argues that the fact that certain documents are inconsistent regarding the origin of a few inputs does not ipso facto render the quantity and value of those inputs similarly suspect and certainly does not render the whole accounting system incorporating those values unreliable. Three Star maintains that the Department confirmed this conclusion with its verification, including its verification of documents and accounting entries related to the market economy purchases. Three Star contends that given the consistency of its reporting of the quantity and value throughout the multiple systems it has reported, it is over-reaching at best for Petitioners to make a blanket assertion that because Three Star cannot corroborate the accuracy of the market economy invoices, it cannot corroborate the accuracy of the record data taken from the invoices.

Three Star argues that Petitioners' primary reliance on Metal-Top Ironing Tables for their claim that total AFA is warranted is misplaced. Three Star asserts that the only similarity between Metal-Top Ironing Tables and this instant review is that they both involve market economy input purchases. Three Star argues that there are critical distinction between this review and Metal-Top Ironing Tables. It notes first of all that the Department did not verify the respondent (Since Hardware) in Metal-Top Ironing Tables and thus based its findings of unreliability in Since Hardware's accounting system on submissions only. [84] Three Star states that in this case the Department verified the response completely and verified it after the issue was discovered. As a second point, Three Star highlights that in Metal-Top Ironing Tables, the import documents were categorically proven to be forgeries and Since Hardware was unable to provide mill certificates for its steel inputs. [85] Three Star maintains that no similar situation exists in this case. Finally, Three Star notes that Since Hardware provided no credible explanation for these discrepancies. [86] Three Star asserts that its explanation (for inconsistencies in its documentation) was credible and was provided in detail before and at verification. [87] Three Star concludes that the record of this review is replete with examples of Three Star's cooperation. It reiterates that the verification report indicates no problems were discovered with Three Star's record keeping or data reported to the Department and the record contains complete information to permit the Department to calculate Three Star's margin.

B. Alleged Failure to Report Certain Information Warrants Application of AFA.

We address these comments in the BPI Memorandum providing summaries of Petitioners' affirmative comments and Three Star's rebuttal. We find that alleged failure to report certain information does not warrant application of AFA and provide some background discussion on this determination in the BPI Memorandum. The legal reasoning for our determinations on both Comment 2A. and 2B. is provided in the Department's Position that follows.

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[84] See Metal-Top Ironing Tables at Comment 1.
[85] See id.
[86] See id.
[87] See Three Star Verification Report at 35. See also Memorandum to the File from David Layton, entitled, "Business Proprietary Information Memorandum for the Final Determination," July 6, 2009 ("BPI Memorandum").

Department's Position:
We disagree with Petitioners that it is appropriate to apply total AFA to Three Star. Section 776(a)(1) of the Act mandates that the Department use facts available if necessary information is not available on the record of a proceeding. In addition, section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Section 782(d) of the Act provides if the Department determines that a response to a request for information does not comply with the request, the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In this instance, we determine that the application of facts available is warranted because Three Star failed to provide information requested by the Department regarding the origin of certain inputs which the company claimed were imported from market economy countries. However, we do not find that an adverse inference should be drawn based on Three Star's level of cooperation in this review. Generally, Three Star has cooperated by responding to several supplemental questionnaires[88] and providing all requested information at verification. On the particular issue of market economy inputs, Three Star sought the supporting information requested by the Department[89] and when it was not able to obtain that information, the company acknowledged its inability to do so and withdrew its claim for use of the market economy input prices it had submitted.[90]

We acknowledge that the information submitted by Petitioners identifying deficiencies in Three Star's market economy purchase claims raises concerns about the veracity of Three Star's claims.[91] To address these concerns, the Department pursued this matter at verification but was not able to corroborate any of the potentially incriminating evidence provided by Petitioners to support their argument that Three Star deliberately falsified the record. In particular, while Three Star could not provide certain documents to show the foreign origin of these inputs, we traced payments, using bank documents, to verify that Three Star paid the market economy suppliers

[88] See Three Star Oct 16 SQR; Three Star Second Supplemental Questionnaire Response, November 14, 2009 ("Three Star Nov. 14 SQR"); Three Star Feb. 2 SQR; Three Star Feb. 23 SQR; and Three Star Post-Verification SQR.
[89] See Three Star Oct 16 SQR at 8 and Exhibit S-8; Three Star Nov. 14 SQR at 2-4 and Exhibits SS-2 – SS-4; Three Star Feb. 2 SQR at 3 and Exhibit 2S-1; and Three Star Feb. 23 SQR at 1-3.
[90] See Three Star's February 12 Letter at 4 – 5 and Three Star Feb. 23 SQR at 1 – 2.
[91] Petitioners' Rebuttal Factual Information Submission at Attachment A.

named in its response. While Three Star's explanation of the factors behind its problems in documenting its market economy claims is itself difficult to corroborate, the Department did not obtain any evidence indicating that the explanation is inaccurate.[92]
We disagree with Petitioners that the circumstances in this review mirror those in Metal-Top Ironing Tables.[93] In Metal-Top Ironing Tables, the Department identified numerous considerations which led to the application of AFA: the certificates submitted by the respondent as the basis for its market economy claims were clearly not issued by the regulatory agency responsible for certifying the origin of the input; documentation from multiple, independent, unaffiliated suppliers contained identical typographical errors and other discrepancies that could not be explained by the respondent; the implausibility of the respondent's claim that it did not have mill certificates for its steel purchases; and the lack of support in the trade data for the claimed purchases. Because the respondent's accounting system reflected the discredited documents it had submitted, the Department concluded that it could not trust the accuracy and validity of the data the respondent retrieved from its accounting system and, consequently, that its questionnaire responses were not reliable for determining the margin of dumping.
In this review, the authenticity of certain documents submitted by Three Star in support of its market economy input claim is questionable. As Three Star admits in its rebuttal brief, these documents contain "certain inconsistencies."[94] We found that for one of Three Star's claimed market economy inputs, the amount claimed from market economy sources was less than what was reported in publicly available Chinese import statistics taken from the WTA. [95] On the other hand, the aggregate import amounts reported by WTA for the other market economy claims were more than what Three Star had claimed.[96] However, other documents connected with these purchases were examined closely at verification and found to be consistent with Three Star's claim that the inputs were purchased from market economy suppliers.[97] Even if the claimed origin of the claimed market economy inputs cannot be substantiated and for one input is contradicted by import statistics, the Department found that the purchase of the inputs took place. Thus, unlike the situation in Metal-Top Ironing Tables, the questionable documents formed only a portion of the support for Three Star's claim.

Moreover, in this review, the questionable documents are not from multiple, independent and unaffiliated sources; the inputs in question would not have mill certificates or other similar documentation identifying the producer. In our verification, we confirmed that Three Star's accounting records can be directly tied to Three Star's audited financial statements. Three Star was able to demonstrate, in turn, that individual revenue and expense accounts that we linked to the financial statements, are consistently and comprehensively supported by source documents such as sales invoices and stock-in slips.[98] Given the consistency of Three Star's accounting and production records with its audited financial statements and financial statement notes, we find nothing to suggest that the flawed documentation Three Star submitted to support its market

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[92] See BPI Memorandum.
[93] See Metal-Top Ironing Tables at Comment 1.
[94] See China First and Three Star Rebuttal Brief at 14.
[95] See BPI Memorandum. We did not have information on the specific shipments and importers, but compared the aggregated numbers in the public statistics to the proprietary amounts reported in Three Star's Section D QR.
[96] See Three Star Verification Report at 35.
[97] See id.
[98] See Three Star Verification Report, passim.

economy claims in any way compromised the integrity of Three Star's accounting and inventory records. Even if the actual country of origin of the claimed market economy inputs cannot be substantiated and for one input is contradicted by import statistics as we note above, the Department can conclude that the purchase of the inputs took place. Consequently, the information from the company's financial system and in the response is reliable for purposes of computing the dumping margin. In contrast, in Metal-Top Ironing Tables, the Department determined from its examination of copies of the ledger entries submitted by the respondent in that case that entries in the respondent's accounting system also reflected inaccurate and unreliable information and that the responses based on these records reflected their unreliability.[99] For these reasons, we determine that the adverse inference drawn is not warranted in this review.

To address Three Star's inability to submit certain information requested by the Department, we are valuing the inputs in question using surrogate values rather than the market economy prices submitted by Three Star.

Comment 3: Appropriate Labor Rate

China First and Three Star's Affirmative Comments:
China First and Three Star argue that the Department must conform its practice to prevailing law and value labor at an Indian-specific rate, not a global regression analysis. China First and Three Star refer to the antidumping statute and the fact that it instructs the Department to value labor in an NME country by reference to prices or costs of labor in one or more market economy countries that are (A) at a level of economic development that is comparable to the NME country and (B) significant producers of comparable merchandise. See section 773(c)(4) of the Tariff Act of 1930, as amended ("the Act"). They argue that the Department's regression analysis is esoteric and does not follow the statute because it incorporates wages and gross domestic product from a large number of developed and developing countries, which do not all produce comparable merchandise to determine the labor rate of an NME country if it were a market economy country. China First and Three Star state that in the Allied Pacific Food (Dalian) Co. Ltd. v. United States, 587 F. Supp. 2d 1330 (Ct. Int'l Trade 2008) ("Allied Pacific II"), the CIT found the Department's NME labor calculation methodology and its regulation, section 351.408(c)(3), to be inconsistent with section 773(c)(4) of the Act.

China First and Three Star state that record evidence shows the Indian wage rate to be $0.21 per hour. They state that this satisfies the "economic comparability" and "significant producer" requirements of the Act, and the Department should use this wage rate for the final results.

Rongxin's Affirmative Comments:
Rongxin also argues that Department's regulation allowing the use of a regression analysis to calculate a labor wage rate does not comply with the statute and that the Department should use the labor rate for India in the final results. Rongxin states that the Department only identified five economically comparable countries to the PRC when considering surrogate countries and

[99] See Metal-Top Ironing Tables at Comment 1.

chose India, which has an average wage rate of $0.21 per hour.[100] Rongxin also states that the Department's regression analysis uses 64 countries including some of the most developed countries with significantly higher wage rates such as the United Kingdom, Denmark, and the United States, and results in a wage rate of $1.04 per hour. Rongxin points out that only three of the five countries determined to be economically comparable to the PRC were included in the regression.

Rongxin also argues that the Department ignored the plain language of section 773(c)(4) of the Act because its regulation does not comply with statute and the regression it used to calculate the labor rate for the PRC included countries that are not economically comparable to the PRC, and are not significant producers of the subject merchandise. Rongxin states that the inclusion of countries such as Japan, Germany, and the United Kingdom in the regression does not yield a labor rate that would exist in the PRC if it were a market-economy country and, moreover, results in an artificially inflated rate. Rongxin argues that this selection of countries to determine the labor rate is contrary to the Department's statutory mandate and policy of using a surrogate country that is the most comparable to the PRC to value the inputs in the production process. Rongxin argues that the Department used the best surrogate country for the other FOPs and should use the same surrogate country, India, to value labor. Rongxin points out that the labor rate of $1.04 per hour, used by the Department in its Preliminary Results, is 400 percent higher than India's labor rate of $0.21 per hour. Rongxin concludes that the Department's methodology for calculating the labor rate does not result in the most accurate dumping margin or use the best available information.

Rongxin also makes the argument that the Department's regression methodology regulation is inconsistent with section 773(c)(4) of the Act because the CIT has concluded that both the methodology the Department used to develop the {surrogate labor rate} and the regulation under which that methodology was applied are "inconsistent" with the governing statute.[101] Rongxin states that in the Allied Pacific II case the Department argued that its authority to enforce its regression analysis regulation had been upheld in past cases. However, Rongxin argues that in the Allied Pacific II case the court decided that the Department cannot "consider labor costs in one or more surrogate countries that potentially are better {sources of} information than the country-wide labor cost information that the regulation, and methodology implementing it, requires Commerce to use." Rongxin acknowledges the Chevron case, which recognizes deference to an agency's interpretation of a statute when Congress does not speak clearly on a particular issue,[102] but contends that such deference cannot exist when the Department's regulation has been found to be invalid.

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[100] See Import Administration website, http://ia.ita.doc.gov/wages/ ("Expected Wages of Selected Non-Market Economy Countries"). See also Memorandum from Carole Showers, Acting Director, Office of Policy, to Susan H. Kuhbach, Director, Office 1, entitled "Administrative Review of the Antidumping Duty Order on Certain Cased Pencils ("Pencils") from the People's Republic of China (PRC): Request for a List of Surrogate Countries," July 9, 2008.

[101] See Allied Pacific II, 587 F. Supp. 2d at 1351-1361.

[102] See Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843-44 (1984) ("Chevron").

Rongxin contends that should the Department continue to use its regression analysis to value the labor rate for the PRC, the analysis should be corrected because it does not use all countries for which gross national income ("GNI") data are available and it includes some of the world's most economically advanced countries with a significantly higher GNI than the PRC. Rongxin argues that the Department's regression-based analysis labor calculation is flawed because it arbitrarily excludes available data from more countries than it has admitted. Rongxin says that the Department notes on its website that it used labor rate data for all countries for which it had GNI data and excluded 13 countries because they were NME countries.[103] However, Rongxin says that the Department has not put the World Bank's list of 208 countries reporting GNI for 2005 on the record of the current review and instead the Department only used 64 countries in its regression analysis while it could have used many more additional countries.[104] Rongxin indicates that as many as 125 or more low income countries, including three of the five surrogate countries that the Department selected as possible surrogates, were excluded. Rongxin refers to two other cases where the Department failed to include all the possible countries for which GNI data was available.[105] Rongxin also argues that the Department has not provided any explanation for the exclusion of this data and that it conflicts with the Department's reasoning for using the regression-based calculation in the first place.[106] As a result, Rongxin concludes that the Department should not use a regression-based calculation if it is not going to include all available data.

Petitioners' Rebuttal Comments:
Petitioners argue that the Department should not use the respondents' alternative surrogate wage rate value in place of the required regression-based wage rate. Although, the respondents have cited Allied Pacific II because it rejected the Department's regression methodology, Petitioners point out that the Department recently rejected the same argument in Frontseating Service Valves at Comment 3.[107] Petitioners further contend that the Department has previously rejected the idea that it should revise its wage rate policy on a case by case basis in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review, 71 FR 66304 (November 14, 2006), and accompanying Issues and Decision Memorandum at Comment 2 ("Brake Rotors").

Department's Position:
The Department has continued to use its regression-based analysis to calculate the surrogate value for the labor wage rate in the final results of this review. Consistent with our findings in Frontseating Service Valves, we disagree that the Department's regression methodology, provided for in section 351.408(c)(3) of the Department's regulations, is inconsistent with

[103] See http://ia.ita.gov/wages/o5wages/05wages-051608.html.
[104] See Rongxin's June 2, 2009 Case Brief, Exhibit 1.
[105] See Notice of Final Determination of Sales at Less Than Fair Value: for Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004); Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Review, 71 FR 26329 (May 4, 2006).
[106] See Antidumping Duties; Countervailing Duties Part II, 62 FR 27296, 27367 (May 19, 1997) ("Final Rule").
[107] See Frontseating Service Valves I&D Memo, at Comment 3.

section 773(c)(4) of the Act. Section 773(c)(1) of the Act provides that, where, as in this case, the subject merchandise is exported from an NME country, "the valuation of factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." While the Act does not define "best available information," it provides that the Department, "in valuing factors of production under paragraph (1), shall utilize, to the extent possible, 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." See section 773(c)(4) of the Act.

In accordance with the guidance provided, and discretion afforded pursuant to section 773(c) of the Act, the Department calculates the labor wage rate using a regression analysis. Section 351.408(c)(3) of the Department's regulations provides that the Department will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries and the calculated wage rate will be applied in NME proceedings each year. The calculation will be based on current data, and will be made available to the public.

The methodology works in two steps. First, the Department uses a regression analysis to estimate the linear relationship between per-capita GNI and hourly wage rates in all market economy countries that meet the requirements detailed below. Second, the Department uses the results of the regression analysis and the GNI data for the particular NME country to estimate the hourly wage rate for that country. The result is the expected NME country labor/wage rate for each NME country.

To calculate the regression, the Department uses four separate data series: country-specific earnings data from the International Labor Organization's ("ILO's") Yearbook of Labour Specifics; country-specific consumer price index ("CPI") data from the International Monetary Fund ("IMF"); exchange rate data from the IMF; and country-specific GNI data from the World Bank. The wage rate data from the ILO are converted to hourly wage rates and adjusted using CPI data so that they are representative of the current "Base Year," the most recent reporting year, which is two years prior to the current year. These data are then converted into U.S. dollars using exchange rate data.

In order to ensure that the wage rate data provide a complete picture of labor in the particular market economy, the Department requires that the data fall within the following hierarchy of parameters: (1) coverage of both men and women; (2) coverage of different types of industries; (3) coverage of different types of workers, such as wage earners or salaried employees; (4) the unit of time for which the wage is reported, such as per hour or per month; and (5) a code for the source of the data. Because the parameters are hierarchical, the Department first looks to the parameter for gender, and always chooses data that cover both men and women, then chooses data that cover all reported industries as described in (2) above, and so on.

If there is more than one record in the ILO database that meets the criteria of (1) and (2), the Department looks to the remaining parameters. The Department then prioritizes the data that are closest to the Base Year with respect to the remaining parameters. The Department uses wage rate data from all market economy countries that meet the criteria discussed above. The data are converted into US dollars using Base Year period-average exchange rates reported by the IMF.

Next, the Department uses Base Year GNI data for each of the countries in the Department's analysis, as reported by the World Bank, to calculate a regression for these data. The results of this regression analysis describe generally the relationship between hourly wage rates and GNI. In order to determine the estimated wage rate for the specific NME country, the Department applies the Base Year GNI for the NME.

This methodology was affirmed by the CIT in Dorbest Ltd. v. United States, 547 F. Supp. 2d 1321 (CIT 2008) ("Dorbest II"). A detailed description of the Department's labor methodology is also set forth in Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761 (June 30, 2005), and was further updated in Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006) ("AD Methodologies and Request for Comments").

The respondents argue that the regression-based labor rate calculated by the Department is contrary to the statute because it ignores economic comparability of the market economies used and does not consider whether the countries used are significant producers of comparable merchandise. The Department disagrees that its method for valuing labor is in contravention of the statute. The Department further considers that the regression methodology constitutes the best available information for purposes of valuing labor. The Department's methodology avoids extreme variances in labor wage rates that exist across market economies, and instead, accounts for the global relationship between GNI and wages. This is then used to determine an expected wage rate for the specific NME country, using that country's GNI. When promulgating its regulations, the Department explained:

> {U}se of this average wage rate will contribute to both the fairness and the predictability of NME proceedings. By avoiding the variability in results depending on which economically comparable country happens to be selected as the surrogate, the results are much fairer to all parties. To enhance predictability, the average wage to be applied in any NME proceeding will be calculated by the Department each year, based on the most recently available data, and will be available to any interested party.

Antidumping Duties; Countervailing Duties Part II, 61 FR 7308, 7345 (February 27, 1996)

Although section 773(c) of the Act provides guidelines for the valuation of the FOPs, it also accords the Department wide discretion in the valuation of FOPs. Nation Ford Chemical Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999) ("Nation Ford"); accord Magnesium Corp. of America v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999). The statute requires the use of the "best available information," but it does not define the term, nor does it clearly delineate how the Department should determine what constitutes the best available information. See Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 59 F. Supp. 2d

1354, 1357 (Ct. Int'l Trade 1999), aff'd 268 F.3d 1376 (Fed. Cir. 2001); China Nat'l Mach. Import & Export Corp. v. United States, 264 F. Supp. 2d 1229, 1236 (Ct. Int'l Trade 2003). The Department's regulation prescribes a methodology that reflects a permissible interpretation of what the statute allows with respect to the determination of labor wage rates, by calculating the market economy wage rate for a country at a comparable level of economic development, that is, for a market economy country with the same per capita GNI as the NME.

While the requirement to use the "best available information" is an unqualified statutory mandate, the statute only directs the Department to draw factor values from economically comparable countries and significant producers of comparable merchandise, "to the extent possible." See section 773(c)(4) of the Act. For this reason, we do not find that we can select values that meet the requirements of sections 773(c)(4)(A) and (B) of the Act, if such values do not represent the "best available information. . . in a market economy country or countries considered to be appropriate by {the Department}" as required by section 773(c)(1) of the Act. Moreover, the CIT found the Department's regulation is not inconsistent with its statutory mandate. Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262 (Ct. Int'l Trade 2006) ("Dorbest I").

Furthermore, the Department considers that its regression analysis sufficiently takes economic comparability of market economies, utilized in the regression, into account. The regression analysis utilized by the Department calculates a wage rate that reflects what the market economy rate would be for a country at a level of economic development comparable to the NME country. The regression analysis' function is to determine the relationship between income and wages. The use of the regression and application of the subject NME country's GNI generates an expected wage rate for a market economy country at a comparable level of development, and constitutes the use of the best available information. In addition, the expected wage rate calculated for the NME country is "by definition a wage rate for a producer country at a comparable level of development, as required by 19 U.S.C. §1677b(c)(4) {section 773(c)(4) of the Act}." Dorbest I, 462 F. Supp. 2d at 1293.

Additionally, relying only on data from countries that are economically comparable to each NME would undermine, rather than enhance, the accuracy of the Department's regression analysis. The number of "economically comparable" countries would be extremely small. For example, when examining countries with GNIs that range between US$ 700 and US$ 2500 (e.g., countries that might be considered economically comparable to the PRC), there are just nine countries out of a full dataset of 61 countries used in the revised wage calculation in May 2008.[108] A regression based on such a small subset of countries would be highly dependent on each and every data point and, thus, the inclusion or exclusion of any one country could have an extreme effect on the regression results from case-to-case, and from year-to-year. Relying on a broad data set, as opposed to data from just the economically comparable countries, maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the basket, and provides predictability and fairness. See, e.g., Final Rule, 62 FR at 27367; see also AD Methodologies and Request for Comments, 71 FR at 61720.

[108] Note due to the lag-time in data availability, the regression calculation performed in 2008, is based on data from 2005.

The respondents' further argument that the Department's labor regression is contrary to the statute because it does not focus on the significant producer criterion, overlooks the purpose in using a regression methodology, which is to provide a more accurate labor value that is stable and predictable across all cases. The regression methodology accomplishes this by providing a variable average that "smoothes out" the variations in the data and permits, in a predictable manner, the estimation of a market economy wage rate relative to a level of GNI that is as accurate as practicable, with the least amount of volatility across cases. Furthermore, in determining surrogate values for FOPs, the Department need not "duplicate the exact production experience of the {Chinese} manufacturers." See Nation Ford, 166 F.3d at 1377 (citing Magnesium Corp. of America v. United States, 938 F. Supp. 885 (Ct. Int'l Trade 1996), aff'd 166 F.3d 1364 (Fed. Cir. 1999) (upholding the Department's use of a surrogate value for a primary input of production where the actual input differed from the production experience in the NME)). See also Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 268 F.3d 1376, 1381 (Fed. Cir. 2001) ("we have specifically held that Commerce may depart from surrogate values when there are other methods of determining the 'best available information' regarding the values of the factors of production.")

The Department does not find the respondents' reliance on Allied Pacific II to be persuasive. For reasons previously stated, the Department finds the regression methodology, applied pursuant to section 351.408(c)(3) of the Department's regulations, constitutes the best available information for purposes of valuing labor in NME cases. In Dorbest II, the Department's regression analysis was affirmed in its entirety. Furthermore, the decision in Allied Pacific II is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted.

In the alternative, the respondents argue the Department should value labor using a single, surrogate country. While surrogate values for other FOPs are selected from a single surrogate country, due to the gross variability between wage rates and GNI, we do not find reliance on wage data from a single surrogate country reliable for purposes of valuing the labor input. While there is a strong positive correlation between wage rates and GNI, there is also variation in the wage rates of comparable market economies. For example, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., where GNI is below US$ 2500), the wage rate spans from US$ 0.21 to US$ 2.06. See "Expected Wages of Selected NME Countries," revised in May 2008, available at http://ia.ita.doc.gov/wages/index.html. To further illustrate, the respondents advocate that instead of relying on the regression methodology, the Department should value labor using India's single wage rate. Columbia is another country (in addition to India) with a GNI of under US$ 2500. India's wage rate is approximately US$ 0.21, as compared to Columbia's observed wage rate of US$ 1.13. The large variance in these two countries' wages—not to mention the variances which occur when wage rates are considered for other market economy countries of economic comparability— illustrate the arbitrariness of relying on a wage rate from a single country.

We also disagree with the respondents' suggestion to include data from numerous additional countries, for which both the per-capita GNI and wage rate data were available from the ILO website in the wage rate calculation for this review. As we stated in Brake Rotors, a recalculation of the estimated NME wage rates using a different group of countries could result in a significant change in the Department's regression analysis, which has been based on the same group of countries for the last several years. The Department's 2005 calculation of expected NME wage rates is based on this group of countries. This dataset is dependable, and is adequate in performing a useful regression analysis. It would be contradictory to section 351.408(c)(3) of the Department's regulations to evaluate whether of each of these additional data points were appropriate within the context of a single proceeding. Instead, the Department considered changes to its methodology in a broader context and announced its current methodology in AD Methodologies and Request for Comments. As stated in that notice, pursuant to the comments received and the Department's analysis, these revisions will take effect in the 2006 calculation of expected NME wage rates and will apply to all relevant proceedings thereafter. For this proceeding, however, the Department's current wage rate methodology is based on the best available information.

Because the Department's regression analysis utilizes the best available information for the calculation of a surrogate value for labor, complies with the Department's regulation, and comports with the statute, the Department continues to value labor in this segment of the proceeding using its regression analysis, as provided in section 351.408(c)(3) of the Department's regulations. Thus, for the final results of this review the surrogate value for the wage rate continues to be $1.04 per hour.

Comment 4: Surrogate Values

Rongxin's Affirmative Comments:
Citing to section 773(c)(1) of the Act, Rongxin argues that the Department must meet the statutory standard to select the best available information when it selects surrogate values for the FOP. Rongxin asserts that case precedent directs the Department to review all surrogate data to make a determination regarding the quality of the data, or to explain why a particular data set is not methodologically reliable.[109] Referring to CITIC Trading Co., Ltd. v. United States, 27 CIT 356, 366 (Ct. Int'l Trade 2003) ("CITIC Trading"), Rongxin contends that the Department must provide a reasoned explanation if it rejects a respondent's choice for surrogate value. Further, Rongxin argues that the Department is obliged to defend its own choice if it rejects a respondent's proffered surrogate value.[110]

According to Rongxin, the Department has a well-established policy to consider the quality, specificity, and contemporaneousness of the data when it selects surrogate values using the "best

[109] See Olympia Industrial, Inc. v. United States, 22 CIT 387, 390 (Ct. Int'l Trade 1998); Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.
[110] See Shanghai Foreign Trade Enterprises Co., Ltd. v. United States 28 CIT 480, 495, 318 F. Supp. 2d 1339, 1352 (Ct. Int'l Trade 2004) ("Shanghai Foreign Trade Enterprises"); Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, 28 CIT 1185, 1190 (Ct. Int'l Trade 2004) ("Hebei Metals").

available information."[111] Citing to Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (Mar. 1, 2004) at 4, Rongxin contends that the Department prefers surrogate value data that is tax-exclusive.

Citing to CITIC Trading, Rongxin asserts that the court may determine the reasonability of the Department's surrogate price selection.[112] Moreover, Rongxin notes that the case for judicial deference is less compelling with respect to agency positions that are inconsistent with previously held views.[113] Rongxin asserts that case precedent directs the Department to explain any departure from prior norms.[114]

China First and Three Star Affirmative Comments:
China First and Three Star assert that finished pencil inputs, such as those ordinarily purchased by the respondent companies, are not readily or feasibly traded in international commerce. Thus, China First and Three Star assert Indian import statistics often reflect a much higher quality input that is used for a more processed, lighter and more expensive product, such as pencil cores that are used for mechanical pencils. China First and Three Star assert that this issue, coupled with the unusual nature of the input commodities, demands that the Department seek and find the best available and most specific contemporaneous input data available in order to obtain the most accurate dumping margins possible.[115] China First and Three Star contend that this mandate has been affirmed by several court decisions.[116] Further, China First and Three Star argue that there is a clear preference for domestic surrogate data over import data.[117] According to China First and Three Star, in order for import data to be used, case precedent demands for reason to believe that the industry in question would use imported inputs.[118]

China First and Three Star note that, for this administrative review, an Indian industry journal that includes an article about India's pencil industry has been placed on the record by the

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[111] See Honey From the People's Republic of China: Preliminary Results, Partial Rescission, and Extension of Final Results of Second Antidumping Duty Administrative Review, 69 FR 77184, 77192 (December 27, 2004); Hebei Metals, 28 CIT at 1191.
[112] See CITIC Trading, 27 CIT at 365-66.
[113] See Hylsa, S.A. de C.V. v. United States, 22 CIT 44, 48 (Ct. Int'l Trade 1998) (citing Pauley v. Bethenergy Mines, Inc., 501 U.S. 680, 698 (1991)).
[114] See Shanghai Foreign Trade Enterprises, 28 CIT at 487-88, 318 F. Supp. 2d at 1346.
[115] See Dorbest I, 462 F. Supp. 2d at 1276; Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People's Republic of China, 66 FR 50608 (October 4, 2001), and accompanying Issues and Decision Memorandum at Comment 3; Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964, 61987 (November, 20, 1997) and accompanying Issues and Decision Memorandum at Comment 29; Shakeproof Assembly Components, Inc. v. United States, 268 F. 3d. 1376 (Fed. Cir. 2001); Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990); Olympia Indus., Inc. v. United States, 22 CIT 387, 390 (Ct. Int'l Trade 1998); Shandong Huarong General Corp. v. United States, 159 F. Supp. 2d 714, 719-720 (Ct. Int'l Trade 2008).
[116] See Hebei Metals, 28 CIT at 1194; Yantai Oriental Juice Co. v. United States, 26 CIT 605, 617 (Ct. Int'l Trade 2002).
[117] See Zhengzhou Harmoni Spice Co., Ltd. v. United States, Slip Op. 09-39 (Ct. Int'l Trade May 13, 2009); Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, 29 CIT 288, 299 (Ct. Int'l Trade 2005).
[118] See Dorbest I, 462 F. Supp. 2d at 1278-1279.

respondents.[119] China First and Three Star assert that "Paper and Stationery" discusses several cased pencil inputs, such as slats, black and color cores, and lacquer, and discusses their prevailing market values for mid-2007. Thus, China First and Three Star urge the Department to rely on the data in "Paper and Stationery" to calculate values for the FOPs.

Petitioners' Rebuttal Comments:

Petitioners rebut the respondents' suggestion that the Department deviate from the WTA and Hardwood Market Report data for purposes of calculating surrogate values. According to Petitioners, WTA and Hardwood Market Report data conform to the Department's standards and practices for surrogate valuation, and are consistent with the methodology used in the initial investigation and subsequent administrative reviews.

According to Petitioners, the Department's practice is to determine surrogate values with publicly available price information that reflects numerous transactions.[120] Petitioners assert that the WTA Indian import data meet this requirement because they reflect numerous transactions from a market economy country. Further, Petitioners contend that the Department's practice is to use surrogate values that are "representative of a range of prices in effect" during the POR.[121] Petitioners argue that the Department considers single-source information inferior to published, nationwide materials as government import statistics.[122] Petitioners continue that the Department does not use price data that have little or no supporting documentation.[123] Petitioners conclude that the Department's preference is for tax-exclusive source data, such as WTA import data, instead of tax-inclusive domestic prices.[124]

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[119] See Pencil Industry in India – A Robust Future, Divya Jha, Paper & Stationery Samachar (Delhi November 2008), attached as Exhibit 2 to China First and Three Star's February 10, 2009 Surrogate Value submission ("Paper and Stationery").

[120] See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 74 FR 10545 (Mar. 11, 2009), and accompanying Issues and Decision Memorandum ("Hydroxyethylidene Memorandum")

[121] See Potassium Permanganate From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 66 FR 46775 (September 7, 2001); Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12440, 12442 (Mar. 9, 1998).

[122] See Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Venezuela, 67 FR 15533 (April 2, 2002), and accompanying Issues and Decision Memorandum; Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People's Republic of China, 66 FR 50608 (October 4, 2001) ("Honey Memorandum"); Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12440 (March 9, 1998).

[123] See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004), and accompanying Issues and Decision Memorandum at 48 ("Polyethylene Retail Carrier Bags from China"); Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003), and accompanying Issues and Decision Memorandum at 5; 1999-2000 Final Results at 13, aff'd Kaiyuan Group Corp. v. United States, Slip Op. 04-51 (Ct. Int'l Trade May 14, 2004).

[124] See Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008), and accompanying Issues and Decision Memorandum at 16 ("Helical Spring Lock Washers").

Department's Position:
In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In addition, the Department's criterion for selecting surrogate value information is based on certain requirements. First, surrogate value information is normally based on the use of publicly available information ("PAI") and the Department considers several factors when choosing the most appropriate PAI, including quality, specificity, and contemporaneity.[125] In addition, the Department also looks for surrogate values that are "representative of a range of prices in effect during the" POR and information that includes numerous transactions.[126] The Department also avoids using single-source information and prefers country-wide information such as government import statistics.[127] Similarly, the Department has also stated that it is "the Department's preference to use industry-wide values, rather than values of a single producer, whenever possible, because industry-wide values are more representative of prices and costs of all producers in the surrogate country." [128] Finally, the Department does not use price data that has inadequate supporting documentation and prefers to use tax-exclusive sources instead of tax-inclusive domestic prices.[129]

The Department examined the slats, lacquer, and cores data contained in "Paper and Stationery" on a case-by-case basis and found several limitations with the information on each of these inputs. The Department also found several deficiencies with the sources that contained data on coal, castor oil, kaolin clay, and packing, which do not satisfy the Department's requirements for the selection of surrogate value information. Each of the specific surrogate value sources and the specific material input data contained in each of them is discussed in detail in Comments 4a, 4b, 4c, and 4d below.

The Department has used WTA data since the initial investigation, including past reviews. WTA is consistent with the Department's surrogate valuation methodology because it provides many sales from a market economy country, it represents a range of prices during the POR, it is a published source that is publicly available, and its data are tax-exclusive. Therefore, the Department will continue to use WTA data as a surrogate value source.

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125 See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 3; Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

126 See Potassium Permanganate From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 66 FR 46775 (September 7, 2001), and accompanying Issues and Decision Memorandum at Comment 16, and Hydroxyethylidene Memorandum, at Comment 3.

127 See Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Kazakhstan, 67 FR 15535 (April 2, 2002), and accompanying Issues and Decision Memorandum at Comment 4.

128 See Honey Memorandum at Comment 4.

129 See Polyethylene Retail Carrier Bags from China and accompanying Issues and Decision Memorandum at Comment 48; Helical Spring Lock Washers and accompanying Issues and Decision Memorandum at Comment 16.

Comment 4a. Surrogate Values for Slats

Rongxin's Affirmative Comments:
Rongxin argues that the slat prices in "Paper and Stationery" are superior to the basswood lumber prices used in the Department's Preliminary Results for following three reasons. First, Rongxin contends that the data reflect prices from the Department's primary surrogate country, namely, India. Second, Rongxin asserts that the slat prices reflect Rongxin's material purchases, because Rongxin purchased slats, not raw basswood lumber. Third, Rongxin argues that the calculated average basswood lumber value does not reflect the wood grade that is typically used for pencil production. According to Rongxin, the average basswood lumber value includes all grades of basswood, including the higher quality basswood most often used for cabinetry, wood shutters, molding, millwork, and musical instruments. Rongxin argues that, because pencils are usually coated in paint, the poorest wood grade can be used for production.

China First and Three Star Affirmative Comments:
China First and Three Star assert that the "Paper and Stationery" describes 5-ply and 8-ply pencil slats of varying wood types, which are similar to the qualities and characteristics of slats useable for pencil production. Moreover, China First and Three Star argue that the prices are for processed, finished pencil slats of varying widths, which is more similar to the actual Chinese purchasing experience than the data derived from the "Hardwood Market Report" used in the Preliminary Results. China First and Three Star emphasize that, although it is a better surrogate value than the "Hardwood Market Report," "Paper and Stationery" overstates the slat costs experienced by Chinese producers because Chinese producers use inordinately slender 2-, 3-, and 4-ply slats.

Petitioners' Rebuttal Comments:
Petitioners assert that the "Paper and Stationery" data are unreasonable bases for slat values because they do not contain price data for lindenwood, which is the type of wood used by the respondents. Petitioners contend that in a previous administrative review, the Department concluded wood comparability is the essential element for determining slat surrogate values. Petitioners note that this conclusion was reaffirmed in the Remand Determination pursuant to Writing Instrument Manufacturers Association, Pencil Section, et al. v. United States, where the CIT found that the Department acted consistent with the primary objective of determining the most accurate dumping margins by using U.S. basswood to value Chinese lindenwood.[130] Petitioners continue that there is no record information that the wood types described in "Paper and Stationery" are similar to lindenwood, nor have the respondents contested that basswood and lindenwood are virtually indistinguishable.

Moreover, Petitioners assert that "Paper and Stationery" provides no documentation for the prices and attributes of the two slats it describes. Thus, Petitioners state that "Paper and Stationery" runs afoul of the standard set forth in the Honey Memorandum and Polyethylene Retail Carrier Bags from China. Petitioners continue that "Paper and Stationery" does not reflect

[130] See Writing Instrument Manufacturers Association, Pencil Section, et al. v. United States, Slip Op. 97-151 at 16 (Ct. Int'l Trade 1997).

numerous transactions that are contemporaneous of the POR, because it is a "glimpse" of prices "during mid-2007." Petitioners assert that the slat prices appear to reflect prices for a single kind of wood charged by a single vendor. Accordingly, Petitioners urge the Department to continue using American basswood prices to determine surrogate values for slats.

Rongxin's Rebuttal Comments:
Rongxin restates its affirmative arguments in its rebuttal comments.

Department's Position:
The Department agrees with Petitioners' comments concerning the surrogate value for slats. In the Preliminary Results the Department valued lindenwood pencil slats, used by China First, Three Star, and Rongxin, using publicly available, published U.S. prices for American basswood lumber because price information for Chinese lindenwood and American basswood is not available from any of the potential surrogate countries.[131] The U.S. lumber prices for basswood that we used are from the "Hardwood Market Report" for the period December 1, 2006 through November 30, 2007 for Northern 4/4 kiln-dried basswood for grades 1 and 2 Common. These data were placed on the record by Petitioners.[132]

The Department found several limitations regarding the slat data in "Paper and Stationery." The prices listed in the article are not for lindenwood slats, but for Ajanta 5-ply and Vatta II 8-ply slats. There is no evidence in the article that demonstrates whether or not Ajanta and Vatta II slats are similar to lindenwood. As a result, the slat information in "Paper and Stationery" is not as comparable with respect to the type of wood as the basswood surrogate used in the Preliminary Results.

China First and Three Star admit in their June 2, 2009, brief, that none of the wood types listed in "Paper and Stationery" are lindenwood. We do not have any information on the record to determine whether Vatta and Ajanta are hardwood or softwood. However, we do know that lindenwood and American basswood are both temperate hardwoods. The Department determined in the initial investigation that comparability of wood is a necessary factor in deciding the surrogate value for lindenwood slats.[133] In other words, the Department established a preference for wood type over a slat-specific price when selecting a surrogate value for Chinese lindenwood. In the Pencils Final Determination of LFTV, the Department stated that, "we find that jelutong value inappropriate because our research indicates that, although jelutong is used in pencil production, it is an entirely different genus of wood." Additionally, jelutong was

[131] In the antidumping investigation of certain cased pencils from the PRC, the Department found Chinese lindenwood and American basswood to be virtually indistinguishable and thus used U.S. prices for American basswood to value Chinese lindenwood. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China, 59 FR 55625, 55632 (November 8, 1994) ("Pencils Final Determination of LTFV"). This methodology was upheld by the CIT. See Writing Instrument Manufacturers Association, Pencil Section, et. al. v. U.S. Dept. of Commerce, 984 F. Supp. 629, 637-38 (CIT 1997), aff'd 178 F.3d 1311 (Fed. Cir. 1998).

[132] See Petitioners' submission (November 26, 2008) at 2 and Attachment A; Petitioners' submission (December 15, 2008) at 1-2 and attachments.

[133] See Pencils Final Determination of LTFV.

determined to be a tropical soft timber while lindenwood is a temperate hardwood. The Department also concluded that the fact that these two types of wood are used to make pencils, does not mean they are comparable in quality and value. Thus, the Department found that American basswood was more comparable to lindenwood than jelutong and declined to use jelutong wood slat prices as a surrogate value for lindenwood slats. The Department used U.S. basswood prices because comparable hardwood prices were not available for any of the surrogate countries.

The Department's slat surrogate value decision was upheld by the CIT. The CIT found that the Department acted with the intention of finding the most accurate dumping margins by valuing Chinese lindenwood with American basswood and that Department's evidence indicates the most comparable wood to Chinese lindenwood is American basswood.[134] The Department's decision to reject the use of jelutong slats resulted in the adoption of a preference for using basswood lumber over non-basswood slats. The Department has valued Chinese lindenwood slats using American basswood in every review following the Pencils Final Determination of LTFV and remand determination. In this review, the Department will continue to use American basswood prices as the surrogate value for Chinese lindenwood slats, since there is no information on record of this review to determine whether Vatta and Ajanta wood slats are hardwood or softwood, let alone even similar to lindenwood.

Moreover, the slat information in "Paper and Stationery" does not satisfy the Department's surrogate value selection criteria of being contemporaneous with POR. "Paper and Stationery" does not provide prices covering the entire POR and instead lists slat prices for mid-2007. Furthermore, we do not know if the slat price information in "Paper and Stationery" represents a range of transactions that are industry-wide. It is also not evident whether these prices reflect transactions that occurred throughout all regions of India.

On the other hand, the "Hardwood Market Report" prices are consistent with the Department's surrogate value selection requirements because the information represents a range of prices covering the entire POR, includes many transactions, and is specific because American basswood is very similar to the lindenwood slats used by China First, Three Star, and Rongxin. Therefore, the Department will continue to use American basswood prices published in the "Hardwood Market Report" as a surrogate value for lindenwood slats for the final results of this review.

Comment 4b. Surrogate Values for Cores and Lacquer

China First and Three Star Affirmative Comments:
China First and Three Star argue that pencil cores used in cased pencil production, like those used by China First and Three Star, are not readily and feasibly traded in international commerce because they are too heavy and inexpensive to ship internationally, particularly to a country like India with an indigenous source of such materials. China First and Three Star further allege that the WTA import statistics for black core are demonstrably flawed, as evidenced by their

[134] See Writing Instrument Manufacturers Association, Pencil Section, et al. v. United States, Slip Op. 97-151 at 16.
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deviation from the prices detailed in "Paper and Stationery" and their deviation from the price lists of an Indian supplier of cores provided by the respondents. Further, China First and Three Star note that "Paper and Stationery" distinguishes between color and black cores, which is more precise than the generic "pencil core" value derived from WTA data. According to China First and Three Star, the WTA pencil core valuation is more than four times higher than the published, commercial value reported in "Paper and Stationery."

China First and Three Star argue that "Paper and Stationery" provides a commercially realistic, input-specific price valuation for lacquer, and the Department should use this data for the final results. China First and Three Star note that "Paper and Stationery" data is significantly different from the WTA data.

Rongxin's Affirmative Comments:
Rongxin argues that the Department should use "Paper and Stationery" to value color cores as this article shows the prices of pencil lead by the sole producer in India. Rongxin argues that the value of cores from the WTA data used by the Department in the Preliminary Results is 500% more than the value of the pencil lead prices in "Paper and Stationery." According to Rongxin, this means that the WTA data are aberrational and clearly incorrect. Rongxin asserts that the WTA data includes products other than color cores and many of the color cores included in the WTA data are not used for normal pencils. In either case, Rongxin argues that the WTA data are wrong and, in other PRC reviews, it has been demonstrated import statistics can be wrong. For example, Rongxin points out that in a prior review of pencils, the Department used Ex-Im Key data as the source rather than official Indian import data for pencils lead cores because the official import data for India were demonstrated to contain numerous other products that had been misclassified with the wrong tariff number and were not in fact pencil cores.[135] Rongxin concludes that because domestic Indian prices of color cores are a broad market average (they include all sales in India), are contemporaneous with the POR, are specific to pencils sold by Rongxin, and appear to be tax-exclusive, they are superior to WTA data.

Petitioners Rebuttal Comments:
Petitioners argue that "Paper and Stationery" prices are deficient for use as surrogate values for the following reasons. First, the data are from a single manufacturer. Second, "Paper and Stationery" does not contain data regarding the Indian core manufacturer's total sales volume, nor the total sales volume at the cited prices, nor whether the prices were quotes or actual market transactions. Third, the prices are undocumented. Fourth, there is no indication that the prices are tax-exclusive. Fifth, there is no evidence that these prices prevailed during the POR. Last, the existence of large core import volumes demonstrates that the market is larger than a single manufacturer.

Petitioners rebut that the WTA data used by the Department are superior to the sources proffered by the respondents. Petitioners argue that the WTA data comport with the Department's standards and practices for surrogate valuation—including the preference for publicly available price information that reflects numerous transactions from a market economy, has supporting

[135] See 2000-2001 Final Results.

documentation, and is tax-exclusive and are in keeping with the approach that the agency has taken in the initial investigation and prior administrative reviews.

Petitioners rebut the respondents' argument that the Indian import prices on cores are too high because they are higher than those cited in the magazine article, by arguing that the applicable tariff item, 9610.20, covers exactly the materials used in pencil production: black and color cores. Petitioners argue that these imports have no use other than in pencils and, therefore, reflect what Indian pencil producers paid for cores during the POR. Petitioners further argue that the Department dispatched a similar argument in the Hydroxyethylidene Memorandum,[136] stating that it is impossible to determine which value is aberrant when comparing only two data points, and in the TRBs Memorandum, where the Department stated that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresented and, thus, is insufficient to exclude a particular surrogate value absent specific evidence the value is otherwise aberrational. Petitioners also argue that the Department has previously determined that WTA data provide the best available information for pencil core valuation and explicitly rejected the use of Indian core prices for surrogate values or impeaching WTA data.[137]

Petitioners assert that the lacquer prices are likewise from a single, undocumented source. Thus, the lacquer prices in "Paper and Stationery" suffer the same deficiencies as the core prices discussed above.

Department's Position:

We agree with Petitioners' comments regarding the surrogate value for cores and lacquer. First, as previously outlined in the general position for Comment 4 above, the Department prefers WTA data because it is consistent with the Department's surrogate valuation methodology.

The Department found several deficiencies with the cores data contained in "Paper and Stationery." First of all, it appears that the cores prices in "Paper and Stationery" come from an interview with the director of the Indian company that produces the cores. Since there is no official documentation to support these prices, the Department cannot determine whether or not these core prices are from a price list or if they represent actual transactions. Additionally, "Paper and Stationery" does not appear to be a regular industry survey of prices. Furthermore, this source does not provide any data regarding the total volume of sales for the Indian core producer's reported prices. There is also no documentation that indicates whether these prices exclude taxes. The article states that there is only one known supplier of lead cores in India, M/s Lead Slips Products Pvt. Ltd, Ahmedabad. However, we agree with Petitioners that the presence of significant quantities of black and color pencil core imports into India indicates that the core market in India is larger than one single domestic supplier. "Paper and Stationery" does not specify an exact time period for these cores prices and, instead, refers to a "major price revision effected by this party in August of 2006," which is four months prior to the start of the POR. As a result, the Department cannot assume that the cores prices in "Paper and Stationery" prevailed in India during the entire review period.

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[136] See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 10545 (March 11, 2009) ("Hydroxyethylidene Memorandum").

[137] See 2003-2004 Final Results at Comment 1.

The Department also found deficiencies similar to those of cores in the lacquer data in "Paper and Stationery." The lacquer prices come from a single producer, and as a result only represent that producer's sales instead of sales from multiple producers. Furthermore, we do not know if these prices reflect actual transactions, a characteristic that the Department strongly prefers. It also cannot be determined from the lacquer data in "Paper and Stationery" whether the manufacturer produces or sells lacquer or if its lacquer prices are based on its own sales or countrywide transactions throughout India.

As a result, the core and lacquer data in "Paper and Stationery" do not meet the Department's selection requirements for surrogate value information as outlined in Comment 4 above. Therefore, the Department will continue to use the approach it has taken in the initial investigation and prior administrative reviews and value cores and lacquer using WTA data for the final results of this review.

Comment 4c. Surrogate Values for, Castor Oil, Kaolin Clay, and Packing

Rongxin's Affirmative Comments:
Rongxin argues that the respondents' data for castor oil[138] are superior because they are for domestic castor oil that were produced and sold in India, are contemporaneous to the POR, and do not suffer from any of the pitfalls of WTA import data that have been shown to be incorrect numerous times. Rongxin argues that WTA data used by the Department are clearly aberrational since they are more than 300% higher than domestic prices.

Rongxin argues that the respondents' data for kaolin clay[139] are also superior because it is produced in the primary surrogate country, are from the POR, and do not suffer from the inaccuracies often found in WTA data. Rongxin alleges that the "Monthly Statistics of Mineral Production" shows a domestic value for kaolin clay nearly 900% higher than WTA data. Rongxin also argues that the respondents' packaging data[140] are superior for all of the same reasons it alleges above for castor oil and kaolin clay. Rongxin alleges that "Paper Mart" magazine contains a broad range of prices for packaging produced in India, and that while the prices shown are for July 2008, the amount of the price hike is also shown and therefore can easily be subtracted to derive prices during the POR. Rongxin avers that these prices are for domestically produced cartons throughout India. Rongxin argues that the WTA import prices are aberrational since they average 400% higher than domestic Indian prices.

Petitioners' Rebuttal Comments:
Petitioners argue that the Department should continue to use WTA data to value castor oil, kaolin clay, and packaging materials. Petitioners rebut that the mere fact that the WTA data show higher prices than the private source data provided by the respondents does not, by themselves,

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[138] See China First and Three Star's Feb. 10, 2009 Surrogate Value Filing at Exhibit 6 (from "Chemical Weekly").
[139] See China First and Three Star's Feb. 10, 2009 Surrogate Value Filing at Exhibit 7 (from "Monthly Statistics of Mineral Production").
[140] See China First and Three Star's Feb. 10, 2009 Surrogate Value Filing at Exhibit 4 (from "Paper Mart" magazine).

make the WTA data aberrational. Petitioners cite to the Hydroxyethylidene Memorandum and the TRBs Memorandum to support this argument.[141] Petitioners argue that in these memoranda the Department stated that comparison of two data sets provides no guidance as to the aberrance of one of them. Furthermore, Petitioners allege that the tariff items upon which the WTA data are based are specific to the identical items for which surrogate values are sought, i.e., tariff subheading 1515.20 is an eo nomine provision covering castor oil, 2507.00.10 covers kaolin clay, and 3208.10 covers nitrocellulose lacquer. Petitioners also allege that WTA provides data for tariff items specific to the types of packaging used by the respondents and that the respondents have failed to show any flaw in the WTA data.

Petitioners argue that the alternative source data the respondents ask the Department to use to determine the surrogate values of castor oil, kaolin clay, and packaging materials are inferior for surrogate valuation use under the Department's criteria. Petitioners allege that although the Department considers "Chemical Weekly" to be an acceptable source of surrogate value information, it covers only two markets in India, whereas the WTA data apply to the entire country and, thus, better reflects countrywide prices. As a result, Petitioners argue that there is no reason not to use WTA data and no reason to use the "Chemical Weekly" prices. Similarly, Petitioners argue that the kaolin clay data from the "Monthly Statistics of Mineral Production" do not describe how "value" was calculated, nor do they purport to reflect sales prices in India, whereas the WTA data are based on sales, thus providing a superior guide to Indian market prices. Also, Petitioners argue that the packaging data in the "Pencil Mart" magazine are unusable because they do not provide sufficiently detailed product descriptions to relate them to the packaging actually used by the respondents and do not purport to reflect prices in the entire Indian market as the WTA data does.

Department's Position:
We agree with Petitioners' comments regarding surrogate values for castor oil, kaolin clay, and packaging materials. As previously outlined in the position for Comment 4 above, the Department prefers WTA data because it is consistent with the Department's surrogate valuation methodology. We find that in this context the sources, "Chemical Weekly," "Monthly Statistics of Mineral Production," and "Pencil Mart," do not satisfy the Department's established requirements for the selection of surrogate value information.

Even though "Chemical Weekly" has been used as a source by the Department before, it only has castor oil data for two markets in India while WTA data provide countrywide statistics for India. The Department also sees deficiencies with the kaolin clay data contained in "Monthly Statistics of Mineral Production." "Monthly Statistics of Mineral Production" does not explain how the kaolin clay values were derived. Moreover, it does not use sales prices from India for kaolin clay while WTA data uses official sales transactions. Finally, "Monthly Statistics of Mineral Production" is not contemporaneous because the prices are only up through the publication date of March 2007 and WTA data cover the POR, which is December 2006 through November 2007

[141] See Hydroxyethylidene Memorandum; and TRBs Memorandum.

Similarly, the packaging material data in "Pencil Mart" fail to supply adequate product descriptions so it cannot be determined whether the packaging materials listed in "Pencil Mart" are similar to the respondents' packaging materials. On the other hand, the WTA data have harmonized tariff schedule ("HTS") numbers that are exactly specific to these particular inputs. For example, HTS number 1515.30 covers castor oil, HTS number 2507.00.10 covers kaolin clay, and WTA has multiple HTS numbers that cover packaging materials used by the respondents.

The Department has also stated in both the Hydroxyethylidene Memorandum and the TRBs Memorandum that one dataset cannot be deemed aberrational to another on the basis of their comparison.

Therefore, the Department will continue to use WTA data to value castor oil, kaolin clay, and packaging materials for the final results of this review.

Comment 4d: Surrogate Value for Steam Coal

China First and Three Star's Affirmative Comments:
China First and Three Star argue that the Department should follow recent practice and resort to Tata Energy Research Institute's Energy Data Directory & Yearbook ("TERI data") to value steam coal. China First and Three Star point out that the Department used a surrogate value of 3,514 rupees per ton from WTA to value coal.[142] China First and Three Star propose that the Department value coal at 801.54 rupees per ton and use TERI data.[143] China First and Three Star cite to two previous cases, Wooden Bedroom Furniture and Chlorinated Isocyanurates, in which the Department relied on TERI data to assign a surrogate value to coal.[144] China First and Three argue that in both of these cases, the Department decided that TERI data were the best source with which to value steam coal. China First and Three Star indicate that TERI data uses Coal India Limited ("CIL") at its data source and that it is a very comprehensive price source since its data include sales are from all over India and for the largest volume of coal traded in India. In addition, they argue that CIL data are based on market factors because CIL is an independent India company and its data represents market-determined prices because the price of the coal depends on the grade. China First and Three Star provided a summary sheet for calculating the surrogate value for coal using TERI data.[145]

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142 See 2006-2007 Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Factor Valuation for the Preliminary Results, December 30, 2008, at 7 ("Pencils Factor Valuation Memorandum").

143 See China First and Three Star's Feb. 10, 2009 Surrogate Value Filing at Exhibit 3.

144 See "Factor Valuation Memorandum for the Preliminary Results, First Administrative Review of Wooden Bedroom Furniture from the People's Republic of China" (January 31, 2007) at Comment 9 ("Wooden Bedroom Furniture"). See also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 159 (January 2, 2008), and accompanying Issues and Decision Memorandum at Comment 7 ("Chlorinated Isocyanurates").

145 See China First and Three Star's June 2, 2009 Case Brief, Exhibit B.

Rongxin's Affirmative Comments:
Rongxin argues that China First and Three Star's data for coal are superior because the prices listed in Exhibit 3 of China First's and Three Star's Surrogate Value letter are for domestic India coal and not imported coal.[146] Rongxin argues that the import values that the Department used in the Preliminary Results could contain certain errors. Rongxin states that in the prior review of pencils, the Indian import data from WTA for cores included various other products that had been misclassified with the wrong tariff number and these products were not pencils cores.

China First and Three Star Rebuttal Comments:
In their June 12, 2009 coal price comments, China First and Three Star assert that coal price information derived from TERI and CIL data, which they assert was placed on the record with China First's and Three Star's Feb. 10, 2009 Surrogate Value Filing, are the proper valuation of coal. According to China First and Three Star, these data reflect POR market prices for coal in India. They further assert that the Department has used the TERI or CIL-based price data for coal valuations in numerous past cases.[147] China First and Three Star conclude that the TERI and CIL data meet the Department's threshold requirement for surrogate value sources, as the data are reliable and publicly available.[148] Thus, they contend that the Department should value coal for the final results at 801.54 Rps/MT.

Rongxin's Rebuttal Comments:
Rongxin argues that the TERI and CIL data can only qualify as best available information once the Department knows what kind of coal Rongxin uses, as only then could it apply the specific type and grade of coal to Rongxin. Rongxin used a limited amount of coal for the purpose of heating ovens in the pencil core production process.

Since pencils are a simple product and, hence, do not require high quality raw materials, Rongxin argues that it uses the cheapest grade of non-coking coal in the production of pencil cores. In addition, Rongxin notes that the Useful Heat Value ("UHV") for Rongxin's application also requires the cheapest grade of non-coking coal.

Rongxin argues that neither the application of any other type or grade of coal would not qualify as best available information, nor would an average of multiple grades or types of coal to achieve a surrogate value be appropriate to apply to Rongxin.

Petitioners' Rebuttal Comments:
In their June 12, 2009 Coal Price comments, Petitioners note that the CIL data are virtually contemporaneous with the POR, while the TERI data are several years out of date. Asserting that the Department's preference is for contemporaneous data in determining the best available

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146 See China First and Three Star's Feb. 10, 2009 Surrogate Value Filing at Exhibit 3.

147 See Chlorinated Isocyanurates; Wuhan Bee Healthy Co., Ltd. v. United States, 29 CIT 1275 (Ct. Int'l Trade 2005).

148 See Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 15; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Light-Walled Rectangular Pipe and Tube From the Republic of Korea, 73 FR 5794, 5797-98 (January 31, 2008).

information for surrogate values, Petitioners argue that the Department should rely on CIL data.[149] Petitioners conclude that, regardless of whether it uses TERI or CIL data, the Department should use Grade A coal to determine the surrogate cost of the steam coal.

Department's Position:
We disagree with both Petitioners' and the respondents' argument that the Department should use TERI data, which uses 2007 CLI coal prices, to calculate a surrogate value for steam coal. 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 surrogate values, including the quality, specificity, and contemporaneity of the data. As there is no hierarchy for applying the above-mentioned factors, 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" surrogate value is for each input.[150] TERI data are categorized by major types of coal and the 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.[151]

The Department stated in Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 9 ("OTR from the PRC"), that since none of the respondents provided the necessary specificity with regard to the steam coal used, there was no advantage to using TERI data. In this case, the Department does not have the specific grades of coal or the UHV on the record that China First, Three Star, and Rongxin use. Absent the necessary information regarding the type of coal used by the respondents, there is no benefit to using TERI data to calculate a surrogate value for coal. In addition, the Department prefers to use WTA data because they are consistent with the Department's surrogate valuation methodology in that they provide many sales from a market economy country, they represent a range of prices and official sales transactions during the POR, it is a published source that is publicly available, and its data is tax-exclusive. Therefore, the Department will continue to use WTA data to calculate a surrogate value for steam coal in the final results of this review.

Comment 5: Adjustment of the Pencil Slat Surrogate Value to Account for Wood Loss

Petitioners' Affirmative Comments:
Petitioners assert that, in past administrative reviews of this product, the Department valued lindenwood slats using public, published prices for basswood lumber. Petitioners argue that the production of lumber to slats results in wood loss due to wood slicing, wood sawing, and inherent wood defects. Petitioners contend that, in past administrative reviews, the Department

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[149] See Frontseated Service Valves.

[150] See Certain Preserved Mushrooms From the People's Republic of China; Final Results of the Antidumping Duty Review, 72 FR 44827 (August 9, 2007) and accompanying Issues and Decision Memorandum at Comment 1; Nation Ford, 166 F.3d at 1373.

[151] See Chlorinated Isocyanurates at Comment 7.

used a conversion factor to account for this wood loss. According to Petitioners, the Department's practice for this conversion factor relied on partial facts available because record information regarding wood loss was unavailable.

Petitioners assert that the Department deviated from its past practice in the instant administrative review because it did not account for the lumber to slat wood loss. Petitioners cite to the Preliminary Results, where the Department stated that, "the slat FOP already accounts for the yield loss."[152] Petitioners argue that this was an error by the Department, because the lumber to slat production process occurs before the slat is delivered to the pencil producer. Hence, say Petitioners, the yield loss is incurred when the slat producer transforms the lumber into slat. Petitioners conclude that the Department should revert to its past practice, and account for lumber to slate yield loss in determining the surrogate value of finished slats.

The respondents had no further comments.

Department's Position:
In the Preliminary Results, the Department failed to account for wood loss when lumber is sliced into slats. In prior administrative reviews, the Department has recognized that pencil slats are produced from lumber in a process that results in wood loss.[153] The wood lost while producing pencil slats is a cost that would likely be reflected in the price of the slats if they were purchased in a market economy. Therefore, the market economy surrogate price that we are using to value pencil slats should reflect the cost of the wood lost. Because we are using the price of lumber, a price of an earlier stage product which does not reflect this wood loss, as a surrogate value for pencil slats, we need to adjust this price for the wood lost in producing slats from lumber.

Rongxin provided information regarding its lumber to slat yield loss on pages 23-24 and in Exhibit D-15 of its August 7, 2008, Section D Questionnaire Response. China First and Three Star did not provide any information in their responses regarding their lumber-to-slat yield loss ratio. Thus, for the final results of this review, we will use the information provided by Rongxin to adjust for wood loss in the slat surrogate value for China First, Three Star, and Rongxin.

Comment 6: Whether Certain WTA Data Are Aberrational

China First and Three Star Affirmative Comments:
China First and Three Star assert that the Department should reevaluate all of the import data that it used in its FOP valuation and remove what the respondents consider to be "aberrant values." According to China First and Three Star, it is the Department's established practice that unreasonable and aberrant surrogate values will not be used in the calculation of normal value.[154]

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[152] See Preliminary Results at 8.
[153] See 2000-2001 Final Results at Comment 3 ("{t}he Department recognizes that wood loss will occur in the process of producing a slat from a piece of sawn lumber"); Remand Determination: Writing Instrument Manufacturers Association, Pencil Section, et al. v. United States (March 22, 1996) at 13 ("we find persuasive the Petitioners' arguments that there will be some wood loss in the process of producing a slat from a piece of sawn lumber"). See also 2004-2005 Final Results at Comment 2.
[154] See Final Determination of Sales at Less Than Fair Value: Refined Antimony Trioxide from the People's Republic of China, 57 FR 6801, 6803 (Feb. 28, 1992).

Moreover, China First and Three Star argue, the Department has itself stated that it will examine surrogate values for reasonableness.[155]

According to China First and Three Star, the Department's "rule of thumb" is to disregard FOP values that are four times higher than the calculated average value for a particular input. On this basis, China First and Three Star contend that in calculating the FOPs, the Department should eliminate the Japanese imports from glue data, Swedish and Luxembourg imports from the film and sheet data, Swiss imports from the acetone and yellow pigment data, and Taiwanese imports from the "other transfers" (transfer film) data.

Petitioners' Rebuttal Comments:
Petitioners assert that China First's and Three Star's request for removal of selected WTA data should be rejected because the respondents failed to provide further analysis to support their position that the selected WTA data are aberrant. Petitioners cite to TRBs Memorandum at Comment 6, in support of their position. Specifically, Petitioners note the Department's statement in Comment 6 of the TRBs Memorandum that its recent practice has found that existence of higher prices alone does not necessarily indicate that price data is misrepresented or distorted, and is not sufficient to exclude a value, absent specific evidence that a value is aberrational. According to the Petitioners, China First and Three Star's argument is premised solely on the fact that certain values for imports from certain countries are higher than others, and this is insufficient to warrant exclusion of the data from the FOP valuation calculation.

Department's Position:
We agree with Petitioners that China First and Three Star failed to provide specific evidence and analysis to support their position that selected country-specific unit values in the WTA data are aberrational. Consequently, we have not eliminated these specific unit values from the WTA data we used for our FOP calculations.

China First and Three Star have presented no specific evidence or analysis that would substantiate their claim that any of the import values referenced above are aberrational. Rather all the respondents have done is to ask the Department to exclude the import values referenced above based on a "rule of thumb," whereby any country-specific value equal to four times the average value for that data is automatically considered an "aberrant value." Petitioners' citation of TRBs Memorandum at Comment 6, appropriately highlights the Department's practice which finds the existence of higher prices does not necessarily indicate that the price data is distorted or misrepresented. The position in TRBs Memorandum is consistent with the 2008 final determination for OTR from the PRC and the 2007 final results for Shrimp from Vietnam in

[155] See Tapered Roller Bearing and Parts Thereof, Finished or Unfinished From Romania: Final Results of Antidumping Duty Administrative Review, 62 FR 37194, 37199 (July 11, 1997); Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Belarus, 66 FR 33528 (June 22, 2001), and accompanying Issues and Decision Memorandum at Comment 2; Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China, 59 FR 55625, 55633 (Nov. 8, 1994); Notice of Final Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China, 66 FR 50608 (Oct. 4, 2001), and accompanying Issues and Decision Memorandum at Comment 3.

which the Department determined it would not exclude higher import values, absent specific evidence that they were aberrational.[156] While it is well established, as the respondents have argued, that the Department will not use unreasonable and aberrant surrogate values in the calculation of normal value and will examine all surrogate values for reasonableness, the Department does not consider the reasonableness of a surrogate value can be demonstrated solely by comparing how high or low it relative to other unit values in the data. In this case, no evidence has been for the factors referenced above that shows that the whole range of WTA values are not representative of the market for that factor in India.

As an illustration of the problematic nature of excluding import values simply on the basis of their size, we note that for glue China First and Three Star have argued that based on their rule of thumb any value above 473 Rs/kg should be excluded, which in this case means the Japanese imports with a unit value of 589.49 Rs/kg. We note, however, that the respondents have not requested the Department to exclude the Iranian imports which at 23.94 Rs/kg represents the low end of the price spectrum and are equal to only 20 percent of the average value. Based on the logic that disproportionately high unit values should be excluded, it would follow that we would exclude the disproportionately low Iranian prices as well. However, there are substantive reasons for keeping the low-end Iranian imports in the calculation as they represent about half of all of India's imports of glue in quantity terms. On the same token, Japanese imports represent about 5.3 percent of the total quantity of glue imports, which, while small relative to the Iranian imports, is substantial compared to the quantities imported from a number of other countries. We do not have evidence on the record that indicates the type or uses of the Japanese or Iranian glue imported into India, nor do we have specific information on the type of glue used by Chinese pencil manufacturers.

With respect to prices for film and sheet imports from Sweden and Luxembourg, removing imports from these two countries from the WTA data only reduces the average value from 114.93 Rs/kg to 114.61 Rs/kg. The respondents did not provide any data demonstrating that these values were aberrational, but even if this was the case, their removal would not result in a significant change in the overall average value.

In addition, China First and Three Star suggest removing imports from Switzerland from the WTA acetone data. As there are no Swiss imports in the acetone data for the POR, we assume that China First and Three Star were actually referring to imports from Germany.[157] Although the German value is about three times the average acetone price, no specific evidence was presented by China First or Three Star to show that this value is aberrational. As with film and sheet, removing German imports from the average acetone value reduces does not result in a significant change, reducing the average value from 38.31 Rs/kg to 38.26 Rs/kg.

Consistent with the Department's position that parties must provide specific evidence to support the exclusion of WTA data, the Department has reviewed all of its WTA average unit Surrogate

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[156] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 4 ("Shrimp from Vietnam").

[157] See Pencils Factor Valuation Memorandum at Exhibit 4.

Value calculations and put back certain preliminarily excluded values in the WTA data if no specific justification existed for their exclusion.[158]

In its review of the surrogate value calculations, the Department notes that it excluded North Korean imports from several WTA surrogate value calculations. As the Department does not include North Korea on its list of NME or excludable export subsidy countries, our exclusion of the North Korean imports in the Preliminary Results was not warranted. Therefore, in these Final Results, we have included North Korean data in our surrogate value calculations.[159]

Comment 7: Correction of Clerical Errors

Rongxin's Affirmative Comments:
According to Rongxin, the Department's identified surrogate value for OPP bags, which it used for China First, was not correctly applied to Rongxin's margin calculation. If the Department does not use the superior Indian surrogate value data that was offered by Rongxin, then Rongxin requests that the Department use the same surrogate values for Rongxin's inputs that it applied to China First's inputs.

Petitioners had no further comments.

Department's Position:
We agree with Rongxin's comments that the Department did not use the correct surrogate value for the calculation of the FOP for Rongxin's OPP bags input. This was due to a clerical error and we apply the correct surrogate value of 177.60 rupees per kg in these final results.

Comment 8: Use of Wrong Surrogate Value for "Shell Card"

Rongxin's Affirmative Comments:

Rongxin asserts that the Department used the wrong surrogate value for Rongxin's shell card in the preliminary margin calculation. Rongxin claims that it uses the same material for shell card as for the mid-size (non-corrugated) box with a tariff number of 48191010. It argues that this is the same value that the Department used to value China First's shell card. If the Department does not use the superior Indian surrogate value data that was offered by Rongxin, then Rongxin requests that the Department use the same surrogate values for Rongxin's inputs that it applied to China First's inputs.

Petitioners had no further comments.

Department's Position:

We note that the factor variable "CARD" in Rongxin's FOP database is identified at a "shell

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[158] See id.
[159] See, e.g., OTR from China at Comment 9.

card" in Rongxin's Section D response rather than a card/label.[160] There were no card/label factors reported in the actual FOP database. Given this identification of CARD as a "shell card" in the original Section D, and again in the subsequent December 16, 2008 submission, Rongxin "Correction to Tariff Numbers and Names of Factors of Production", we determine that we used the wrong surrogate value in our preliminary results for the "CARD" factor.[161] Therefore, we use import data from tariff number 48191010 for the surrogate value for CARD and correct the factor name to read "shell card."

RECOMMENDATION

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

AGREE___________ DISAGREE___________

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

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Date

[160] Rongxin D Response, August 7, 2008, at Exhibit 1. The "shell" identified at page 20 of the Section D response refers to the plastic shell, a separate packing material.
[161] Rongxin "Correction to Tariff Numbers and Names of Factors of Production December 16, 2008, at Exhibit 2.