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August 10, 2009

**MEMORANDUM TO:** Carole Showers
Deputy Assistant Secretary
for Policy and Negotiations

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

**SUBJECT:** Antidumping Duty Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2007 Antidumping Duty Administrative and New Shipper Reviews

**SUMMARY:**

We have analyzed the case briefs submitted by the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively "Petitioners"), Guangdong Yihua Timber Industry Co. Ltd., ("Yihua Timber"), Lifestyle Enterprise, Inc., Trade Masters of Texas, Inc., and Emerald Home Furnishing, LLC (collectively "Importers' Coalition"), Ron's Warehouse Furniture ("Ron's Warehouse"), Dream Rooms Furniture (Shanghai) Co., Ltd. ("Dream Rooms"), Dongguan Bon Ten Furniture Co., Ltd. ("Bon Ten"), and Orient International Holding Shanghai Foreign Trade Co., Ltd. ("Orient International").[1] We have also reviewed the Petitioners', Yihua Timber's, Bon Ten's, Importers' Coalition's, and COE, Ltd.'s ("COE") rebuttal briefs. As a result of our analysis, we have made changes to *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review*, 74 FR 6372-01 (February 9, 2009) ("*Preliminary Results*").

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues raised in the antidumping duty administrative review and concurrent new shipper reviews for which we received comments.

[1] Petitioners filed a case brief concerning the new shipper reviews. Issues and arguments raised in that brief mirrored Petitioners' arguments in their case brief for the administrative review, and all arguments are addressed below.

**Case Issues:**

Comment 1: Use of the Philippines as Surrogate Country

Comment 2: Net Import Quantity - Philippines

Comment 3: Surrogate Value for Poplar, Ash and Pine, Veneers and Plywood

Comment 4: Surrogate Value for Plywood

Comment 5: Surrogate Value for Medium Density Fiberboard (MDF)

Comment 6: HS Code for Calculation of the Surrogate Value for Pine

Comment 7: Surrogate Value for Sealer

Comment 8: Surrogate Value for Particle Board

Comment 9: Surrogate Value for Labor

Comment 10: Surrogate Value for Energy

Comment 11: Surrogate Value for Truck Freight

Comment 12: Treatment of Ocean Freight Expense

Comment 13: Treatment of and Surrogate Value for Brokerage & Handling

Comment 14: Selection of Financial Statements

Comment 15: Treatment of Works-in-Progress and Changes in Finished Goods Inventory in Surrogate Financial Ratios

Comment 16: Treatment of Indirect Materials, Indirect Labor & Subcontractor Expenses

Comment 17: Constructed Export Price Offset

Comment 18: Yield Ratio Calculation

Comment 19: Treatment of Warehousing Expense

Comment 20: Treatment of Yihua Timber's FOP and Gross Weights

Comment 21: By-Product Offset

Comment 22: Yihua Timber Affiliate's (Company A's) Sales

Comment 23: Inventory Carrying Costs

Comment 24: Inland Freight for Yihua Timber's Channel 1 Sales

Comment 25: SAS Programming Changes and Error

Comment 26: Use of Combination Rates

Comment 27: Absorption of Antidumping Duties

Comment 28: Cash Deposit Instruction for Companies that Lost Their Separate Rate

Comment 29: Whether to Rescind the Review with Respect to Dongguan Bon Ten Furniture Co., Ltd.

Comment 30: Whether to Grant Dream Rooms Furniture (Shanghai) Co., Ltd. a Separate Rate

Comment 31: Whether the Department Failed to Timely Initiate the Administrative Review Thereby Erroneously Choosing Orient International as a Mandatory Respondent

Comment 32: Separate Rate Status of Orient International

**Background:**

The merchandise covered by the order is wooden bedroom furniture from the People's Republic of China ("PRC"), as described in the "Scope of the Order" section of the *Preliminary Results*. The period of review ("POR") is January 1, 2007, through December 31, 2007. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our *Preliminary Results*. The interested parties submitted case and rebuttal briefs on May 27, 2009, and June 4, 2009, respectively. On May 28, 2009, we rejected Yihua Timber's case brief because it contained untimely new information. On June 4, 2009, Yihua Timber resubmitted its case brief with the new information redacted. On June 6, 2009, we rejected the Importers' Coalition's and COE's respective rebuttal briefs due to untimely new arguments included in their respective rebuttal briefs. On June 11, 2009, the Importers' Coalition and COE resubmitted their respective rebuttal briefs with the new arguments redacted. On June 12, 2009, we rejected Yihua Timber's rebuttal brief because it included an untimely new argument. On June 15, 2009, Yihua Timber resubmitted its rebuttal brief with the new argument redacted.

**Comment 1: Use of the Philippines as Surrogate Country**

Petitioners state that, for the *Preliminary Results*, the Department of Commerce ("Department") determined that the data from both India and the Philippines is relatively equal in terms of quality, availability, and general contemporaneity. Petitioners assert that the Department selected the Philippines over India as the surrogate country because the Philippine financial statements on the record of this review are more contemporaneous than the Indian financial statements. Petitioners argue that if the Department finds that there are no reliable Philippine surrogate values for certain inputs, the Philippine Financial Statements would no longer be necessary as a "tie-breaker" between the countries and that the Department should rely upon India as the surrogate country. Petitioners argue that, consistent with 19 CFR 351.408(c)(2), the Department should value all inputs using information from a single surrogate country. Petitioners contend that reliable Indian surrogate values are available for all inputs.

In rebuttal, Yihua Timber argues that there is a far greater degree of economic comparability between the Philippines and PRC than between India and PRC. Furthermore, Yihua Timber argues that there are no inputs for which valid Philippine surrogate value data are lacking. In addition, Yihua Timber contends that Petitioners wrongly assert that the absence of useable Philippine data for a few inputs would dictate using India as the primary surrogate country. Yihua Timber argues that 19 CFR 351.408(c)(2) gives the Department latitude to use data from

more than one surrogate country, in that it provides that the Department "normally" will value all factors in a single surrogate country. In addition, Yihua Timber argues that precedent supports the selective use of surrogate value data from a second country, not the wholesale substitution of Indian surrogate data for reliable Philippine surrogate data.[2] In addition, Yihua Timber argues that the Philippines is a superior primary surrogate country due to the contemporaneity of the Philippine data, particularly with respect to the Philippine financial statements, even if useable Philippine data were lacking for certain inputs. Finally, Yihua Timber states that if the Department determines that there is no reliable Philippine data for certain specific wood inputs, Yihua Timber has no objection to the use of values derived from Indian import statistics in their stead.

**Department's Position:**

For the final results, we will continue to use the Philippines as the surrogate country in this segment of the proceeding. In the *Preliminary Results,* the Department stated that "… the Philippines and India are both: (1) at a level of economic development comparable to the PRC; (2) significant producers of comparable merchandise; and (3) provide contemporaneous publicly available data to value FOPs. Because the data from both India and the Philippines are relatively equal in terms of quality, availability, and general contemporaneity, we have broadened our analysis. Specifically, we have determined that the Philippine surrogate financial data provide for greater contemporaneity with the period of review ("POR") than the Indian surrogate financial data." *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review,* 74 FR 6372 (February 9, 2009). No interested party has disputed these statements.

The Philippine financial statements are precisely concurrent with the POR whereas the Indian financial statements are concurrent with only three months of the POR, *i.e.*, January 1, 2007 through March 31, 2007. *See* Memorandum to the File, "Third Administrative Review and Fifth New Shipper Reviews of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Surrogate Country Selection - Period of Review - 1/1/07 - 12/31/07," dated January 30, 2009. Therefore, the Department continues to find that, given the relative equality of the other surrogate data, the Philippines provides superior data, thus we have continued to rely on the Philippines as the surrogate country in this review.

As demonstrated below, reliable Philippine surrogate value data are available for all factors of production ("FOPs"); therefore it is not necessary to consider using India as the surrogate country in part, or in whole, as suggested by Petitioners.

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[2] Yihua Timber cites *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR49162 (August 20, 2008) and the accompanying Issues and Decision Memorandum at 21-22 and *Certain Frozen Fish Fillets From Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March, 21, 2006).

**Comment 2: Net Import Quantity – Philippines**

Petitioners argue that the Department should re-calculate surrogate values for all FOPs using import data published by the Philippine National Statistics Office ("NSO") that Petitioners provided in their March 6, 2009 surrogate value submission. Petitioners claim that the gross weights reported in the World Trade Atlas ("WTA") data include the weights of packing materials and shipping containers ("gross kilogram data"), whereas the NSO data is net of packing materials and shipping containers ("net kilogram data"). Petitioners contend that Yihua Timber's usage rates for its direct materials are reported on a net weight basis and that in order to state usage rates and surrogate values on an "apples-to-apples" basis, the Department must calculate Philippine surrogate values on a net *(i.e.*, unpacked) kilogram basis. Petitioners claim that using gross kilograms as the denominator in the calculation of average unit values ("AUV") of FOPs artificially inflates the denominator, thus understating the AUV of each FOP. Petitioners further state that the Department acted appropriately in its preliminary calculations for lumber, veneer, and plywood based upon volume (*i.e.*, dollars per cubic meter) data from the Philippine NSO.

Yihua Timber argues that the volume based and net kilogram quantities reported in NSO import data are unreliable. Yihua Timber asserts that the Philippine NSO has conceded that its import data is prone to gaps and that the Philippine NSO relies upon a standard weight-to-volume conversion factor to fill in gaps in volume-based data. According to Yihua Timber, weight is the only unit of measure that importers of wood and wood products are required to report on Philippine entry documents, and where this information is missing, the Philippine NSO applies a standard conversion factor to convert the weight to cubic decimeters. In support of this claim, Yihua Timber cites email correspondence with an official from the Philippine NSO, provided in Yihua Timber's March 6, 2009, Surrogate Value Submission at Exhibit 1. Yihua Timber further claims that Philippine NSO import data shows anomalies that can only be explained by the application of a standard conversion factor.

In rebuttal, Petitioners cite Yihua Timber's submission of a "Q&A" document from a Philippine NSO official to a representative of the WTA publisher where the NSO official states that the NSO data for both kilograms and cubic decimeters is based upon entry documents. Petitioners assert that the same document states that importers "very seldom" fail to report cubic decimeters. Thus, Petitioners contend that calculating the second unit of measure from the primary unit using standard formulas is rarely done. With regard to Yihua Timber's claim that the Philippine NSO has conceded that its data are unreliable, Petitioners argue that Yihua Timber misunderstands the Philippine NSO's statements concerning its data. Furthermore, Petitioners maintain that even if such standard formula conversions are used, Yihua Timber has not demonstrated that they are distortive.

In rebuttal, Yihua Timber argues that the Philippine NSO's volume-based data is unreliable because it is based upon the Philippine NSO's net kilogram data, which is also unreliable. Yihua Timber reiterates that the net kilogram data and the volume-based data are both second units of measure not required by the Philippine customs service, thus the Philippine NSO data is prone to gaps. Yihua Timber argues that differences between the gross kilograms and net kilograms reported for certain Harmonized System ("HS") codes demonstrate that the net kilogram data is unreliable. For example, for two entries of pigment under the HS code 3206.49, one from Mexico and one from Sweden, the difference between the gross weight and net weight is zero and for another entry

from Sweden, the difference is 50 percent. Yihua Timber argues that its analysis of the NSO data, contained in Attachment 1 of its rebuttal brief, further demonstrates that net kilogram NSO data is unusable. Yihua Timber contends that Attachment 1 demonstrates that; in some cases, only gross kilogram data is available; the second unit of measure is inconsistent with the primary unit of measure; the second unit of measure is not reported; and, within HS codes, the differences between net kilograms and gross kilograms varies "wildly." Yihua Timber claims that using net kilograms as the denominator in the calculation of AUVs artificially overstates the AUVs because the numerator in the calculation reflects the total value of imports, including packing materials, whereas net kilograms does not.

**Department's Position:**

For the final results, we determined to rely solely upon WTA data covering Philippine imports during the POR to calculate surrogate values for all FOPs in this administrative review and the concurrent new shipper reviews. We agree with Yihua Timber that numeric anomalies bring into question the reliability of the Philippine import data obtained by the Petitioners directly from the NSO. In addition to the examples cited by Yihua Timber above, we find that net weights and corresponding gross weights vary significantly throughout the NSO data.

Yihua Timber has demonstrated anomalies in the NSO data in Attachment 1 of its rebuttal brief ("Attachment 1"). For example, with regard to Philippine HS code 7317.00 ("Nail,Tack, Et, N 8305"), which was used to value nails and staples for the *Preliminary Results*, the differences between net weight and gross weight for entries range up to 37.14 percent. In addition, with regard to Philippine HS code 3506.91 ("Adhesives based on polymers of headings 39.01 to 39.13"), which was used to value glue for the *Preliminary Results*, the differences between net weight and gross weight for entries range up to 22.50 percent.[3] The remainder of Attachment 1 demonstrates similar anomalies that further support the Department's preliminary determination. The fact that the differences between the net weights and gross weights vary significantly within HS codes underscores the unreliability of the NSO data, as differences due solely to packing would likely be somewhat consistent, assuming that like products are packed using similar containers and materials. The extent of these anomalies is sufficient evidence that the Philippine NSO data are unreliable without the Department having to reach the question of what import data is regularly reported to Philippine authorities, or whether the Philippine NSO consistently applies a standard conversion factor to complete missing data fields.

In contrast with the Philippine NSO data, no interested party has claimed that the WTA import data for the Philippines is unreliable. We agree with Yihua Timber that using a net quantity and gross value to calculate surrogate values would be distortive. Dividing a gross value that includes the value of packing by a net quantity that does not include packing would artificially inflate surrogate values, thus inflating normal value. With respect to Petitioners' argument regarding apples-to-apples comparisons, dividing gross import values by net quantities to calculate surrogate values is not apples-to-apples. Reliance upon the WTA data provides an

[3] The Department notes that no party has contested reliance upon the Philippine HS codes discussed in these two examples.

apples-to-apples approach in that both the import value and the import quantity are gross values.

**Comment 3: Data Source for Surrogate Value for Poplar, Ash, Pine, Veneers and Plywood**

Yihua Timber argues that the Department should not rely on volume based NSO data to calculate the surrogate values for Poplar, Ash, Pine, Veneers and Plywood, as was done in the preliminary results. Yihua Timber argues that the NSO volume data suffers the overall deficiencies of the NSO data described above in Issue 2. In addition, Yihua Timber argues that importers are not required to report volumes, and that in instances where volume is not reported, the NSO converts the weight of wood imports to volumes using standard conversion factors which renders this data unreliable.

Yihua Timber also argues that the HS codes used to value lumber and plywood are all basket categories and are not specific to Yihua Timber's inputs. Yihua Timber also presents evidence that that heavier woods are, on average, much costlier than lighter weight woods. Yihua Timber argues that the basket categories used by the Department to calculate the surrogate value for woods consumed by Yihua Timber are much heavier per cubic meter ("M3") than the weights of the wood it used to produce subject merchandise, thus they cannot be used to value its wood inputs. Yihua Timber states that the simplest means of curing the reliability and specificity defects of the volume-based NSO data with respect to Yihua Timber's poplar and ash inputs is to rely instead on the average per-kilogram value of imports into the Philippines under HS code 4407.99**,** "Lumber, Non-Coniferous, of thickness > 6Mm, Nes," and apply that to the verified per-M3 weights.

Alternatively, Yihua Timber states that there are reliable alternative value sources that are (1) country-wide, (2) government-published, (3) publicly available, and (4) reasonably specific to poplar and ash. Yihua Timber asserts that the best alternative is to value poplar and ash using 2007 market data from the Philippines Forest and Management Bureau covering domestic Philippine prices of indigenous Philippine woods that are similar in weight, color and uses to the poplar and ash used by Yihua Timber. Yihua Timber claims that the Department and the Court of International Trade have previously expressed a preference for domestic pricing in the surrogate country. Yihua Timber further claims that an academic study published in 1907 supports its assertion that Philippine and U.S. hardwoods are comparable. Yihua Timber argues that weight/M3 tends to correlate to price with respect to hardwoods such as poplar and ash. Yihua Timber did not propose alternative surrogate value calculations for veneers. *See* Comment 4, below for Yihua Timber's and Petitioners' comments regarding plywood.

As a second alternative, Yihua Timber suggests using the values of exports of hardwood lumber from the U.S. to the Philippines to calculate a surrogate value for poplar and ash. Yihua Timber claims that the Department has utilized U.S. exports to a surrogate country in prior cases where the record lacks reliable surrogate values. Yihua Timber further claims that the U.S. export values are the only source on the record of this review that are specific to poplar and ash.

As a third alternative, Yihua Timber suggests using U.S. exports of poplar and ash to PRC. Yihua Timber states that the Department could calculate the surrogate value of pine using per-kilogram import statistics. Finally, as an alternative specific to the valuation of pine and fir,

Yihua Timber suggests the Department could calculate the surrogate value using U.S. and Canadian exports to the Philippines or U.S. exports of coniferous lumber to PRC as the basis of the calculation.

In rebuttal, Petitioners argue that the Department should reject Yihua Timber's approach because, among other problems, Yihua Timber's methodology fails to account for differences in moisture content between the wood imported into the Philippines and the kiln-dried lumber consumed by Yihua Timber. Petitioners argue that measuring wood on a per cubic meter basis alleviates distortions caused by the moisture content of wood measured on the basis of weight. Specifically, Petitioners argue that volumes remain stable at different moisture levels, whereas weight fluctuates based upon moisture. Accordingly, Petitioners argue that it is not distortive to value one cubic meter of Yihua Timber's kiln-dried lumber using a surrogate value for one cubic meter of Philippine green wood lumber imports. In addition, Petitioners argue that the Department cannot use domestic Philippine prices to value poplar, ash, pine, and fir because the domestic prices cover only native, tropical species which are fundamentally different species and do not even fall within the same six-digit tariff subheadings. Petitioners further argue that, among other shortcomings, the domestic data put forward by Yihua Timber represent only preliminary figures. Furthermore, Petitioners argue that it is not the Department's practice to calculate surrogate values using U.S. export statistics. Finally, Petitioners argue that Yihua Timber cites no legal support with respect to using U.S. exports to China as the basis of surrogate value calculations.

**Department's Position:**

For the final results, we determined to calculate the surrogate values for poplar, ash, pine, and veneers using WTA weight-based data in this administrative review and the concurrent new shipper reviews. Specifically, we will continue to use the HS codes used in the *Preliminary Results* to value poplar, ash, basswood veneer, ash veneer, and pine veneer, and we note that no interested party has proposed alternate HS codes.[4] We have rejected the NSO data due to the anomalies described in Comment 2, above.

With respect to Yihua Timber's proposed alternatives, we have determined not to use Philippine domestic prices to calculate surrogate values because the Philippine prices cover only tropical species, such as lauan, gmelina, apiton, tanguile, and yakal, which are not the woods we are valuing and accordingly are not specific to the inputs used by Yihua Timber to produce subject merchandise. Tropical species are classified under HS codes distinct from those covering poplar, ash, pine, and the woods used to produce the veneers used by Yihua Timber, *i.e.*, basswood, ash and pine veneers). For example, tropical wood veneers are covered by HS code 4408.20 "Veneer Sheet<6Mm Thck, Tropical Woods" and tropical woods are covered by HS code 4407.29 "Lumber, Tropical Wood, of thickness . 6Mm, Nes." In addition, non-tropical veneer is

[4] In the *Preliminary Results*, we valued poplar and ash using HS code 4407.99, we valued basswood veneer and ash veneer using HS code 4408.90, and we valued pine veneer using HS code 4408.10. *See also* Memorandum for The File from Robert Bolling, regarding 2007 Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China: Surrogate Value Memorandum for the Preliminary Results, dated January 30, 2009 ("WBF Prelim SV Memo")

covered by HS codes 4408.90 and 4408.10 and non-tropical lumber is covered by 4407.99. See the WTA website at http://www.gtis.com/wta.htm and Surrogate Value Memorandum at Attachment 3.

In addition, we have determined not to use U.S. or Canadian export data to calculate a surrogate value for these FOPs, as proposed by Yihua Timber. The Department prefers not to use export prices as surrogate values when a domestic and/or import price for the same input is also available. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review;* 69 FR 54635, 54642 (September 9, 2004). In addition, the Department did not determine that the U.S. or Canada would be an appropriate surrogate country for the PRC. On September 2, 2008, the Office of Policy issued a memorandum identifying five countries as being at a level of economic development comparable to the PRC for this segment of the proceeding. The countries identified in that memorandum are India, Indonesia, the Philippines, Colombia, and Thailand.[5] In addition, to calculate surrogate values, it is the Department's preference to choose non-export averages. *See, e.g.,* Notice of *Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71 (December 8, 2004)).

Further, we do not agree with Petitioners' argument that using the NSO volume-based data is less distortive than using the WTA weight-based data, because we have already determined that the NSO volume-based data is flawed and have determined it to be unreliable as a surrogate value source in these reviews. See Issues 2 and 3 above for our determination regarding the unreliability of the NSO data.

**Comment 4: Surrogate Value for Plywood**

Citing *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1278 (Ct. Int'l Trade 2006) ("*Dorbest*"), Yihua Timber asserts that the Department has no reason to believe that if the company were producing wooden bedroom furniture in the Philippines it would import its plywood panels, and so the Department should use Philippine domestic data to value this input. Yihua Timber further argues the Department's preliminary value for Yihua Timber's plywood imports suffer from the same problems as all other values derived from the Philippines NSO data, specifically, that it is unreliable because the Philippine government applies standard conversation factors to fill gaps in the data. Accordingly, Yihua Timber argues that the Department should use domestic Philippine prices from the Philippines Department of Environment and Natural Resources, Forest Management Bureau ("FMB") website to value plywood, which Yihua Timber provided in its March 6, 2009, surrogate value submission.

In rebuttal, Petitioners argue that the Department valued plywood correctly using the NSO volume-based import data. Petitioners argue that the FMB data are unreliable. Petitioners contend that the FMB data are for "panel board," and it is unclear whether this is the same as

"plywood." In addition, Petitioners claim that the FMB prices are only "preliminary" values. Furthermore, Petitioners claim that there is no report from the FMB accompanying the raw pricing data describing the data sources used and how the data were developed. Specifically, Petitioners claim that the FMB data suffer from five flaws: (1) no detailed description of the different board products for which prices have been reported; (2) unclear when the "preliminary" prices will become final; (3) unclear whether and to what extent import prices are included in the data; (4) no explanation regarding FMB's data sources; and (5) no explanation regarding FMB's data collection methodology.

**Department's Position:**

For the final results, we will calculate a surrogate value for plywood using WTA import data covering Philippine HS code 4412.14 ("Plywood Consisting Of Sheets Of Wood, Each Ply Not Exceedg 6 Mm. Thickness, W/ At Least One Outer Pl.") in this administrative review and the concurrent new shipper reviews. In determining the most appropriate surrogate values, the Department's stated practice is "to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data." The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[5] Philippine HS code 4412.14 was used to calculate the surrogate value for plywood in the *Preliminary Results* and no interested party has disputed that this is the appropriate HS code to use to value plywood. As explained in the Department's position under Issue 2, the WTA data are reliable and consistent with the Department's standards for surrogate value data, whereas the NSO data are unreliable because of anomalies in the data.

With regard to Yihua Timber's FMB data, the Department agrees with Petitioners' statement that the fact that this data is labeled "Preliminary" renders the data unreliable for surrogate value purposes as we have no means of discerning how significantly they may vary from the "final" data. *See* Yihua Timber's Submission of Publicly Available Information to Value Factors of Production, dated March 6, 2009, at pg. 5 of Ex. 9, titled "Average Domestic Price of Wood panel Board: 2007/Preliminary." With respect to Petitioners' other arguments regarding the FMB data (*i.e.*, that there is (1) no detailed description of the different board products for which prices have been reported; it is (2) unclear whether and to what extent import prices are included in the data; there is (3) no explanation regarding FMB's data sources; and (4) no explanation regarding FMB's data collection methodology), as stated above, we have determined that the FMB data is unreliable because it is preliminary data. This alone is sufficient to demonstrate its unreliability and thus it is unnecessary to reach conclusions with respect to Petitioners' other arguments.

In addition, Yihua Timber's reliance upon *Dorbest* is unpersuasive. In *Dorbest*, the CIT found that the Department cannot always rely upon import data for surrogate value calculations, and

[5] *See* Import Administration Policy Bulletin 04.1, Non-Market Economy Surrogate Country Selection Process, *available at:* http://ia.ita.doc.gov/policy/bull04-1.html (last accessed August 4, 2009).

explained that the Department is obligated to evaluate the relative accuracy of the import and domestic data. *Dorbest*, 462 F. Supp. 2d at 1278-79. The Department has satisfied that requirement here by: 1) evaluating all the proposed surrogate value data, 2) providing an extensive explanation of its findings regarding the unreliability of the preliminary FMB data; and 3) providing the reasoning underlying its determination to ultimately rely upon the WTA import data covering Philippine HS code 4412.14. Accordingly, for the final results of this administrative review and the concurrent new shipper reviews, the Department will value plywood using WTA data covering imports under Philippine HS code 4412.14.

**Comment 5: Surrogate Value for Medium Density Fiberboard (MDF)**

Yihua Timber states that, in the *Preliminary Results*, the Department relied upon the four digit Philippine HS tariff heading 4411 to value MDF, and that this preliminary valuation was in error because the four digit tariff heading includes high density fiberboard. Yihua Timber argues that, by definition, MDF is medium density fiberboard, thus reliance on the four digit heading that included the high-density material resulted in a distorted value. Yihua Timber claims that medium density fiberboard is properly classified under the six digit Philippine HS tariff heading 4411.29, therefore the Department should rely upon the six digit tariff heading to value MDF in the final results.

Petitioners argue that the Department should continue to value MDF using Philippine HS code 4411. Petitioners argue that Yihua Timber failed to identify the actual density of its MDF purchases anywhere in its questionnaire responses, and that there is no basis to assume that Yihua's MDF purchases fall solely in the 0.5 grams per cubic centimeter ("g/cc") to 0.8 g/cc density range covered by Philippine HS code 4411.29. Petitioners argue that even if the density of Yihua's MDF were between 0.5 g/cc and 0.8 g/cc, based on Yihua's proprietary information, the Department should calculate the surrogate value for Yihua's MDF using Philippine HS code 4411.21. *See* the calculation memorandum for Yihua Timber for discussion of business proprietary information relating to HS code 4411.21.

**Department's Position:**

For the final results, we determined to calculate a surrogate value for MDF reported by Yihua Timber as an FOP using Philippine HS code 4411.29. The description in the WTA data for Philippine HS code 4411.29 is "Oth Fibreboard of Density Exceeding 0.5G Per Cu Cm. Not Exceeding 0.8 G Per Cu Cm., Wtr Not Bonded W/." Contrary to Petitioners' statement that Yihua failed to identify the actual density of its MDF purchases, Yihua reported the density for its MDF input at Exhibit D-7 of its January 9, 2009 Supplemental Questionnaire Response. It is listed in Chinese characters (without translation) after "particle board" and before "lacquer." (The translation is provided on the second page of Exhibit D-37 of the January 9, 2009 supplemental questionnaire response.) Exhibit D-7 specifies the density of MDF as 450 – 880 kg/M3, which converts to .45 to .88 g/cc, and which approximates the density range specified for Philippine HS code 4411.29.

The WTA data includes density specifications for only one other HS code, 4411.39.00 "Oth Fibreboard of Density Exceeding 0.35 G Per Cu Cm Not 0.5 G Per Cu Cm, Wtr Not Bonded W/

Resins," which covers part of the density range reported by Yihua Timber. However, based on the evidence on the record, HS code 4411.39.00 covers densities not used by Yihua Timber to produce subject merchandise, *i.e.*, Exhibit D-7 of Yihua Timber's January 9, 2009 Supplemental Questionnaire Response demonstrates that Yihua Timber did not use MDF ranging from 0.35 g/cc to .44 g/cc, which is covered by HS code 4411.39.00. Therefore, we have determined not to use HS code 4411.39.00 to value MDF. Descriptions of merchandise for all other subheadings under Philippine HS code 4411 do not specify densities. Thus, we determine that using those subheadings to value the specific density MDF used by Yihua Timber would detract from the accuracy of the calculation. Since no interested party raised this issue with respect to the MDF consumed by Sunshine and Golden Well, for the final results, we will continue to value MDF consumed by Sunshine and Golden Well using HS code 4411.

**Comment 6: HS Code for Calculation of the Surrogate Value for Pine**

Petitioners argue that, for the final results, the Department should calculate the surrogate value for pine and fir wood using the eight-digit Philippine tariff subheading 4407.10.90, which Petitioners claim covers "Other" types of pine. Petitioners assert that the Philippine tariff schedule disaggregates pine woods based upon the degree of finishing, and that the Department erred in the *Preliminary Results* when the Department valued pine using the Philippine HS code 4407.10, which is less specific than the eight digit tariff subheading. Based upon proprietary information, Petitioners argue that the eight digit Philippine HS code 4407.10.90 is more representative of Yihua Timber's pine purchases.

Yihua Timber argues that the Department should value pine and fir based upon the per-kilogram value of 2007 pine and fir imports into the Philippines, as applied to verified per-kilogram weight of the pine and fir that Yihua used in its production process. In the alternative, Yihua Timber argues that the Department could value Yihua Timber's usage of pine and fir lumber based upon data covering U.S. and Canadian statistics on the exports of both softwood lumber species to the Philippines.

In rebuttal, Petitioners argue that Yihua Timber's proposed methodology is distortive because it does not account for any moisture differences between wood imports into the Philippines and the kiln-dried wood consumed by Yihua Timber. Petitioners further argue that Yihua Timber's proposed alternative methodology is also unreasonable because the export quantities and values reported by Yihua Timber for pine and fir do not reconcile with the NSO data.

In rebuttal, Yihua Timber states that the issue before the Department is whether record evidence indicates that Yihua Timber did not purchase sanded or end-jointed pine, covered by the eight digit Philippine HS code 4407.10.20, or planed pine, covered by the eight digit Philippine HS code 4407.10.10. Yihua Timber argues that the record demonstrates that its woods purchase contract sets out specific tolerances for pine such that it is unreasonable to assume that Yihua Timber's lumber supplier did not perform some planing before delivery. Yihua Timber further asserts that the record is silent with regard to whether the pine purchased by Yihua Timber was already sanded, yet it remains a possibility. Yihua Timber also states that Petitioners' suggestion is flawed because Petitioners' proffered value is based upon the NSO volume-based data, thus the data are unreliable because the NSO data include data derived using a standard conversion

formula. Yihua Timber illustrates this point with a table showing alleged anomalies in the NSO data.

**Department's Position:**

For the final results, we determined to calculate a surrogate value for pine reported by Yihua Timber[6] as an FOP using WTA import data for the six digit Philippine HS code 4407.10.[7] The record does not demonstrate whether Yihua Timber used sanded or end-jointed pine (both covered by the eight digit Philippine HS code 4407.10.20) or planed pine (covered by the eight digit Philippine HS code 4407.10.10) to produce subject merchandise. See Exhibit S#-2, "Ash and Pine Source Documentation," of Yihua Timber's December 31, 2008 Supplemental Questionnaire Response (Proprietary); *see also* Yihua Timber Calculation Memorandum, dated August, 10, 2009, for analysis of this issue based upon business proprietary information. Accordingly, reliance upon a more specific, eight digit HS code to value pine would not be supported by substantial evidence.

Moreover, for the same reasons stated in the Department Positions for Issues 2 and 3, we have determined it is not appropriate to use NSO data or export data to value pine. Therefore, to calculate the surrogate value for pine, it is appropriate to use WTA import data for Philippine HS code 4407.10, which covers all types of pine Yihua Timber could have used to produce subject merchandise, and we have done so for the final results of review.

**Comment 7: Surrogate Value for Sealer**

Petitioners argue that, for the final results, the Department should calculate the surrogate value for sealer reported by Yihua Timber[8] as an FOP using the eight digit Philippine HS codes 3907.99.10 and 3907.99.20, which cover liquid sealers. Petitioners argue that the Department erred in the *Preliminary Results* when the Department relied upon the six digit Philippine HS code 3907.99, which includes both liquid sealers and dry sealers, *i.e.*, granules, flakes, and powder. Petitioners claim that wood sealers are sold and consumed in liquid form, therefore the eight digit Philippine HS codes 3907.99.10 and 3907.99.20 are more specific to Yihua's input.

In rebuttal, Yihua Timber argues that Petitioners' claim that liquid sealers are used in the production of wooden bedroom furniture is based upon U.S. vendors' product descriptions for "industrial sanding sealer," which does not demonstrate that liquid sealers are used in the production of wooden bedroom furniture. In addition, Yihua Timber argues that the eight digit Philippine HS code 3907.99.90, "Sealers, Other," comprises 88.7 percent of the total value and

[6] Sunshine did not report pine as an FOP. In the *Preliminary Results* we valued Golden Well's pine FOP using a market economy purchase price and will continue to do so for the final results.

[7] Yihua Timber did not report consumption of fir. *See* Yihua Timber's Section D Questionnaire Response at Exhibit D-2, "Factor of Production Database;" Exhibit D-7, "FOP Spreadsheet;" and Exhibit D-36, "Bill of Materials for Products Within Specified Connum."

[8] Neither Sunshine nor Golden Well reported sealer as an FOP.

94.1 percent of the total quantity under the six digit Philippine HS code 3907.99. Yihua Timber asserts that, in contrast, the combined data for HS codes 3907.99.10 and 3907.99.20 account for less than three percent of the total value and less than two percent of the quantity. Thus, Yihua Timber asserts that it is reasonable to infer that, despite the eight-digit subheadings, sealer of any type was most likely classified at the eight-digit level as "other," HS code 3907.99.90.

**Department's Position:**

For the final results, we determined to use WTA import data for the six digit Philippine HS code 3907.99 to calculate a surrogate value for sealer. The record evidence indicates that Yihua Timber consumed sealer in the production of subject merchandise, but the available evidence does not demonstrate whether Yihua Timber consumed liquid or non-liquid sealer. Specifically, Exhibit D-7 of Yihua Timber's January 9, 2009 Supplemental Questionnaire Response, which is an FOP spreadsheet that includes material specifications, does not indicate whether sealer consumed by Yihua Timber in production of subject merchandise was liquid or dry. It is therefore appropriate to use the six digit Philippine HS code 3907.99, which covers both liquid and dry sealers, to calculate a surrogate value for this FOP. Accordingly, the Department rejects Petitioners' assertion that Yihua Timber's sealer should be valued based upon entries under the eight digit Philippine HS codes covering only non-liquid sealer imports.[9]

**Comment 8: Surrogate Value for Particle Board**

Petitioners argue that, for the final results, the Department should calculate the surrogate value for particle board using the six digit Philippine HS tariff subheading 4410.31 instead of the four digit Philippine HS code 4410, which the Department relied upon to calculate the surrogate value for particle board in the *Preliminary Results*. Petitioners claim that Philippine HS code 4410 includes types of board not used in the production of furniture (*i.e.*, oriented strand board and waferboard, which Petitioners claim are covered under Philippine HS codes 4410.21 and 4410.29). Petitioners claim that, for example, Yihua Timber did not report any consumption of oriented strand board in their Section D Response or Supplemental Section D Response. In addition, based upon proprietary information concerning Yihua Timber's production process, Petitioners argue that the Philippine HS code 4410.31 is more specific to Yihua Timber's particle board consumption. Petitioners further argue that because particle board is a wood product, it would not fall under Philippine HS tariff subheading 4410.90, which is specific to non-wood materials. Petitioners therefore assert that the six digit Philippine HS code 4410.31 provides the only appropriate six digit classification for Yihua Timber's particle board consumption

In response, Yihua Timber argues that Petitioners' approach is flawed for several reasons. First, Yihua Timber argues that the Petitioners rely upon NSO data, and the Department cannot rely upon the second-unit-of-measure net kilogram data provided by the NSO. Next, Yihua Timber asserts that its use of particle board has been reported and verified, but the record does not

[9] The Department does not find Yihua Timber's argument regarding the quantity and value of entries under the HS subheadings to be probative because Yihua Timber's argument is based upon the Philippine NSO data, which the Department has rejected for any purpose, as discussed under Issue 2.

provide sufficient detail to support Petitioners' argument about which Philippines HS categories are specific to Yihua Timber's particle board input. Further, Yihua Timber asserts that Petitioners' explanation concerning the Philippine HS code is misleading, and Yihua Timber claims to quote Petitioners' submission concerning the NSO import data for 2007 to demonstrate discrepancies between Petitioners' citation and the NSO import data. Based upon the tariff code descriptions set forth in Yihua Timber's rebuttal brief, Yihua Timber argues that the highest degree of specificity that the record will support with regard to Yihua Timber's particle board consumption is a combination of Philippine HS codes 4410.29, 4410.31, 4410.39 and 4410.90.

**Department's Position:**

The Department determined to continue to use Philippine import data reported by the WTA for the final results and rejected reliance upon the Philippine NSO data, as explained in Comments 2 and 3. We reviewed the WTA descriptions on the WTA website and we determined that, based on the WTA descriptions, HS codes 4410.31, 4410.32, 4410.33, and 4410.39 are the only Philippine HS codes that are specific to particle board. *See* Surrogate Value Memorandum at Attachment 3. Specifically, the WTA descriptions for these Philippine HS codes are as follows: 4410.31 – "Part&Sim Brd Of Wood,Unwork/N," 4410.32 – "Part&Sim Brd Of Wood,Surf Cvd," 4410.33 – "Part&Sim Brd Of Wood,Surf Cvd," and 4410.39 - "Particle & Similar Board Of Wo." *See id*. The descriptions for the remaining WTA subheadings covered by 4410 do not specifically cover particle board. For example, HS code 4410.11 is described as "Waferboard." Thus, for the final results of this administrative review and the concurrent new shipper reviews, we will calculate the surrogate value using only the Philippine WTA HS codes that specifically cover particle board, *i.e.*, Philippine HS codes 4410.31, 4410.32, 4410.33, and 4410.39.

**Comment 9: Surrogate Value for Labor**

Yihua Timber argues that the Department's regression analysis is contrary to the statute's instructions as set forth in section 773(c)(4) of the Act. Quoting this statutory provision, Yihua Timber states that the Department must use, to the extent possible, the prices or costs of FOPs from one or more market economy countries that are economically comparable to the NME country and are "significant producers of comparable merchandise."

Yihua Timber refers the Department to the Court of International Trade's ("CIT") decision in *Allied Pacific Food Co., Ltd. v. United States*, 587 F. Supp. 2d 1330 (CIT 2008) ("*Allied Pacific*"), in which the CIT found 19 CFR 351.408(c)(3) to be contrary to section 773(c)(4) of the Act. Yihua Timber cites to the CIT's finding that the regulation does not follow the Act's mandate to use "to the extent possible" the prices or cost of FOPs in market economy countries which are at a comparable level of economic development and are significant producers of comparable merchandise. Yihua Timber argues that the Department cannot lawfully use the PRC wage rate of US $1.04/hour as calculated for the *Preliminary Results* because the regression analysis used by the Department includes countries that are not at a comparable level of economic development to the PRC, and the calculated wage rate is unsupported by any evidence as to whether any of the countries included in the regression analysis are significant producers of merchandise comparable to wooden bedroom furniture.

As an alternative to the regression analysis, Yihua Timber argues that the Department should use a Philippines' wage rate of US $0.74 per hour, as a surrogate value for labor in the PRC. Yihua Timber asserts that it calculated this wage rate based on 2004 – 2007 daily average wage information for the Philippines derived from the International Labor Organization ("ILO") in a manner consistent with section 773(c)(4) of the Act. Yihua Timber contends that this wage rate is supported by record evidence concerning the "economic comparability" and "significant producer" requirements of that statute, and based on wage data that is contemporaneous with the POR, and thus, is the best available information for valuing Yihua Timber's hourly cost of labor in this case.

Petitioners rebut this argument by stating that the Department's regulation accounts for the discretion it has under section 773(c)(1) of the Act to use the best available information. Further, citing *Luoyang Bearing Corp. v. United States*, 347 F. Supp. 2d 1326, 1346 (CIT 2004), *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984), and *Koyo Seiko Co. v. United States*, 36 F.3d 1565, 1570 (Fed. Cir. 1994), Petitioners assert that the CIT has recognized that the statute does not direct the Department to use a specific method to value labor, and the appellate courts have recognized that the Department's interpretation of the statute is therefore given controlling weight as long as it is rational.

Petitioners state that a draft version of the regulation codified at 19 CFR 351.408(c)(3) was subject to public comment and, pursuant to comments submitted, the Department recognized that its prior practice of using labor data collected from only one selected surrogate country resulted in wage rate variations and unpredictable margin calculations. Citing *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296 (May 19, 1997), Petitioners note that the Preamble to the Department's regulations states that the Department's reliance upon a regression-based wage rate would "significantly enhance{} the accuracy, fairness, and predictability of calculations in NME cases." Furthermore, Petitioners state that, in *Dorbest II*, the CIT affirmed the Department's determination not to base its wage rate calculation in NME cases on data in a single country. *See Dorbest Ltd. v. United States*, 547 F. Supp. 2d 1321, 1330 (CIT 2008) ("*Dorbest II*").

Petitioners contend that the Department recognized in the past that using a wage rate from a single surrogate country resulted in a high level of wage rate variations among cases and unpredictable margins. Petitioners assert that the Department specifically developed the regression-based wage rate methodology to enhance accuracy and predictability in margin calculations, and that the CIT affirmed the use of this methodology in *Dorbest II*.

Petitioners also state that the Department has already rejected the legal argument that Yihua Timber is making in this review, in the final determination on frontseating service valves from the PRC where the Department affirmed its use of the same regression-based wage rate that Yihua Timber is now challenging. *See 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) ("*FSVs Final Determination – 2009*"), and accompanying Issues and Decision Memorandum at Comment 3. Petitioners also assert that the Department noted in the *FSVs Final Determination – 2009* that the decision in *Allied Pacific*, which forms the crux of Yihua Timber's argument, is not a final

decision, as the Department has not yet exhausted its appellate rights. Petitioners state that the Department should reach the same conclusion in this review as in the *FSVs Final Determination – 2009* with regard to Yihua Timber's arguments.

Petitioners further argue that even if the Department were to use a wage rate that is not derived from its regression methodology, the Department could not use the wage rate proposed by Yihua Timber as it is based on workers involved in general manufacturing. Further, Petitioners assert that Yihua Timber made some incorrect assumptions in its calculation of the wage rate from the data it used (*e.g.*, Yihua divided the daily wage rate by 8 hours, even though record evidence demonstrates that the average hours worked per day is 7.5 hours). Petitioners also contend that if the Department does determine to use a Philippine-specific wage rate, it should use the rate submitted by Petitioners, because the data are based on the hourly wage of Philippine workers engaged in the manufacture and repair of furniture.

**Department's Position:**

The Department disagrees with Yihua Timber's argument that the regression methodology, provided for in 19 CFR 351.408(c)(3), is contrary to section 773(c) of the Act. Section 773(c)(1) of the Act provides that, where, as in this case, the subject merchandise is exported from a 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." *See* section 773(c)(1) of the Act (emphasis added). 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 (emphasis added).

In accordance with the guidance provided under section 773(c)(1) of the Act and the discretion permitted pursuant to section 773(c)(4) 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. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

19 CFR 351.408(c)(3) (2009).

The methodology works in two steps. First, the Department uses a regression analysis to estimate the linear relationship between per-capita gross national income ("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 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).

We do not agree with Yihua Timber's contention that the Department's wage rate methodology is contrary to the statute because it incorporates data from market economies that are not economically comparable to the PRC and does not consider whether the countries used are significant producers of comparable merchandise. 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 (*i.e.*, the PRC), using that country's GNI. Not all NME

countries have the same calculated wage rate. For example, Vietnam, also an NME country, has a 2005 GNI of US$ 620 and an expected wage rate of US$ 0.52. *See* "Expected 2005 Wages of Selected NME Countries", http://ia.ita.doc.gov/wages/05wages/05wages-051608.html#table1, accessed on July 27, 2009. 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) ("*Proposed Rule*").

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. *See Nation Ford v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999); *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 v. United States*, 59 F. Supp. 2d 1354, 1357 (CIT 1999), *aff'd Shakeproof Assembly Components v. United States*, 268 F.3d 1376 (CIT 2001); *China Nat'l Mach. Import & Export Corp. v. United States*, 264 F. Supp. 2d 1229, 1236 (CIT 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 to the NME country at issue. In effect, the methodology obtains the wage rate 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. 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 I*, 462 F. Supp. 2d 1262 (CIT 2006).

The Department also 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 wage 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.

The first step of the Department's wage rate methodology is to use a regression analysis to estimate the linear relationship between GNI and hourly wage rates in all ME countries that meet certain requirements, as described *supra*. 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 only nine countries out of a full dataset of 61 countries used in the revised wage calculation in May 2008.[10] 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., Antidumping Duties; Countervailing Duties Part II*, 62 FR 27296, 27367 (May 19, 1997) ("*Final Rule*"); *see also Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61720 (October 19, 2006).

Yihua Timber's argument that the Department's labor regression is contrary to the statute, because it does not provide for a case specific analysis, or 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 the NME country's GNI that is as accurate as practicable, with the least amount of volatility across cases. Further, in determining surrogate values for FOPs, the Department need not "duplicate the exact production experience of the Chinese manufacturers." *See Nation Ford Chemical Company v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (citing *Magnesium Corp. of America v. United States*, 938 F. Supp. 885 (CIT 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 nonmarket economy)); *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

[10] We note that due to the lag-time in data availability, the regression calculation performed in 2008, is based on data from 2005.

surrogate values when there are other methods of determining the 'best available information' regarding the values of the factors of production.")

Finally, the Department does not find Yihua Timber's reliance on *Allied Pacific* to be persuasive. The decision in *Allied Pacific* is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted at this time. Moreover, the Department's regression analysis was affirmed in its entirety in *Dorbest II*. For reasons previously stated, the Department finds that the regression methodology, applied pursuant to 19 CFR 351.408(c)(3), constitutes the best available information for purposes of valuing labor in NME cases.

In the alternative, Yihua Timber argues 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 USD $2,500), the wage rate spans from USD $0.21 to USD $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 problems inherent in relying upon a single country to value labor, the Department's wage rate data shows that Sri Lanka and Egypt have GNIs of US$ 1170 and 1250, respectively, but their approximate wage rates vary significantly (*i.e.*, Sri Lanka's hourly wage rate is approximately USD $0.37, and Egypt's hourly wage rate is approximately USD $0.67). *See* "Expected Wages of Selected NME Countries," revised in June 2008, available at http://ia.ita.doc.gov/wages/index.html. Though these countries' respective GNIs closely correspond, their wage rates vary greatly, which demonstrates the arbitrariness of relying on a wage rate from a single country, *i.e.*, the Philippines. *See id*. As noted by Petitioners, the Department rejected similar arguments concerning reliance upon a single surrogate country to value the wage rate in *FSVs Final Determination – 2009*, at Comment 3.

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 case using its regression analysis, as provided in 19 CFR 351.408(c)(3).

**Comment 10: Surrogate Value for Energy**

Yihua Timber argues that the Department should value electricity using data derived from the source *Doing Business in the Philippines* ("*Doing Business*"), as it did in the 2005-2006 administrative review of the WBF antidumping order, because it is a more comprehensive source than *The Cost of Doing Business in Camarines Sur* ("*Camarines Sur*"). Yihua Timber states that while both sources contain identical electricity rate data for Naga City and Iriga City/Pili, *Doing Business* offers far greater geographical coverage by providing additional electricity rate data for Clark, Subic, Cebu, Davao, and the city of Manila.

Yihua Timber further argues that the Department erred when it inflated the *Camarines Sur* data in the *Preliminary Results*. Yihua Timber states that there is no record evidence showing that the rates listed in *Camarines Sur* have increased since it was published. Additionally, Yihua Timber asserts that if the Department uses data from *Doing Business*, inflation is not required because, as the Department stated in the second administrative review of the WBF antidumping order, "there is no indication that any of these rates are not still in effect."[11]

Finally, Yihua Timber asserts that data from the Meralco 2007 Annual Report, proposed by Petitioner, is unusable because it is an average of both industrial and household rates, and is therefore not as specific to the input as the *Doing Business* data, which is specific to businesses.

Petitioners argue that the *Camarines Sur* report is a superior data source because it provides specific electricity pricing for industrial consumers, while *Doing Business* is not as specific because it combines prices of residential, commercial, and industrial users for some cities. Petitioners further contend that some of the *Doing Business* prices are only estimates.

Citing *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15936-37 (April 8, 2009) ("*Glycine from the PRC Prelim – 2009*"); and *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 4929 (January 28, 2009) ("*Lawn Groomers from the PRC Prelim – 2009*"), Petitioners also argue that the Department is correct to inflate the data for the surrogate electricity value because the *Camarines Sur* report contains electricity pricing for 2005 which is not compatible with the POR. Petitioners contend that there is no burden to show that the electricity rates are not still in effect before applying an adjustment.

**Department's Position:**

The Department will continue using the *Camarines Sur* data because it is specific to industrial consumers, [12] unlike the *Doing Business* report, which combines prices of residential, commercial, and industrial users.[13] Although the Department generally prefers country-wide data, in this instance, the Camarines Sur provincial data is specific to industrial users of electricity and therefore provides a more accurate depiction of the costs associated with furniture manufacturing and consequently represents the best available data with which to value electricity. In contrast, the *Doing Business* report aggregates data from industrial consumers with data from other categories of electricity consumers (*i.e.*, residential and commercial). Put simply, though the *Camarines Sur* report covers a smaller geographic area,[14] the report provides

[11] *WBF – AR2 Issues Memo* at Comment 1(D), p. 23; *WBF – AR2* Factor Valuation Memo at 9.

[12] *See* WBF Prelim SV Memo at Attachment 10, pgs. 2 of 7 and 4 of 7.

[13] *See* Yihua Timber's September 30, 2008, Surrogate Country Comments at Exhibit 6, page 65.

[14] The Department notes that Yihua Timber claims that the *Camarines Sur* report and the *Doing Business* report contain identical rate data for Naga City and Iriga City/Pili. However, as a factual matter, this claim is in error; only the *Camarines Sur* report, in both the 2005 and 2009 editions, contains electricity rate data for Naga City and Iriga City/Pili.

a surrogate value that better represents the cost of electricity in the production experiences of Yihua Timber, Golden Well, and Sunshine.

On July 10, 2009, the Department placed the 2009 edition of the *Camarines Sur* report data on the record of this administrative review. The 2009 report contains electricity rate data that are identical to the data in the 2005 report, and no party provided comments on the 2009 data. Accordingly, the Department finds that inflating the data for the surrogate value for electricity is unnecessary because the correspondence between the 2009 and 2005 *Camarines Sur* data demonstrates that the cost of electricity has not changed since 2005.

The cases cited by Petitioners in support of its claim that the 2005 data should be inflated are distinguishable from the instant case because, in each of those cases, the Department lacked information that demonstrated that the rates had not changed. *See Glycine from the PRC Prelim – 2009*; and *Lawn Groomers from the PRC Prelim – 2009.* As discussed above, record evidence in these reviews demonstrates that the rate available for use here were in effect during the POR.

**Comment 11: SV for Truck Freight**

Yihua Timber argues that the Department improperly inflated the truck freight surrogate value derived from *The Cost of Doing Business in Camarines Sur* ("*Camarines Sur*") available at the Philippine government's website for the province: http://www.camarinessur.gov.ph. *See* Memorandum for the File regarding the "2007 Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China: Surrogate Value Memorandum for the Preliminary Results", dated January 30, 2009, at Attachment 10. Yihua Timber states that the Department used this same source in the final results of the 2005 2006 administrative review of WBF where the Department declined to inflate the truck freight surrogate value because "there is no indication that the rates are not still in effect."[15] Yihua Timber argues that no new information has been placed on the record to warrant a different conclusion in this proceeding.

Citing *Glycine from the PRC Prelim – 2009*; *Lawn Groomers from the PRC Prelim –2009*; *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 74 FR 16838 (April 13, 2009), and accompanying Issues and Decision Memorandum ("*Citric Acid from the PRC Final IDM – 2009*") at Comment 4, Petitioners rebut Yihua Timber's argument by stating that it is the Department's practice to inflate surrogate values that are not contemporaneous with the POR, including truck freight. Petitioners argue that the data obtained from *Camarines Sur* is not contemporaneous with the POR in this proceeding, thereby warranting an inflator in order to derive the surrogate value for truck freight.

[15] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decisions Memorandum at Comment 1D.

**Department's Position:**

On July 10, 2009, the Department placed the 2009 edition of the *Camarines Sur* report on the record of this administrative review. The 2009 report contains a truck freight value that is identical to the value in the 2005 report, and no party provided comments on the 2009 data. Accordingly, the Department finds that inflating the data for the surrogate value for truck freight is unnecessary because the correspondence between the 2009 and 2005 *Camarines Sur* data demonstrates that the cost of truck freight has not changed since 2005.

The cases cited by Petitioners are distinguishable from the instant case because, in each of those cases, the Department lacked information that demonstrated that the rates had not changed. *See Glycine from the PRC Prelim – 2009, Lawn Groomers from the PRC Prelim* –2009; and *Citric Acid from the PRC Final IDM – 2009*" at Comment 4.

**Comment 12: Treatment of Ocean Freight Expense**

Petitioners argue that Yihua Timber has not adequately confirmed that it incurred market economy ("ME") international freight expenses. Yihua Timber has provided the Department of Commerce ("Department") with invoices from its local agent who, according to Yihua Timber, arranges for the purchase of its ME international ocean freight. However, Yihua Timber has not provided the invoices demonstrating actual purchase of ME international ocean freight but, rather, signed affidavits from Yihua Timber's local agent. These affidavits state that the freight invoices cannot be provided out of concern for the confidentiality of its other clients and that ME shippers were in fact contracted and paid in U.S. dollars ("USD"). Citing *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 5 ("*OTR Tires*"), *Citric Acid and Certain Citrate Salts from the People's Republic of China*, 74 FR 16838 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comment 13 ("*Citric Acid*"), and *Pure Magnesium from the People's Republic of China*, 71 FR 61019 (October 17, 2006) and accompanying Issues and Decision Memorandum at Comment 6 ("*Pure Magnesium*"), Petitioners argue that Yihua Timber has not provided the appropriate documentation demonstrating a ME purchase and that the Department should therefore apply a surrogate value to Yihua Timber's ocean freight expense. Furthermore, Petitioners argue that INTNFR2U, Yihua Timber's reported international freight expense, cannot be used in its entirety as Yihua Timber stated during verification that local brokerage and handling ("B&H") charges are also included in the reported ME ocean freight charge and cannot be separated out. Accordingly, Petitioners suggest that the Department use the surrogate value information for ocean freight provided in Yihua Timber's March 6, 2009, surrogate value submission of $3.40 per cubic foot.

In response, Yihua Timber claims that Petitioners' argument is in error because record evidence demonstrates that Yihua Timber's verified freight costs should be valued as an ME expense. For example, Yihua Timber points to its direct shipments to customers (*i.e.*, Channel 3 sales), where Yihua Timber's U.S. affiliate, New Classic Home Furnishings, Inc. ("New Classic"), directly incurred the U.S. freight costs through an ME freight forwarder and paid the costs in USD. With respect to inventory sales (*i.e.*, Channel 1 and 2 sales), Yihua Timber emphasizes that it is the only party privy to the contracts for ocean freight for its shipments to the United States, meaning

that the local agent is not a signatory, and that the Department verified both submitted ME and non-market economy ("NME") international shipping contracts. Yihua Timber argues that the Department verified that Yihua Timber incurs freight expenses in USD and that Yihua Timber has provided alternative suitable evidence, *i.e.*, affidavits from Yihua Timber's local PRC shipping agents, in place of an invoice between the ocean freight company and the freight forwarder. According to Yihua Timber, the submitted affidavits as well as the verified ME freight contracts and its payments in USD, traced by the Department during Yihua Timber's verification, distinguish the instant case from the Department's past practice of disallowing a ME purchase price when direct invoices are not provided (*e.g.*, *Citric Acid*).

Yihua Timber further argues that, should the Department determine that Yihua Timber did not demonstrate that it paid its market economy suppliers in U.S. dollars, the Department should not rely upon the Petitioners' suggested surrogate value of $3.40. Citing *Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (August 11, 2003) and accompanying Issues and Decision Memorandum at Comment 11, and the Department's preliminary determination in *Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 21314 (April 20, 2001) (changed in the final to accept the ME price, *see* 66 FR 49345 and accompanying Issues and Decision Memorandum at Comment 8), Yihua Timber argues that the per-container price paid by Yihua Timber is the same price regardless of the shipper's nationality and that, because Yihua Timber negotiates with the foreign ocean carriers directly, as verified by the Department, the ME per-container price should be used.

**Department's Position:**

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value factors of production ("FOP"), but when a producer sources an input from a ME supplier and pays for it in ME currency, the Department may value the factor using the actual price paid for the input.[16] Our practice of requiring adequate evidence of an ME purchase, in particular for ocean freight, has been upheld by the courts. *See e.g.*, *Luoyang Bearing Corp. v. United States*, 347 F. Supp. 2d 1326, 1349-50 (Ct. Int'l Trade 2004). Accordingly, concerning Yihua Timber's Channels 1 and 2 sales, we agree with Yihua Timber that the data on the record adequately demonstrate that Yihua Timber incurred ME ocean freight expenses despite the Department not having been provided invoices directly from the ME ocean carrier demonstrating the price of Yihua Timber's shipment costs. First, we note that *Citric Acid* and *Pure Magnesium* are distinguishable from the instant case. In *Citric Acid* and *Pure Magnesium*, we disallowed the ME price for ocean freight as the respondents' principal evidence of an ME purchase were invoices issued by the local PRC agent to the respondents exhibiting USD payments, which established only that the ocean freight purchase was from an NME supplier who in turn purchased the freight from an ME supplier. *See Citric Acid* at Comment 13 and *Pure Magnesium* at Comment 6. In contrast, Yihua Timber provided the Department with supplemental documentation demonstrating that it contracted directly with the ME supplier for ocean freight and paid for ocean freight in an ME currency. Namely, Yihua Timber has provided

[16] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div. of Ill v. United States*, 268 F.3d 1376, 1382-1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

copies of its contracts with ME freight companies, which demonstrate that Yihua Timber is the sole signatory and that it pays for the ocean freight in USD, as stipulated by the contracts. *See* Memorandum from Erin Begnal, Program Manager, Office 8 and Sergio Balbontin, International Trade Compliance Analyst, Office 8 to Wendy J. Frankel, Director, Office 8, "Verification of the Sales and Factors of Production Response of Guangdong Yihua Timber Industry Co., Ltd. in the Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China," (May 18, 2009) ("Yihua Timber Verification Report") at Exhibit 17. Thus, *Citric Acid* and *Pure Magnesium* are distinguishable from the instant case.

Second, in *OTR Tires*, the respondent used a local PRC ocean freight agent rather than an independent PRC broker (who typically resells freight services at a profit). *OTR Tires* at Comment 35. We allowed the ME price in *OTR Tires* as the respondent demonstrated a link from its USD payments to the ME carrier through the ME ocean freight's agent. As in *OTR Tires*, Yihua Timber's local agent is also a PRC ocean freight agent. *See* Yihua Timber Verification Report at 20. Additionally, Yihua Timber demonstrated at verification a cogent payment trace from Yihua Timber to its local agent, which we tied to Yihua Timber's contracts with its ME ocean freight carrier. *See* Yihua Timber Verification Report at Exhibit 17. Moreover, in this case, Yihua Timber contracts directly with its ME freight providers, thus meeting the requirement that it contracted with the ME supplier providing the service and paid for the service in an ME currency. Accordingly, we determine that the instant facts are similar to those in *OTR Tires*, and we are allowing Yihua Timber the ME purchase price for ocean freight.

With respect to Yihua Timber's Channel 3 sales, the Department has verified that New Classic contracted a ME freight forwarder and paid in USD. *See* Memorandum from Robert Bolling, Program Manager, Office 4 and Gene Degnan, Acting Program Manager, Office 8 to Wendy J. Frankel, Director, Office 8, "Verification of the U.S. Sales Questionnaire Responses of Guangdong Yihua Timber Industry Co., Ltd. and their U.S. Subsidiary New Classic Home Furnishing, Inc. in the Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China" (May 18, 2009) ("New Classic Verification Report") at Exhibit 10. Accordingly, we are continuing to use Yihua Timber's reported ME price for ocean freight on the Channel 3 sales. With respect to Petitioners' argument that INTNFR2U cannot be used in its entirety, we address that below in Comment 13. Lastly, because we are allowing Yihua Timber the ME price for ocean freight, we find it unnecessary to address the parties' suggested ocean freight surrogate values.

**Comment 13: Treatment of and Surrogate Value for Brokerage & Handling**

Yihua Timber argues that its domestic PRC brokerage and handling ("B&H") charges are included in its ME cost of ocean freight and that, accordingly, the Department should not assign a surrogate value to its B&H. Yihua Timber argues that assigning a surrogate value to B&H would be double counting this expense, as B&H is included in Yihua Timber's ocean freight cost. Yihua Timber cites the statements of company officials during the Department's verification, who stated that Yihua Timber does not pay separately for domestic B&H, as it is included in its ocean freight costs. Yihua Timber also cites a sample ME ocean freight contract

presented at verification, which, according to Yihua Timber, also demonstrates that no separate B&H charge is incurred by Yihua Timber as the contract encompasses local B&H charges.

In the alternative, Yihua Timber argues that should the Department determine that a B&H surrogate value is warranted, the Department should no longer rely upon the surrogate value for B&H used in the *Preliminary Results*. According to Yihua Timber, the Philippine Tariff Commission's Customs Administrative Order No. 01-2001, used for the *Preliminary Results*, sets its rates on the dutiable value of a shipment such that the larger the value of the shipment, the lower the cost of the brokerage expense as a percentage of the value. Specifically, the applicable rate for shipments valued over 200,000 Philippine pesos, or $4,300 USD, is the 200,000 peso fee plus one-eighth of one percent of the value over 200,000 pesos, rather than the flat rate assessed for shipment values under 200,000 pesos. Accordingly, Yihua Timber claims that the Department erred in assuming that Yihua Timber's largest shipment was valued at $4,300. Yihua Timber argues that its submissions demonstrate a significantly higher shipment value and thus the Department should apply an overall proportionately lower B&H cost due to the higher value of its shipments. Yihua Timber asserts that, based upon the average value of its U.S. entries during the POR, the "over 200,000" pesos rate would apply should the Department determine that a separate domestic brokerage expense is applicable here.

Petitioners counter Yihua Timber's argument against the Department's use of a surrogate value for B&H charges by noting that Yihua Timber has not met its burden of providing support for its assertion that it does not incur separate B&H charges. Petitioners also cite to Yihua Timber's company officials' statement during verification that foreign shipping companies are only allowed to handle ocean transport, while local agents must handle local matters. Accordingly, Petitioners argue, Yihua Timber, by its own admission, stated that a local PRC agent provided local B&H services as the foreign shipping firms are disallowed from providing the service in the PRC.

In its rebuttal case brief, Yihua Timber reiterates that the shipping contract the Department viewed during verification proves that the international freight tariff paid by Yihua Timber was inclusive of the B&H charges.

Petitioners, in their rebuttal brief, argue that the said contract does not demonstrate that Yihua Timber's B&H expenses are included in the ocean freight charges. As to the Department's calculated surrogate value for B&H, Petitioners argue that the assigned 7.86 percent utilized for the *Preliminary Results* is corroborated by information published by the World Bank Group. Additionally, Petitioners counter Yihua Timber's argument that the Department erred in assuming a $4,300 largest shipment value, by arguing that Yihua Timber's calculation is based on entered value, not shipment value which is distortive. Therefore, Petitioners contend, should the Department recalculate the surrogate value for B&H, it ought to do so based on the average sales value from Yihua Timber to New Classic, expressed on a per-container basis.

**Department's Position:**

As we stated above, in accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value FOPs, but when a producer sources an input from an ME

and pays for it in ME currency, the Department may value the factor using the actual price paid for the input. With respect to Yihua Timber's purchase of B&H, the issue is whether Yihua Timber has adequately demonstrated that it sources its PRC B&H from an ME provider in an ME currency. Yihua Timber has asserted that its B&H expenses are included in the price of its ME ocean freight, as stipulated in its contracts with its ocean freight providers. However, we determine that Yihua Timber has not adequately demonstrated that its purchase of B&H was actually provided by an ME supplier. While there is evidence indicating that Yihua Timber's contracts with its ME ocean freight providers include certain B&H services as "applicable charges," Yihua Timber company officials stated at verification that, ". . . foreign shipping companies can only handle ocean transportation, where other services (such as customs clearance) have to be handled by a local agent." *See* Yihua Timber Verification Report at 20. Thus, while B&H may be included in Yihua Timber's contracts with its ME ocean freight providers, it is the local PRC agent, not the ME ocean freight carrier, that provides the B&H services in the PRC to Yihua Timber. Accordingly, Yihua Timber has not, in accordance with 19 CFR 351.408(c)(1), satisfied the requirement that its B&H is provided by an ME supplier in order for the Department to value this service using the ME price.

The Department acknowledges that certain B&H services may be included in Yihua Timber's ocean freight contracts. However, Yihua Timber was unable to partition, on a line item basis, the applicable B&H charges from the ocean freight charges. *See* Yihua Timber Verification Report at Exhibit 17. Thus, any attempt by the Department to separate out B&H charges would not be based upon sufficient evidence. Accordingly, we will assign a surrogate value to Yihua Timber's B&H charges, in addition to deducting international freight charges, INTNFRU2, from the U.S. price.

As to the calculation of the B&H surrogate value, we agree with Yihua Timber that the Department erred at the *Preliminary Results* in how we applied the Philippine Tariff Commission's Customs Administrative Order No. 01-2001. The Philippine Tariff Commission's Customs Administrative Order No. 01-2001 rates are based on "Formal/Warehousing Entries" and "Dutiable Value of Shipment." *See* Preliminary FOP Memo at Attachment 11. While it appears that Yihua Timber interchangeably used the terms shipment value and entered value in its case brief, we find it appropriate to use Yihua Timber's average entry value to determine which B&H rate from the Philippine source applies. We agree with Yihua Timber that its average entered value per entry during the POR exceeded the 200,000 Philippine pesos, or $4,300 USD rate. Moreover, whether we use Yihua Timber's average shipment value (listed in Exhibit 17 of New Classic's Verification Report) or average entered value (listed in Exhibit C-91 of Yihua Timber's March 17, 2009, supplemental response), the result is still that the B&H rate for values over 200,000 pesos applies.

**Comment 14: Selection of Financial Statements**

Yihua Timber argues that the Department should not rely on the financial data of five small companies: Diretso Design Furniture, Inc. ("Diretso Design"), Enpekei International Inc. ("Enpekei"), Global Classic Designs, Inc. ("Global Classic"), Las Palmas Furniture, Inc. ("Las Palmas"), and SCT Furnishing Corporation ("SCT") to calculate surrogate ratios. Yihua Timber asserts that the five small companies' SG&A ratios are, on average, three times greater than the

average ratio of the larger six Philippine companies.[17] Citing to *Dorbest I* (wherein the Department ultimately excluded data from certain smaller companies because it could not justify their use for calculating ratios for a much larger respondent), Yihua Timber argues that these companies have virtually nothing in common with its operations as they are small companies who do not operate on the same scale and level of trade as Yihua Timber. *See Dorbest Ltd., et al. v. United States*, 462 F. Supp. 2d 1262 (CIT 2006) ("*Dorbest I*") at 1306 (citing Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988) at 591); *Dorbest Ltd., et al. v. United States*, 547 F. Supp. 2d 1321 (CIT 2008) ("*Dorbest II*") at 48 & 49; *Final Results of Redetermination Pursuant to Court Remand, Dorbest Ltd., et al. v. United States*, Consol. Court No. 05-00003 (July 15, 2008) at 19, *sustained by Dorbest Ltd., et al. v. United States*, Consol. Ct. No. 05-00003, Slip Op. 09-2 (January 7, 2009) at 8. Yihua Timber argues that accordingly, only the six companies with annual sales greater than US $1 million – Arkane International Corporation ("Arkane"), Casa Cebuana Incorporada ("Casa Cebuana"), Giardini Del Sole Manufacturing & Trading Corporation ("Giardini"), Insular Rattan and Native Products Corp. ("Insular Rattan"), Maitland-Smith Cebu, Inc. ("Maitland-Smith"), and Philippine Contract Furniture Resources, Inc. ("PCFR") – should be used as surrogate companies in this review.

Yihua Timber further argues that because the five smaller companies are also very different from Yihua Timber in terms of the structure and nature of their operations, their data cannot be included in the surrogate ratio calculations and discusses each one, in turn. Yihua Timber argues that Diretso Design has only 50 direct workers and 450 indirect workers, does not operate on an industrial scale, and does not produce identical or comparable merchandise to wooden bedroom furniture. SCT, Yihua Timber argues, operates at retail, thereby incurring significant SG&A costs that Yihua Timber does not. Further, Yihua Timber argues, SCT has only 65 indirect workers and 35 direct workers and, like Diretso Design, does not produce identical or comparable merchandise to wooden bedroom furniture.

Yihua Timber argues that Las Palmas sells its furniture at retail as well as at wholesale, thereby generating high SG&A costs that Yihua Timber does not have, *e.g.*, Las Palmas spent over five percent of its 2007 income on "shows and exhibits," "rent", "delivery and mailing expenses" and "magazines and catalogues" as a result of its retail sales. Further, Yihua Timber argues that Las Palmas produces home furniture, office furniture, cabinets of various sorts, upholstered furniture, customized furniture, and various architectural and interior finishes (*e.g.*, baseboards, cornices, etc.), which entail costs that are not incurred in the mass production of wooden bedroom furniture. Yihua Timber argues that Enpekei also produces customized furniture and also incurs these costs. Lastly, citing *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3; and *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003) and accompanying Issues and Decision Memorandum at Comment 9,

[17] The Department calculates the SG&A ratio as a ratio of SG&A expenses / cost of goods sold. In its case brief Yihua discusses the SG&A ratio as a ratio of the SG&A expenses / cost of manufacture (which based upon the values used in its calculations is also cost of goods sold.) *See e.g.*, Yihua Timber's June 1, 2009 Case Brief at 30-31. Accordingly, references herein to the "SG&A ratio" or the "SG&A/COM ratio" are reflecting an identical concept.

Yihua Timber argues that because Global Classic Design makes extensive use of subcontractors, the difference between it and Yihua Timber in terms of their respective levels of integration, disqualifies Global Classic Design as a potential surrogate producer.

Yihua Timber also argues that the Department should not have rejected the Insular Rattan and Arkane data from the surrogate financial ratios calculations for the *Preliminary Results* because the financial data for each company are both audited and complete. Yihua Timber argues that Insular Rattan's financial statements had the same format that was relied upon by the Department in the second administrative review of this antidumping order and, further, were accepted by the Philippine government. Yihua Timber argues that the mining reference in the Arkane financial statements, the basis for the Department's determination to exclude Arkane's financial statements from the surrogate financial ratios calculations, was merely a mistake. Yihua Timber states that all the other information on the record of this review regarding Arkane's operations confirm that Arkane is a furniture producer and exporter and not, in any way, a mining company.

Petitioners argue that SCT's financial statements should be included in the surrogate financial ratio calculations of the final results. Petitioners contend that record evidence demonstrates that SCT manufactures wooden bed frames and complete wooden bedroom sets that are identical to the merchandise subject to this review. Petitioners also argue that Jireh Forge, Inc.'s ("Jireh") financial statements should be included in the surrogate financial ratio calculations of the final results. Noting the Department's stated reason for not using Jireh's financial statements for the *Preliminary Results* (*i.e.*, no record evidence upon which to base a conclusion that Jireh is actually a producer of wooden furniture), Petitioners argue that the record now demonstrates, via Jireh's financial statements and catalog, that Jireh is a manufacturer of furniture, including wooden bedroom furniture. Petitioners also argue that Jireh's financial statements clearly demonstrate that the company is not a reseller of traded goods because the company's "cost of sales" is comprised solely of "raw materials used," "direct labor," and "factory overhead."

Yihua Timber rebuts the Petitioners' argument that the Department should use the financial statements of SCT and Jireh in the surrogate financial ratios calculations for the final results. Yihua Timber argues that neither company qualifies as a suitable surrogate for Yihua Timber because they are both small volume producers. Yihua Timber further argues that their average SG&A expenses relative to their costs of manufacture supports its argument regarding the systematic nature of the larger producer/smaller producer SG&A expense differential.

Yihua Timber also maintains that: 1) Jireh is not a producer of wooden bedroom furniture, but instead, metal furniture; 2) there is unrebutted evidence on the record that Jireh is subsidized; and 3) because its year-ending inventories for both work-in-process and finished goods were "zero," it had ceased manufacturing at some point during calendar year 2007. Furthermore, Yihua Timber argues that unlike the other companies for which data are on the record, Jireh's financial statement does not itemize the component parts of its "factory overhead" cost category that the Department considers components of MLE, the use of a financial statement that does not itemize such elements would necessarily result in the Department double counting certain parts of Yihua Timber's constructed MLE costs.

Yihua Timber maintains that in addition to the small volume of SCT's production and its retail sales, the company has far more direct than indirect workers {sic}and produces housewares, home décor and baskets, and wearables, fashion complements and bags – all non-comparable merchandise. . Therefore, Yihua Timber argues, the Department should exclude SCT from its surrogate financial ratio calculation for the final results.

Petitioners argue that the premise of Yihua Timber's entire argument, that smaller companies necessarily have greater SG&A costs than larger companies, is flawed. Petitioners also point out that Yihua Timber's SG&A ratio calculation for Global Classic is incorrect, and the SG&A ratio should be 7.72 percent, further highlighting that a "small" company can have a "small" SG&A ratio.

Petitioners argue that Yihua Timber misinterprets the CIT's statement from *Dorbest I*, and the cited legislative history. Petitioners argue that the cited legislative history discusses surrogate factors in general, not just financial ratios and that *Dorbest I* affirms that the statute provides Commerce with significant discretion when identifying the best available information. Petitioners argue that the CIT noted that a firm's size "may" affect its financial ratios, and economies of scale are beneficial in "certain settings," but there is no presumption that size affects financial ratios. Petitioners argue that, in fact, the Department consistently has determined that the size of a company is not relevant to its financial ratios and cites *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 68030 (December 5, 2003), and accompanying Issues and Decision Memorandum at Comment 1; and *Certain Steel Threaded Rod From the People's Republic of China*: *Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

Petitioners argue that there is no record evidence that furniture companies in general, or Philippine furniture companies in particular, benefit from economies of scale. Petitioners state what while in certain capital intensive manufacturing industries, a company can lower its per unit fixed costs by spreading such costs over a larger production base, furniture manufacturing is labor and materials intensive, not capital intensive. Petitioners argue that there is no basis to assume that a Philippine company with higher revenue will have lower per-unit fixed costs. Petitioners contend that Yihua Timber has put forth no affirmative evidence to support its contention that smaller companies necessarily have greater SG&A ratios and insist that it is merely pure speculation to suggest that a company has lower per-unit fixed costs just because it has a higher level of sales.

Petitioners further argue that there is no basis for Yihua Timber's division of the potential surrogate companies at the level of $1 million in sales value, other than to self-select certain financial statements. Petitioners also argue that Yihua Timber has not demonstrated that its $1 million threshold has any relation to the production and sales activity of its own operations, and it has not explained how its theory relates to the sales activities of the other respondents subject to the review. Citing *Remand Results From Dorbest I* (May 25, 2007) at 71, Petitioners argue that the existence of different financial ratios shows nothing more than the obvious fact that different companies will have different financial ratios which is precisely why the Department prefers to average the results of multiple financial statements.

Petitioners provide a regression analysis based on the financial statements on the record, to support its contention that company size has no effect on the SG&A ratio. Petitioners also argue that the results of a linear-based regression analysis between SG&A/COM and sales value, performed for 40 furniture companies in the Osiris® database previously submitted by Petitioners, corroborate that no correlation exists between furniture companies' sales values and their SG&A ratios. Petitioners argue that, accordingly, the Department should reject Yihua Timber's arguments to exclude the financial statements of Las Palmas, SCT, Global, and Diretso Design.

Moreover, citing *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 Decisions Memorandum ("*Tires from the PRC IDM – 2008*") at Comments 18f, 18g, and 18h. Petitioners assert that it is not necessary for the surrogate producer to match identically the experience of the Chinese producer and refutes Yihua Timbers argument on these grounds as well.

Specifically, with regard to Diretso Design, Petitioners argue that, contrary to Yihua Timber's contentions: 1) Diretso Design's product catalog shows that it manufactures and sells predesigned wooden furniture products; 2) the financial statements indicate that the company's principal activity is manufacturing furniture and furniture accessories; and 3) the CITEM profile submitted by Yihua Timber classifies Diretso Design as a "large" company with 500 workers. Therefore, Petitioners argue, there is no basis for the argument that Diretso is so different "operationally" from Yihua Timber such that it should be excluded from the financial ratio calculations.

Petitioners assert that Yihua Timber's arguments with respect to SCT are also without merit, and the Department should include SCT in the surrogate financial ratio calculations. Petitioners argue that record evidence from SCT's website and catalog clearly demonstrates that SCT's primary business clearly is dedicated to the production of furniture. Further, Petitioners argue that Yihua Timber provides no basis for its assertion that SCT operates at retail, and no analysis of how SCT's structure and operations are so different from its own so as to make SCT an inappropriate surrogate.

With regard to Las Palmas, Petitioners argue that Yihua Timber cites no record evidence regarding the relevance, or specific activities, of the showroom, and that the five percent value cited by Yihua Timber is comprised primarily of a line item on Las Palmas' financial statement entitled "rent expense" which Yihua Timber presumes relates to a "Makati showroom," despite the fact that no evidence supports that assumption. Finally, Petitioners state that the record clearly demonstrates that Las Palmas manufactures wooden bedroom furniture, and that although Las Palmas makes other types of furniture as well, the same can be said of every other Philippine company at issue in this case.

Petitioners argue that Yihua Timber's argument that Global Classic's financial statements should be excluded because Global Classic incurs subcontractor fees is also unsound because, as stated

above and discussed at length in *Tires from the PRC IDM – 2008* at Comments 18f, 18g, and 18h, it is not necessary for the surrogate producer to match identically the experience of the Chinese producer under review. Additionally, Petitioners aver that there is no basis for Yihua Timber's inference that Global Classic must operate at a different "level of integration" from Yihua Timber simply because the surrogate company subcontracts some of its production.

With respect to Insular Rattan, Petitioners maintain that the Department properly excluded this company from the surrogate financial ratios calculations. Petitioners argue that Philippine GAAP requires the inclusion of certain information in the notes, and that the Department uses the notes: 1) to ascertain a description of the nature of the entity's operations; 2) to determine if there were "Government grants" constituting a countervailable subsidy; and 3) to interpret the line items in the financial statements. Therefore, Petitioners argue, consistent with its established practice, the Department should continue to find Insular Rattan's financial statements incomplete and exclude them from the financial ratios calculations in the final results. Petitioners argue that, while the Department used Insular Rattan's financial statements in the financial ratio calculations for the second administrative review because it was unclear as to which financial reporting components were mandatory, the more complete record in this review clearly demonstrates that Insular Rattan's statements do not meet Philippine accounting standards.

Finally, Petitioners argue that the Department appropriately excluded Arkane from the financial ratios calculations. Petitioners argue that the record evidence offered by Yihua Timber to show that Arkane does not conduct mining operations is unconvincing. Further, Petitioners argue that the email correspondence regarding conversations with Arkane's auditor is merely hearsay, and at best, confirms that the financial statements contain erroneous statements. According to the Petitioners, Arkane's articles of incorporation contain broad statements of purpose, under which Arkane could conduct "small scale mining" of limestone. Petitioners also argue that the depreciation information in the financial statements themselves suggests that Arkane is not operating in the same manner as a typical furniture producer, it states that Arkane uses an estimated useful life of 25 years to depreciate its machinery, tools, and equipment, whereas the maximum period is 10 years among the other potential surrogates whose financial statements estimated a useful life for their for their machinery, tools, and equipment. Accordingly, Petitioners argue, in the final results the Department should continue to reject Arkane's financial statements.

**Department's Position:**

For the reasons discussed below, for the final results, we are calculating the surrogate financial ratios using the financial statements of: 1) Arkane; 2) Casa Cebuana; 3) Diretso Design; 4) Giardini; 5) Global Classic; 6) Las Palmas; 7) Maitland-Smith; and 8) SCT. For purposes of the final results of review, as explained in detail below, we did not rely on the financial statements of: 1) Enpekei; 2) Insular Rattan; 3) Jireh Forge; 4) JLQ; and 5) PCFR.

Before the *Preliminary Results*, parties placed eight financial statements on the record, of which we used five for purposes of calculating the surrogate financial ratios for the *Preliminary Results*. Specifically, for the preliminary results we used the audited financial statements of 1) Casa Cebuana; 2) Diretso; 3) Global Classic; 4) Las Palmas; and 5) Maitland-Smith, all

producers of wooden furniture from the Philippines. *See* Memorandum for The File from Robert Bolling, regarding 2007 Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China: Surrogate Value Memorandum for the Preliminary Results, dated January 30, 2009 ("WBF Prelim SV Memo"), at page 5. We did not rely upon the following three companies' financial statements in the *Preliminary Results* because: 1) Insular Rattan's financial statements did not contain notes or a statement of accounting policies; 2) Arkane's financial statements indicated that it was also involved in mining; and 3) Jireh's financial statements were inconclusive as to whether it is a producer of comparable merchandise. *See id*. at page 6.

After the preliminary results, Yihua Timber submitted additional information regarding Arkane, Diretso Design, Insular Rattan, and Maitland-Smith. Petitioners submitted additional information regarding Diretso Design. Also subsequent to the *Preliminary Results*, the parties placed a total of five additional financial statements on the record in order to calculate the surrogate financial ratios for the final results: Enpekei, Giardini, JLQ, PCFR, and SCT. Accordingly, based on the new record information regarding these statements, the new financial statements placed on the record after the preliminary results, and the arguments raised by the parties, we have evaluated the appropriateness of using each of the record financial statements for the final results of review, below.

In selecting surrogate values for factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data." *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) ("CLPP 2006") and accompanying Issues and Decision Memorandum at Comment 1*. Guidance regarding surrogate values for manufacturing overhead, general expenses, and profit is provided by 19 CFR 351.408(c)(4), which states that "{t}he Secretary normally will use non-proprietary infromation gatehred frm producers of identical or comparable merchandise in the surrogate country." While the statute does not define "comparable merchandise," it is the Department's practice, where appropriate, to onsider 1) physical characteristics, 2) end uses, and 3) production processes. *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) ("*Cased Pencils 2002")* and accompanying Issues and Decision Memorandum at Comment 5.

**Financial Statements Not Relied Upon for the Final Results of Review**

*Enpekei*

We did not use the financial statements from Enpekei because the company is not a producer of comparable merchandise. Record evidence in the form of online catalog print outs and Enpekei's financial statements notes demonstrated that Enpekei primarily produced home accessories and a small line of rattan furniture that did not use wood. *See* Yihua Timber's March 6, 2009, Submission of Publicly Available Information to Value Factors of Production at Exhibits 28 & 29; *see also* Petitioners' Post-Preliminary Results Surrogate Values Rebuttal

Submission (March 6, 2009) at Exhibit 9. Accordingly, we determined that Enpekei is not a producer of comparable merchandise and is not an appropriate surrogate for use in this administrative review. Because we are not using Enpekei's financial statements for the reason discussed above, other issues raised by the parties with respect to this company's financial statements are moot and we do not need to address them here.

*Insular Rattan*

After the *Preliminary Results*, Yihua Timber submitted additional publicly available information regarding Insular Rattan in the form of tax returns. *See* Yihua Timber's March 6, 2009, Submission of Publicly Available Information to Value Factors of Production at Exhibit 34. Nevertheless, we are not convinced by Yihua Timber's claim that the Department should not have rejected Insular Rattan from the surrogate financial ratios calculations for the *Preliminary Results* because the financial data are: 1) both audited and complete; 2) in the same format that was relied upon by the Department in the second administrative review; and 3) were accepted by the Philippine government. As an initial matter, regarless of whether Insular Rattan's tax returns and financial sttatements agree, the tax return does not provide information concerning the notes to the financial statements and how such information would impact the manner in which the Department would calculate the surrogate ratios derived from those financial statements. In the second administrative review of this antidumping duty order, where we accepted Insular Rattan's financial statements, the Department did not have the same factual information on the record as in this current administrative review regarding the Philippine requirement regarding notes to financial statements. Specifically, the record of the instant review includes the Philippines' Statement of Financial Accounting Standards (SFAS) No. 1 ("SFAS"). *See* Petitioners' November 14, 2008, Rebuttal To Yihua's November 4, 2008 Submission Of Surrogate Factor Values at Exhibit 8. The SFAS states that a complete set of financial statements includes accounting policies and explanatory notes. *See id*. at Exhibit 8, pages 4-5. Unlike the second administrative review, where we included Insular Rattan's financial statements based upon Insular Rattan's accountant's statements that the statements were complete, the SFAS on the record of this review confirms that notes and accounting policies are mandatory in order for financial statements to be considered complete. *See WBF AR2 2008 at Comment 10*. Accordingly, because Insular Rattan's fiscal year 2007 financial statements, as presented to the Department for this administrative review, do not contain notes or accounting policies, they appear to be incomplete, and, consistent with the Department's practice to exclude incomplete statements, we are excluding Insular Rattan's financial statements from the surrogate financial ratios calculations for the final results. *See, e.g., Tires from the PRC IDM – 2008 at* Comment 17a; *CLPP* at Comment 1 (where the Department used a surrogate producer's financial statements after pages that were initially missing were supplied by an interested party, making the financial statements complete); and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus*, 66 FR 33528 (June 22, 2001) ("*Rebar* IDM – 2001") and accompanying Issues and Decisions Memorandum at Comment 2 (the Department chose not to use a financial statement because the "financial statement on the record appears incomplete"). Because we are not using Insular Rattan's financial statements for the reason discussed above, the other issues raised by the parties with respect to this company's financial statements are moot and we do not need to address them here.

*Jireh*

While Petitioners submitted record information (catalog and website pages) demonstrating that Jireh is, in fact, a producer of wooden furniture, in reviewing the company's financial statements for purposes of the final results, we find that they do not break out the energy expenses associated with production. *See* Petitioners' December 30, 2008, Supplemental Submission of Surrogate Factor Values at Exhibit 5, page 25. Specifically, Note 15, which provides detail of the company's cost of sales provides only the following detail: raw materials used, direct labor, and factory overhead. *See id*., page 25. Moreover, we cannot go behind the financial statements of a surrogate company to obtain additional information as we have no authority to either ask questions or verify the information from the surrogate company. *See Tires from the PRC Final IDM – 2008* at Comment 18.F. As a result, if we were to use Jireh's financial statements, we would be double-counting energy costs associated with production because we account for the respondents' energy costs separately from their factory overhead. *See* 19 CFR 351.401(2), which states that, "The Secretary will not double-count adjustments." Accordingly, we have determined not to use Jireh's statements for the final results of review. Because we are not using Jireh's financial statements for the reason discussed above, the other issues raised by the parties with respect to this company's financial statements are moot and we do not need to address them here.

*JLQ*

JLQ's financial statement demonstrates that the company did not earn a profit during the period in question. *See* Yihua Timber's March 6, 2009, Submission of Publicly Available Information to Value Factors of Production at Exhibits 30. Thus, per the Department's practice, we are not relying on JLQ's financial statement for the final results of review. *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007), and accompanying Issues and Decisions Memorandum at Comment 2 ; *see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69494 (December 13, 1999). The Department acknowledges that it has utilized profit-less financial statements, however, this occurs only when other appropriate surrogate financial statements are not available. *See Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), accompanying Issues and Decision Memorandum at Comment 3. In the instant case, because the record contains financial statements of other producers of comparable merchandise that are complete, legible, publicly available, and contemporaneous with which to calculate the surrogate financial ratios for these reviews, it is not necessary, for purposes of these final results, for the Department to consider using a financial statement of a company that did not earn a profit. Because we are not using JLQ's financial statements for the reason discussed above, the other issues raised by the parties with respect to this company's financial statements are moot and we do not need to address them here.

*PCFR*

Yihua Timber submitted record information (catalog and website pages) demonstrating that PCFR is a producer of wooden furniture. *See* Yihua Timber's March 6, 2009, Submission of Publicly Available Information to Value Factors of Production at Exhibits 26 & 27. However, in reviewing the company's financial statements, we found that PCFR's financial statements had

notes that were referenced throughout the financial statements, but were not included with Yihua Timber's submission. *See id*. at Exhibit 26, PCFR's Financial Statements "Balance Sheets", "Statements of Income", "Statements of Changes in Stockholders' Equity", "Statements of Cost of Goods Manufactured and Sold", and "Statements of Cash Flows" state "See accompanying Notes to Financial Statements" at the bottom of each statement. Accordingly, because PCFR's financial statements do not contain the referenced notes, they appear to be incomplete, and, consistent with the Department's practice to exclude incomplete statements, we are not relying on PCFR's financial statements for the surrogate financial ratios calculations for the final results. *See, e.g., Tires from the PRC IDM – 2008* and accompanying Issues and Decision Memorandum at Comment 17a; *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) ("*CLPP 2006")* and accompanying Issues and Decision Memorandum at Comment 1 (where the Department used a surrogate producer's financial statements after pages that were initially missing were supplied by an interested party, making the financial statements complete); *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus*, 66 FR 33528 (June 22, 2001) ("*Rebar IDM – 2001*") and and accompanying Issues and Decision Memorandum at Comment 2 (the Department chose not to use a financial statement because the "financial statement on the record appears incomplete"). Because we are not using PCFR's financial statements for the reason discussed above, the other issues raised by the parties with respect to this company's financial statements are moot and we do not need to address them here.

**Financial Statements Relied Upon for the Final Results of Review**

Issues with respect to treatment of work-in-process and finished goods are addressed in Comment 15, below. Issues related to the treatment of indirect and subcontracting costs, and whether certain companies are or are not appropriate surrogate producers because of their respective indirect and subcontracting costs are addressed in Comment 16, below.

**Producers of Comparable Merchandise**

We have evaluated the production of Arkane, Casa Cebuana, Diretso Design, Giardini, Global Classic, Las Palmas, Maitland-Smith, and SCT, based on the Department's three-prong test to determine if their production is of merchandise comparable to wooden bedroom furniture. With regard to physical characteristics and end uses, we find that the 1) Arkane[18]; 2) Casa Cebuana[19];

[18] Yihua Timber's November 4, 2008, Submission of Surrogate Values at Exhibit 19: "Arkane International Corporation Notes to the Financial Statements" ("It is a family owned corporation principally engaged in the manufacturing of rattan and wood furniture for export.").

[19] Yihua Timber's November 4, 2008, Submission of Surrogate Values at Exhibit 15: "Casa Cebuana Incorporada Notes to Financial Statements" ("…primary purpose of buying, selling, manufacturing and/or processing of wood products…using indigenous raw materials such as , but not limited to, wood case goods, cabinets, bedroom sets, night stand with drawers and the like…").

3) Diretso Design[20]; 4) Giardini[21]; 5) Global Classic[22]; 6) Las Palmas[23]; 7) Maitland-Smith[24]; and 8) SCT [25] financial statements clearly indicate that these companies produce comparable merchandise because they all produce wooden furniture. Further, as a general matter, we disagree with Yihua Timber's contentions that the only appropriate surrogate financial statements are those of companies that either solely produce WBF or disaggregate their production of furniture based on the specific type of material used. Because furniture of different types of materials can be considered comparable based on the Department's criteria articulated above, contrary to Yihua Timber's assertions, we find that Diretso Design's and SCT's financial statements lack of disaggregation between furniture made of wood and other materials do not prevent these companies' financial statements from representing quality surrogate data.[26]. As all of these companies produce and sell wooden furniture, the Department also finds that these companies' products have end uses similar to WBF. Finally, there is no record evidence to suggest, and no party has argued, that any of these companies have production processes different from WBF manufacturers (*e.g.*, all these companies engaged in the manufacturing of wooden furniture). For all these reasons, the Department determines that Arkane; Casa Cebuana; Diretso Design; Giardini; Global Classic; Las Palmas; Maitland-Smith; and SCT are producers of merchandise that is comparable to WBF.

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[20] *See* Petitioners' December 30, 2008, Supplemental Submission of Surrogate Factor Values at Exhibit 6: "Diretso Design Furnitures, Inc. Notes to the Financial Statements" ("…principal activity is manufacturing furniture and furniture accessories.").

[21] *See* Yihua Timber's March 6, 2009, Submission of Publicly Available Information to Value Factors of Production at Exhibit 32: "Giardini Del Sole Manufacturing and Trading Corporation Notes to Financial Statements" ("Its primary current business operation is engaged in manufacture, trading, and export of wooden furniture and related products.").

[22] Yihua Timber's November 4, 2008, Submission of Surrogate Values at Exhibit 20: "Global Classic Designs, Inc. Notes to Financial Statements" ("It's main purpose is to engage in the business of manufacturing, importing, exporting, buying, selling or otherwise dealing in at wholesale and retail, such goods as furniture, furnishings…").

[23] *See* Petitioners' December 30, 2008, Supplemental Submission of Surrogate Factor Values at Exhibit 6: " Las Palmas Furniture, Inc. Notes to Financial Statements" ("Its primary purpose is to engage in the business of manufacturing goods such as furniture…").

[24] *See* Yihua Timber's November 4, 2008, Submission of Surrogate Values at Exhibit 13: "Maitland-Smith Cebu, Inc. Notes to the Financial Statements" ("Maitland-Smith Cebu, Inc. … primarily to engage in manufacturing, importing, exporting, buying, and selling of veneered curved wood furniture, lamps and other decorative items.").

[25] *See* Petitioners' March 6, 2009, Post-Preliminary Results Surrogate Values Submission at Exhibit 5: "SCT Furnishing Corporation Notes to Financial Statements" ("SCT Furnishing Corporation is a domestic corporation. . . engaged in the manufacturing, assembling, exporting/importing furniture accessories of every kind, nature and description.").

[26] We note that Arkane's articles of incorporation indicate that it makes furniture from wood, rattan, burl, metal and other products, but its financial statements do not segregate the costs incurred for these different products. Nevertheless, while Yihua Timber argues against inclusion of the SCT and Diretso Design financial statements for just this reason, Yihua Timber advocates the use of the Arkane financial statements for purposes of calculating the final results surrogate financial ratios.

**Company Size and Potential Economies of Scale**

With respect to Yihua Timber's assertions that a company's size results in distorted surrogate ratios, which bears upon the suitability of that company as a surrogate producer, the Department's practice is to disregard company size as a basis upon which to determine the representative nature of a company's financial statements, unless specific record evidence indicates otherwise. *See e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 68030 (December 5, 2003) and accompanying Issues and Decision Memorandum at Comment 1; *Certain Steel Threaded Rod From the People's Republic of China*: *Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) and accompanying Issues and Decision Memorandum at Comment 1; and *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 6712 (Feb. 10, 2003) (Persulfates Fourth Review Final) and accompanying Issues and Decision Memorandum at Comment 8* (where we stated that the types of distortions that might cause us to disregard a company's financial statements, such as something unusual in the production process or an extraordinary event such as a flood or fire, were not present in that case).

With regard to Yihua Timber's argument concerning the relevance of economies of scale in the Department's calculations, in *Final Results of Redetermination Pursuant to Court Remand*, Court No. 05-00003, May 25, 2007 ("*Remand II*"), the Department determined that economies of scale did not affect the financial ratios at issue in that decision. The Department first compared the relative size of the seven Indian surrogates to the calculated SG&A ratios, and we found that the SG&A ratio for the largest surrogate company, Indian Furniture Products, Inc., represented the mid-point of the calculated SG&A ratios. *See Remand II* at 69. The Department concluded that this observation is contrary to what one would expect if economies of scale affected the SG&A ratio in that the largest surrogate company would be expected to have the lowest SG&A ratio, not the mid-point. *See id*. The Department also found that although the surrogate companies may differ in size, their SG&A ratios may be comparable. *See id*. Additionally, the Department did not find that the record evidence supported a relationship between production experience and overhead. Specifically, the surrogate company with the highest revenues had the highest calculated overhead ratio while the surrogate company with the second highest revenues had the lowest overhead ratio. *See Remand II* at 70.
Yihua Timber is correct that in *Remand III*, notwithstanding the Department's practice and decision as articulated in *Remand II*, the Department excluded certain smaller companies from the pool of financial statements used to calculate the surrogate financial ratios. *See Final Results of Redetermination Pursuant to Court Remand*, Court No. 05-00003, February 27, 2008 ("*Remand II*"), *at 19; Dorbest Limited, et al.* v. *United States*, Slip Op. 09-02 (CIT January 7, 2009) ("*Dorbest III*").

In *Dorbest II*, the Court indicated that it would only allow the continued inclusion in the surrogate financial ratios of Fusion Design, DnD, Nizamuddin, and Swaran (the smaller of the surrogate producers in that segment), if the Department was able to support its assertion that the above-mentioned companies' sizes are not relevant to their respective SG&A ratios with "substantial evidence, such as calculations and identifications of outlier data points." *Dorbest II*, 547 F. Supp. 2d. 1321, 1344 (Ct. Int'l Trade 2008). In response, in *Remand III*, the Department

noted that our practice of determining financial ratios by calculating a simple average (as opposed to using a regression analysis) of the surrogate companies' overhead, SG&A, and profit, is longstanding. *See Remand II* at 18 (*citing Rhodia, Inc. v. United States*, 25 C.I.T. 1278, 1351 (CIT 2001) ("*Rhodia*"). Further, we articulated that a more rigorous methodology (*i.e.*, a regression analysis) is neither practical nor necessary for purposes of selecting surrogate financial statements. *See remand II at 19 (citing Final Determination of the Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 10). We further explained that because the Department is not able to go behind the financial statements to gather the necessary data nor obtain numerous financial statements to perform a more complex analysis, the Department, pursuant to the Court's order, excluded Fusion Design, DnD, Nizamuddin, and Swaran from the financial ratios, although it did so under respectful protest. *See Remand II* at 19. Thus, we continue to believe that the Department should not exclude the financial statements of the smaller companies absent specific record evidence demonstrating that economies of scale affect the financial ratios.

Moreover, we agree with Petitioners that the CIT in *Dorbest I* noted that a firm's size may affect its financial ratios and that economies of scale may occur, but did not conclude that there is an absolute presumption that size will have an impact on the surrogate ratios. *See Dorbest I*, 462 F. Supp. 2d 1262, 1306-07 (Ct. Int'l Trade 2006). In fact, in *Dorbest II* the CIT afforded Commerce an opportunity demonstrate that there is no direct correlation between size and the ratios, however, the Department determined that it did not have the requisite data and that the regression analysis proposed by the CIT would be unduly burdensome even if the data were available. *See Dorbest II*, 547 F. Supp. 2d. at 1344, *Remand II* at 19. Further, we agree with Petitioners that there is no record evidence that the Philippine companies at issue here necessarily benefit from economies of scale. Finally, we agree with Petitioners that the one million peso sales value that Yihua Timber selected to delineate large from small producers does not appear to be based on a comparison to its own sales record or that of the other respondents under review and we are therefore unable to support the rationale behind using that value to arbitrarily characterize a particular producer as large or small.

In the instant review we have again compared the relative size (based on sales value) of the surrogate companies to their respective calculated SG&A ratios as detailed below. In addition, we have compared the relative size (based on sales value) of each company to its respective overhead ratio. *See* chart below.

| **Company** | **Sales Value** | **(1 = highest sales value)** | OH Ratio | **(1 = highest OH Ratio)** | **SG&A Ratio** | **(1 = highest SG&A ratio)** |
|---|---|---|---|---|---|---|
| Maitland-Smith | 1,912,731,986 | **1** | 28.29 % | 5 | 5.23 % | 8 |
| Casa Cebuana | 341,110,658 | **2** | 19.33 % | 6 | 10.72 % | 5 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Giardini | 165,619,625 | **3** | 35.52 % | 2 | 12.35 % | 4 |
| Arkane | 68,857,985 | **4** | 7.24 % | 8 | 6.55 % | 7 |
| Las Palmas | 45,824,851 | **5** | 31.96 % | 3 | 23.60 % | 2 |
| SCT | 36,208,502 | **6** | 31.36 % | 4 | 20.27 % | 3 |
| Global Classic | 22,613,134 | **7** | 74.77 % | 1 | 7.72 % | 6 |
| Diretso Design | 13,777,495 | **8** | 16.12 % | 7 | 70.37 % | 1 |

Based on the data points above, we did not find a sufficient relationship between company size and financial ratios to warrant the exclusion of the companies Yihua Timber has designated as small producers. More specifically, we do not find there is a general inverse relationship between the size of a company and its SG&A or overhead ratios. For example, Arkane, the company with the fourth highest revenues, has the lowest overhead ratio and the second lowest SG&A ratio of the eight surrogate companies used for these final results of review; Global Classic, the company with the second to lowest sales revenues, has the highest overhead ratio, but the third smallest SG&A ratio; and Giardini, the company with the third largest revenues, has the second highest overhead ratio and the fourth highest SG&A ratio. Accordingly, because we have not found a direct correlation between size and financial ratios, we have not excluded any financial statements based solely on the size of the company.

**Surrogate Company-Specific Issues**

*Arkane*

We agree with Petitioners that we should not rely solely on the email from a third party (submitted by Yihua Timber) purporting to have been advised by Arkane's auditor that the reference to small scale mining in Arkane's financial statement was a mistaken reference stemming from the statements of another company which the auditor used as the template for the Arkane financial statement. *See* Yihua Timber's March 6, 2009, Submission of Publicly Available Information to Value Factors of Production at Exhibits 35-36. When evaluating whether or not a potential surrogate company produces comparable merchandise, we look at all the relevant record evidence[27]. *See, e.g.*, "Enpekei", above , where the Department examined Enpekei's online catalogue; and "SCT", below, where the Department examined SCT's website and online catalogue. Accordingly, after close examination, we believe that the record evidence

[27] This is distinguishable from the examination of the data contained in the financial statements, where the Department will not go behind the line-items or rely upon outside information regarding the data in the financial statements, as it may introduce unintended distortions. *See e.g.*, Comment 16, below.

on the whole demonstrates that Arkane was a producer of wooden furniture, and not a mining company, as outlined below.

We observe that note 1 of Arkane's financial statement refers to Arkane as "a family owned corporation principally engaged in the manufacturing of Rattan and wood furniture for export," While page 3 of the notes refers to Arkane as "being engaged in small scale mining whose main product is limestone". *See* Yihua Timber's November 4, 2008, Submission of Surrogate Values at Exhibit 15. We note that neither statement refers to both furniture production and mining, and so determine that it is reasonable to conclude that one of the statements is incorrect. In light of this, the question before the Department is whether the record evidence demonstrates that Arkane is a producer of wooden furniture, or engaged in mining.

The articles of incorporation that Yihua Timber put on the record state that Arkane is in the business of producing wooden furniture and does not mention mining. *See id*., at Exhibit 35. Specifically, they state that the primary purposes of Arkane are to:

> engage in the business of manufacturing furniture, fixtures, handicrafts, and other related products and by-products made of burl, rattan, wood, metal leather, leatherette, cloth, wicker, fiber, vines, and other related materials and forest products; and to carry on the business of importing, exporting buying acquiring, holding, fabricating, manufacturing, repairing, selling, exchanging, bartering, marketing, or otherwise disposing and dealing in the aforementioned furniture, fixtures, handicrafts, and other related products and by-products.

*See id*. at Exhibit 35, page 2.

Moreover, the "Secondary Purposes" identified in the articles of incorporation similarly do not mention mining or any activity that could easily be construed to be related to mining. Because mining is such a distinct activity from furniture production, it is reasonable to expect that a company's article of incorporation would make some note of such diverse activities. *See id*. Accordingly, we do not agree with Petitioners that this is such a broad statement that it could incorporate mining as one of Arkane's business activities. Further, the Department has reviewed the full financial statements of Arkane and found no other references to mining other than the single statement relied upon for the *Preliminary Results.* *See* Yihua Timber's November 4, 2008, Submission of Surrogate Factor Values at Exhibit 19. Finally, with respect to Petitioners' argument regarding the average useful life estimated by Arkane for its "Machinery, Tools & Equipment," we find this argument unpersuasive because neither Arkane nor the other potential surrogate producers' financial statements identified by Petitioners contain sufficient narratives in to understand the reasoning behind their respective reported average useful lives of their machinery and equipment. Consequently, there is insufficient record evidence to conclude that Arkane's reported average useful life is related to a potential mining operation. Finally, the Arkane financial statements provide sufficient data for the Department to calculate surrogate overhead, SG&A and profit ratios. Therefore, in light of all the record information, the Department has determined that there is sufficient evidence on the record to conclude that Arkane does not have a mining operation. Further, Arkane meets the Department's criteria with respect to contemporaneity, specificity (it is a manufacturer of a comparable product) and quality

of the data. Given the above, we find that the record evidence provides a reasonable basis to conclude that Arkane is, in fact, engaged primarily in the production of furniture, and not mining. Accordingly, the Department correctly determined that it may rely on the Arkane financial statements for purposes of these final results of review.

*Diretso Design*

Yihua Timber submitted additional information from Diretso Design's online catalog and a print out of CITEM (an export promotions agency of the Philippine Department of Trade and Industry) Catalog Online for Diretso indicating that the company has 50 direct workers and 450 indirect workers. *See* Yihua Timber's March 16, 2009, Comments on Petitioners' Surrogate Value Submission of March 6, 2009, at Exhibits 1, 1-A, 1-B, 1-C, and 3. However, we are not persuaded by Yihua Timber's allegation that this record evidence demonstrates that Diretso Design does not produce wooden furniture, or that it is not operationally similar to Yihua. First, the CITEM website classified Diretso Design as a "large" company, which contradicts Yihua Timber's characterization that it is a "small" company. *See* Yihua Timber's March 16, 2009, Comments on Petitioners' Surrogate Value Submission of March 6, 2009, at Exhibit 3. Second, it is unclear what CITEM's basis is for characterizing certain of Diretso Design's employees as direct or indirect, and there is no means of telling how this information does or does not reflect the company's own characterization of its workers. Further, the additional evidence submitted by Petitioners (also an online catalog) contains a printout of Diretso Design's wooden furniture collection, thus clearly demonstrating that it is a producer of comparable merchandise. *See* Petitioners' March 6, 2009, Post-Preliminary Results Surrogate Values Submission at Exhibit 7. Finally, the Diretso Design financial statements provide sufficient data for the Department to calculate surrogate overhead, SG&A and profit ratios. The Department, therefore, continues to find that Diretso Design meets the Department's criteria with respect to contemporaneity, specificity (it is a manufacturer of a comparable product) and quality of the data. Accordingly, the Department correctly determined that it may rely on Diretso Design's financial statements for purposes of these final results of review.

*Las Palmas*

We do not dispute Yihua Timber's contention that the Las Palmas financial statements provide evidence that the company has an extensive sales operation. However, we do not agree that this evidence also demonstrates that the sales are extensively or even predominantly retail in nature. The specific items that Yihua references to support its contention regarding a retail operation (*e.g.*, shows and exhibits, rent, magazines and catalogues) may just as readily pertain to sales at the wholesale level as many manufacturers undertake such activities with respect to their wholesale customers. *See* Petitioners' December 30, 2008, Supplemental Submission of Surrogate Factor Values, at Exhibit 6.

Moreover, as discussed above, the types of distortions that might cause us to disregard a company's financial statements, such as something unusual in the production process or an extraordinary event such as a flood or fire, do not appear to be present in this case. The fact that Las Palmas' activities might not be a mirror reflection of Yihua Timber's activities does not negate its suitability for use in calculating surrogate financial ratios. Section 351.408(c)(4) of the Department's regulations stipulates that the Department normally will value manufacturing overhead, SG&A expenses and profit using "non-proprietary information gathered from

producers of identical or comparable merchandise in the surrogate country." As discussed above, in complying with the statute and the regulations, the Department calculates the financial ratios based on contemporaneous financial statements of companies producing comparable merchandise from the surrogate country. As Yihua Timber argues, in doing so, the Department attempts to base its surrogate data on companies whose experience reflects the general merchandise and production experience of the respondent companies. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001) ("*HR Carbon Flat Products-PRC 09/28/01")* and accompanying Issues and Decision Memorandum at Comment 4 (rejecting the surrogate financial statement of a producer because it may be less representative of the financial experience of the Indian integrated steel industry). Both the statute and the regulations are silent with respect to the surrogate producers' sales activities.

Record evidence clearly shows that Las Palmas produces wooden furniture. *See* Petitioners' December 30, 2008, Supplemental Submission of Surrogate Factor Values, at Exhibit 6: "Las Palmas Furniture, Inc. Notes to Financial Statements" ("Its primary purpose is to engage in the business of manufacturing goods such as furniture…"). The fact that the company might also engage in customized furniture interior furnishings, that might incur costs not incurred in the mass production of wooden furniture, however, does not negate its suitability as a surrogate producer in this review. *See* Yihua Timber's January 9, 2009, Surrogate Value Submission, at Exhibit 14. Evidence suggests that the WBF manufacturers in the Philippines generally produce and sell a mix of furniture or similar items, each targeting multiple market sectors, but not necessarily producing every type of product within a market sector mix. More significantly, the record clearly indicates that the respondent companies in this investigation also produce a range of furniture encompassing subject and non-subject merchandise. For example, Arkane's articles of incorporation indicate that it makes furniture from wood, rattan, burl, metal and other products, some of which might also incur costs not incurred in wooden furniture production. *See id*. at Exhibit 35, page 2. Notwithstanding this apparent product range, Yihua Timber advocates against the use of the Arkane financial statements for purposes of calculating the final results surrogate financial ratios. Moreover, we note that Yihua Timber itself produces more than wooden bedroom furniture. *See* Yihua Timber Verification Report at 4. Finally, the Las Palmas financial statements provide sufficient data for the Department to calculate surrogate overhead, SG&A and profit ratios. Based on this analysis, the Department, therefore, finds that Las Palmas continues to meet the Department's criteria with respect to contemporaneity, specificity (it is a manufacturer of a comparable product) and quality of the data. Accordingly, the Department correctly determined that it may rely on Las Palmas' financial statements for purposes of these final results of review.

*SCT*

Yihua Timber alleges that its record evidence from the CITEM website demonstrates that SCT is not operationally similar to Yihua Timber because it states that SCT has 35 direct workers and 65 indirect workers. *See* Yihua Timber's March 16, 2009, Comments on Petitioners' Surrogate Value Submission of March 6, 2009, at Exhibit 4, second page, under "Products and Services". Yihua Timber also alleges that because the CITEM website states that SCT produces "Houseware and Home Decor – Baskets (functional & decorative)" and "Wearables – Fashion Complements – Bags (Fiber/Indigenous)", its financial statements are not reflective of a wooden

bedroom furniture producer. However, we are not persuaded by these arguments. First, Petitioners have put conflicting information on the record with respect to the number of SCT's workers. Specifically, Petitioners submitted additional information from SCT's company website and online catalog which states that SCT designs and builds furniture made from wood, and has over 200 workers. *See id*., at Exhibit 6, under sections "What We Do" and "About Us". In addition, SCT's financial statements indicate that the company produces wooden furniture. *See* Petitioners' March 6, 2009, Post-Preliminary Results Surrogate Values Submission at Exhibit 5: "SCT Furnishing Corporation Notes to Financial Statements" ("SCT Furnishing Corporation is a domestic corporation. . . engaged in the manufacturing, assembling, exporting/importing furniture accessories of every kind, nature and description."). As Yihua Timber suggests, SCT's online catalog indicates that SCT supplies retail and exports to international customers. *See* Petitioners' March 6, 2009, Post-Preliminary Results Surrogate Values Submission, at Exhibit 6, under sections "What We Do" and "About Us". In addition, we do not dispute that based on information from SCT's website, it appears to produce a mix of additional products, *e.g.*, dining room and living room furnishings. *See* Yihua Timber's March 16, 2009, Comments on Petitioners' Surrogate Value Submission of March 6, 2009, at Exhibit 4, second page, under "Products and Services". However, while Yihua Timber argues that the retail operation and SCT's product mix are sufficiently different from its own operations as to render SCT inappropriate as a surrogate producer, we do not agree for the same reasons as discussed above with respect to Diretso Design and Las Palmas. Finally, the SCT financial statements provide sufficient data for the Department to calculate surrogate overhead, SG&A and profit ratios. Based on all of the above, the Department finds that SCT meets the Department's criteria with respect to contemporaneity, specificity (it is a manufacturer of a comparable product) and quality of the data. Accordingly, the Department correctly determined that it may rely on SCT's financial statements for purposes of these final results of review.

**Comment 15: Treatment of Changes in Finished Goods Inventory in Surrogate Finanical Ratios**

Petitioners state that the Department erroneously included changes in finished goods inventory as part of raw materials, labor, and energy ("MLE") when calculating the financial ratios for Maitland-Smith. Petitioners argue that it is the Department's practice to exclude changes in finished goods inventory from the financial expense calculations and cites *Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews*, 71 FR 70739 (December 6, 2006) and accompanying Issues and Decision Memorandum ("*WBF from the PRC Final IDM – 2006*") at Comment 4; and *Preliminary Results of Antidumping Duty Administrative Review: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 70 FR 76234, 76238 (December 23, 2005) ("*Malleable Iron from the PRC Prelim – 2005*"). Accordingly, Petitioners state that the Department correctly excluded changes in finished goods inventories from the Las Palmas' and Casa Cebuana's financial ratio calculations in the *Preliminary Results*.

Yihua Timber argues that neither work-in-process ("WIP") nor changes in finished goods inventory should be included in the denominator for the factory overhead ratio. Yihua Timber argues that the factory overhead denominator should consist of only the materials, labor, and energy components of manufacturing cost, while the value of inventories of both WIP and

finished goods reflect not only the materials, energy, and labor, but also the factory overhead associated with their processing and production. Yihua Timber further argues that the denominator of the selling, general, and administrative expenses ("SG&A") ratio should consist of the cost of manufacturing, adjusted by a ratio of the cost of manufacturing to the cost of goods manufactured and sold.

In rebuttal, Petitioners maintain that Yihua Timber's proposed adjustments to the denominators for the factory overhead and SG&A ratios should be rejected because the Department's calculations (with the exception of the exclusion of changes in finished goods inventory from the Maitland-Smith calculations) adhere to existing practices. Petitioners argue that examination of the surrogate financial statements does not support Yihua Timber's contention that WIP and changes in finished goods inventory includes energy, labor, and factory overhead in the surrogate financial statements. Petitioners argue that most of the surrogate company financial statements do not provide information on what is included in their valuations of WIP or finished goods inventory, and that even when there is discussion, the information that is provided does not support the proposition made by Yihua Timber that all materials, energy, labor, and factory listed in the company's cost of manufacturing are reported in the WIP and finished goods inventory.

Petitioners argue that while the Department has information to distinguish between WIP and finished goods inventories, it does not have the information indirectly attributable to the product that is necessary to make the calculation requested by Yihua Timber. In support of the proposition that the Department cannot make an adjustment that is not clear from the financial statements at issue, Petitioners cite *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 ("*Tires from the PRC Final IDM – 2008*") at Comment 18.F. Therefore, Petitioners argue, the Department should continue to treat any reported changes in WIP inventory as an addition or subtraction from MLE and exclude any changes in finished goods inventory from its calculations, in accordance with *WBF from the PRC Final IDM – 2006* at Comment 4.

In rebuttal, Yihua Timber maintains that because WIP and changes in finished goods inventory include all manufacturing costs (including overhead costs), it is incorrect to treat a period change in either as a change to materials only. Yihua Timber reiterates that the denominator of the overhead ratio should be calculated as the ratio of factory overhead cost to MLE. Yihua Timber further maintains that the Department should use "cost of goods sold" as the denominator in the SG&A ratio, as it does in market economy ("ME") cases, and cites *Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review,* 68 FR 59366 (October 15, 2003) and accompanying Issues and Decision Memorandum at Comment 6. Yihua Timber argues that the reasoning behind this practice, *i.e.*, that period SG&A expenses are borne by period sales, applies equally in an NME context and NME methodology should not differ from the ME's methodology in calculating financial ratios.

**Department's Position:**

We agree with petitioners with regard to the treatment of WIP, and for the final results, we included changes to WIP in our calculation of the direct materials cost used as the denominator of the factory overhead ratio in order to capture all direct expenses comprising the surrogate company's cost of manufacturing. This determination is consistent with the Department's normal practice. *See Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 40293 (July 14, 2008) and accompanying Issues and Decision Memorandum at Comment 3; *Malleable Iron from the PRC Prelim – 2005* (unchanged in *Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 37051 (June 29, 2006)); *WBF from the PRC Final IDM – 2006* at Comment 4.

In deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements on the record and categorizes expenses as they relate to MLE, factory overhead, SG&A and profit, and excludes certain expenses (*e.g.*, movement expenses) because it is the Department's practice to account for these expenses elsewhere. *See Freshwater Crawfish Tailmeat from the People's Republic of China: Final Results of Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum ("*Crawfish from the PRC Final IDM – 2007*") at Comment 1.

Further, we agree with Petitioners assertion that it has been our long-standing practice to not make adjustments to the financial statements data, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy. *See Final Determination of Sales at Less than Fair Value: Coated Freesheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007) and accompanying Issues and Decision Memorandum at Comment 4; *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Administrative and New Shipper Reviews*, 72 FR 52049 and accompanying Issues and Decision Memorandum at Comment 2 (stating that because the Department cannot adjust the line items of the financial statements of any given surrogate company, we must accept the information from the financial statement on an "as-is" basis in calculating the financial ratios); *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345 (September 27, 2001 and accompanying Issues and Decision Memorandum at Comment 4 ("[I]n calculating overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements *in toto*, rather than performing a line-by-line analysis of the types of expenses included in each category."). Moreover, the Court of Appeals for the Federal Circuit has recognized that valuation of factory overhead is dependent on the facts present and data available to the Department in each case. *See Magnesium Metal Am. Corp. v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999) ("As factory overhead is composed of many different elements, the cost for individual items may depend largely on the accounting method used by the particular factory. Given these uncertainties, the broad statutory mandate directing Commerce to use, "to the extent possible," the prices or costs of factors of production in a comparable market economy country does not require item-by-item accounting for factory overhead.").

In the instant case, the relevant financial statements do not contain any information to indicate that the WIP line items contain overhead costs. Therefore, to insure that the raw materials and labor associated with WIP are captured as direct expenses, we have included WIP in the denominator of the factory overhead calculation. As explained above, this is consistent with our treatment of WIP and, moreover, consistent with our practice that we cannot go behind line items in financial statements.

In response to the parties' comments regarding the treatment of changes in finished goods inventory, we reviewed the Department's practice relating to treatment of this item. Yihua is correct that, in ME cases, the Department has generally used the cost of goods sold ("COGS") (which includes the changes in finished goods inventory) as the denominator in calculating a respondent's SG&A and profit ratios. *See, e.g., Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 67 FR 55780 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 35. In NME cases, the Department's practice is mixed. Specifically, the Department has sometimes excluded the change in finished goods from the surrogate ratio calculations (*see, e.g., WBF from the PRC Final IDM – 2006* at Comment 4) or sometimes included the change in finished goods in the denominator of the SG&A and profit ratios (*see, e.g., Polythylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008) and accompanying Issues and Decision Memorandum ("*PET Film Final IDM - 2008*") at Comment 3.

In cases where the Department excluded the change in finished goods inventory, we stated that we included changes in raw materials or WIP because those items are properly classified as production expenses, but we did not articulate whether changes in finished goods are also production expenses. *See, e.g., WBF from the PRC Final IDM – 2006* at Comment 4 and *Malleable Iron from the PRC Prelim – 2005*, 70 FR at 76327-76328. In *PET Film Final IDM - 2008* at Comment 3, where we included the change in finished goods inventory in the denominator of the SG&A ratio, we stated that it is logical to use COGS as the denominator in calculating the SG&A ratio because SG&A expenses for the given period are incurred for all products sold during that period, including those that were manufactured in the current as well as prior periods. We agree with Yihua Timber and the rationale articulated in *PET Film Final IDM - 2008* at Comment 3. Specifically, we agree that SG&A expenses for a given period are incurred for all products sold during that period. Moreover, that same rationale applies to the calculation of the profit ratio, as the profit realized during a certain period also relates to the sales incurred during that period. Further, as explained above, this is consistent with our treatment of these items in market economy cases, and there is no compelling reason to treat these costs differently in NME proceedings that in market economy proceedings. Accordingly, for these final results, we have included the changes in finished goods inventory in the denominator of the SG&A and profit surrogate ratios for each surrogate financial statement that included this item.

**Comment 16: Treatment of Indirect Materials, Indirect Labor and Subcontractor Expenses**

Yihua Timber argues that the Department misapplied the data of the surrogate financial statements to calculate the surrogate financial ratios, which resulted in double counting of indirect materials and indirect labor, and the improper inclusion of subcontractor expenses in the *Preliminary Results*. Yihua Timber states that it reported as individual factors of production ("FOPs") its usage of indirect materials such as glue, hardener, adhesive tape, filler and sandpaper. Yihua Timber states that it also reported its indirect labor hours, and if it had any, it would also have had to report the FOPs of its subcontractors. Yihua Timber argues that despite its reporting of indirect materials and indirect labor, the Department treated these costs as "factory overhead" in its calculation of the surrogate ratios, thereby double-counting each of these costs.

*Indirect Materials*

Yihua Timber cites *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008) ("*WBF from the PRC AR2*") and accompanying Issues and Decisions Memorandum at Comment 11, where the Department explained that the substantive nature of an expense item, not the way it is characterized by a surrogate company, has always dictated whether it falls in MLE or factory overhead for purposes of the Department's normal value calculation. Yihua Timber asserts that, accordingly, the Department cannot classify the costs for indirect materials as overhead merely because the surrogate financial statements classify them as such.

Yihua Timber contends that Philippine financial statements often categorize indirect materials or factory or production supplies (collectively "indirect materials"), indirect labor and subcontractor expenses as "factory overhead," and provides a statement from Victor Machacon, a Philippine CPA, that purports to explain the distinction made in Philippine financial statements between "raw materials," on the one hand, and "indirect materials" on the other.

Further, Yihua Timber states that, at verification, the Department confirmed that Yihua Timber had reported as FOPs its usage of materials from both its "primary materials" (woods, processed woods, etc.) and "ancillary materials" (hardener, other paints, glue, etc.) accounts. Yihua Timber states that the Department verified that the primary materials and ancillary materials covered all inputs, with the exception of sandpaper. Yihua Timber states that sandpaper is the only FOP used by Yihua Timber that was not recorded as a primary or ancillary material, because it is recorded as a manufacturing expense in the "de minimis consumable" account. On these verified facts, Yihua Timber argues that the Department cannot properly treat the same types of costs (*i.e.*, costs for ancillary materials) incurred by a surrogate company as part of factory overhead for purposes of calculating Yihua Timber's financial ratios without double-counting Yihua Timber's costs.

Yihua Timber asserts that a breakout of Maitland-Smith's 2007 financial statement "production supplies" line-item, obtained by Yihua Timber's counsel, demonstrates that 73 percent of this

line-item consists of materials that the Department required Yihua Timber to report as FOPs. Yihua Timber argues that this demonstrates that valuing the "production supplies" line-item as overhead results in double counting of costs.

Yihua Timber argues that because all evidence indicates that most of the "factory supplies" or "production supplies" are indirect materials used to produce furniture (as distinct from repairs supplies or tooling expenses), and because Chinese respondents have been required to report these types of materials as distinct factors of their production, the most accurate way of calculating a surrogate factory overhead ratio for Yihua Timber using Maitland-Smith's financial data is to separate the amount reported in the "production supplies" line-item into its constituent parts. Yihua Timber argues that, therefore, the cost of materials included in the production supplies line-item would be treated as part of MLE; the other costs would be treated as factory overhead. Yihua Timber argues that the other permissible alternatives are (1) to calculate the ratio of factory overhead to MLE by excluding "indirect materials," "production supplies," and "factory supplies" from both sides of the equation, (2) disqualifying companies with high ratios of indirect materials/product supplies/factory supplies as potential surrogate because their operations are not reasonably comparable to Yihua Timber's, or (3) not to use any financial data from Maitland-Smith or, for that matter, any other Philippine company, that reports relatively significant costs for "production supplies" or "factory supplies."

Petitioners argue that the Department's treatment of indirect materials as manufacturing overhead is consistent with its established practice. Citing *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) ("*Persulfates from the PRC*") and accompanying Issues and Decisions Memorandum at Comment 4; *Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005–2006 Administrative Review*, 72 FR 42386 (August 2, 2007) and accompanying Issues and Decisions Memorandum at Comment 3; and *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) ("*Tires from the PRC*") and accompanying Issues and Decisions Memorandum at Comment 18.F, Petitioners argue that an adjustment is appropriate only where there is specific evidence that the surrogate producer's factory overhead line-items include the same materials that were also treated as direct materials in the normal value calculations. Petitioners argue that Yihua Timber provides no reliable evidence that demonstrates double-counting with respect to the indirect materials treated as manufacturing overhead for purposes of the surrogate financial ratio calculations. Petitioners claim that the email submitted by Yihua Timber regarding the breakout of Maitland-Smith's "production supplies" line-item is unreliable and unusable, and the submitted opinion of Mr. Machacon is non-specific and inconclusive. Additionally, citing *Tires from the PRC* at Comment 18.F, Petitioners state that the Department does not go behind financial statements to determine the appropriateness of including an item in the financial ratio calculation, and it should reject Yihua Timber's attempt to extrapolate information that is not contained in the financial statements.

*Subcontractor Expenses and Indirect Labor*

Yihua Timber asserts that it submitted data on its usage of indirect labor and reported that it did not use any subcontracted services to produce subject merchandise, both of which have since been verified, yet the Department preliminarily included as part of the factory overhead ratio calculation very significant amounts for "contractors fees," "outside services," "subcontractor expenses," and similar line-items (collectively "subcontractor expenses") and indirect labor. Yihua Timber argues that the inclusion of subcontractor expenses as part of factory overhead instead of MLE skewed the Department's preliminary dumping margin calculation. Instead, Yihua Timber argues, the correct treatment of subcontractor and indirect labor expenses is a part of MLE, not as part of factory overhead and cites *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results and Partial Rescission of the 2001-2002 Administrative Review, and Final Results of the New Shipper Review*, 68 FR 71062 (December 22, 2003) ("*Non-Frozen Apple Juice Concentrate from the PRC*"), and accompanying Issues and Decisions Memorandum at Comment 2 to support its position.

Yihua Timber argues that if the Department decides to treat subcontractor expenses as part of factory overhead, a significant difference in the degree of vertical integration between respondent and the surrogate should disqualify a potential surrogate. Yihua Timber argues, citing *Sinopec Sichuan Vinylon Works v. United States*, Slip. Op. 07-88, CIT (May 30, 2007) at 4; *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3; and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 68 FR 10685 (March 6, 2003) and accompanying Issues and Decision Memorandum at Comment 1.F, that the Department has always preferred financial data for companies that are comparable to a respondent in terms of vertical integration because of the comparability of their cost structures. Yihua Timber argues that companies that rely heavily on subcontractors (like Global Classic, SCT, Las Palmas or Giardini Del Sole) are structured very differently from Yihua Timber in that they are significantly less vertically integrated, and so the financial statements for these companies should not be used in the surrogate financial ratios calculations. Yihua Timber argues that, alternatively, the Department can treat subcontractor expenses as part of MLE, in which case the difference in vertical integration is of no consequence.

Petitioners argue that the Department should continue to treat subcontracting expenses as part of factory overhead costs when surrogate companies separately report direct labor and energy costs, as consistent with its practice. Citing *WBF from the PRC AR2* at Comment 11, and *Tires from the PRC* at Comment 18.F, Petitioners argue that the Department correctly treated the line-item for "contractors fee" in Global's financial statements and the line-item for "outside services" in Maitland-Smith's financial statements as factory overhead expenses as consistent with its longstanding practice of treating outside services (*e.g.*, third party services, conversion charges, and subcontractor charges) as factory overhead expenses. Petitioners state that SCT and Giardini Del Sol also separately report labor and energy costs, and that, accordingly, if the Department determines to use the financial statements of SCT and Giardini Del Sol in the final results, it should treat SCT's "Outside Services" and Giardini Del Sol's "Sub-Con Expenses" as factory overhead expenses.

Petitioners additionally argue that in Yihua Timber's argument for treating outside services as part of ML&E, Yihua Timber quotes only part of the relevant passage from *Non-Frozen Apple Juice Concentrate from the PRC*. Petitioners argue that the decision in that case supports the Department's longstanding practice of treating outside services as manufacturing overhead if energy and labor costs are identified separately in the financial statements. Petitioners argue that unlike in the financial statements of Global, Maitland-Smith, SCT, and Giardini Del Sol, labor costs were not separately identified in the financial statements at issue in *Non-Frozen Apple Juice Concentrate from the PRC*. Moreover, Petitioners assert, the Department did not treat the subcontracting costs in that case as 100 percent labor costs (as desired by Yihua Timber), but split subcontracting costs between labor costs and SG&A.

Petitioners argue that simply because the Department requests information on tollers and subcontractors in its questionnaire, it is not therefore required to exclude outside services from its factory overhead expense calculation. Petitioners assert that Yihua Timber's argument ignores *WBF from the PRC AR2* at Comment 11, where the Department included outside services in its calculation the surrogate factory overhead expense.

Lastly, Petitioners argue that there is insufficient information on the record about the surrogate producers for the Department to draw conclusions about the level of their integration, or that any such integration distorts the overhead ratios. Petitioners argue that the Court of International Trade has made clear that assumptions about integration are insufficient grounds for adjusting factory overhead and cites *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247,1250-51 (CIT 2002) ("*Rhodia*"). Petitioners argue that all Yihua Timber does is suggest that Philippine companies with a high ratio of outside services as a percentage of direct and indirect labor are significantly less vertically integrated than Yihua Timber. Petitioners further argue that the Department has refused to draw inferences about the nature of certain expenses by comparing financial ratios. Petitioners assert that in *Tires from the PRC* at Comment 18.F, the Department stated that it could not "intuit the nature of the expenses included in the conversion charges . . . simply by comparing the companies' respective labor, energy and overhead ratios." Petitioners similarly argue that the Department cannot know the level of vertical integration of a Philippine surrogate company based on its ratio of outside services as a percentage of direct and indirect labor. Petitioners argue that the Department has concluded that it cannot go behind financial statements or dissect the financial statements of a surrogate company as if it were an actual interested party and cites *Tires from the PRC* at Comment 18.F, and so it should reject Yihua Timber's arguments that call on it to extrapolate information not contained in the surrogate financial statements.

**Department's Position:**

**Indirect Materials**

We agree with Petitioners that the line-items for indirect materials should be treated as manufacturing overhead in this case. The Department typically examines surrogate financial statements and categorizes expenses as they relate to material, labor, energy, factory overhead, SG&A and profit, and then excludes certain other expenses (e.g., certain movement expenses

and excise duty). *See Freshwater Crawfish Tailmeat from the People's Republic of China: Final Results of Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum ("*Crawfish from the PRC Final IDM – 2007*"); *Tires from the PRC* at Comment 18.F. It is the Department's practice to treat indirect materials as manufacturing overhead unless there is a specific statement in the financial statements as to what costs are included in these line items, and those identified costs are accounted for elsewhere in the Department's calculations. *See WBF from the PRC AR2* at Comment 11; *Persulfates from the PRC* at Comment 4; *Tires from the PRC* at Comment 18.F. Because we have no evidence in the surrogate financial statements that the costs associated with these line-items can be traced to a particular product or reflect the materials for which the respondent reported FOPs, we will follow our general practice and treat indirect materials as overhead in the calculation of the surrogate financial ratios.

In addressing the arguments regarding the correct classification of indirect materials, as well as indirect labor and subcontracting expenses, it is important to note it is not possible for the Department to dissect the financial statements of a surrogate company as if the surrogate company were an actual interested party, because the Department has no authority to issue questionnaires or verify the information from the surrogate company. As established in Comment 15, because we cannot go behind line-items in the surrogate financial statements, the Department has a longstanding practice not to make adjustments to the financial statement line-items, as that may introduce unintended distortions into the data rather than achieving greater accuracy.

We find Yihua Timber's reliance on *WBF from the PRC AR2* as a basis to classify indirect materials as MLE is unpersuasive. In that case, we specifically stated that "it is the Department's longstanding practice to avoid double-counting costs *where the requisite data are available to do so*." *WBF from the PRC AR2* at Comment 11 (emphasis added). In fact, it was precisely because the line-items "gas and oil" and "fuel used" were broken out in the overhead sections of the respective surrogate financial statements of two companies that the Department was able to re-classify these line-items as energy, rather than overhead. *Id.* In the instant case, as explained above, we have no evidence of the costs that are captured in the indirect material line-items. Accordingly it is not possible to determine the substantive nature of the expense items in the surrogate financial statements so as to re-classify them to more closely match the respondent's experience, as requested by Yihua Timber.

Yihua Timber attempts to show, by breaking out the line-items in its overhead costs, that it reported all indirect materials, and argues that it is distortive to assign to it the percentage of overhead costs, including indirect materials, experienced by the surrogate company. What Yihua Timber cannot show, however, is how the surrogate company classifies its costs, or that the same costs are included in the indirect material line-item of the surrogate company that are included in Yihua Timber's accounts. Without this information the Department cannot exclude costs that may be associated with the FOPs reported by Yihua Timber without also possibly excluding other costs that should remain in overhead. It is precisely for this reason that the Department has a longstanding practice, as noted above and established in Issue 15, not to make adjustments to the financial statement line-items, as that may introduce unintended distortions into the data rather than achieving greater accuracy.

We do not find that the arguments and evidence presented by Yihua Timber regarding the relative costs of the indirect materials category compared to direct materials, or the opinion of Mr. Machacon, are determinative of what costs are included in the surrogate companies' indirect materials line-items. Yihua Timber's demonstration of the fact that the "production supplies" line items are large compared to the line items of raw materials for some surrogate companies does not demonstrate the specific costs in these line-items, and therefore does not provide a basis for the Department to exclude costs that may be double-counted without also excluding costs that area not accounted for elsewhere. Additionally, we agree with Petitioners that the statement provided by Mr. Machacon is not specific to any of the financial statements in the review and sheds no light on what materials and costs are actually included in the surrogate financial statements that have also been reported by the respondent. In both cases, the evidence submitted by Yihua Timber does not specifically address the line-items in the surrogate financial statements. As stated above, because the Department cannot go behind line-items in the surrogate financial statements, we base our determinations on the information contained within the financial statements themselves, and none of this evidence submitted by Yihua Timber is based on the surrogate financial statements.

Regarding the email submitted by Yihua Timber, purportedly obtained from counsel to Maitland-Smith's parent company, and allegedly showing the break-out of Maitland-Smith's line item "production supplies," we agree with Petitioners that this information is unusable. As discussed, above, the Department has no authority to either ask questions or verify the information from the surrogate company. In fact, the only assurance the Department has of the accuracy of the financial statements comes from the fact the we will only use financial statements that are audited and complete, including all required auditor's notes and statements. *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 3. Once we have financial statements that meet these criteria, the Department does not adjust the surrogate financial statements with data outside of the financial statements themselves, as we would have no way of knowing if using this data would introduce unintended distortions into the data rather than achieving greater accuracy. *See Citric Acid and Certain Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) ("Citric Acid 2009") and accompanying Issues and Decision Memorandum at Comment 2. Accordingly, the core problem with the information contained in the email provided by Yihua Timber is that it is not part of the audited financial statement. Regardless of the purported source of the email or the potential accuracy of the information therein, the point of the Department's reliance upon audited financial statements alone is that, as explained above, there are no means of verifying the accuracy of additional data points or sources of information (in this case, an email message) that fall outside of the audited statement itself. We therefore find that using the information provided by respondents would be contrary to established Department practice of relying only upon audited data and not going behind line items in financial statements, as we cannot know whether this information would result in more accuracy or if it would lead to unintended distortions.

For the reasons discussed above, we determine that indirect materials in the surrogate financial statements are properly classified as overhead cost for the purposes of calculating the financial ratios in this case, in accordance with longstanding Department practice. Accordingly, we do not

agree with any of Yihua Timber's proposed alternate methodologies for calculating the overhead ratio without including the indirect materials line-items.

**Subcontracting Expenses and Indirect Labor**

Yihua Timber argues that the Department should classify the line-items for subcontracting, outside services and contracting fee (collectively "subcontracting expenses") as MLE, rather than overhead. The surrogate financial statements containing these line-items are: Global Classic, Las Palmas, SCT, Giardini del Sol, and Maitland-Smith, each of which was selected by the Department to be used for the purpose of calculating surrogate ratios. As discussed above, in deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to MLE, factory overhead, SG&A and profit, and excludes certain expenses (*e.g.*, movement expenses) consistent with the Department's practice of accounting for these expenses elsewhere. *See Crawfish from the PRC Final IDM – 2007* at Comment 1; *Tires from the PRC* at Comment 18.F. In the instant case, with the exception of the "outside services" line-item of Maitland-Smith, each of the line-items at issue are clearly classified in the surrogate financial statements as either manufacturing overhead or labor: SCT's "outside services" is classified under manufacturing overhead on schedule 11of its financial statements; Global Classic's "contractor's fee" is classified under manufacturing overhead at Schedule 14 of its financial statements; Giardini's "sub-con expenses" is classified under manufacturing overhead (no schedule or page number); and Las Palmas "subcontracted labor" is classified as such in cost of goods sold, note 7 of its financial statements.

We have also determined that the subcontracting expenses of Maitland-Smith should be classified as overhead. Petitioners correctly note that it is the Department's practice to treat outside services as manufacturing overhead if energy and labor costs are identified separately in financial statements. *See Crawfish from the PRC Final IDM – 2007* at Comment 1. In deriving surrogate ratios, it is the Department's longstanding practice to avoid double-counting costs where the requisite data are available to do so. *See Tires from the PRC* at Comment 18.F; *Certain Tissue Products from the PRC*, 72 FR 58642 (October 16, 2007) and accompanying Issues and Decision Memorandum at Comment 2. In this proceeding, we reviewed the financial statements of Maitland-Smith, as well as Global Classic, SCT and Giardini, and determined that each clearly accounts for direct labor, materials and energy as separate line items. Consequently, we have determined there is no evidence to support Yihua Timber's claim that treating subcontracting expenses as overhead results in double counting in this proceeding. Thus, we have treated subcontracting expenses of Maitland-Smith, as well as Global Classic, SCT and Giardini, as a manufacturing overhead cost for purposes of these final results. This is similar to our findings in *Crawfish from the PRC Final IDM – 2007* at Comment 1,where we stated that because direct labor and energy had been accounted for in separate line items in the surrogate producer's financial statement, the processing and freezing charges were properly allocated to the manufacturing overhead portion of the calculation.

Additionally, we determine that the subcontracting expense of Las Palmas is clearly related to labor, as stated in the financial statement, and we will not include it in overhead cost, but rather classify it as labor. We note that no party has argued that this line-item should be treated as overhead cost.

We agree with Petitioners that *Non-Frozen Apple Juice Concentrate from the PRC* is distinguishable from the present case. In *Non-Frozen Apple Juice Concentrate from the PRC,* the relevant financial statements did not contain a line-item identifying labor cost. This fact is key, because the premise of the Department's practice of treating subcontracting expenses as manufacturing overhead if energy and labor costs are identified separately, is the presumption that if there are separate labor and energy line-items, the relevant costs for these inputs would be included in those line-items (and therefore not in the subcontracting expenses line-item). Conversely, if there are no separate line-items for labor or energy, then these costs may be accounted for in the subcontracting expense line-item. For example, in *Crawfish from the PRC,* the respondent argued that certain "processing and freezing charges" should be classified as a manufacturing expense, though there was no indication in the surrogate financial statements of precisely what costs were included in this line-item. The Department determined that because the surrogate financial statements clearly accounted for labor and energy in specific line-items, the "processing and freezing charges" line-item, was properly allocated to overhead. *See, e.g., Crawfish from the PRC Final IDM – 2007* at Comment 1. *See also Tires from the PRC* at Comment 18.F (stating that because the surrogate financial statements contain specific line-items for labor and energy, these costs would not also be included in the line-item "conversion costs."

In the instant case, each of the surrogate companies has a distinct line-item for labor, as well as energy and materials. Accordingly, we find no evidence that direct material, labor, or energy costs are included in the subcontracting expenses line-items, and thus we have no basis to conclude that we are double-counting labor by including subcontracting expenses in overhead.

Further, we disagree with Yihua Timber that the fact that the Department requests information from respondents regarding their use of subcontractors indicates that subcontracting expenses of the surrogate companies should be classified as labor for purposes of calculating surrogate ratios. The Department requests information regarding subcontracting from the respondents in order to determine how to value the inputs provided by the subcontractor, *i.e.*, either using the materials, labor and energy consumed by the subcontractor, or directly valuing the input provided by the subcontractor. In calculating surrogate ratios, however, the Department cannot request information from the surrogate company. Accordingly, the Department cannot, and is not required to, ascertain the information necessary to precisely match the production experience of the surrogate company to that of the respondent. *See Nation Ford Chem. Co. v. United States,* 166 F.3d 1364, 1372 (Fed. Cir. 1999).

We disagree with Yihua Timber that the simple fact that a company uses subcontractors dictates that it is less vertically integrated than a company that does not. As Petitioners assert, the CIT made clear in *Rhodia* that substantial evidence, not merely assumptions, is required to demonstrate that there is a difference in integration that affects the overhead ratio. *See Rhodia,* 240 F. Supp. 2d at 1250-51. While it is true, as Yihua Timber states, that the Department prefers financial data from companies at a comparable level of integration to the respondent, Yihua Timber has submitted no evidence demonstrating a different level of integration between these certain surrogate companies and itself. *See id.*

Finally, Yihua Timber also claims that the Department incorrectly included line-items for indirect labor as an overhead expense. For the *Preliminary Results* we used three surrogate financial statements that reported indirect labor as a line item under manufacturing overhead:

Diretso Design, Maitland-Smith, and Global Classic. In each of these cases we classified the reported indirect labor as labor cost, not overhead. This is our standard practice when we know what costs are contained in a line-item, and that cost is accounted for elsewhere, in this instance reported by the respondent as a labor input. *See* Memorandum to the File: 2007 Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China: Surrogate Value Memorandum for the Preliminary Results (January 30, 2009) at Attachment 5, *see also Tires from the PRC* at Comment 18.F. For the final results we continue to use the financial statements of these three companies, as well as the financial statements of two additional companies that also report indirect material line-items under overhead in their financial statements: Casa Cebuana and SCT. Consistent with our practice as described above, we will treat the line-items of indirect labor as labor cost for all five of these surrogate companies for the final results. *See* Memorandum to the File: 2007 Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China: Surrogate Value Memorandum for the Final Results (August 10, 2009) at Attachment 1. Similarly, the Las Palmas financial statement identifies "subcontracted labor" as a line item in the cost of goods sold schedule. Consistent with our treatment of indirect labor discussed above, we included the subcontracted labor line item as a labor cost in our surrogate financial ratio calculations. *See id.*

**Comment 17: Constructed Export Price Offset**

Yihua Timber argues that section 773(a)(7)(B) of the antidumping statute requires the reduction of normal value ("NV") by the amount of indirect selling expenses associated with the normal value calculation (limited by the amount of the selling expense deduction from the constructed export price ("CEP") whenever "normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price." Yihua Timber claims that its constructed export price is at a level of trade, *i.e.*, sales to an affiliated U.S. distributor, that involves no significant selling expense. Yihua Timber claims that, in contrast, several of the surrogate companies that the Department used to preliminarily calculate surrogate financial ratios are much smaller design shops that sell at retail.

Yihua Timber asserts that because most of these companies are much smaller than either Yihua Timber or larger Philippine producers for which financial data are on the record, and because their SG&A ratios are so much higher than those of the larger potential surrogates, the CIT's decision in *Dorbest*, 462 F. Supp. 2d. at 1306, precludes their useas surrogate producers. However, Yihua Timber states that if the Department does not follow *Dorbest*, the Department must make the level of trade adjustment required by section 773(a)(7)(B) because Yihua Timber's export sales are at a less "advanced state of distribution" than sales of several of the surrogate country producers that sell directly to end-users. Yihua Timber provides a table that demonstrates, according to Yihua Timber, the SG&A line-item adjustments required in some of the Philippine companies' financial statements. Yihua Timber further contends that even if these adjustments are made, the structural problem of higher SG&A ratios from smaller surrogates, as identified by *Dorbest* still exists.

Petitioners state that Yihua Timber is wrong that the statute requires a CEP offset to account for the different selling functions that it performs for its CEP level of trade and those performed by the Philippine surrogate companies at a presumably more advanced level of trade. Citing

*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) (*OTR Tires*) and accompanying Issues and Decision Memorandum at Comment 52, Petitioners claim that the Department recently explained that section 773(c) of the Tariff Act of 1930, as amended ("the Act"), which governs the calculation of normal value in NME cases, "contains no provision for a level-of-trade adjustment or a CEP offset or, for that matter, a COS adjustment." Petitioners assert that the Department further explained in *OTR Tires* that those adjustments are set forth only within section 773(a), which applies in market economy cases. Furthermore, Petitioners argue that even if a CEP offset were permitted under the statute, there is no record evidence that would allow the Department to determine whether Yihua Timber would qualify for an offset. Petitioners contend that Yihua Timber simply asserts that it is "indisputable" that its CEP sales were at a less advanced state of distribution than the surrogate producers, but avers that there is no evidence on the record in support of this assertion. Petitioners further assert that Yihua Timber did not claim an entitlement to a CEP offset at any time before filing its case brief and submitted no evidence concerning its selling functions and the selling functions performed by the Philippine companies to determine whether there are differences in levels of trade. Petitioners claim that Yihua Timber is in the same position as Lacquer Craft in the original investigation in this proceeding, where the Department rejected the requested CEP offset, as described in *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (Nov. 17, 2004) and accompanying Issues and Decision Memorandum at Comment 44.

Finally, Petitioners assert that even if Yihua Timber was entitled to the CEP offset, there is no record evidence upon which to calculate the CEP offset. Petitioners claim that Yihua Timber's reliance upon several expense items in the Philippine financial statement is in error because there is no evidence that these items are comprised solely of the indirect selling expenses that should be subject to an offset. Petitioners claim that this point has been explained by the Department in *OTR Tires*, and include an excerpt from Comment 52 of the Issues and Decision Memorandum in *OTR Tires*.

**Department's Position:**

For the final results, consistent with *OTR Tires*, we determined that it is not appropriate to make a CEP offset as was requested by Yihua Timber. *See OTR Tires* at Comment 52. We agree with Petitioners that section 773(c) of the Act contains no provision for a level-of-trade adjustment or a CEP offset. Specifically, the Department calculates NV in NME cases pursuant to section 773(c) of the Act, which contains no provision for making either a level-of-trade adjustment or, by extension, a CEP offset. In contrast, section 773(a) of the Act governs the determination of NV in market economy cases, and includes level of trade, CEP offsets, and cost of sale adjustments. Therefore, in the absence of statutory provisions for such adjustments in the application of NME methodology, the Department does not believe that such adjustments are warranted.

With respect to Yihua Timber's argument that *Dorbest*, 462 F. Supp. 2d. at 1306, precludes the use of certain Philippine financial statements to calculate surrogate financial ratios, as explained

in Issue 14, the Department has not adopted *Dorbest* as the Department's current practice. We note however, that due to financial statement-specific data considerations, for the Final Results, we are not using financial statements from the following companies to calculate surrogate financial ratios: 1) JLQ 2) Enpekei, 3) PCFR; 4) Insular Rattan; and 5) Jireh. *See* Comment 14, above.

Furthermore, even if the statute did allow for CEP offsets in NME investigations and administrative reviews, we agree with Petitioners' argument that Yihua Timber is in the same position as Lacquer Craft was in the original investigation with respect to its arguments for a CEP offset, which the Department did not allow. In the investigation, the Department stated:

> We have determined to deny Lacquer Craft's claim to a CEP-offset adjustment. Lacquer Craft did not claim entitlement to a CEP-offset adjustment in its initial questionnaire responses, supplemental questionnaire response, or at any point prior to its case brief. As a result, the Department had no opportunity to investigate or verify Lacquer Craft's claims. In addition, Lacquer Craft did not provide sufficient evidence of different levels of trade or the performance of different selling functions. In order to determine whether the normal value is at a different level of trade than the CEP sales, the Department must examine the marketing process and selling functions between the CEP sales and the home market sales or in this investigation surrogate companies used to calculate the financial ratios.
>
> In this investigation, we find that Lacquer Craft did not provide its selling functions or the Indian surrogate companies' selling functions from which we could compare. Because there is no record evidence of Lacquer Craft's selling functions or the Indian surrogates companies we find that we are unable to determine whether Lacquer Craft and the Indian surrogate companies sell at a different level of trade. Therefore, we have not granted Lacquer Craft a CEP offset.

*See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 44. Similarly, in this segment of the proceeding, Yihua Timber did not claim its entitlement to a CEP offset at any time before filing its case brief and did not submit adequate evidence concerning its selling functions and the selling functions performed by the surrogate Philippine companies to determine whether there are differences in levels of trade. In *Honey-PRC 07/06/05*, the Department, explaining why it cannot make COS adjustments in NME cases, stated that it "has noted in prior cases that it is not possible to deconstruct surrogate financial ratios at the level of detail that would be necessary to make such adjustments, because it is not known whether there is an exact correlation between the NME producer's and the surrogate producer's expenses."[28] Consequently, any attempt at calculating the requested adjustments would require so many inferences and so much speculation that it

[28] *See Honey from the People's Republic of China*, 70 Fed. Reg. 38873 (Dep't Comm. July 6, 2005) (final results admin. rev.) ("*Honey-PRC 07/06/05* IDM at Comment 3").

could actually lead to less accurate determinations. Accordingly, we find there is insufficient evidence on the record to calculate a CEP offset in this review.

**Comment 18: Yield Ratio Calculation**

Petitioners argue that Yihua Timber failed to report product-specific utility yields and related raw material consumption factors. Petitioners further argue that, with respect to the raw material consumption calculation, the Department was misled by Yihua Timber. Petitioners state that Yihua Timber asserted that its reported raw material consumption and utility rates (or yield ratios) were based upon product-specific bills of material ("BOMs"). Petitioners argue that the yield ratios in the BOMs provide only estimates of standard utility rates based upon the production experience of Yihua Timber's staff, and the yield ratios reported in the BOMs do not correspond with Yihua Timber's actual utility rates. For example, according to Petitioners, Yihua Timber's BOMs and Fourth Supplemental Questionnaire response do not correspond to the information provided to the Department during verification with respect to the product-specific utility rate calculation. As a result of Yihua Timber's alleged failure to report data on a CONNUM-specific basis, Petitioners argue that the application of an adverse inference is warranted, as Yihua Timber could have reported the product-specific utility yields and raw material consumption, or could have developed a more accurate reporting method if in fact utility rates were not maintained in its normal course of business. Petitioners' suggested partial facts available rate is based on business proprietary data.

Yihua Timber responds to Petitioners' arguments by asserting that average yield ratios are used in its normal course of business, as clarified in its submissions, and that the Department verified the accuracy of its reported average yield ratios. Yihua Timber asserts that, contrary to Petitioners' claims, there are no product-specific yield ratio data available on the record. Yihua Timber argues that Petitioners have confused Yihua Timber's exhibits substantiating the product-specific yield ratio estimates in its BOMs for actual data. That is, Yihua Timber asserts that the product-specific yield data in its Fourth Supplemental Questionnaire response was prepared outside the normal course of business, *i.e.*, for the purpose of this administrative review. Yihua Timber further argues that its reported average yield ratios are maintained by controlling the wood inputs into the wooden bedroom furniture product during the production process. Accordingly, Yihua Timber claims that the Department does not need to rely upon adverse facts available, as Yihua Timber did not mislead the Department and its reported average yield ratios are reliable.

**Department's Position:**

We disagree with Petitioners' allegation that Yihua Timber misled the Department in how it calculated its yield ratios. In its March 17, 2009, response, for example, Yihua Timber stated that its yield ratios are based on the experience of the staff and provided an example for one series of product for ash veneer. Yihua Timber's claim that it tracks only average yield data, and not CONNUM-specific or product-specific yields, in its normal course of business is consistent with the information provided at Yihua Timber's verification. In addition, the Department verified, consistent with Yihua Timber's questionnaire responses, that Yihua Timber's yield ratios are based on the experience of the staff, and Yihua Timber provided a calculation to

substantiate those estimates. *See* Yihua Timber Verification Report at 25. Thus, because Yihua Timber uses average utility rates in its normal course of business and because Yihua Timber did not, at any point in this review, inform the Department otherwise, we determine that there is no basis to apply adverse facts available to Yihua Timber. Furthermore, there is no evidence on the record that Yihua Timber could have provided CONNUM-specific yields as was the case in *Non-Malleable Cast Iron Pipe Fittings from China*, 68 FR 7765 (February 18, 2003) (final determination) and accompanying Issues and Decision Memorandum at Comment 1, and *Small Diameter Graphite Electrodes from China*, 74 FR 2049 (January 14, 2009) (final determination). The instant case is distinguishable from both cases because, unlike the respondents in both of those reviews, Yihua Timber could not have provided CONNUM-specific yields simply because Yihua Timber did not track them in its normal course of business.

As to the issue of whether Yihua Timber accurately reported its yield ratios and factors of production inputs, we determine that it has done so, and accordingly, we will continue using Yihua Timber's reported yield ratios. In *Polyethylene Retail Carrier Bag Committee v. United States*, 232 Fed. Appx. 965, 970-71 (CAFC 2007), the U.S. Court of Appeals for the Federal Circuit upheld our reliance upon the respondent's aggregate factor usage data where the respondent demonstrated, through verification, that its reported factors of production were based on related records that were kept in the normal course of its business. There, we concluded that the respondent's verified allocation methodology was reasonable, reliable, and that it did not prevent us from calculating an accurate dumping margin. In the instant case, during verification, we examined Yihua Timber's manufacturing facility and verified Yihua Timber's factors of production by, *inter alia*, weighing various inputs and finished products, observing Yihua Timber's production line and finished goods inventory, and interviewing Yihua Timber employees. *See* Yihua Timber Verification Report. We additionally audited various raw material inventory reports, production orders, worksheets, financial statements, and tested Yihua Timber's actual and standard consumption rates, and the variances and how company officials adhere to the utility rate in their BOMs. *Id*. Accordingly, we find that Yihua Timber's verified yield ratio records are reasonable, reliable, reflect data kept in its normal course of business, and do not prevent us from calculating an accurate dumping margin.

As we will continue to use Yihua Timber's yield ratios, it is not necessary to address Petitioners' suggested partial applied facts available rate.

**Comment 19: Treatment of Warehousing Expense**

Petitioners argue that New Classic has not established that its Rancho Cucamonga, California warehousing expenses, the services of which were provided by an affiliated company, were incurred at arm's length. According to Petitioners, the worksheet provided at the verification of New Classic intended to demonstrate a quantity discount does not establish that the lower rates were the result of a quantity discount. Petitioners therefore claim that, consistent with past practice, the Department should adjust New Classic's Rancho Cucamonga warehousing expenses to reflect market prices. Petitioners have provided a business proprietary-based suggested adjustment to USWAREHU to reflect the market value of Rancho Cucamonga, California warehousing expenses.

Yihua Timber argues that an adjustment to New Classic's Rancho Cucamonga warehousing expenses is unjustified, as warehouse expenses will be lower when larger spaces are used. Yihua Timber adds that, during New Classic's verification, the Rancho Cucamonga warehouse's larger size was verified as was the Rancho Cucamonga warehouse's per-cubic foot cost being proportionate to the per cubic foot cost of warehousing provided by unaffiliated parties. Also, Yihua Timbers argues that evidence that New Classic's payments were being used to directly pay for the affiliated company's loan for the warehouse further demonstrate the arm's length nature of the business relationship. Lastly, with respect to Petitioner's proposed adjustment to Yihua Timber's warehousing expenses, Yihua Timber argues that neither the Act nor the Department's regulations require that the price respondents pay an affiliated party be equal to the price it pays an unaffiliated party.

**Department's Position:**

Section 773(f)(2) of the Act provides that "{a} transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of the value required to be considered, the amount representing that element does not fairly reflect . . . {the market value}." In addition, 19 CFR 351.402(e) requires an adjustment to payments between an exporter/producer and its affiliate(s) if these payments are not reflective of market prices. Petitioners are correct that, pursuant to the Department's practice, exporters/producers must overcome the presumption that transactions with affiliated parties do not reflect market prices, *i.e.*, the transactions are not "at arm's length." *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 64 FR 12927, 12948 (March 16, 1999).

We determine that Yihua Timber has not adequately demonstrated that New Classic's warehousing expenses, paid to an affiliated company, were at market value. First, it appears from Yihua Timber's submissions and New Classic's verification report that New Classic is not responsible for all costs associated with its affiliate's warehouse (*e.g.*, insurance, utilities, and personnel). For example, in New Classic's Verification Exhibit 12, New Classic provided copies of invoices from unaffiliated warehouse providers which include certain warehousing costs. However, there is no evidence that Yihua Timber's affiliated warehousing provider charged Yihua Timber for similar costs. As explained in Yihua Timber's rebuttal brief, rather than strictly comparing the prices at issue, the Department looks to the circumstances surrounding affiliated and unaffiliated transactions to determine their comparability. *See* Yihua's Rebuttal Brief at 38-39; *Stainless Steel Wire Rod from the Republic of Korea*, 72 FR 6528 (February 12, 2007) and accompanying Issues and Decision Memorandum at Comment 3. Here, the circumstances demonstrate that the affiliated and unaffiliated transactions are not comparable. Specifically, the fact that the unaffiliated warehousing providers charged New Classic for certain expenses, but New Classic's affiliated warehousing provider did not charge for those expenses, indicates that New Classic's warehousing expenses with its affiliated warehouse were not reflective of market costs.

Second, we are not persuaded that New Classic's verification presentation regarding the warehouse expense is probative of Yihua Timber's assertion that New Classic is receiving a per-cubic foot quantity discount from the affiliated company. That is, Yihua Timber presented no evidence other than stating that it pays per-cubic foot for its affiliate's warehouse space, to

demonstrate that the lower per-unit warehouse charge is the result of a "quantity discount." We agree with Petitioners that, in order to demonstrate that Yihua Timber receives a quantity discount from its affiliate, Yihua Timber could have provided the Department with evidence exhibiting the price(s) charged by the affiliated warehouse to non-affiliated parties or, in the alternative, unaffiliated warehouse price lists/offers for similar warehouse space.

Third, we are also not persuaded that New Classic's arrangement of paying the affiliate's warehouse financing loan and property taxes as rent demonstrates that it is paying a market price. Yihua Timber has not demonstrated that this amount is the result of arm's length bargaining. For example, there is no demonstration that certain expenses (*e.g.*, insurance, utilities, and personnel) were absorbed by the affiliated company in exchange for Yihua Timber's directly paying the financing loan and property taxes. We therefore determine that Yihua Timber has not substantiated its claim that the warehouse expenses paid to its affiliate are reflective of competitive market prices. As facts available, we applied the adjustment proposed in Petitioners' case brief at Exhibit 6 to account for New Classic's warehousing expense associated with its warehousing incurred at its affiliates warehouse. *See* Memorandum to the File entitled "2007 Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Analysis of the Final Results Margin Calculation for Guangdong Yihua Timber Industry Co., Ltd." (August 10, 2009) ("Analysis Memo") for the calculation of warehousing.

**Comment 20: Treatment of Yihua's FOP and Gross Weights**

Yihua Timber argues that the Department should reverse its preliminary reliance upon facts available as to Yihua Timber's FOP weights, which the Department based upon the discrepancy between Yihua Timber's reported gross weights and FOP weights. Yihua Timber points to its reconstruction of the majority of products sold during the POR which were no longer available in either Yihua Timber or New Classic's inventory. Accordingly, Yihua Timber adds that the Department had the opportunity to verify both the reconstruction of the products, inquire about the difference between the 2007 and 2009 versions of the products, as well as weigh six randomly chosen products. As such, Yihua Timber concludes that continuing to apply facts available for the final results is unwarranted as the necessary information for calculating a proper antidumping margin, *i.e.*, accurate FOP weights, has been made available and was verified by the Department.

In response, Petitioners argue that Yihua Timber's reconstructed furniture was not built in Yihua Timber's normal course of business. As such, according to Petitioners, it is not possible to determine whether alterations were incorporated into the reconstruction in order to meet the pre-determined weights. Petitioners further argue that it is not possible to determine whether Yihua Timber only presented at verification merchandise that met a pre-determined weight. Moreover, Petitioners argue that, notwithstanding the reconstructed products, Yihua Timber has still not met its burden of authentication with respect to certain reconstructed products and other products that were not reconstructed. Namely, for certain CONNUMs, Petitioners allege that the gross weights and FOP weights continue to appear distorted. Therefore, Petitioners conclude that the continued use of partial facts available for the final results is necessary.

**Department's Position:**

We determine that the application of facts available to Yihua Timber's FOP weights is no longer required for the final results. We find that Yihua Timber has met its burden to demonstrate that its reported FOP weights are in line with the gross weights of its products. We offered Yihua Timber, subsequent to the *Preliminary Results*, an opportunity to substantiate that it had accurately reported its FOPs by weighing all of its products that it currently had in stock.[29] In order to fulfill this request, Yihua Timber reconstructed a number of its products which it built to reflect its 2007 BOMs[30], stating that it could not simply weigh these products from inventory and instead needed to rebuild these products entirely. On March 16, 2009, the Department spoke with counsel to Yihua Timber, and requested that Yihua Timber explain why it could not weigh products from inventory, and why it proceeded to re-build these products.[31] In its March 20, 2009, submission to the Department, Yihua Timber stated that the "odds were remote that New Classic's February 2009 inventory held products produced during 2007."[32] Yihua Timber submitted its gross weights for its reconstructed products in its February 24, 2009, submission and its March 25, 2009, submission. In these submissions, there were a small number of products for which the gross weights exceeded the reported FOP weights.

At the verification of Yihua Timber, we weighed six products selected by company officials. Additionally, at verification, we chose at random and on-site five other products to test the accuracy of Yihua Timber's reported gross weights. *See* Yihua Timber Verification Report at 13-14. We found that the gross weights of these products corresponded to the gross weights of the products reported in Yihua Timber's submissions subsequent to the *Preliminary Results*. With respect to Petitioners' argument that the subject merchandise was not built in the normal course of business, the Department finds this line of reasoning unpersuasive. Verification is an opportunity for the Department to test the accounting and business systems of a respondent to a level of detail that gives the Department a reasonable indication as to the integrity of the respondent's questionnaire responses. *See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews*, 73 FR 56550 (September 29, 2008) and accompanying Issues and Decision Memorandum at Comment 2. Additionally, the purpose of verification is solely to confirm that the information reported to it by a respondent is correct and supported by verifiable, factual information. *See PMC Specialties Group, Inc. v. United States*, 20 C.I.T. 1130, 1134. As we weighed various products at verification and found that the weights correspond closely to Yihua Timber's submissions (*See*

[29] *See* Memorandum to the File, from Robert Bolling, Program Manager, regarding, "Phone call to Wilmer Cutler Pickering Hale and Dorr LLP: Guangdong Yihua Timber Industry Co. Ltd. ("Yihua Timber")," dated February 4, 2009.

[30] *See* Letter from Wilmer Hale, regarding "Wooden Bedroom Furniture from the People's Republic of China, Submission of Product Weights," dated February 24, 2009.

[31] *See* Memorandum to the File, from Erin Begnal, Program Manager, regarding, "3/16/2009 Phone call to Wilmer Cutler Pickering Hale and Dorr LLP, Counsel to Guangdong Yihua Timber Industry Co., Ltd.,"dated March 16, 2009.

[32] *See also* New Classic Verification Report at 6.

Yihua Timber Verification Report at 13), the Department is satisfied by its findings at verification that Yihua Timber's reconstructed product weights are accurate.

With respect to Petitioners' argument that Yihua Timber's FOP weights are distorted with respect to some CONNUMs because Yihua Timber has failed to report sufficient FOPs to account for its reported finished production weights, the Department finds that Yihua Timber's allocation methodology is not distortive. Specifically, in constructing its FOP database, Yihua Timber collected the per-unit standard usage for each raw material for each product type during the POR, based on its BOMs. Next, Yihua Timber calculated an actual-to-standard variance for each raw material, based on the total standard and actual usage during the POR. Then, to calculate the actual usage for purposes of the FOP database, Yihua Timber multiplied the unit standard usage by the actual-to-standard variance. *See* Yihua Timber's Section D Response at D-11 to D-13. At verification, the Department verified Yihua Timber's BOMs, which listed the per-unit standard usage, verified the yield ratio (utility rate) for certain inputs, verified Yihua Timber's actual consumption of various inputs, and verified the calculation of the variance and the calculation of the FOPs for various products. *See* Yihua Timber Verification Report at 24-26. The Department found no discrepancies at verification with respect to Yihua Timber's FOPs, as the data used to construct the FOPs was sourced from Yihua Timber's books and records in the normal course of business. *See Id.* The Department has consistently accepted allocation methodologies that are reasonable, based on a company's books and records in the normal course of business, and do not result in distortions. *See, e.g., Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 14514 (March 31, 2009) and accompanying Issues and Decision Memorandum at Comment 1; *see also Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*, 72 FR 27287 (May 15, 2007) and accompanying Issues and Decision Memorandum at Comment 11. Thus, we find it appropriate not to apply a partial AFA adjustment to Yihua Timber's FOP weights, because we do not find that Yihua Timber's FOPs are distorted at the product-specific level.

**Comment 21: By-Product Offset**

In accordance with Yihua Timber's argument that the Department's use of facts available as to FOP weights is unwarranted, Yihua Timber also argues that the Department's denial of its by-product offset is also unwarranted. Yihua Timber adds that the Department had the opportunity to verify Yihua Timber's reported by-product quantity revenue.

In rebuttal, Petitioners argue that the Department should continue to deny Yihua Timber a by-product offset, in accordance with their argument that the Department should apply partial facts available for the final results with respect to Yihua Timber's FOP weights.

**Department's Position:**

It is the Department's practice to allow a by-product offset for scrap that has been generated and collected from the production of subject merchandise and re-entered into production of the subject merchandise, or sold. *See Certain Preserved Mushrooms from the People's Republic of*

*China: Preliminary Results of the Eighth New Shipper Review*, 70 FR 42034, 42037 (July 21, 2005), unchanged in *Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Eighth New Shipper Review*, 70 FR 60789 (October 19, 2005). When a by-product is sold and income realized from it, that income is considered to offset the cost of producing subject merchandise. *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 11.

For the *Preliminary Results*, we stated that we were not granting Yihua Timber its claimed by-product offset because "any such offset appears to result in FOP weights that are insufficient to produce the merchandise under review." *See Preliminary Results*. As the Department no longer finds that Yihua Timber has under-reported its FOP weights (*see* Comment 20), and because the Department verified that Yihua Timber otherwise substantiated its claim to a by-product offset,[33] we are allowing Yihua Timber its by-product offset for the final results.

**Comment 22: Yihua Timber's Affiliate's (Company A's) Sales**

Yihua Timber argues that, for the final results, the Department should exclude Company A's sales from its analysis. Company A, whose identity is business proprietary, was a U.S. affiliate of Yihua Timber that dissolved in the middle of 2007. According to Yihua Timber, Company A accounted for a small percentage of Yihua Timber's total sales and lacked an electronic sales tracking system, which precluded Yihua Timber from reporting Company A's U.S. sales for the *Preliminary Results*. With regard to the inclusion of Company A's sales in the *Preliminary Results* and the Department's corresponding determination to base its analysis of Company A's sales on adverse facts available, Yihua Timber argues that the Department misapplied section 782(e) of the Act. Specifically, Yihua Timber asserts that the Department erred by failing to acknowledge Yihua Timber's attempts to comply with the Department's requests for information. To further support its request that Company A's sales be excluded, Yihua Timber claims that Company A's sales information was burdensome for both Yihua Timber to report and the Department to verify, that not reporting Company A's sales would not materially alter the final results, and that Company A is no longer in business.

In the alternative, should the Department determine to include Company A's sales in its analysis, Yihua Timber argues that the Department should not continue to apply partial adverse facts available for Company A's sales. Yihua Timber asserts that Company A's sales database is now available, and cites its own efforts to reconstruct the database using temporary employees. Yihua Timber argues that this database was submitted to and verified by the Department. In addition, Yihua Timber argues that, should the Department decide to not exclude Company A's sales, then the Department should include only Company A's verified sales of subject merchandise rather than Company A's total sales.

[33] See Yihua Timber Verification Report at 29.

In response, Petitioners assert that there is no basis to exclude Company A's sales, and that Yihua Timber lacks legal authority for its request. Petitioners argue that the Department should include Company A's verified data in Yihua Timber's margin calculation.

**Department's Position:**

We find that, for the final results, the application of adverse facts available is no longer necessary for Company A's sales of subject merchandise. We stated in the *Preliminary Results* that, "Yihua Timber did not provide sufficient evidence (*e.g.*, a sales reconciliation) to support its contention that only a portion of the sales reported in Company A's financial statements reflected sales of subject merchandise. Thus, Yihua Timber has not successfully demonstrated that it appropriately excluded the non-reported sales, which represent a significant portion of the sales on Company A's financial statements, and thereby failed to demonstrate that it had accounted for all of Company A's sales of wooden bedroom furniture in that databases." *See Preliminary Results*, 74 FR at 6379.

Subsequent to the *Preliminary Results*, the Department issued Yihua Timber a supplemental questionnaire, and requested that Yihua Timber provide evidence demonstrating that Company A's sales of subject merchandise were accurately reported to the Department. Yihua Timber, in its March 17, 2009, supplemental response, provided a complete list of Company A's sales of subject merchandise during the first six months of the 2007, prior to the company's closing. At the verification of New Classic, the Department reviewed the reconciliation of Company A's sales, in addition to performing various tests to examine the accuracy of the reported data. The Department found no discrepancies with respect to Company A's reported sales information. *See* New Classic Verification Report at 9. Thus, the Department is satisfied, based on Yihua Timber's March 17, 2009, submission and the verification of New Classic, that Company A's U.S. sales have been accurately reported. We will use Company A's verified U.S. sales database in our final margin calculations.

Yihua Timber's argument that the Department should exclude Company A's sales from the Department's margin calculation lacks support. Petitioners are correct that Yihua Timber has not provided any statutory authority for excluding Company A's verified sales data. Yihua Timber has cited only *Softwood Lumber from Canada*, 70 FR 33063 (June 7, 2005) (Preliminary Results) ("*Canadian Lumber*") as the basis for excluding Company A's sales from the final margin calculation. In *Canadian Lumber*, we exempted certain individual respondents from reporting the sales of specific merchandise or sales by certain affiliates because the sales were a relatively small percentage of total U.S. sales, burdensome to the company to report and for the Department to review, and would not materially affect the results of this review.[34] *Id* at 33066.

[34] The Department typically only exempts respondents from reporting certain sales when applying the "special rule," pursuant to 19 CFR 351.402(c)(3), where the Department has the authority to determine dumping margins based on the weighted-average dumping margin of identical or similar merchandise, when merchandise is further manufactured in the United States. There is no basis to apply the special rule here because there is no evidence that Yihua Timber's merchandise was further manufactured in the United States.

The instant case is distinguishable because, at the *Preliminary Results*, we did not entertain the idea of excusing Yihua Timber from reporting Company A's sales because, as we determined that Yihua Timber did not provide sufficient evidence supporting its contention that only a portion of the sales reported in Company A's financial statements reflected sales of subject merchandise, *i.e.*, Yihua Timber failed to demonstrate that it had accounted for all of Company A's sales of wooden bedroom furniture. *See Preliminary Results*, 74 FR at 6379. Moreover, *Canadian Lumber* involved an exemption from reporting, not a situation where the Department disregarded verified data, which is what Yihua Timber seeks here.

**Comment 23: Inventory Carrying Cost Calculation**

Yihua Timber argues the Department should abandon its preliminary reliance upon facts available with regard to Yihua Timber's inventory carrying costs. Yihua Timber disputes the Department's interpretation of *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823 (September 11, 2008) ("*Ball Bearings*") and accompanying Issues and Decision memorandum at Comment 4, in support of the Department's position that it normally calculates inventory carrying costs by subtracting the number of days between entry date and shipment date from inventory. Yihua Timber asserts that the Department's standard methodology is based upon, in part, the average length of time in inventory. To support its claim, Yihua Timber points to Department's antidumping questionnaire at field INVCARU, which instructs respondents to report the average length of time that a product is in inventory.

Yihua Timber asserts that the Department should use its proffered inventory carrying cost calculation, which is based upon average inventory turnover. Yihua Timber also argues that its adjustment to sales based upon cost of sales, is necessary, because this adjustment ensures that inventory carrying costs are based on New Classic's inventory value or landed cost, consistent with *Ball Bearings*.

Petitioners did not comment on this issue.

**Department's Position:**

The Department has determined not to apply facts available to Yihua Timber's inventory carrying cost calculation for final results. Subsequent to the *Preliminary Results*, the Department issued Yihua Timber a supplemental questionnaire, where we requested that Yihua Timber calculate an average number of days in inventory for Yihua Timber's sales during the POR, in addition to requesting that Yihua Timber explain its inventory carrying cost formula, specifically the cost of sales to sales ratio. Yihua Timber responded to the Department's requests for information, and the Department verified Yihua Timber's inventory carrying cost calculation at the verification of New Classic. *See* New Classic Verification Report at 15. Thus, we find that Yihua Timber correctly calculated inventory carrying costs using New Classic's average inventory turnover, consistent with the Department's practice. *See, e.g., E.I. Dupont De Nemours & Company v. United States*, 22 CIT 220, 228-229 (1998). Additionally, consistent with *Ball Bearings*, we find that applying the ratio of cost of sales to sales in the inventory

carrying cost calculation is appropriate in order to ensure that inventory carrying costs are based on New Classic's landed cost. Thus, for the final results, we will accept Yihua Timber's inventory carrying costs as reported in the U.S. sales database as "INVCARU."

**Comment 24: Inland Freight for Yihua Timber's Channel 1 Sales**

Yihua Timber argues that, with respect to transportation expenses related to New Classic's delivery of subject merchandise to some U.S. customers, *i.e.*, Channel 1 sales, the Department, erred in the *Preliminary Results* when it applied the transportation expense to all of Channel 1 customers rather than to only those Channel 1 customers to whom New Classic actually delivered the merchandise. Yihua Timber points to the Department's verification of limited delivered sales by New Classic, noting that the adjustment made for the *Preliminary Results* is no longer required, as this expense has been revised in its U.S. sales database.

Petitioners did not comment on this issue.

**Department's Position:**

We agree with Yihua Timber that the Department erred in its application of transportation expenses in the *Preliminary Results*. Thus, for the final results, the Department will rely upon the verified transportation expense, as reported in Yihua Timber's U.S. sales database. *See* New Classic Verification Report at 14-15.

**Comment 25: SAS Programming Changes and Errors**

Yihua Timber argues the *Preliminary Results* contain a number of programming issues that no longer apply as a result of its March 17, 2009, supplemental response and May 22, 2009, post-verification submission. First, Yihua Timber argues that the Department's reference to gross weight (GWEGHTU) is no longer applicable. Yihua Timber asserts that the Department should rely upon its March 17, 2009, Supplemental Questionnaire Response, which includes a revised U.S. database with movement expenses reported based on cubic feet rather than gross weight. Second, Yihua Timber argues that, as a result of the Department's verification of Yihua Timber's conversion rates for wood, board, and veneer, the Department should update the conversion rates used in the *Preliminary Results* to reflect the verified data. Third, regarding Yihua Timber's "damaged sales," Yihua Timber argues that these sales are incorporated in Company A's verified sales database and that references to "damaged sales" should be removed from the Department's SAS program. Fourth, regarding a miscoded CONNUMU for a nightstand as submitted in Yihua Timber's January 2, 2009, submission, Yihua Timber argues that assigning an average FOP based on all nightstands is no longer necessary as the CONNUMU was corrected in Yihua Timber's March 17, 2009, submission. Fifth, Yihua Timber argues that the U.S. duty (USDUTYU), credit (CREDITU), and warranty (WARRU) should not be recalculated, as was done in the *Preliminary Results*. Instead, for the final results, Yihua Timber asserts that the Department should use the verified U.S. sales database submitted on May 22, 2009.

Petitioners did not comment on this issue.

**Department's Position**:

For the final results, the Department has revised its final SAS program to incorporate all the changes requested by Yihua Timber, as discussed above. First, we have used Yihua Timber's most recently submitted U.S. sales database, which has updated its reported movement and selling expenses, that were verified by the Department. Second, the Department will update the conversion ratios for Yihua Timber's wood, board, and veneer inputs, as verified by the Department. Third, we are not using Yihua Timber's damaged sales U.S. sales database, as the damaged sales were made to Company A, Yihua Timber's affiliate. *See* Yihua Timber Verification Report at 3. Fourth, we are no longer assigning the average FOPs for nightstands to the nightstand for which the CONNUM was missing at the *Preliminary Results*, and instead are using the data as reported in Yihua Timber's most recently submitted FOP database. Fifth, we are no longer recalculating USDUTYU, CREDITU, and WARRU as we did in the *Preliminary Results*, and instead are using Yihua Timber's most recently submitted U.S. sales database which contains these expenses, as verified by the Department. *See* New Classic Verification Report at 13-17.

**Comment 26: Use of Combination Rates**

Petitioners argue that the Department should assign combination rates in the instant administrative review. Petitioners contend that the Department's regulations at 19 CFR 351.107(b)(1) allows for the use of combination rates, and that the preamble to the Department's regulations states that the purpose of using such rates is to prevent foreign producers from manipulating their rates. Petitioners cite *Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran*, 70 FR 7470 (February 14, 2005) "*Pistachios from Iran*") and accompanying Issues and Decision Memorandum at Comment 2, where the Department applied a combination rate in an administrative review. Petitioners explain that the Department has rejected the use of combination rates in other NME administrative reviews, including *Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 46957 (August 22, 2007) ("*First Administrative Review*"), and further assert that the Department has sought a voluntary remand in the CIT appeal of the *First Administrative Review*.

Petitioners argue that the circumstances in the instant administrative review warrant the application of combination rates, in particular with respect to Orient International. They argue that suppliers with high cash deposit rates are selling through exporters with lower cash deposit rates, allowing those suppliers to evade the high dumping duty rate applicable to them. Petitioners requested in their case brief that the Department issue supplemental questionnaires to the separate rate respondents requiring them to identify the producers that supplied the subject merchandise, so that the Department can assign combination rates for the final results.

COE and the Importers' Coalition, in their respective rebuttal briefs, argue that the Department should not assign combination rates in the instant administrative review as it has declined to do so in past administrative reviews of wooden bedroom furniture from the PRC. According to COE and Importers' Coalition, Petitioners have not demonstrated that high margin producers are

in fact exporting through entities with lower separate rates. COE and the Importers' Coalition add that Petitioners' reference to the *First Administrative Review* is misplaced as there is no indication that the Department intends to assign combination rates.

**Department's Position:**

For the final results, we have not exercised our discretion to apply combination rates. The preamble to the Department's regulations states that "if sales to the United States are made through an NME trading company, we assign a non-combination rate to the trading company. . ." *See Final Rule*, 62 FR 27296, 27303 (May 19, 1997). As set forth in 19 CFR 351.107(b)(1), "{i}n the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the Secretary may establish a 'combination' cash deposit rate for each combination of the exporter and its supplying producers." In *Pistachios from Iran*, the Department exercised its discretion and assigned a combination rate to the exporter and its supplier of the subject merchandise based on: (1) the similarity of the exporter's U.S. sale subject to the administrative review and the exporter's U.S. sale in the previous new shipper review in which a combination rate was applied; (2) the exporter's normal business practice of selling pistachios only to the U.S. market; (3) the exporter's ability to source the pistachios it sells from a large pool of suppliers; and (4) high cash deposit rates for other producers subject to the order and a high "all-others" rate. *See Pistachios from Iran* at Comment 2. The Department is unable to make the same determination here because there is no record evidence concerning specific producers who are shifting their exports from high-margin to low-margin exporters, or that specific producers are otherwise manipulating or evading the antidumping rates.

Citing an article from *Furniture Today* which states that unnamed officials from high duty factories informed the publication that several of them are shipping through low duty counterparts into the United States, Petitioners requested that the Department issue supplemental questionnaires to the separate rate respondents requiring them to identify the producers that supplied the subject merchandise. However, we find the assertions made in the *Furniture Today* article are simply too vague to compel the Department to query the entire group of separate rate respondents. Moreover, the article itself is insufficient evidence for the purpose of imposing combination rates.

With respect to Petitioners' allegations regarding Orient International, as discussed below in "Comment 32: Separate Rate Status of Orient International," Orient International's cash deposit rate is based upon adverse facts available. Therefore, we find there is little or no prospect of companies with high cash deposit rates selling through Orient International.

**Comment 27: Absorption of Antidumping Duties**

Petitioners state that, on April 7, 2008, they timely requested, pursuant to 19 CFR 351.213(j), that the Department make a duty absorption determination in this review. Citing *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009) and accompanying Issues and Decision Memorandum at Comment 5C, Petitioners argue that the burden is on the respondent to show that it did not absorb antidumping duties. Petitioners

contend that because Yihua Timber did not show that it did not absorb antidumping duties, the Department should make a finding of duty absorption.

Other interested parties did not comment on this issue.

**Department's Position:**

Section 751(a)(4) of the Act provides that, if requested, the Department shall determine during an administrative review initiated two or four years after the publication of the order "whether antidumping duties have been absorbed by a foreign producer or exporter. . . if the subject merchandise is sold in the United States" through an affiliated importer. Additionally, as explained by the Court of Appeals for the Federal Circuit, the statute authorizes the Department to make a duty absorption determination pursuant to the second and fourth administrative reviews of an antidumping order. *See Agro Dutch Indus. v. United States*, 508 F.3d 1024, 1028 (Fed. Cir. 2007). Because the order on wooden bedroom furniture from the PRC was published on January 4, 2005, and this review was initiated three years thereafter on March 7, 2008 (*see* Comment 31), this review was not initiated two or four years after the publication of the order. Therefore, pursuant to section 751(a)(4) of the Act, the Department determines not to make a duty-absorption determination in this review.

**Comment 28: Cash Deposit Instructions for Companies that Lost Their Separate Rate**

Petitioners request that for those companies which lost their separate rate in the instant administrative review, the Department should issue cash deposit instructions to U.S. Customs and Border Protection ("CBP") indicating that these companies are no longer eligible for a separate rate and are part of the PRC-entity. Petitioners also request that the Department indicate in the instructions that the CBP module numbers associated with those companies are no longer available for entries of subject merchandise.

Other interested parties did not comment on this issue.

**Department's Position:**

As we stated in the *Preliminary Results*, *74 FR at 6385*; "{t}he following cash deposit requirements will be effective upon publication of the final results of these reviews for shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(1)(C) and (a)(2)(C) of the Act: . . . (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 216.01 percent. . . ." Thus, for the companies that the Department found to be part of the PRC-entity for the final results (*i.e.*, Bon Ten; Dongguan Qingxi Xinyi Craft Furniture Factory (Joyce Art Factory); Tianjin Sande Fairwood Furniture Co. Ltd.; Yida Co. Ltd., Yitai Worldwide Ltd., Yili Co., Ltd., and Yetbuild Co., Ltd.; Hamilton & Spill, Ltd. ("Hamilton"); and Dream Rooms), the Department will indicate in its cash deposit instructions to CBP that these companies that lost their separate rate are now part of the PRC-entity, and that their module numbers are no longer available for entries of subject merchandise.

**Comment 29: Whether to Rescind the Review with Respect to Dongguan Bon Ten Furniture Co., Ltd.**

Bon Ten explains that it participated in a new shipper review ("NSR") covering the period January 1, 2007, through July 31, 2007, and was assigned a company-specific assessment and cash deposit rate. Bon Ten maintains that within the context of the NSR, it stated that it had no subsequent sales to the United States during the NSR POR, and that in the context of the NSR, its reconciliation demonstrates that Bon Ten had no further U.S. sales during the remainder of 2007. Bon Ten argues that the Department erred in the *Preliminary Results* by assigning Bon Ten the PRC-wide rate on the basis that it did not submit a separate rate application and therefore was not entitled to a separate rate. Bon Ten asserts that the Department should rescind the administrative review with respect to Bon Ten because it established its entitlement to a separate rate in the context of the semi-annual NSR and because it had no further sales to the United States during the POR of the administrative review. Bon Ten argues that rescinding the review is consistent with 19 CFR 351.214(j)(1) and *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) ("*2004/2006 PRC Shrimp*").

In response, Petitioners argue that Bon Ten was subject to this administrative review and was required to submit information with respect to separate rates. Petitioners assert that Bon Ten did not submit any information to the Department until after the *Preliminary Results*, and that consistent with *Peer Bearing Co. v. United States*, 587 F. Supp. 2d 1319, 1324-25 (CIT 2008) ("*Peer Bearing*"), when a respondent does not respond to the Department's separate rate application or certification, it does not merit a separate rate. Petitioners argue that though Bon Ten may have submitted information with respect to its separate rate status in the NSR, that information was not on the record of the instant administrative review and its separate rate status may have changed between the time of the NSR and the administrative review. Thus, Petitioners request that the Department continue to find that Bon Ten is part of the PRC-entity.

In its rebuttal brief, Bon Ten reiterates that its shipments have already been reviewed by the Department within the referenced NSR and that rescission of the instant administrative review, as to Bon Ten, is appropriate pursuant 19 CFR 351.214(j)(1) and *2004/2006 PRC Shrimp*.

**Department's Position:**

For the final results, we are continuing to find Bon Ten part of the PRC-entity. While Bon Ten's sale during the instant POR was reviewed during the context of the NSR, Bon Ten was still subject to the response requirements of the current administrative review because a review of its sales had been requested and we initiated a review based on that request. As we recently stated in *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 29174 (June 19, 2009) and accompanying Issues and Decision Memorandum at Comment 11, "{p}ursuant to section 751(a)(2)(A) of the Act, the Department shall determine the dumping margin for each entry of subject merchandise under review. If an exporter subject to a review does not believe

that it had any entries, exports or sales of the subject merchandise during the POR, it is incumbent on the exporter to so inform the Department." The record of this review shows that Bon Ten did not timely submit the required no shipment certification or separate rates application/certification. In addition, while Bon Ten may have submitted information on the record of the NSR that it had no subsequent shipments, that information however, is not on the record of the instant administrative review. Further, while Bon Ten was granted a separate rate in the context of the NSR, an entity subject to administrative review must either: 1) demonstrate no shipments during the relevant period, in which case the review is rescinded and the company's separate rate status is no longer an issue; or 2) if it had shipments, it must submit the requisite separate rates certification/application, as appropriate.

With respect to Bon Ten's assertion that the Department should rescind the review, pursuant to 19 CFR 351.214(j)(1), we find that the circumstances here do not allow the Department to rescind. Bon Ten is correct that, pursuant to 19 CFR 351.214(j)(1), the Department may rescind a review if that review covers the merchandise of an exporter subject to another review. However, the issue here is not whether Bon Ten's entry is covered by more than one review, as Bon Ten's entry covered by the NSR is not subject to the administrative review ("AR"), but rather whether Bon Ten has demonstrated that it had no further sales of subject merchandise in the five-month period subsequent to the NSR that was covered by the administrative review. Here, the Department has no evidence on the record of the administrative review that Bon Ten had no further sales during the POR of the AR. The Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the POR, pursuant to 19 CFR 351.213(d)(3). Therefore, the Department is correct in not rescinding the administrative review because Bon Ten never filed a no shipment certification and there is no evidence on the record of the AR that Bon Ten did not have any further sales during the five months of the POR not covered by the AR.

Moreover, consistent with *Peer Bearing*, because Bon Ten did not submit a separate rate certification or application relating to the administrative review period (which covers five months subsequent to the NSR period of review), the Department finds that Bon Ten did not rebut the Department's presumption of government control, and finds that Bon Ten is part of the PRC-entity.

In addition, we disagree with Bon Ten's reliance on *2004/2006 PRC Shrimp*. In *2004/2006 PRC Shrimp*, we rescinded the administrative review with respect to Zhanjiang Regal, where the new shipper POR overlapped partially with the AR POR, "because the Department has already reviewed all of the company's sales which were made during the POR in the context of a new shipper review." However, in *2004/2006 Shrimp*, the respondent submitted a letter on the record of the AR indicating it had only one POR shipment of subject merchandise which was already subject to a new shipper review. *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2006 Administrative Review and Preliminary Intent To Rescind 2004/2006 New Shipper Review*, 72 FR 10645, 10647 (March 9, 2007) (unchanged in *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of the 2004/2006 Administrative Review and Preliminary Intent To Rescind 2004/2006 New Shipper Review*, 72 FR 52049, 52050

(September 12, 2007). Here, Bon Ten made no such assertion prior to submission of the case briefs.

Moreover, with respect to Bon Ten's argument that failing to rescind the administrative review would disturb Bon Ten's liquidation and cash deposit instructions, resulting in multiple assessments of duties on the same entries, we find this argument to be flawed. First, the Department has already issued cash deposit and liquidation instructions with respect to Bon Ten's new shipper sale. Second, the cash deposit instructions the Department intends to issue subsequent to these final results are prospective in nature, meaning that they would be applied to future entries of subject merchandise. With respect to the liquidation instructions the Department intends to issue for the final results, these instructions will be applied to any of Bon Ten's entries not already subject to liquidation instructions issued in conjunction with the NSR.

Thus, as we stated in the *Preliminary Results*, all companies listed in the *Initiation Notice* wishing to qualify for separate rate status in this administrative review were required to submit, as appropriate, either a separate rate status application or certification. *See Preliminary Results*, 74 FR at 6377. Because Bon Ten did not submit a separate rate certification or application, we continue to find that Bon Ten has not demonstrated its eligibility for separate rate status in this administrative review. As a result, the Department is treating Bon Ten as part of the PRC-wide entity.

**Comment 30: Whether to Grant Dream Rooms Furniture (Shanghai) Co., Ltd. a Separate Rate**

Dream Rooms argues that the Department erred in assigning it the PRC-wide rate rather than a separate rate. Dream Rooms explains that the Department stated in its *Preliminary Results* that the Department attempted to contact Dream Rooms, but that Dream Rooms did not respond to the Department's request for information. Dream Rooms argues that it was not represented by counsel at the time of the *Preliminary Results* and that it never received the questionnaire referenced by the Department. Dream Rooms cites, among others, *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007) ("*Shrimp from India*"), where the Department declined to apply AFA to a respondent that did not receive the Department's request for information. Dream Rooms argues that the Department should assign Dream Rooms a separate rate for the final results based on its timely filed separate rate certification.

Petitioners argue that the Department sent the supplemental questionnaire to Dream Rooms via mail to the address provided in Dream Rooms' separate rate certification and via facsimile to the phone number provided in Dream Rooms' separate rate certification. Petitioners also assert that Dream Rooms was on notice that the Department had issued a supplemental questionnaire in the Department's *Preliminary Results*. Petitioners rebut Dream Rooms' reliance on *Shrimp from India*, among other cases, because Dream Rooms' reason for not responding is not akin to the circumstances in *Shrimp from India*. Petitioners argue that this situation is similar to *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 43661 (August 14, 1998) and accompanying Issues and Decision Memorandum at Comment 2B, where the Department applied AFA to the respondent

for its failure to cooperate. Petitioners contend that Dream Rooms did not provide any evidence that it did not receive the supplemental questionnaire, and thus the Department should consider Dream Rooms to be part of the PRC-entity and not grant it a separate rate.

**Department's Position:**

For the final results, we have continued to treat Dream Rooms as part of the PRC-entity and have not granted it a separate rate. On January 26, 2009, the Department placed a memo to the file attaching the Federal Express delivery confirmation notice indicating that the Department's supplemental questionnaire was delivered to the address provided by Dream Rooms in its separate rate certification and delivered to the "Receptionist/Front Desk" on January 12, 2009. While Dream Rooms provided an affidavit in its case brief from the general manager of Dream Rooms stating, "I. . .certify that 1) I had never received the supplemental questionnaire. . ., and 2) that is the only reason we did not respond," the record evidence from Federal Express firmly establishes that the package was indeed delivered to the respondent company. Dream Rooms failed to address this evidence.

We find Dream Room's reliance on *Shrimp from India* to be misplaced. In *Shrimp from India*, the respondent provided information documenting that it did not respond to the quantity and value ("Q&V") questionnaire because the company never received it. Specifically, the respondent certified that the person listed on the Federal Express delivery confirmation notice as having received its Q&V questionnaire had never been employed by the respondent, and also provided a copy of the deed of sale of the company dated prior to the initiation of that administrative review, indicating that the company had closed offices, in addition to other evidence. *See Shrimp from India* and accompanying Issues and Decision Memorandum at Comment 10.

We also find the instant case distinct from *Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Silicon Metal From the People's Republic of China*, 73 FR 46587 (August 11, 2008) and accompanying Issues and Decision Memorandum at Comment 2. In that case, the Department was unable to inform the party of the nature of the deficiency on the record because the party had moved locations. Dream Rooms makes no similar claim here. Finally, we find *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (November 7, 2006) and accompanying Issues and Decision Memorandum at Comment 22, to be distinct from the instant case. In that case, the Federal Express delivery confirmation did not demonstrate that the package was delivered to the company, but rather to an unknown address. Here, the Federal Express confirmation demonstrates that the package was delivered to the company.

Thus, consistent with the *Preliminary Results*, we continue to find that because Dream Rooms did not respond to the Department's request for clarification regarding its separate rate certification on the record of this review, the Department is unable to determine whether Dream Rooms operates free from PRC government control for purposes of this review. It is the Department's practice to require a party to submit the evidence necessary for the Department to determine that it operates independently of the state-controlled entity in each segment of a

proceeding in which it requests separate rate status. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005-2006 Administrative Review and Partial Rescission of Review,* 72 FR 56724 (October 4, 2007), which was upheld by the Court of International Trade in *Peer Bearing*, 587 F. Supp. 1319,1324-1325. ). Thus, consistent with the Department's practice, as upheld by the CIT, because Dream Rooms' separate-rate certification is deficient, Dream Rooms has not demonstrated its eligibility for separate-rate status in this administrative review. *See Peer Bearing*, at 1324-25. Consequently, for the final results, the Department is treating Dream Rooms as part of the PRC-wide entity.

**Comment 31: Whether the Department Timely Initiated the Administrative Review, and Whether Orient International was Properly Selected as a Mandatory Respondent**

The Importers' Coalition argues that the Department failed to initiate the instant administrative review within the deadline required by 19 CFR 351.221(c)(1)(i), *i.e.*, February 29, 2008. Therefore, according to the Importers' Coalition, the instant administrative review is unlawful and must thus be rescinded. The Importers' Coalition claims that the untimely initiation is harmful because they import from Orient International, which the Importers' Coalition claims was erroneously selected as a mandatory respondent pursuant to the Department's untimely initiation, and they have incurred financial obligations and hardships pursuant to the Department's determinations.

According to the Importers' Coalition, pursuant to 19 CFR 351.221(c)(1)(i), the Department was required to publish the initiation notice for the instant review no later than the last day of February 2008, as this is the last day of the month following the anniversary month of the antidumping duty order on wooden bedroom furniture from the PRC. The Importers' Coalition asserts that the Department's February 27, 2008 *Federal Register* notice demonstrates that initiation of the instant review was not timely, as the February 27, 2008, notice stated that the Department would publish separately the initiation notice for the instant review. The Importers' Coalition further asserts that the Department published its initiation notice for the instant review on March 7, 2008, then relied upon that date as the initiation date in a subsequent letter to the parties and in the *Preliminary Results*,

The Importers' Coalition disagrees with the Department's statement in the *Preliminary Results* that the February 27, 2008, *Federal Register* notice provided parties with notice of the instant review. According to the Importers' Coalition, the Department's reasoning is deficient because the Department's regulations require initiation by the close of the month following the anniversary month of the antidumping duty order, not merely notice.[35] Citing several decisions of the Court of Appeals for the Federal Circuit and the Court of International Trade, the Importers' Coalition argues that it is well-settled that an agency is bound by its own regulations, and the Department has failed to explain its deviation from its regulations.

[35] Ron's Warehouse submitted arguments similar to those put forward by the Importers' Coalition; Orient International, by reference, adopted the Importers' Coalition's arguments.

The Importers' Coalition disputes the Department's statement in the *Preliminary Results* that the Department has an established practice concerning its initiation of administrative reviews of this antidumping duty order. The Importers' Coalition claims that the prior reviews were also untimely, and that prior errors do not compel the Department to continue with the instant review nor do they constitute a defensible practice.

Alternatively, the Importers' Coalition argues that, should the Department determine to continue with the instant administrative review, the review must be conducted based upon an initiation date of February 27, 2008. Pursuant to this date, under 19 CFR 351.213(d)(1), the Importers' Coalition claims that the last day upon which parties could request withdrawal from the administrative review was May 27, 2008, *i.e.*, 90 days from initiation. The Importers' Coalition argues that, based upon the May 27, 2008, deadline, companies larger than Orient International remained in the respondent selection pool. The Importers' Coalition states that although these companies ultimately requested withdrawal from the review before Orient International, the Department had not announced that it would exercise its discretion to accept withdrawals after May 27, 2008, thus there were other, larger companies that should have been selected as respondents rather than Orient International.

According to the Importers' Coalition, participation in the instant review is financially burdensome for Orient International, and the Department's preliminary application of the PRC-wide rate was erroneous because Orient International should have been granted a separate rate.

In response, Petitioners contend that the February 27, 2008, publication fulfilled the notice requirement of 19 CFR 351.221(c)(1)(i), as parties were apprised of the instant administrative review. Petitioners argue section 751 of the Act mandates that the Department conduct an administrative review pursuant to Petitioners' proper request and that the Department does not lose its authority or obligation to proceed with the administrative review when it misses a statutory or regulatory deadline. Citing instances where the Department published untimely initiation notices based upon inadvertent errors, Petitioners argue that Orient International has not provided any authority that distinguishes between inadvertent and intentional untimely notices. Petitioners claim that there is no unfair prejudice stemming from an untimely initiation notice, as the Importers' Coalition's reference to financial hardship is ordinary in an administrative review and is in no way affected by the timing of the initiation notice.

Regarding the selection of Orient International as a mandatory respondent, Petitioners assert that the Department relied upon March 7, 2008, as the date of initiation, thus the schedule for all time-sensitive events in the review was based upon that date. Accordingly, the last day for the Department's automatic acceptance of withdrawals of requests for review, under 19 CFR 351.213(d)(1) was June 5, 2008, and, at that time, Orient International remained amongst the largest PRC exporters of subject merchandise in the respondent pool. Alternatively, Petitioners argue that even if the Department relies upon February 27, 2008, as the date of initiation and the last day for the Department's automatic acceptance of withdrawals would be May 27, 2008, the Department nevertheless could exercise its discretion to grant withdrawals after that date. Petitioners argue that the Department is not required to notify parties whether it will grant withdrawals after the 90-day deadline passes. Petitioners assert that no significant Department resources were expended such that late withdrawals would have been unwarranted.

**Department's Position:**

Regarding the Importers' Coalition's argument that the instant review must be rescinded because its initiation was untimely, the antidumping statute mandates that the Department conduct an administrative review pursuant to a timely request for review and publication of a notice of review. As we stated in the *Preliminary Results*, Section 751 of the Act requires the Department to conduct an administrative review when timely and properly requested, as was done by multiple parties for this review. *See Preliminary Results*, 74 FR at 6374; *see also* Section 751(a)(1) of the Act (mandating that the Department conduct a review of an antidumping order, countervailing duty order, or suspension agreement at least once during every 12-month period pursuant to a request for review and publication of notice of review). The courts have consistently recognized that failure to follow administrative procedures, including an agency's failure to follow its own timing regulations, do not exempt administrative agencies, including the Department, from meeting their statutory obligations. *See, e.g.*, *Brock v. Pierce County*, 476 U.S. 253 (1986) (holding that, unless stated, Congress does not intend for agency action to be voided due to failure to follow procedure); *Kemira Fibres Oy v. United States*, 61 F.3d 866 (Fed. Cir. 1995) (holding that the Department does not lose its authority to conduct an administrative review as a result of a late filing).[36] In both cases, the courts looked to the legislative history underlying the statute for guidance. Here, the SAA is silent with respect to the date by which the Department must publish its notice of initiation of an annual administrative review; the SAA speaks only to the timing of the review's completion. *See Statement of Administrative Action Accompanying H.R. 5110*, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994), at 875 ("SAA"). The SAA states;

> The Administration is aware of prior complaints regarding delays in the completion of administrative reviews and the liquidation of entries, and intends to do its utmost to ensure that Commerce and Customs are able to comply with the deadlines established by the bill. At the same time, however, it is not the Administration's intent to sacrifice accuracy of results and fairness to the parties involved for the sake of speed.

*Id*. Applying the same principle here, the Department's alleged failure to meet its regulatory deadline for publication of an initiation notice is insufficient grounds to disregard numerous properly filed requests for an administrative review and void the considerable effort by the Department and all parties to this review to achieve a fair and accurate result.[37]

With regard to the Importers' Coalition's argument that the Department's regulations are legally binding, the question here is not whether the Department is bound by its regulations but whether

[36] "{The respondent} should not become immune from the antidumping laws because Commerce missed the deadline. The national interest in the regulation of importation should not fall victim to an oversight by Commerce, especially when domestic parties express their interest in an outstanding order. Any harm caused to [the respondent] by the slight delay in administrative action (and none has been shown) would be disproportionate to the potential harm to domestic industry were we to accept [the respondent's] argument." *Kemira Fibres Oy v. United States*, 61 F.3d at 873.

[37] There is no explanation the *Final Rule* concerning the timing requirement at issue in this review. *See Antidumping Duties/Countervailing Duties*, 62 FR 27296, 27325 (May 19, 1997) ("*Final Rule*").

the Department's alleged failure to meet a regulatory deadline moots a statutory obligation, particularly when administrative efforts and resources to fulfill that obligation have already been expended. The Department does not disagree that its regulations are binding, however, as explained above, applicable precedent and legislative history dictate that failure to meet a regulatory deadline does not exempt the Department from satisfying its statutory obligation to conduct an administrative review.

Finally, we note that the purpose of the initiation notice is to provide notice to interested parties that the Department is initiating an administrative review on the product at issue. In this case, the parties received ample notice in that the Department published two notices in the *Federal Register*, and thus no party can reasonably argue that the Department did not fulfill its obligation to provide notice to interested parties, and we find no party was prejudiced for failing to receive notice of initiation in this case.

As to the official initiation date and notice to the interested parties, consistent with our previous pronouncements, we have determined March 7, 2008, to be the initiation date.[38] Our reference in the *Preliminary Results* to the February 27, 2008, notice as "our first notice" is not inconsistent with our determination. *See Preliminary Results*, 74 FR at 6372. At a minimum, based upon the February 27, 2008, notice, parties were given constructive notice of the forthcoming administrative review and the liabilities on their entries during the POR. *See Transcom Inc. v. United States*, 182 F.3d 876, 880 (Fed. Cir. 1991).

As we determine March 7, 2008, to be the official initiation date, we additionally determine that we did not erroneously choose Orient International as a mandatory respondent. On June 5, 2008, the last day interested parties could have timely withdrawn their requests for review (*i.e.*, 90 days from March 7, 2008), Orient International continued to be among the largest exporting companies during the POR of wooden bedroom furniture from the PRC based on the total value of wooden bedroom furniture as reported by the CBP data.[39] With regard to the Importers' Coalition's arguments that the Department did not announce or explain its acceptance of untimely withdrawals in the Department's *Partial Rescission Notice*, the rescissions announced in that notice were timely, pursuant to the Department's March 7, 2008 initiation date, therefore the Department had no reason to exercise its discretion under 19 CFR 351.214(d)(1). *See Wooden Bedroom Furniture from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 49990 (August 25, 2008) ("*Partial Rescission Notice*").

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[38] *See e.g.*, Memorandum from Demitri Kalogeropoulos, Analyst, Office 8 and Robert Bolling, Program Manager, Office 8 to Wendy J. Frankel, Director, Office 8, "Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Selection of Respondents", dated July 31, 2008, *Wooden Bedroom Furniture from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 49990 (August 25, 2008) ("Respondent Selection Memo"), *Wooden Bedroom Furniture From the People's Republic of China: Extension of Time Limits for the Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 73 FR 58113 (October 6, 2008), and *Preliminary Results*, 74 FR at 6372.

[39] *See* Respondent Selection Memo.

With respect to the Department's determination to select Orient International as a mandatory respondent, the Importers' Coalition has argued that the Department erred in its selection because other, larger, companies should have remained in the pool of potential candidates for selection and in fact should have been selected over Oriental International. The Importers' Coalition rests its argument on a requirement that the February 27, 2008, notice date is the only date of initiation that can set the 90-day time period for establishing when timely withdrawal requests are due to the Department, and therefore that withdrawal requests for the larger companies were untimely, and therefore the withdrawal requests for these companies should have been denied, and thus remained in the pool of candidates and should have been selected for individual examination over Oriental International. We find these arguments highly speculative and unpersuasive. Even if the earlier, February 27, 2008, date were the only basis for establishing when the 90-day period for timely withdrawal requests begins, the Department has discretion to extend that date if it determines it is reasonable to do so under 19 CFR 351.213(d)(1).[40] In this case, the difference in time was little more than a week and no significant Department resources were expended to make it unreasonable for the Department to extend the time for filing withdrawal requests. Moreover, we note that to the extent confusion was created by the two notices as to when the 90 day period begins to run, a reasonable basis for extending that deadline is created. Finally, we note that the Department is not required to notify parties as to whether it will grant withdrawals after the 90 day period expires.

Moreover, the "financial burden" alleged by the Importers' Coalition stemming from selection of Orient International as a respondent and subsequent application of a cash deposit rate to the company's entries is, by the Importers' Coalition's admission, the resulting cash deposit rate and related expenses. Because the Department determines that the review was lawfully initiated and that Orient International was properly selected as a mandatory respondent, the hardship alleged is merely a result of the normal functioning of the antidumping law.

**Comment 32: Whether to Grant Orient International a Separate Rate**

In connection with their argument that the Department failed to timely initiate the instant administrative review and thereby erroneously choose Orient International as a mandatory Respondent, the Importers' Coalition argues that, as a remedial measure, the Department should reinstate Orient International's separate rate status. The Importers' Coalition asserts that reinstating Orient International's separate rate is warranted as the Department granted the status as a result of the investigation and because Orient International has reconfirmed its separate rate status for the instant review.

Orient International argues that neither the statute nor the regulations allow the Department to remove a respondent's separate rate status because of, or in conjunction with, the application of facts available. Orient International further argues that the Department erred by imposing a cash

[40] *See* Importers' Coalition Case Brief at 16, fn.4 ("The Importers' Coalition does not challenge the Department's discretion to accept withdrawals after the 90-day deadline."); *see, e.g., Polyethylene Retail Carrier Bags from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 8031 (February 12, 2008); *Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42032 (July 21, 2005).

deposit rate upon Orient International that assumes government control after Orient International had successfully rebutted the presumption of government control in the instant review and the less than fair value investigation. Citing *Gerber Food (Yunan) Co. v. United States*, 387 F.Supp.2d 1270, 1288 (Ct. Int'l Trade 2005) ("*Gerber Food*"), Orient International argues that the Department cannot deny Orient International separate rate status as a result of the application of adverse facts available. In addition to advancing many of the same claims put forward by Orient International, Ron's Warehouse asserts that the CIT has previously rejected the Department's application of the China-wide rate to separate rate companies, as discussed in *Shandong Huarong General Group Corporation v. United States*, 27 CIT___, Slip Op 03-135 at 41-42 (October 22, 2003) ("*Shandong Huarong*"). Ron's Warehouse further argues that the Court of Appeals for the Federal Circuit has held that Department does not have the discretion to apply adverse facts available in a manner that imposes an unjustifiably high, punitive rate that ignores the facts discovered in the course of its own investigation.

In response, Petitioners cite the *Preliminary Results*, where the Department determined that Orient International failed to demonstrate its separate rate eligibility notwithstanding its separate rate certification, as the Department was unable to verify Orient International's submission due to its withdrawal from this review. Petitioners argue that Orient International's separate rate status in the less than fair value investigation does not dictate that Orient International should receive the same status in the instant review, as the Department's practice of treating each review as a separate proceeding based upon unique facts has been upheld by the CIT. Petitioners further argue that Orient International's separate rate certification alone does not demonstrate that Orient International is free from government control. In support of this point, Petitioners assert that the Department requested supplemental information from several separate rate companies. Petitioners claim that Orient International's withdrawal from the instant review prevented the Department from soliciting additional information or verifying the accuracy of Orient's separate rate certification. Petitioners further argue that, as a factual matter, Orient International's separate rate certification does not demonstrate that it is free from government control, and that the cases cited by Orient International and Ron's Warehouse are inapposite.

Alternatively, Petitioners argue that, in the event that the Department determines that Orient International is entitled to separate rate status, the 216.01 percent rate applied to Orient International continues to be appropriate as Orient International failed to participate "to the best of its ability" as required by Section 776(b) of the Act and because the Department is obligated to presume that Orient International's decision to not participate was self-serving. Petitioners argue that this rate has been corroborated by the record of the instant review and that the Department has discretion in determining the rate to be applied to uncooperative respondents.

The Importers' Coalition's rebuttal to Petitioners' arguments reiterates the Importers' Coalitions arguments that the instant review is unlawful, that Department erred in selecting Orient International as a mandatory respondent, and, should the Department continue with the instant review, it should treat Orient International as a separate rate company.

**Department's Position:**

We agree with Orient International and Ron's Warehouse that the Department should not have denied Orient International a separate rate for purposes of the *Preliminary Results*, but not for the reasons espoused by Orient International, Ron's Warehouse or the Importers' Coalition. As we stated in *Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 46957 (August 22, 2007) ("*WBF Amended Final*") and accompanying Issues and Decision Memorandum at Comment 43:

> . . . a respondent must wholly and fully participate in an investigation or administrative review. In other words, a respondent must respond to all the information that has been requested by the Department and not selectively choose which requests to respond to or which information to submit. It cannot fully participate in one aspect of the review, while simultaneously failing to provide complete, accurate and verifiable data with respect to other required elements of that review. In the instant case, First Wood responded to the Department's requests with respect to information related to separate-rate status, but failed to cooperate to the best of its ability in the review as a whole by providing incomplete and unverifiable sales, cost, and FOP data. Because, however, the Department failed to notify First Wood that a respondent cannot qualify for separate- rate status if it fails to cooperate to the best of its ability throughout the investigation and/or review, the Department, as noted above, will continue to issue First Wood a separate rate. In future investigations and reviews, however, the Department will routinely notify all respondents of this requirement.

*WBF Amended Final* and accompanying Issues and Decision Memorandum at Comment 43.

In accordance with the above statement, we revised language in the full antidumping questionnaire and the separate rate application/certification. Specifically, the language in the separate rate certification states that if chosen as a mandatory respondent, a separate rate applicant will be required to provide a response to the full antidumping questionnaire. However, this language does not clearly specify that failure to respond to the full antidumping questionnaire will result in not receiving a separate rate, and the Department in the instant review did not clearly inform Orient International of this obligation.

Additionally, while Petitioners are correct that the language in the separate rate certification notifies parties that the Department may issue supplemental questionnaires and/or verify the separate rate certification, the Department did not, in the instant administrative review, issue any supplemental questionnaires to Orient International on its separate rate certification or state that it planned to verify Orient International's separate rate certification. Therefore, for the final results, the Department has analyzed Orient International's timely submitted separate rate certification, to determine whether Orient International has demonstrated its eligibility for a separate rate. In addition, the Department is further revising both the full antidumping questionnaire and the separate rate application/certification to inform mandatory respondents that, in the future, they will not be eligible for separate rate status if they do not fully respond to

the full antidumping questionnaire and any supplemental questionnaires, regardless of whether or not they have separately submitted a separate rate application/certification.

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) ("*Sparklers*"). Based on Orient International's separate rate certification, the record supports a finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the company; and (3) there are formal measures by the government decentralizing control of the company.

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. Based on Orient International's separate rate certification, we determine that the record supports a finding of *de facto* absence of government control, specifically; (1) Orient International sets its own export prices independent of the government and without the approval of a government authority; (2) Orient International retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) Orient International has the authority to negotiate and sign contracts and other agreements; and (4) Orient International has autonomy from the government regarding the selection of management.

The evidence placed on the record of this review by Orient International demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Specifically, Orient International was granted a separate rate most recently in the less than fair value investigation, based on information contained on the record of the investigation. *See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 79. In the *Initiation Notice* for the instant administrative

review, we stated, "{f}or this administrative review, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate." *See Initiation Notice*, 73 FR at 12391. Orient International satisfied the Department's request by submitting its separate rate certification. Thus, because Orient International had a separate rate in the most recent segment of the proceeding in which it participated, and because it certified that it continued to meet the criteria for obtaining a separate rate, we have granted Orient International a separate rate for the final results.

Granting a separate rate to Orient International is consistent with the Department's practice. In an administrative review, for companies who were previously assigned a separate rate in a previous segment of this proceeding, the Department normally requires entities to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate. *See, e.g., Fresh Garlic from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative and New Shipper Reviews and Intent to Rescind, In Part, the Antidumping Duty Administrative and New Shipper Reviews*, 73 FR 74462,74464 (December 8, 2008) (unchanged in final results, *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 29174 (June 19, 2009)). Thus, consistent with the Department's practice of recognizing separate rate certifications as a sufficient demonstration of separate rate eligibility, we reject Petitioners' contention that Orient International's separate rate certification does not demonstrate that it is free of government control.

We agree with Ron's Warehouse that the instant case is factually similar to *Shandong Huarong*, 27 CIT at 1594-95, where the CIT found that while the respondents did not cooperate with the Department, the Department erred in denying the company a separate rate and applying the PRC-wide rate as AFA.[41] Here, as in *Shandong Huarong*, Orient International provided evidence (*i.e.*, its separate rate certification) of its independence from government control. While Petitioners argue that Orient International's withdrawal as a mandatory respondent prevented the Department from verifying or requesting that Orient International remedy any deficiencies in its separate rate certification, we find that the Department could have requested to verify this information or issue supplemental questionnaires, but elected not to do so. Thus, it would be improper to deny Orient International a separate rate for failing to cooperate with the Department because Orient International's separate rate certification demonstrates a lack of government control over Orient International's export activities, and the Department neither verified nor requested supplemental information with respect to Orient International's separate rate certification.

Orient International chose not to respond to any of the Department's other informational requests with respect to this review. Specifically, on September 18, 2008, Orient International submitted

[41] Though the cases are factually similar, the instant case is distinguishable from Shandong Huarong with respect to the rate applied based upon AFA. In this case, the Department is not relying upon the PRC-wide rate as the AFA rate. *See Shandong Huarong*, 27 C.I.T. at 1594-95.

a document stating that it would no longer participate in this review, and did not respond to Sections C or D of the Department's questionnaire. Section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping 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.

In this case, we find that the application of facts available is warranted. In accordance with sections 776(a)(2)(A) through (D), by not responding to the Department's questionnaire and informing the Department that it would no longer participate in the administrative review as a mandatory respondent, we find that Orient International withheld information requested, failed to produce the requested information in a timely manner, significantly impeded the proceeding, and did not allow for verification of the data requested in the questionnaire, as it had ceased cooperating with the Department.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may use an inference that is adverse to the interests of the respondent if it determines that the respondent has failed to cooperate to the best of its ability. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See SAA* at 870. In making its determination the Department must articulate its reasons for concluding that a party failed to cooperate to the best of its ability, and explain why the missing information is significant to the review. The Federal Circuit has explained that "acting to the best of its ability" means that a respondent must "do the maximum it is able to do." *See Nippon Steel Corp. v. United States*, 337 F. 3d. 1373, 1382-1393 (Fed. Cir. 2003).

In this case, Orient International was provided an ample amount of time to submit a response to the Department's antidumping duty questionnaire. At no point did Orient International seek clarification from the Department on the information requested in the questionnaire. Therefore, pursuant to section 776(b) of the Act, the Department finds that Orient International failed to cooperate to the best of its ability by not providing a questionnaire response that was essential to the calculation of the antidumping duty margin. Because Orient International failed to cooperate with the Department in this matter, we find it appropriate to use an inference that is adverse to the interests of Orient International in selecting from among the facts otherwise available. See section 776(b) of the Act. By doing so, we will ensure that Orient International will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this administrative review. *See SAA* at 870.

In deciding which facts to use as adverse facts available ("AFA"), section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination,

or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). Further, it is the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See SAA* at 870; *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005).

Generally, the Department finds that selecting the highest rate from any segment of the proceeding as AFA is appropriate. *See, e.g., Certain Cased Pencils from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005). The CIT and the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions. *See, e.g., Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990) (affirming the Department's presumption that the highest margin was the best information of current margins) ("*Rhone Poulenc*"); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in the investigation); *Kompass Food Trading International v. United States*, 24 CIT 678, 683 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United Sta*tes, 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondents' prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." *See Rhone Poulenc*, 899 F. 2d at 1190.

Thus, because Orient International did not cooperate to the best of its ability to comply with the Department's requests for information, as AFA, we have assigned to Orient International, a rate of 216.01 percent, from the 2004-2005 new shipper reviews of WBF from the PRC, which is the highest rate on the record of all segments of this proceeding. The Department determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the highest calculated rate from the 2004-2005 new shipper reviews to determine an AFA rate is subject to the requirement to corroborate secondary information.

For purposes of the final results, we find that the rate of 216.01 percent is both reliable and relevant. The AFA rate that the Department is now using was determined in the published final results of a previous NSR. *See Wooden Bedroom Furniture from the People's Republic of*

*China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews*, 71 FR 70739, 70741 (December 6, 2006). Because this rate is a company-specific calculated rate concerning subject merchandise, we have determined this rate to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F. 3d 1220, 1221 (Fed. Cir. 1997) (ruling that the Department will not use a margin that has been judicially invalidated). To assess the relevancy of the rate used, the Department compared the margin calculation of the participating mandatory respondent in the instant administrative review with the 216.01 percent calculated rate from the 2004-2005 new shipper review. The Department found that the margin of 216.01 percent was within the range of the margins calculated on the record of the instant administrative review. Because the record of this administrative review contains margins within the range of 216.01 percent, we determine that the rate from the 2004-2005 review continues to be relevant for use in this administrative review. *See* Yihua Timber's Analysis Memo.

As the adverse margin is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that this rate meets the corroboration criterion established in section 776(c) of the Act that secondary information has probative value. As a result, the Department determines that the margin is corroborated for the purposes of this administrative review and may reasonably be applied to Orient International as AFA.

With respect to Orient International's reliance on *Gerber Food*, the instant case is distinguishable for two reasons. First, Orient International has provided no verifiable evidence regarding its sales activity. In *Gerber Food*, the separate rate respondents at issue reported data to the Department, which the Department verified, and the CIT found that the fact that the respondents' data was generally supported by the Department's verification findings precluded application of AFA. *Gerber Food*, 387 F. Supp. 2d at 1283. Accordingly, the CIT found that the Department's application of the PRC-wide rate, as AFA, to the respondents at issue did not bear any relationship to their sales activity, particularly because they had demonstrated their freedom from government control. *Id.* at 1286. In contrast, because Orient International did not respond to the Department's questionnaire, the Department has no information on the record with respect to Orient International's sales during the POR. The second reason why *Gerber Food* is not applicable here is because, as explained above, the Department is not applying the PRC-wide rate as AFA. Thus, *Gerber Food* is inapposite.

**RECOMMENDATION**:

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

AGREE_____ DISAGREE_____

_____
Carole Showers
Deputy Assistant Secretary
for Policy and Negotiations

_____
Date