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October 5, 2009

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2007-2008 Administrative Review of Certain Tissue Paper Products from the People's Republic of China (PRC)

Summary

We have analyzed the case and rebuttal briefs submitted by the respondent[1] and the petitioner[2] in the above-referenced review. As a result of our analysis, we have made changes in the margin calculation for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from the parties.

Comment 1: Max Fortune's Request for Revocation from the Antidumping Duty Order

Comment 2: Incorporating Negative Dumping Margins in the Calculation of the Overall Antidumping Margin

Comment 3: Selection of Plastic Bag Surrogate Value

Comment 4: Valuing Containerization Expenses Separately from Brokerage and Handling Expenses

Comment 5: Selection of Financial Statements for Surrogate Financial Ratio Calculations

Comment 6: Reclassifications and Adjustments to Surrogate Financial Ratio Calculations

Comment 7: Appropriate Labor Rate

[1] The respondent is Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (hereafter referred to as Max Fortune).

[2] The petitioner is Seaman Paper Company of Massachusetts, Inc.

Comment 8: Excluding Indian Imports from Hong Kong in WTA-Sourced Surrogate Value Calculations

Comment 9: Revisions to Plastic Bag Consumption

Background

On April 6, 2009, the Department of Commerce (the Department) published the preliminary results of the 2007-2008 antidumping duty administrative review of certain tissue paper products from the PRC. See Certain Tissue Paper Products From the People's Republic of China: Preliminary Results and Partial Rescission of the 2007-2008 Administrative Review and Intent Not to Revoke Order in Part, 74 FR 15449 (April 6, 2009) (Preliminary Results). The products covered by this review are certain tissue paper products. The period of review (POR) is March 1, 2007, through February 29, 2008. We invited interested parties to comment on the Preliminary Results.

On May 21, 2009, Max Fortune and the petitioner submitted publicly available information (PAI) for consideration in the final results.

Max Fortune and the petitioner filed case and rebuttal case briefs on June 15 and 29, 2009, respectively. No party requested a hearing.

On July 15, 2009, we extended the time limit for the final results in this review until October 3, 2009.[3] See Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Tissue Paper Products from the People's Republic of China, 74 FR 35842 (July 21, 2009).

Based on our analysis of the comments received, we have changed the weighted-average margin applicable to Max Fortune from the Preliminary Results.

Margin Calculations

We calculated export price (EP) and normal value (NV) for Max Fortune using the same methodology described in the Preliminary Results, except as follows below:

1. We used the Indian import data from World Trade Atlas (WTA) for Harmonized Tariff Schedule (HTS) subheading 6305.39.00 to value polypropylene bags. See Comment 3 for further discussion.

2. We corrected Max Fortune's reported polypropylene bag consumption factors for two products. See Comment 9 for further discussion.

[3] Since October 3, 2009, is a Saturday, the final results are due on the next business day, October 5, 2009.

See Memorandum from Brian Smith and Brandon Custard, International Trade Compliance Analysts, to The File, entitled "2007-2008 Administrative Review of Certain Tissue Paper Products from the People's Republic of China: Factor Valuation for the Final Results," dated October 5, 2009 (Final Results Factor Valuation Memo); and Memorandum from Brian Smith and Brandon Custard, International Trade Compliance Analysts, to The File, entitled "Final Results Margin Calculation for Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively referred to as Max Fortune)," dated October 5, 2009 (Final Results Margin Calculation Memorandum) for further details.

Discussion of the Issues

Comment 1: Max Fortune's Request for Revocation from the Antidumping Duty Order

On March 31, 2008, Max Fortune submitted a request, in accordance with sections 751(a) and 751(d) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.222(b), that the Department revoke the antidumping order covering certain tissue paper products from the PRC with respect to its sales of the subject merchandise to the United States. In accordance with 19 CFR 351.222(e), the request was accompanied by a certification from Max Fortune that for a consecutive three-year period, including the period of this review, it sold subject merchandise at not less than NV in commercial quantities, and would continue to do so in the future. Max Fortune also agreed to the immediate reinstatement of the antidumping order, if the Department concludes that it sold the subject merchandise at less than NV subsequent to revocation. For the Preliminary Results, the Department found that Max Fortune sold subject merchandise at less than NV during the POR and, therefore, did not meet at least one of the three regulatory requirements for revoking the order pursuant to 19 CFR 351.222(b)(2).

Max Fortune argues that the Department should find that it did not sell subject merchandise at less than NV in the final results and, therefore, should revoke the antidumping order with respect to it. Max Fortune also states that in conjunction with its revocation request, it submitted the mandatory certification declaring that it had met and would adhere to all the necessary conditions for revocation.

The petitioner claims that the Department should decline to revoke the antidumping duty order with respect to Max Fortune because it sold subject merchandise at less than NV during the current POR. Assuming the Department continues to find that Max Fortune sold subject merchandise at less than NV in the final results as it did in the Preliminary Results, the petitioner asserts that Max Fortune will not have met the first criterion for revocation pursuant to 19 CFR 351.222(b)(2).
Moreover, the petitioner claims that Max Fortune did not sell subject merchandise in commercial quantities during each of the past three segments of the proceeding based on the "commercial quantities" standard used by the Department to make revocation decisions in past antidumping

duty cases.[4] According to the petitioner, in this case, a comparison of Max Fortune's quantity of subject merchandise sales to the United States (in terms of reams) during each of the three review periods and its quantity of subject merchandise sales to the United States during the period of investigation (POI), adjusted to account for the difference between the length of the POI and each of the PORs, clearly demonstrates that Max Fortune did not ship in commercial quantities in each of the three review periods subsequent to the POI. Therefore, the petitioner concludes that Max Fortune also has not met the second criterion for revocation pursuant to 19 CFR 351.222(d)(1).

Department's Position:

We do not find that Max Fortune is eligible for revocation under section 751(d) of the Act and 19 CFR 351.222.

A company requesting revocation must submit the following to the Department: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold subject merchandise in commercial quantities in each of the three years forming the basis of its revocation; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. In determining whether to revoke an antidumping duty order in part, the Department must ascertain that the party sold merchandise at not less than NV (i.e., at zero or de minimis margins**)** in commercial quantities for a period of at least three consecutive years. See 19 CFR 351.222(b)(2), (d)(1) and (e); see also Stainless Steel Flanges from India: Notice of Final Results of Antidumping Administrative Review and Revocation in Part, 70 FR 39997 (July 12, 2005).

While the Department found either zero or de minimis dumping margins for Max Fortune during the 1st administrative review (i.e., 2004-2006 or POR1) and 2nd administrative review (i.e., 2006-2007 or POR2) of this order,[5] it has not done so in the current administrative review (i.e., 2007-2008 or POR3). As Max Fortune's final dumping margin in this review is above de minimis, we find that Max Fortune has not satisfied the first regulatory criterion under 19 CFR 351.222, and is therefore not eligible for revocation.

[4] In support of its argument, the petitioner cites to Pure Magnesium From Canada: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke The Antidumping Duty Order in Part, 65 FR 55502, 55504 (September 14, 2000) (Pure Magnesium From Canada) and Honey From Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 74 FR 24220 (May 2, 2008) (Honey From Argentina).

[5] See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 72 FR 58642 (October 16, 2007); and Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 73 FR 58113 (October 6, 2008).

Notwithstanding this finding, we also disagree with Max Fortune that its sales to the United States were made in commercial quantities during each of the three years forming the basis of its revocation request, as required under 19 CFR 351.222(d)(1) and (e)(1)(ii). In order to determine whether Max Fortune made sales in commercial quantities during the three years at issue, we compared Max Fortune's quantity of subject merchandise sales to the United States during the POI with that during each of the three subsequent PORs (i.e., POR1, POR2, and POR3). However, as the POI is only a six-month period whereas the periods of the 1st, 2nd, and 3rd administrative reviews are at least one year in duration, we annualized Max Fortune's POI data for purposes of this comparison. In performing this comparison, we focused on Max Fortune's verified sales quantity data reported in terms of pieces for simplicity, as pieces appear to be the smallest unit of measure for the subject merchandise reported on the record of this review. However, we note that the outcome of our analysis would be no different if we used Max Fortune's verified sales quantity data reported in terms of sets or reams (see Memorandum to The File from Case Analysts entitled "Verification of the Questionnaire Responses of Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. in the Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China," dated March 31, 2009 (Verification Report) at Verification Exhibits 6H, 6L, 6M, 6N, 6O and 6Q, and Max Fortune's January 5, 2009, supplemental response at Exhibit 1). Based on the POI-to-POR sales quantity comparison (in terms of pieces), we found that Max Fortune's aggregate sales of subject merchandise to the United States have not been made in commercial quantities during POR2 and POR3. Therefore, we determine that Max Fortune has not satisfied this regulatory criterion as well, and accordingly is not eligible for revocation also on this basis.

Our commercial quantities finding in this case is consistent with the Department's findings in past cases with similar fact patterns. See, e.g., Honey from Argentina, 74 FR 24220, and accompanying Issues and Decision Memorandum at Comment 5 (where the Department denied the respondent's revocation request because the sales made by the respondent in that case in subsequent years following the imposition of the antidumping duty order were not in commercial quantities). For a complete discussion of our commercial quantities analysis, see October 5, 2009, Memorandum to James P. Maeder, Jr., Director, through Irene Darzenta Tzafolias, Program Manager, from the PRC Tissue Paper Team, "Request for Revocation by Max Fortune Limited (Max Fortune)."

Comment 2: Incorporating Negative Dumping Margins in the Calculation of the Overall Antidumping Margin

In the Preliminary Results, we followed our standard methodology of not using non-dumped comparisons to offset or reduce the dumping found on other comparisons (commonly known as "zeroing").

Max Fortune contends that the Department should calculate its margin in the final results of this review without "zeroing." It maintains that the World Trade Organization (WTO) has found that "zeroing" in administrative reviews is inconsistent with Articles 2.4 and 9.3 of the Antidumping

Agreement and Article VI:2 of the General Agreement on Tariffs and Trade (GATT) (1994).[6] Moreover, Max Fortune maintains that U.S. antidumping law does not require the Department not to offset dumped sales with non-dumped sales, but rather such practice is a result of the Department's interpretation of the statute which can be changed as long as the Department provides an explanation for that change.[7] Therefore, Max Fortune asserts that the Department should reconsider its zeroing practice in a manner consistent with the international obligations of the United States[8] and provide an offset for non-dumped sales when calculating Max Fortune's margin in the final results.

The petitioner argues that the Department appropriately used its standard methodology to calculate Max Fortune's preliminary margin and should continue to do so in the final results. In response to Max Fortune's arguments, the petitioner contends that the WTO decisions that criticize the use of zeroing do not require the Department to change its zeroing methodology in this review, as both the United States Court of Appeals for the Federal Circuit (CAFC) and the Court of International Trade (CIT) have held that WTO decisions are not binding on the United States.[9] In addition, the petitioner argues that the Department has no legal authority to change its zeroing methodology in administrative reviews without following the specific statutory process that must be effectuated before any federal agency can modify its regulations or practices in response to adverse WTO rulings.[10] The petitioner asserts that although the Department has completed proceedings to change its zeroing methodology in investigations, it has not initiated the process for changing its zeroing methodology in administrative reviews. According to the petitioner, if the Department changed its zeroing methodology in this review, such action would undermine the processes and procedures in place to prevent WTO decisions from arbitrarily changing U.S. law.

Department's Position:

[6] In support of its argument, Max Fortune cites to United States – Measures Relating to Zeroing and Sunset Reviews, at page 190(c), WT/DS322/AB/R (January 9, 2007) (U.S. – Zeroing (Japan)).

[7] In support of its argument, Max Fortune cites to Corus Staal BV v. United States, 395 F.3d. 1343, 1347 (Fed. Cir. 2005); Timkin Co. v. United States, 354 F.3d 1334, 1341-42 (Fed. Cir. 2004); NTN Bearing Corp. of America v. United States, 295 F.3d 1263, 1269 (Fed. Cir. 2002); and British Steel, PLC v. United States, 127 F.3d 1471, 1475 (Fed. Cir. 1997).

[8] In support of its argument, Max Fortune cites to Luigi Bormioli Corp. v. United States, 304 F.3d 1362, 1368 (Fed. Cir. 2002).

[9] In support of its argument, the petitioner cites to Corus Staal BV v. United States, 387 F.Supp. 2d 1291, 1298 (CIT 2005); Corus Staal BV v. United States, 395 F.3d 1343, 1347-1349 (Fed. Cir. 2005); and Corus Staal BV v. United States, 30 CIT 1040, 1043 (CIT July 2006).

[10] See 19 USC 3533 and 3538 (sections 123 and 129, respectively, of the Uruguay Round Agreements Act (URAA)) and URAA, Statement of Administrative Action, H. Doc. No. 103-316, at 1020 and 1022 (1994) (SAA).

We have not revised our calculation of the weighted-average dumping margin, as suggested by Max Fortune, in the final results of this review.[11]

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export or constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or constructed export price (CEP). As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See, e.g., Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) (Timken I); and Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied, 546 U.S. 1089 (January 9, 2006) (Corus I).

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel out the dumping margins found on other sales.

This methodology does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

Max Fortune has cited a WTO dispute-settlement report finding the Department's "zeroing" methodology to be inconsistent with the Antidumping Agreement. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.

[11] This decision is consistent with our decision in the prior segment of this proceeding wherein Max Fortune raised the same issue (see Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 73 FR 58113 (October 6, 2008), and accompanying Issues and Decision Memorandum at Comment 5).

See Corus I, 395 F.3d at 1347-49; Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (Corus II); and NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007) (NSK). While the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations, the Department has not adopted any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722, 77724 (December 27, 2006) (Zeroing Notice).

With respect to US-Zeroing (Japan), Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, e.g., section 123 and 124 of the URAA. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to trump automatically the exercise of the Department's discretion in applying the statute. See section 129(b)(4) of the URAA (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See section 123(g) of the URAA; see also Zeroing Notice, 71 FR at 77724. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure. With regard to US-Zeroing (Japan), the steps taken in response to US-Zeroing (Japan) do not require a change to the Department's approach of calculating weighted-average dumping margins in the administrative review. Furthermore, in response to US-Zeroing (Japan), the CAFC has repeatedly affirmed the permissibility of denying offsets in administrative reviews. See Corus II, 502 F.3d at 1374-75; and NSK, 510 F.3d at 1380.

For all these reasons, the various WTO Appellate Body reports regarding "zeroing" do not establish whether the Department's denial of offsets in this administrative review is inconsistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, the Department has continued to deny offsets to dumping based on EPs or CEPs that exceed NV in this review.

For the foregoing reasons, we have not changed the methodology employed in calculating Max Fortune's weighted-average dumping margin for the final results.

Comment 3: Selection of Plastic Bag Surrogate Value

For the Preliminary Results, the Department used a March 2007-February 2008 average Indian import value for polyethylene bags derived from WTA data under Harmonized Tariff Schedule (HTS) subheading 3923.21.00 to value the plastic bag usage amounts reported by Max Fortune.[12]

Max Fortune argues that the Department should use a surrogate value for polypropylene bags instead of polyethylene bags to value its plastic bag usage in the final results. Max Fortune

[12] The description of the HTS subheading 3923.21.00 is "Sacks & Bags of Polyethylene."

states that it indicated in its January 5, 2009, response to the Department's December 17, 2008, supplemental questionnaire (January 5, 2009, SQR) that its plastic bags were made of polypropylene and not polyethylene.[13] Although Max Fortune states that the Department may have used a surrogate value for polyethylene bags to value its plastic bag usage in the Preliminary Results because there was no value for polypropylene bags on the record at that time, Max Fortune argues that the Department should now use May 2009 price data obtained from the website of an Indian producer of polypropylene bags (i.e., Induson International (Induson)) and included in its May 21, 2009, PAI submission to value polypropylene bags in the final results. Max Fortune asserts that these price data, unlike the Indian import value used in the Preliminary Results, are specific to the input at issue. Alternatively, Max Fortune requests that the Department value its polypropylene bag usage amounts using sales value and quantity data from the 2007-2008 financial report of an Indian producer of polypropylene film (i.e., Jindal Poly Films Limited (Jindal)) which Max Fortune also included in its PAI submission. Max Fortune states that although these data are less product-specific than the Induson price data, they are still more preferable to the Indian import value used in the Preliminary Results.

The petitioner agrees with Max Fortune that the Department should select a different surrogate value from that used in the Preliminary Results[14] to value Max Fortune's plastic bag usage in the final results. However, the petitioner claims that the Department should not use any of the plastic bag surrogate value data that Max Fortune submitted in its May 21, 2009, PAI submission, as Max Fortune failed to establish the validity of these data in accordance with the Department's surrogate selection methodology and practice in non-market-economy (NME) cases.[15] Specifically, the petitioner contends that the data Max Fortune obtained from Induson's website are single price quotes which do not reflect broad-based, product-specific average delivered and tax-exclusive values representative of a range of prices within the POR or most contemporaneous with the POR. Instead, the petitioner argues that the Department should use

[13] See Max Fortune's January 5, 2009, SQR at 6-7.

[14] Although the petitioner disagrees with Max Fortune's assertion that that the HTS subheading 3923.21.00 which the Department used in the Preliminary Results to value Max Fortune's plastic bag usage does not contain imports of polypropylene plastic bags, the petitioner does not explain the reason for this disagreement in its case brief.

[15] To support its assertion, the petitioner cites to Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27366 (May 19, 1997); Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (Jan. 24, 2008), and accompanying Issues and Decision Memorandum at Comment 4; Synthetic Indigo from the People's Republic: Final Results of the Antidumping Duty Administrative Review, 68 FR 53711 (Sept. 12, 2003), and accompanying Issues and Decision Memorandum at Comments 1 and 7; and Pure Magnesium in Granular Form From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 66 FR 49345 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

March 2007-February 2008 Indian import data from WTA for HTS subheading 6305.39.00[16] (which it submitted in its September 19, 2008, PAI submission) to value Max Fortune's plastic bag usage in the final results. The petitioner claims that the Indian import data for HTS subheading 6305.39.00 are superior to the data Max Fortune proposes using to value its plastic bag usage because they are from a reliable source used routinely by the Department in this proceeding, and satisfy the Department's surrogate value selection criteria in that they provide a broad-based, product-specific average delivered and tax-exclusive value representative of a range of prices within the POR.

Department's Position:

We agree with the petitioner and have used the Indian import data from WTA for HTS subheading 6305.39.00 to value Max Fortune's polypropylene bag usage in the final results, as it is the best available information on the record for this purpose.

In this review, Max Fortune has stated in its questionnaire response that it used bags made out of biaxially-oriented polypropylene (BOPP) (and not bags made from polyethylene) to pack the subject merchandise for sale to the U.S. market during the POR. As our verification findings did not contradict Max Fortune's polypropylene bag usage claim, we agree with Max Fortune that it would be inappropriate to continue using the WTA data from HTS subheading 3923.21.00 for polyethylene bags to value its polypropylene bag usage in the final results, as the description of this HTS subheading does not relate to the input at issue.

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market-economy country. The Department's criteria for selecting surrogate value information are based on the use of PAI and the Department considers several factors when choosing the most appropriate PAI, including the quality, specificity, and contemporaneity of the data. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079 (September 8, 2006) (Certain Lined Paper Products from the PRC), and accompanying Issues and Decision Memorandum at Comment 3. Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis. See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1. As there is no hierarchy for applying the above-mentioned criteria, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.

[16] The description of the HTS subheading 6305.39.00 is "Sacks and Bags of Textile Material For Packing Goods Not Polyethylene."

The Department has stated in numerous NME cases that it does not prefer to use a surrogate value based on an overly broad HTS category where a more product-specific surrogate value is available. See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 44827 (August 9, 2007) (PRC Mushrooms), and accompanying Issues and Decision Memorandum at Comment 2.

In the instant review, the Department finds that the more specific, publicly available, and reliable surrogate value for polypropylene bags is derived from the WTA data for HTS subheading 6305.39.00. Specifically, this HTS subheading relates to an "other" HTS category labeled "Sacks and Bags of Textile Material For Packing Goods Not Polyethylene." While this HTS subheading may include bags or sacks made of materials other than polypropylene, it is relatively clear from the description of the other subheadings included under the general HTS category 6305, that it includes bags made of polypropylene and excludes bags made of polyethylene (see Final Results Factor Valuation Memo which includes a list of subheadings included in the general HTS category 6305). These data are more suitable for surrogate valuation purposes than the other alternatives proposed by the respondent, as they come from a reliable source and reflect a broad-based, product-specific average delivered and tax-exclusive value representative of a range of prices within the POR.

Regarding the two alternative values proposed by Max Fortune, we find that neither one is preferable to the WTA data for HTS subheading 6305.39.00. Specifically, the prices from Induson's website appear to be single post-POR price quotes, and as such, are not country-wide data from within the surrogate country on which the Department prefers to base surrogate values. See, e.g., 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) (Isos from the PRC LTFV), and accompanying Issues and Decision Memorandum at Comment 1; and Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 68 FR 27530 (May 20, 2003), and accompanying Issues and Decision Memorandum at Comment 1. Price quotes are merely that, and may not reflect actual transaction values. Further, they are easily subject to manipulation and may be dependent on various factors not evident on the administrative record. Accordingly, if the Department has more reliable options on the administrative record, it will not use single post-POR price quotes.

The data from the Jindal financial report relate to BOPP film, not bags, and appear to include other materials not specific to the input in question, including biaxially-oriented polyester and "metalized" film (see pages 13 and 27 of Jindal's financial report included in Max Fortune's May 21, 2009, PAI submission). Accordingly, neither surrogate value alternative proposed by the respondent reflects a broad-based, product-specific average delivered and tax-exclusive value representative of a range of prices within the POR. Although the Department has found in some situations that the data from an Indian producer's financial report can be more reliable in terms of product specificity than the WTA data because the financial report data are more specific to

the input at issue than the WTA data,[17] in this instance, we find that the WTA data are more specific to the input at issue (i.e., bags made from polypropylene) than the data from an Indian producer's financial report that relate to a combination of films and not bags.

Therefore, we find that the average Indian import value derived from WTA data from HTS category 6305.39.00 is the best available information on this record, as it is a broad market average which is publicly available, contemporaneous with the POR, product-specific, and tax-exclusive. For these reasons, we have used the WTA data from HTS category 6305.39.00 to value polypropylene bags in the final results.

Comment 4: Valuing Containerization Expenses Separately from Brokerage and Handling Expenses

For the Preliminary Results, the Department valued brokerage and handling expenses using a simple average of data obtained from three publicly summarized sources[18] and considered this average value to include all export-related charges (such as containerization fees) associated with clearing and loading the merchandise on board ship at the foreign port for exportation to the United States.

The petitioner claims that Max Fortune failed to report the loading and containerization expenses that it incurred in exporting subject merchandise to the United States and requests that the Department apply adverse facts available (AFA) in valuing these unreported expenses in the final results. Specifically, the petitioner maintains that the sales-related documentation (such as the broker invoice and bill of lading) obtained for numerous sales transactions examined by the Department at verification clearly shows that Max Fortune incurred an expense for containerization for the vast majority of those sales transactions. The petitioner further asserts that to the extent the surrogate value the Department used for brokerage and handling expenses in the Preliminary Results does not include containerization fees, the Department should account

[17] See, e.g., PRC Mushrooms, and accompanying Issues and Decision Memorandum at Comment 1.

[18] The three sources used by the Department to value brokerage and handling in the Preliminary Results (and which are included in the Department's memorandum entitled, "Preliminary Results of the 2007-2008 Administrative Review of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China: Factor Valuation for the Preliminary Results," dated March 31, 2009 (Preliminary Factor Valuation Memo), at Attachment 10) are: (1) an average of publicly summarized values reported in the U.S. sales listings submitted by Essar Steel Ltd. (Essar Steel), dated February 28, 2005, in the antidumping duty review of Certain Hot-Rolled Carbon Steel Flat Products from India; (2) a publicly summarized value obtained from the submission filed by Agro Dutch Industries Limited (Agro Dutch), dated May 24, 2005, at Exhibit B-1, in the antidumping duty administrative review of Certain Preserved Mushrooms from India; and (3) an average of three publicly summarized values obtained from the submission filed by Kejriwal Paper Ltd. (Kejriwal), dated January 9, 2006, in the antidumping duty investigation of Lined Paper from India.

for these expenses in its final margin calculation. Because Max Fortune failed to report these expenses to the Department, the petitioner contends that the Department should apply AFA in valuing Max Fortune's containerization expenses separately from brokerage and handling expenses.[19] As AFA, the petitioner requests that the Department rely on a containerization surrogate value from an appropriate source, such as the Department's "Index of Factor Values for Use in Antidumping Investigations Involving Products from the PRC."

Max Fortune maintains that the Department should not deduct from its U.S. net price calculation an additional amount for containerization expenses because these expenses are already captured in the surrogate value the Department used to value Max Fortune's brokerage and handling expenses incurred in the PRC in the Preliminary Results and are already being deducted from Max Fortune's reported U.S. prices. With respect to the cases cited by the petitioner in support of its argument that the Department should assign and deduct from Max Fortune's U.S. sales prices an AFA amount for containerization expenses, Max Fortune notes that the Department's practice has evolved considerably since the completion of those cases; and if the respondent reports that it incurs brokerage and handling charges, the Department deducts such expenses from U.S. price as a matter of course through the use of surrogate values that include a variety of container-yard and port-related fees, such as containerization and other fees associated with loading merchandise onto the vessel for exportation purposes.[20] Therefore, Max Fortune argues that there is no basis for the Department to resort to AFA with respect to its movement and handling expenses, as it provided the Department with complete and accurate information for all of its movement and handling costs incurred in exporting subject merchandise to the United States during the POR.

Department's Position:

We agree with Max Fortune and have not deducted an additional amount for containerization expenses from its reported U.S. prices in the calculation of its final margin in this review.

[19] To support its argument, the petitioner cites to Heavy Forged Hand Tools from the People's Republic of China: Final Results, 56 FR 241242 (January 3, 1991); and Tapered Roller Bearings and Parts Thereof, Final Unfinished, From the People's Republic of China: Final Results, 52 FR 17428, 17430 (May 8, 1987).

[20] See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026,19029 (April 30, 1996); Notice of Amended Final Results in Accordance With Court Decision: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China, 73 FR 11615, 11616 (March 4, 2008); Notice of Amended Final Results in Accordance With Court Decision: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China, 72 FR 12759, 12760 (March 19, 2007) (HFHS); 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) (Fresh Garlic).

As an initial matter, we note that Max Fortune's claim that it properly reported all of its export-related expenses to the Department is consistent with our verification findings (see Verification Report at Exhibits 17A through 17H). Therefore, there is no basis to apply AFA with respect to any such expenses in the final results, as requested by the petitioner. As articulated by the Department in Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 53347 (September 10, 2003), and accompanying Issues and Decision Memorandum at Comment 12, it is normally "the Department's experience that the freight forwarder typically pays all of the miscellaneous expenses necessary to export a product, and then bills its customer (typically, the exporter) for these costs." In this review, the broker invoices received by Max Fortune for the sales transactions examined at verification listed the specific charges included in clearing the subject merchandise through the PRC port of exportation (see Verification Report at Exhibits 17A through 17H).

Regarding the petitioner's suggestion that the Indian surrogate value the Department used to value brokerage and handling expenses in the Preliminary Results does not include containerization fees, we find that the information on the record supports the conclusion that the surrogate value at issue includes all fees and charges associated with clearing the merchandise through Indian customs and all exported-related expenses associated with containerization and loading the merchandise on the ship at the port of exportation. Specifically, data contained in the Department's Preliminary Factor Valuation Memo indicate the following: (1) the average brokerage and handling value from Essar Steel's data represents total amounts listed on invoices issued to Essar Steel from the customs freight forwarding and handling agent; (2) the Agro Dutch value includes agent charges related to export handling and export document fees; and (3) the Kejriwal value includes port expenses (except for extraordinary expenses such as container detention and buffer charges which are not part of the regular cost). See the Preliminary Factor Valuation Memo, at Attachment 10. Therefore, we find that it is appropriate to continue to consider the brokerage and handling surrogate value used in the Preliminary Results to include all port-related and export-handling expenses (including containerization expenses) and not to value separately Max Fortune's containerization fees in the final results. We note that our finding in this case is consistent with that in other NME cases where we have employed the surrogate value at issue. See, e.g., HFHS, 72 FR at 12760, and Fresh Garlic, and accompanying Issues and Decision Memorandum Comment 6.

Comment 5: Selection of Financial Statements for Surrogate Financial Ratio Calculations

In the Preliminary Results, the Department derived the surrogate ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using the 2007-2008 financial report of Pudumjee Pulp & Paper Mills Limited (Pudumjee), an Indian producer of tissue paper products.

The petitioner claims that the Department should use the 2006-2007 financial report of Khatema Fibres Ltd., (Khatema)[21] instead of Pudumjee's 2007-2008 financial report to derive the surrogate financial ratios for the final results because Khatema is also a producer of subject and comparable merchandise, but unlike Pudumjee, is involved primarily in producing identical and comparable merchandise and has no significant trade activities involving non-subject merchandise. Specifically, the petitioner argues that a significant amount of Pudumjee's sales income (i.e., about 36 percent in terms of total sales income) during the 2007-2008 period related to trade activities involving unrelated (steel) products and/or tolling charges, and that this trading activity has a distortive effect on the surrogate SG&A and profit ratio calculations. For this reason, the petitioner claims that Pudumjee's financial data are unsuitable for deriving surrogate financial ratios in the final results and asserts that Khatema's financial data are more reliable for this purpose. Furthermore, the petitioner contends that Max Fortune's production experience is more similar to Khatema's production experience (in terms of production process, use of inputs, and level of integration) than it is to Pudumjee's production experience. Finally, the petitioner contends that like Pudumjee's 2007-2008 financial report, Khatema's 2006-2007 financial report is publicly available and not wholly contemporaneous with the POR, but unlike Pudumjee's financial report, represents sales of merchandise purely identical or comparable to the subject merchandise. Therefore, Khatema's financial report is the best choice for surrogate financial ratio calculation purposes in the final results.

Max Fortune argues that the Department should continue to use Pudumjee's 2007-2008 financial data rather than Khatema's 2007-2008 financial data to derive financial ratios for the final results because notwithstanding the fact that Pudumjee sells steel, this Indian producer's financial report shows that its entire manufacturing operations are related to the production of merchandise that is identical or comparable to the subject merchandise in the POR.

Max Fortune further asserts that it cannot be discerned from Khatema's 2006-2007 or 2007-2008 financial statements whether Khatema actually produced or sold merchandise identical or comparable to the merchandise under review during the periods covering the annual reports. Max Fortune points out that in the auditor's notes of both annual reports, the products Khatema produced from April 2206-March 2008 are described as only "Kraft Paper," "Duplex Board," and "News Print." According to Max Fortune, these products are not even comparable—let alone identical—to the merchandise under review. Therefore, Max Fortune concludes that given that Khatema's 2006-2007 financial report does not reflect the production or sale of subject merchandise, the Department cannot rely on it for purposes of deriving surrogate financial ratios in the final results of this review.

[21] The petitioner also submitted Khatema's 2007-2008 financial report but notes that, consistent with the Department's established practice, the Department cannot use Khatema's 2007-2008 financial report as the basis for its surrogate financial ratios because Khatema was not profitable during the 2007-2008 time period.

Finally, Max Fortune maintains that if the Department incorrectly uses the Khatema financial report as the basis for its financial ratio calculations, it should make some necessary adjustments to the petitioner's proposed financial ratio calculations. These adjustments relate to line items in the financial report for "Sales taxes," "Rates, taxes and fees," "Other expenses," "Other income," "Stores and Packing Consumed," "Workmen Compensation and Gratuity," "Freight etc. (stores)," and "Job Charges Paid," as discussed on pages 5-9 of Max Fortune's rebuttal brief.

Department's Position:

We have continued to rely on Pudumjee's 2007-2008 financial report for surrogate financial ratio calculation purposes in the final results.

Section 773(c)(1)(B) of the Act requires the Department to value FOPs 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." Section 351.408(c)(4) of the Department's regulations further stipulates that the Department will value materials and overhead, general expenses, and profit using "nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country."

To determine the best available information for deriving surrogate financial ratios, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. See, e.g., Certain Lined Paper Products from the PRC and accompanying Issues and Decision Memorandum at Comment 1. Furthermore, pursuant to section 773(c)(1) of the Act and 19 CFR 351.408(c)(4), it is the Department's practice in NME proceedings to obtain surrogate financial ratios using, whenever possible, surrogate-country producers of identical or comparable merchandise, provided that the surrogate data are not distorted or otherwise unreliable. The Department also selects surrogate financial statements that are publicly available, comparable to the respondent's experience, and contemporaneous with the period being reviewed or investigated. See Isos from the PRC LTFV, and accompanying Issues and Decision Memorandum at Comment 1.

On the other hand, the Department has an established practice of rejecting financial statements of surrogate producers whose production process is not sufficiently comparable to the respondent's production process, whose financial statements are incomplete, who are not profitable or are designated as "sick" by the surrogate-country government, and where the statements show that the company benefited from subsidy programs which the Department has found to be countervailable. 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; and Isos from the PRC LTFV, and accompanying Issues and Decision Memorandum at Comment 3.

For the final results, we have not relied upon Khatema's 2006-2007 financial report because the auditor notes accompanying this financial report indicate that it "recognized income in respect of the { Duty Entitlement Passbook Scheme } DEPB entitlement on Export Sales on an accrual

basis." See Note 2.8 in Khatema's financial report included in the petitioner's May 21, 2009, PAI submission. India's DEPB license program has been found by the Department to provide a countervailable subsidy. See, e.g., Certain Iron-Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 64 FR 61592, 61597 (November 12, 1999) (unchanged in Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review, 65 FR 31515 (May 20, 2000), and accompanying Issues and Decision Memorandum at Comment G); Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009), and accompanying Issues and Decision Memorandum at Comment 10 (Kitchenware Appliances from the PRC); and Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 74 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (Crawfish from the PRC). In Crawfish from the PRC and Kitchenware Appliances from the PRC, the Department noted that where it has reason to believe or suspect that a company may have received countervailable subsidies, financial ratios derived from that company's financial statements do not constitute the best available information with which to calculate surrogate financial ratios. See Crawfish from the PRC and Kitchenware Appliances from the PRC. Given the record information regarding Khatema's use of the DEPB License program, and the fact that other acceptable surrogate-producer financial statements exist on the administrative record, consistent with the Department's decision in Crawfish from the PRC and Kitchenware Appliances from the PRC, we have not used Khatema's financial data in our surrogate financial ratio calculations.

Regarding whether Khatema is a producer of subject and/or comparable merchandise, data in its financial report indicate that it is a producer of kraft paper (which is non-subject merchandise) but not tissue paper (see page 1 of Schedule 15 of Khatema's financial report included in the petitioner's May 21, 2009, PAI submission). Although information on its website indicates that Khatema may produce tissue paper, we are unable to confirm the website information based on the financial data on the record for this company. Unlike Khatema's 2006-2007 financial report, we note that Pudumjee's 2007-2008 financial report indicates that Pudumjee is an integrated producer of tissue paper products (as is the respondent in this case) and the period of this report substantially overlaps the POR.

Therefore, in accordance with the Department's practice,[22] we continue to find that Pudumjee's financial report represents the best available information for use in the final results because Pudumjee is a producer of tissue paper products and its financial report contains complete,

[22] See Front Seating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

legible, publicly available, and contemporaneous information with which to calculate the surrogate financial ratios for this review.[23]

Comment 6: Reclassifications and Adjustments to Surrogate Financial Ratio Calculations

If the Department continues to use Pudumjee's 2007-2008 financial report to derive surrogate financial ratios in the final results, then Max Fortune argues that the Department should make a series of corrections to the calculations of those surrogate financial ratios. First, Max Fortune argues that the Department should offset overhead expenses with the "Processing Revenue" amount noted in Schedule J of Pudumjee's financial report. Max Fortune argues that this revenue is directly related to the general operations of the company and is a legitimate offset to production expenses; and that the overhead expense ratio would be overstated if this offset is not made.

Second, Max Fortune maintains that the Department should remove the "Office and Miscellaneous Expenses" amount from SG&A expenses because the Department has no means of determining whether miscellaneous expenses have already been reported or should be excluded. Moreover, Max Fortune states that excluding "miscellaneous expenses" is consistent with the Department's long-standing practice of avoiding double-counting costs.[24]

Third, Max Fortune contends that the Department should offset SG&A expenses with the "Interest Received on Trade Debt" amount noted in Schedule M of Pudumjee's financial report. Max Fortune states that this line item is short-term interest income and it is the Department's practice to offset a company's financial expenses with any short-term interest income generated from a company's manufacturing and selling operations as long as the income is not earned from investing activities and is directly related to the general operations of the company.

Fourth, Max Fortune argues that the Department should remove the "Rent, Rates, and Taxes" amount from SG&A expenses because it cannot be determined from data in Pudumjee's financial report whether some or the entire amount in this expense line item is related to taxes. Max Fortune asserts that in determining the most appropriate surrogate values to use in a given case, the Department's preference, *inter alia*, is to use prices that are net of taxes and import duties.[25]

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[23] Because we have decided not to use Khatema's financial data in the final results, we have not addressed the respondent's arguments with respect to adjustments to the petitioner's proposed financial ratio calculations based on these data.

[24] To support this assertion, Max Fortune cites to Carbazole Violet Pigment 23 From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2007), and accompanying Issues and Decision Memorandum at Comment 2 (Carbazole Violet Pigment).

[25] To support its assertion, Max Fortune cites to Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and

Finally, Max Fortune contends that the Department should include the "Voluntary Retirement Scheme (VRS) Compensation" amount in direct labor costs rather than in SG&A expenses because VRS Compensation represents incentive payments that Pudumjee makes to encourage its workers to retire. Max Fortune states that these incentive payments are similar to bonuses and gratuities which the Department normally treats as direct labor costs.

The petitioner argues that to the extent the Department uses Pudumjee's financial report to calculate surrogate financial ratios for the final results, it should not make any of Max Fortune's suggested adjustments. Regarding Max Fortune's request to offset factory overhead expenses with processing revenue, the petitioner argues that processing revenue is a form of income that the Department is already taking into account by reducing profit. Moreover, the petitioner contends that processing revenue is just like revenue received from the sale of paper or resale of steel (in Pudumjee's case) for which the Department normally does not make an adjustment.

Regarding Max Fortune's request to remove the "Office and Miscellaneous Expenses" line item from SG&A expenses, the petitioner argues that the Department should continue to include this expense line item in the calculation because, even though part of the description of this line item (i.e., "miscellaneous") is undefined, Max Fortune has provided no evidence that the "miscellaneous" expense portion in fact duplicates any of the expenses it reported in its response.

Regarding Max Fortune's request to offset SG&A expenses with interest Pudumjee received on trade debt, the petitioner argues that Max Fortune has provided no evidence to support its claim that this line item is directly associated with Pudumjee's sales operations.

Regarding Max Fortune's request to remove the "Rent, Rates, and Taxes" line item from SG&A expenses, the petitioner argues that this line item does not simply include taxes but also many other expenses such as those associated with owning, renting, and leasing real estate, use of municipal utilities, and property taxes that represent general costs of doing business. As Max Fortune has failed to provide evidence which indicates that the tax portion of this line item represents taxes such as those associated with income which the Department excludes from its financial ratio calculations, the petitioner contends that the Department should continue to include this expense line item in the SG&A ratio calculation.

Regarding Max Fortune's request to treat the VRS compensation amount as a direct labor cost rather than as part of SG&A expenses, the petitioner disagrees, arguing that Max Fortune's assumption that VRE compensation represents as an incentive payment for workers to retire is speculative, and the Department cannot base its determination on speculation.

Department's Position:

Parts Thereof From the People's Republic of China, 71 FR 29303 (May 22, 2006) (Diamond Sawblades), and accompanying Issues and Decision Memorandum at Comment 11C.

We disagree with all five of Max Fortune's financial data reclassification/adjustment requests for the reasons explained below.

Based on our review of Pudumjee's financial report, we found no evidence suggesting that the "Processing Revenue" amount at issue is related to the production of the subject merchandise (see page 36-37 of Pudumjee's financial report). Despite Max Fortune's arguments, we cannot infer such a relationship absent affirmative evidence supporting such a relationship on the administrative record. Accordingly, this amount should not be treated as an offset to manufacturing expenses. Therefore, in accordance with the Department's established methodology, we have denied Max Fortune's request to offset overhead expenses with this income in the surrogate factory overhead ratio calculation. See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 13239 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 1, and Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 71355 (December 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

We have not excluded the "Office and Miscellaneous Expenses" from the surrogate SG&A expense ratio calculation, as there is no information in Pudumjee's financial report which indicates that this expense category is anything but administrative in nature. Moreover, we find it unlikely that the surrogate company would have labeled these costs as "office and miscellaneous" expenses in its financial report if it considered this expense category to be associated with its manufacturing operations.

We have not offset SG&A expenses with the interest income Pudumjee received on trade debt because information contained in the surrogate producer's financial report suggests that this interest income is related to long-term investments as opposed to short-term (current) assets (see page 32 of Pudumjee's financial report). It is the Department's practice to only offset financial expenses with short-term interest income generated from a company's working capital accounts or other current interest-bearing assets. See, e.g., Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 39940 (July 11, 2008), and accompanying Issues and Decision Memorandum at Comment 9; and Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 44827 (August 9, 2007), and accompanying Issues and Decision Memorandum at Comment 6. This is because it is the Department's experience that short term assets generally apply to the day-to-day functioning of a business entity (thereby appropriately considered an SG&A offset), while long-term investments tend not to relate to the normal operations of a company. Therefore, as the evidence on the record suggests that the interest income at issue is not generated from current interest-bearing assets or is not short-term in nature, we have not offset SG&A expenses with it, in accordance with the Department's practice.

We have also continued to include the "Rent, Rates, and Taxes" amount in the surrogate SG&A ratio calculation, as it is the Department's practice to include rates and taxes in this calculation unless the taxes are related to income, value-added-tax (VAT), or excise taxes. See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 52645 (September 10, 2008), and accompanying Issues and Decision Memorandum at Comment 5 (Isos from the PRC AR). As noted in Isos from the PRC AR, we find that this expense category likely represents not only miscellaneous business taxes, but also rental expenses, rates charged by external parties, and other property taxes. As for the portion which represents taxes, we find that it is appropriate to include this amount when not related to income taxation, VAT, and excise taxes in the financial ratio calculations. Financial statements represent the overall operations of a company which can include tax liabilities in the normal course of operation and, therefore, inclusion of these taxes when not related to income, VAT, or excise taxes accurately reflects the financial experience of a surrogate company.

Finally, we have continued to treat the VRE compensation amount as part of SG&A expenses and not as a direct labor cost because there is no information in Pudumjee's financial report which indicates that this expense item is actually akin to a bonus or gratuity. Absent evidence to the contrary, we consider this expense to be a one-time payment to employees for retirement purposes which should be treated as an overall business expense.

Comment 7: Appropriate Labor Rate

In the Preliminary Results, the Department used the regression-based wage rate for the PRC of $1.04 per hour to value Max Fortune's reported labor usage for NV calculation purposes, in accordance with 19 CFR 351.408(c)(3).

Max Fortune argues that the Department should assign a new surrogate value labor rate to calculate NV in the final results of this review, consistent with the CIT's ruling in Allied Pacific Food Co., Ltd. v. United States, 587 F. Supp. 2d 1330 (CIT 2008) (Allied Pacific Food II). Max Fortune asserts that in Allied Pacific Food II, the CIT found that 19 CFR 351.408(c)(3), which instructs the Department to use a regression analysis to value labor hours in nonmarket economy proceedings, is contrary to 19 U.S.C.§ 1677b(c) and therefore invalid. Max Fortune notes that the Court held that the Department's regulation contradicts the statutory language under 19 U.S.C. § 1677b(c)(4) to value FOPs using data from market-economy countries that are at a comparable level of economic development and are significant producers of comparable merchandise. Max Fortune claims that given that the Department has found India to be a significant producer of comparable merchandise and at a level of economic development comparable to the PRC, the Department should use the Indian surrogate value labor rate of $0.21 per hour, as compiled by the International Labour Organization and listed on the Department's website, to derive its labor costs in calculating NV in the final results of this review. According to Max Fortune, this rate is the best available information on the record because it reflects a broad market average of publicly-available and tax-exclusive labor cost data in India.

The petitioner contends that the Department should continue to use the regression-based wage rate for the PRC in the final results because 19 CFR 351.408(c)(3) requires the use of "regression based wage rates that are reflective of the relationship between wages and national income in market economy countries." The petitioner maintains that the Department's decision in a recent NME case[26] held that the wage rate regression methodology contributes to the predictability and fairness in NME proceedings by avoiding the arbitrariness of relying on the wage rate of a single country given the variability of wage rates among countries with comparable economies. For this reason, the petitioner asserts, the regression-based wage rate is the best available information for valuing labor, pursuant to section 773(c)(1) and (c)(4) of the Act, and as such, should continue to be used in the final results.

Department's Position:

We disagree with Max Fortune and have continued to use our regression-based wage rate methodology to calculate the surrogate value for labor expense in the final results of this review. This decision is consistent with our findings in Frontseating Service Valves. Moreover, we disagree with Max Fortune that the Department's regression methodology under 19 CFR 351.408(c)(3), is inconsistent with section 773(c)(4) of the Act.

Section 773(c)(1) of the Act provides that, where, as in this case, the subject merchandise is exported from an NME country, "the valuation of factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." While the Act does not define "best available information," it provides that the Department, "in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." See section 773(c)(4) of the Act. In accordance with the guidance provided, and discretion afforded pursuant to section 773(c) of the Act, the Department calculates the labor wage rate using a regression analysis. This is in contrast to the Department's normal valuation of other FOPs primarily because wage rates are less a function of economic comparability, and more a function of other social and political factors. Section 351.408(c)(3) of the Department's regulations provides that the Department will use regression-based wage rates reflective of the observed relationship between wages and national income in market-economy countries and the calculated wage rate will be applied in NME proceedings each year. The calculation will be based on current data, and will be made available to the public.

In summary, Max Fortune argues that the regression-based labor rate calculated by the Department is contrary to the statute because it ignores economic comparability of the market

[26] In support of its argument, the petitioner cites to Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009), and accompanying Issues and Decision Memorandum at Comment 3 (Frontseating Service Valves).

economies used and does not consider whether the countries used are significant producers of comparable merchandise. The Department disagrees that its method for valuing labor is in contravention of the statute. The Department further considers that the regression methodology constitutes the best available information for purposes of valuing labor. The Department's methodology avoids extreme variances in labor wage rates that exist across market economies, and instead, accounts for the global relationship between gross national income (GNI) and wages. This is then used to determine an expected wage rate for the specific NME country, using that country's GNI. When promulgating its regulations, the Department explained that: "{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. See Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7345 (February 27, 1996). Although section 773(c) of the Act provides guidelines for the valuation of the FOPs, it also accords the Department wide discretion in the valuation of FOPs. See Nation Ford Chemical Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (Nation Ford); accord Magnesium Corp. of America v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).

The statute requires the use of the "best available information," but it does not define the term, nor does it clearly delineate how the Department should determine what constitutes the best available information. See Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 59 F. Supp. 2d 321354, 1357 (Ct. Int'l Trade 1999), aff'd 268 F.3d 1376 (Fed. Cir. 2001); China Nat'l Mach. Import & Export Corp. v. United States, 264 F. Supp. 2d 1229, 1236 (Ct. Int'l Trade 2003). The Department's regulation prescribes a methodology that reflects a permissible interpretation of what the statute allows with respect to the determination of labor wage rates, by calculating the market-economy wage rate for a country at a comparable level of economic development, that is for a market-economy country with the same per capita GNI as the NME. While the requirement to use the "best available information" is an unqualified statutory mandate, the Act only directs the Department to draw factor values from economically comparable countries and significant producers of comparable merchandise, "to the extent possible." See section 773(c)(4) of the Act. For this reason, we do not find that we can select values that meet the requirements of sections 773(c)(4)(A) and (B) of the Act, if such values do not represent the "best available information. . . in a market economy country or countries considered to be appropriate by {the Department}" as required by section 773(c)(1) of the Act. Moreover, the CIT found the Department's regulation is not inconsistent with its statutory mandate. See Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262 (Ct. Int'l Trade 2006) (Dorbest I). The Department considers that its regression analysis sufficiently takes economic comparability of market economies, utilized in the regression, into account. The regression analysis utilized by the Department calculates a wage rate that reflects what the market-economy rate would be for a country at a level of economic development comparable to the NME country. The regression analysis' function is to determine the relationship between income and wages. The use of the regression and application of the subject NME country's GNI generates an

expected wage rate for a market-economy country at a comparable level of development, and constitutes the use of the best available information. In addition, the expected wage rate calculated for the NME country is "by definition a wage rate for a producer country at a comparable level of development, as required by 19 U.S.C. §1677b(c)(4) (section 773(c)(4) of the Act"). See Dorbest I, 462 F. Supp. 2d at 1293.

Additionally, relying only on data from countries that are economically comparable to each NME would undermine, rather than enhance, the accuracy of the Department's regression analysis. The number of "economically comparable" countries would be extremely small. For example, when examining countries with GNIs that range between US$ 700 and US$ 2500 (e.g., countries that might be considered economically comparable to the PRC), there are just nine countries out of a full dataset of 61 countries used in the revised wage rate calculation in May 2008.[27] 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 country basket, and provides predictability and fairness. See, e.g., Antidumping Duties, Countervailing Duties: Final Rule, 62 FR 27296, 27367 (May 19, 1997); 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).

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

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

The Department does not find the respondent's reliance on Allied Pacific II to be persuasive. 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 Dorbest Ltd. v. United States, 547 F.Supp. 2d 1321 (CIT 2008) (Dorbest II), the Department's regression analysis was affirmed in its entirety. Furthermore, the decision in Allied Pacific II is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted.

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

Because the Department's regression analysis utilizes the best available information for the calculation of a surrogate value for labor, complies with the Department's regulation, and comports with the statute, the Department continues to value labor in this segment of the proceeding using its regression analysis, as provided in 19 CFR 351.408(c)(3). Thus, for the final results of this review, we have continued to use the regression-based wage rate of $1.04 per hour as the surrogate value for labor.

Comment 8: Excluding Indian Imports from Hong Kong in WTA-Sourced Surrogate Value Calculations

Max Fortune argues that the Department should exclude any Indian imports from Hong Kong from its WTA-sourced Indian import surrogate value calculations because such imports are likely of PRC-origin, particularly imports of plastic bags. To support its assertion that all exports of plastic bags from Hong Kong to India are likely of PRC-origin, Max Fortune relies on information obtained from a Google search included in its May 21, 2009, PAI submission which indicates that every Hong-Kong-based plastic bag sellers' manufacturing operations are located in the PRC. Based on this information, Max Fortune contends that the Department should exclude from its WTA-sourced Indian import-price calculations any plastic bag imports into India from Hong Kong because the record demonstrates that such imports are likely of PRC-

origin and the Department's practice is to exclude from its surrogate value calculations imports from countries that the Department has found to be NMEs.

The petitioner maintains that the Department should not exclude Indian imports from Hong Kong from its surrogate value calculations in the final results. Not only does the petitioner claim that Max Fortune failed to provide any authority that would require the Department to exclude exports from Hong Kong or one that demonstrates the Department made an error in the Preliminary Results, the petitioner also argues that the data on which Max Fortune relies (i.e., companies located in Hong Kong that sell plastic bags) are not relevant to the POR. Specifically, the petitioner states that the results of Max Fortune's Google search are only applicable after the POR and not during the POR. Moreover, the petitioner argues that the companies included in Max Fortune's Google search may not include all producers of plastic bags located in Hong Kong, and the plastic bags they sell may in fact not be the same bags which Max Fortune sells — namely bags made of polypropylene. Absent additional information, the petitioner maintains that Max Fortune has failed to establish a link between its Google search information and the Indian import data for plastic bags obtained from WTA. Finally, the petitioner notes that Max Fortune's search does not even consider whether the Hong Kong exporters acted as resellers of bags rather than manufacturers.

Department's Position:

We disagree with Max Fortune and have not excluded any Indian imports from Hong Kong from the WTA-sourced Indian import surrogate value calculations in the final results for several reasons. First, the Department considers Hong Kong to be a market economy for antidumping duty purposes and, absent evidence to the contrary, treats the trade activity to and from Hong Kong as market-economy-oriented. See Application of U.S. Antidumping and Countervailing Law to Hong Kong, 62 FR 42965 (August 11, 1997). Second, we find that Max Fortune has provided no evidence that the Indian import data from Hong Kong are of PRC-origin for all of the inputs which the Department is valuing using WTA data. Third, for plastic bags, we have no evidence that Max Fortune's Google search results are inclusive of all known plastic bag companies located in Hong Kong or are applicable to the POR. More importantly, Max Fortune has provided no basis for determining whether its submitted list of plastic bag companies located in Hong Kong actually produce the same type of plastic bag included in the HTS subheading relevant to the WTA-sourced Indian import data used to value plastic bags.
In general, we disagree with Max Fortune's proposition that the Google search results it used as the basis for claiming that all Indian imports of products from Hong Kong are of PRC-origin has any merit in analyzing WTA data. In prior antidumping duty proceedings, parties have relied on other types of secondary data (e.g., Infodrive India) to make similar arguments that the WTA data obtained for a specific HTS subheading are not specific to the input or that the Indian import data from a specific country are not reliable. The Department's normal practice in such instances is not to use secondary data to analyze which portion of the WTA data included in the HTS subheading are specific to the input at issue or sourced from a particular country, as such secondary data do not account for all of the Indian imports which fall under a particular HTS

subheading or from a particular country. See, e.g., Diamond Sawblades, and accompanying Issues and Decision Memorandum at Comment 11D.

Comment 9: Revisions to Plastic Bag Consumption

After the Preliminary Results, Max Fortune twice attempted to submit certain factual information to correct its reported polypropylene bag consumption factors. However, both times we rejected this information as untimely filed new factual information in accordance with 19 CFR 351.302(d).[28]

Max Fortune argues that the Department should incorporate the revisions to its plastic bag consumption that it submitted after the Preliminary Results. Max Fortune maintains that its post-preliminary results submission (which the Department found to contain untimely filed new factual information) actually identified a correction to its plastic bag information already on the record and did not provide new factual information. Max Fortune claims that it attempted to notify the Department of the need to correct a clerical error affecting its plastic bag usage reporting at the earliest opportunity after having a chance to review the Department's preliminary results calculations, and that its submission containing corrections to its plastic bag usage amounts was timely as it was filed before the due date for the submission of case briefs. Additionally, Max Fortune claims that the plastic bag data on the record actually demonstrates that it made this clerical error when reporting its plastic bag consumption factors for its sales of tissue paper packed in sets, and notes that the Department calculated a positive dumping margin for most of these sales.

Max Fortune further maintains that incorporating the corrections to it plastic bag usage amounts would not require the Department to make substantial revisions to its calculations from the Preliminary Results or compromise any of the Department's findings at verification. Max Fortune points out that all of the factors necessary for the Department to make its requested corrections to its plastic bag usage amounts exist in this review, and that it is the Department's long-standing policy (upheld by the CAFC) to correct errors made by respondents when such errors were called to the Department's attention before the final determination.[29] Max Fortune concludes that not incorporating the corrections to its plastic bag usage amounts would preclude the Department from accurately calculating its antidumping duty margin in the final results.

The petitioner argues that the information necessary to identify or analyze Max Fortune's clerical error allegation with respect to its plastic bag usage reporting is not on the record of this review. Therefore, the petitioner maintains the Department could not correct Max Fortune's

[28] See the Department's letters to Max Fortune dated May 13 and 27, 2009.

[29] In support of its argument, Max Fortune cites to Alloy Piping v. United States, Court No. 02-1396 (June 27, 2003); and NTN Bearing Corp. v. United States, 74 F.3d 1204 (Fed. Cir. 1995) (NTN Bearing Corp v. United States).

plastic bag consumption rates even if it agreed that Max Fortune's submission was rejected improperly, which the petitioner argues is not the case. Moreover, the petitioner contends that absent the Department's request for such information from Max Fortune, the Department correctly rejected Max Fortune's attempt to submit in an untimely manner new factual information on the record after the Preliminary Results. Should the Department allow Max Fortune to submit new information on the record, the petitioner requests that the Department provide it with the opportunity to review the information and submit comments on the information, and that the Department verify the accuracy of the information.

The petitioner challenges each of Max Fortune's reasons for allowing on the record its post-preliminary results submission. In particular, the petitioner disagrees with Max Fortune's assertion that the clerical error that it made concerning its plastic bag consumption with respect to tissue paper sold in sets was obvious given that most of its sales of tissue paper sold in sets were sales that the Department found to be dumped. The petitioner disputes Max Fortune's apparent contention that dumped sales are somehow evidence of a reporting error. Instead, the petitioner views Max Fortune's position as a belated attempt to rewrite the record to "fix" its reporting after realizing that its sales of tissue paper in sets were dumped sales. Nevertheless, the petitioner notes that not all sales that the Department found to be dumped were sales of tissue paper in sets.

Furthermore, the petitioner opposes Max Fortune's claim that it made every attempt to notify the Department as soon as possible of the error concerning its plastic bag consumption given that: (1) there is nothing on the record to indicate that it made an error; (2) it waited until five weeks after the Preliminary Results to notify the Department of the error; and (3) it reported its plastic bag consumption usage prior to verification and months before the Preliminary Results. Finally, the petitioner contends that allowing Max Fortune to submit the new information regarding its plastic bag consumption would compromise the information that the Department found to be accurate during verification.

Department's Position:

We disagree with Max Fortune that its unsolicited submissions filed on May 13 and 20, 2009, after the Preliminary Results, simply identified a correction to its plastic bag consumption information already on the record and did not provide new factual information. As discussed in the Department's letters to Max Fortune on May 13 and 27, 2009, we determined that the information (i.e., the number of sets per carton for all tissue paper products sold in sets) contained in Max Fortune's May 13 and 20, 2009, submissions was not on the record of this administrative review as these submissions were rejected by the Department. For this reason, we considered the data Max Fortune had relied on as the bases for alleging a clerical error with respect to its plastic bag usage amounts for tissue paper products sold in sets to be new factual information. Moreover, Max Fortune's May 13 and 20, 2009, submissions were unsolicited and untimely pursuant to 19 CFR 351.302(d).

Furthermore, the correction Max Fortune seeks to make to its polypropylene bag consumption factors was not apparent to us during verification (which was completed before the Preliminary Results), nor was it raised by Max Fortune at that time. Nevertheless, in consideration of Max Fortune's arguments and upon further review of the verification exhibits, we agree that the correction requested by Max Fortune is warranted for two tissue paper products packed in sets where we verified the actual weight of the plastic bag used to pack those products. See Verification Report at Exhibits 14 and 17A. For these two products, there are sufficient data on the record (i.e., the actual weight of the bag and the number of sets per carton) to correct Max Fortune's plastic bag usage amount, and therefore, we have done so in the final results. See Final Results Calculation Memorandum. However, for the remaining tissue paper products packed in sets, we do not have evidence that the reported consumption factors were in error. Specifically, the bag weights reported by Max Fortune for the remaining tissue paper products vary widely and, absent physically weighing the bags, we are unable to confirm or verify that the alleged error affects the consumption factors reported for these products. Therefore, we have not made any corrections to Max Fortune's plastic bag usage amounts for these products in the final results. To do otherwise would compromise information previously determined to be accurate at verification. See NTN Bearing Corp. v. United States, 74 F.3d at 1208 (noting that the Department could not reject untimely information to make alleged "corrections" because the Department had the ability to verify the information and chose not to do so -- unlike in this case where the information was submitted only after verification was completed).

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margin for the reviewed firm in the Federal Register.

Agree ____ Disagree ____

_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____

(Date)