A-570-933
Investigation
7/1/07- 12/31/07
Public Document
IA/O8: LEA & ED

March 6, 2009

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

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

SUBJECT: Antidumping Duty Investigation of Frontseating Service Valves from the People's Republic of China: Issues and Decision Memorandum for the Final Determination

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SUMMARY:

We have analyzed the case briefs and rebuttal briefs submitted by the Parker-Hannifin Corporation, ("Petitioner") and the respondents, Zhejiang DunAn Precision Industries Co., Ltd., Zhejiang DunAn Hetian Metal Co., Ltd. ("DunAn Hetian"), DunAn Precision, Inc. ("DunAn Precision") (collectively, "DunAn"), and Zhejiang Sanhua Co., Ltd. ("Zhejiang Sanhua") and Sanhua International Inc. ("Sanhua International") (collectively "Sanhua") in the investigation on frontseating service valves ("FSVs") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to Frontseating Service Valves from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination, 73 FR 62952 (October 22, 2008) ("Preliminary Determination").

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty investigation for which we received comments.

Background:

The merchandise covered by the order is frontseating service valves, as described in the "Scope of the Order" section of the Preliminary Determination. The period of review ("POR") is July 1, 2007, through December 31, 2007. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Determination. On January 26, 2009, DunAn submitted its case

brief and on January 27, 2009, Petitioner submitted its case brief. Sanhua did not submit a case brief. On February 3, 2009, Petitioner, DunAn, and Sanhua submitted their respective rebuttal briefs. On February 12, 2009, the Department of Commerce ("Department") held a hearing with interested parties regarding issues raised in case and rebuttal briefs.

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

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I. General Issues

Comment 1: Selection of Surrogate Financial Statements and Calculation of the Surrogate Financial Ratios

Petitioner argues that the Department should use Brassomatic Pvt. Ltd.'s ("Brassomatic") 2007 – 2008 financial statements for the final determination to calculate the surrogate financial ratios as its products are the most similar DunAn and Sanhua's products on the basis of end uses and physical characteristics. Petitioner states that Brassomatic's 2007 – 2008 financial statements are also contemporaneous with the POI. Further, according to Petitioner, Brassomatic's production processes are most similar to those of DunAn and Sanhua on the basis of complexity and duration of the processes and the types of equipment used in production. Petitioner states that Brassomatic's 2007 – 2008 data provide direct evidence of brass machining and forging, consumption of copper tubing specific to air-conditioning and refrigeration valves and fittings, and incorporation of copper tube parts similar to DunAn and Sanhua's processes. Petitioner also argues that Brassomatic's financial statements are much more reliable than other companies on the record because they are audited, show a profit for the fiscal year, and provide detailed schedules for earnings and expenses. Petitioner asserts that the Department reviewed Brassomatic's 2006 – 2007 financial statements for purposes of initiating the investigation and indicated that Brassomatic would have been the best surrogate company for the initiation if it had reported a profit.

DunAn argues that the Department should disregard Brassomatic's 2007 – 2008 financial statements because they are unreliable, incomplete and there are other financial statements on the record which contain better data. DunAn states that the Department should use the financial statements placed on the record in its December 15, 2008 Surrogate Value submission for the following companies: Bikaner Valves Private Limited ("Bikaner"); Siddhi Cast Private Limited ("Siddhi"); Pyrocast India Private Ltd. ("Pyrocast"); Batra Associate Limited ("Batra"); Upadhaya Valves Manufacturers Private Limited ("Upadhaya "); and Dharpat Casting Private Ltd. ("Dharpat"). DunAn states that in the Preliminary Determination, the Department used the financial statements of three Indian producers of comparable merchandise, but none were precisely contemporaneous with the POI. Therefore, it has provided six additional financial statements that are more contemporaneous with the POI which, DunAn states, are properly audited with all notes and schedules, show profits, contain no record evidence of export subsidies, and are from manufacturers of comparable merchandise. In its rebuttal, DunAn asserts that there is no evidence on the record that Brassomatic produces comparable merchandise.

Sanhua argues that Brassomatic's financial statements do not show a profit in the detailed schedule of its earnings. Rather, Sanhua claims, it contains a schedule of its debtors. Further, Sanhua states that it is unclear whether the schedule of debtors is even a list of customers given that the names suggest that they are not involved in the domestic market. Therefore, Sanhua argues, based on the lack of profit and uncertainty as to the actual sales of the company, the Department should not use Brassomatic's financial statements in calculating the financial ratios. Sanhua also argues that the Department should continue to use the financial statements that it

used in the Preliminary Determination, and that if the Department uses Brassomatic's financial statements, it should use it with the financial statements that it used in the Preliminary Determination.

Petitioner argues that DunAn's analysis of Brassomatic's financial statements is incorrect. Petitioner argues that the financial statements proposed by DunAn are not from companies that produce comparable merchandise. Petitioner claims that Bikaner does not produce brass valves and supports this claim by stating that its creditors are in the cast iron business; its website shows it sells various cast iron valves; and the valves are produced by casting, not machining. Petitioner claims that Siddhi is not a producer of brass valves for the air conditioning industry, but rather it produces cast iron products, its creditors are steel companies; and the Internet shows that it produces "castings in ferrous metals." Petitioner claims that Pyrocast is also not a primary producer of brass valves for the air conditioning industry, but rather, while it produces some forged brass parts and valves, it primarily produces cast and forged aluminum products. Petitioner also claims that Batra produces railway track clips and liquefied petroleum gas regulators, items not similar to valves; and argues that Upadhaya's 2007 – 2008 financial statements do not contain a profit and loss statement, rendering them inappropriate for use in calculating surrogate financial ratios. Finally, Petitioner claims that Dharpat should be rejected because it produces only cast products, and while it has a very minor brass casting process, it has no forging or machining processes.

Petitioner argues that, if the Department does determine to use the financial statements presented by DunAn, it should correct certain errors in DunAn's financial ratio calculations. We address each of those arguments individually below, in Comments 1a-e.

Department's Position: For the reasons discussed below, for the final determination, we are calculating the surrogate financial ratios using the statements of Siddhi, Pyrocast, and Dharpat. In selecting surrogate values for factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data." See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) ("CLPP"), and accompanying Issues and Decision Memorandum at Comment 1.

We used three financial statements for purposes of calculating the surrogate financial ratios for the Preliminary Determination. While none of these financial statements was contemporaneous with the POI (each statement's financial period was April 2006 through March 2007), they represent the best available information on the record. Specifically, we used the audited financial statements of Carbac Holdings Ltd. ("Carbac"), an Indian brass valve producer; Upadhaya, an Indian producer of valves and fittings; and Oswal Valves Pvt. Ltd. ("Oswal"), an Indian producer of valves. We did not rely upon three other companies' financial statements because Valve Power Engineers Private Limited was not a producer of comparable merchandise; Brassomatic did not demonstrate a profit; and Larsen & Toubro was a producer of a broad range of products, a substantial portion of which are not comparable merchandise to FSVs. These

statements covered the same fiscal year as the statements that we did use for the Preliminary Determination.

Subsequent to the Preliminary Determination, the parties placed a total of seven additional financial statements on the record in order to calculate the surrogate financial ratios. All seven financial statements are contemporaneous with the POI. After reviewing all record information, we find that the financial statements of Siddhi, Pyrocast, and Dharpat (all of which are producers of valves) represent the best available information for use in the final determination because all three companies are producers of comparable merchandise and each financial statement contains complete, legible, publicly available, and contemporaneous information with which to calculate the surrogate financial ratios for this investigation.

We determined that the financial statements of Upadhaya 2007 – 2008 and Brassomatic 2007 – 2008 were not suitable for use consistent with the Department's practice not to use incomplete statements. See, e.g., CLPP at Comment 1 (where the Department used a surrogate producer's financial statements after pages that were initially missing were supplied by an interested party, making the financial statements complete); and Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus, 66 FR 33528 (June 22, 2001) ("Rebar"), and accompanying Issues and Decisions Memorandum at Comment 2 (the Department chose not to use a financial statement because the "financial statement on the record appears incomplete"). Specifically, the Upadhaya 2007 – 2008 statement, as provided to the Department, did not contain an income statement. Further, the Brassomatic 2007 – 2008 statement, as provided to the Department, did not contain the "Accounting Policies & Notes on Accounts" or a "Schedule 20" to support the deferred tax net listed on the balance sheet. Thus, the financial statements from Upadhaya 2007 -2008 and Brassomatic 2007 – 2008 are incomplete and not appropriate for use in calculating surrogate financial ratios, notwithstanding Petitioner's argument that Brassomatic has production processes similar to the respondents in this case. In addition, we did not use the financial statements from Bikaner because, based on record evidence, it was unclear what products Bikaner produced. Thus the Department could not determine if Bikaner is a producer of comparable merchandise. Further, we did not use the financial statements from Batra because certain line items in the Income Statement were illegible and the Department does not use statements that are not fully legible. See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("OTR Tires"), and accompanying Issues and Decisions Memorandum Comment 17a. Finally, for purposes of the final determination, we did not use any of the three financial statements that we used in the Preliminary Determination because they were not contemporaneous with the POI and we have three other financial statements that, as discussed above, are contemporaneous, publicly available, complete, legible, and reflect production of comparable merchandise.

Comment 1a: Treatment of Job Work Expenses

Petitioner states that "job work" is the Indian technical term for expenses incurred by hiring a tolling agent to undertake manufacturing. Petitioner states that the Department has, in the past,

considered such charges to be part of the manufacturing, labor, and energy ("MLE") denominator, when reported as part of total manufacturing expenses in the surrogate financial ratios, and if representing "direct production labor" and cites Final Determination of Sales at Less than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China, 73 FR 55039 (September 24, 2008) ("PET Film"), accompanying Issues and Decisions Memorandum at Comment 3.

Petitioner alleges that neither Sanhua nor DunAn correctly reported direct materials, labor, energy and by-product scrap. Petitioner claims that, instead, both provided incomplete, inaccurate, and often physically impossible gross input, output and scrap volumes. Thus, Petitioner argues that neither company fully, properly and accurately incorporated toll, or "job work" costs as direct material costs. In light of this position, Petitioner argues that the MLE denominator should not include job work expenses, irrespective of the company (or companies) selected as surrogates but rather, the Department should include the job work expenses in the manufacturing overhead as facts available ("FA") to "establish parity between the costs of manufacturing ("COM") built without accurate toll input calculations."

Department's Position: At the outset, we note that Petitioner has not identified a specific set of financial statements with respect to this issue. Therefore, we are unable to respond to this comment on a specific financial statement basis. We have determined to classify job work expenses as part of the MLE denominator, consistent with prior Department determinations, in the surrogate financial ratio calculations for all financial statements where the statement itself appears to characterize this item as a direct labor expense. See e.g., PET Film at Comment 3. The Department has not requested that respondents submit the FOPs of their unaffiliated tollers in this investigation. Rather, we are treating materials re-introduced into production as direct inputs and are valuing the input. Therefore, the FOPs associated with the production of the input are captured in the surrogate value we are applying to the respective material input. See Comments 10 and 12 for further discussion of Sanhua's and DunAn's specific input issues. Consequently we do not agree with Petitioner's characterization that there is a disparity "between the {costs of manufacturing ("COMs")} built without accurate toll input calculations," and the financial ratios applied to those COMs. Therefore, we do not find the use of facts available is warranted in this situation.

Comment 1b: Treatment of Commissions, Advertising and Other Selling Expenses

Petitioner argues that commissions must be included in the selling, general, and administrative ("SG&A") expenses numerator of the surrogate financial ratios. Petitioner states that the Department has consistently upheld the inclusion of sales commissions in the calculation of total SG&A expenses and cites Honey from the People's Republic of China: Final Results and Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 37715 (July 11, 2007), and accompanying Issues and Decisions Memorandum at Comment 3. Petitioner cites to the Department's preliminary calculation methodology where it classified Upadhaya's 2006-2007 commissions as SG&A expenses and cites to the memorandum regarding "Antidumping Duty Investigation of Frontseating Service Valves from the People's Republic of China: Factor Valuations for the Preliminary Determination," dated October 15, 2008, ("Prelim FOP Memo")

at Exhibit 1, and argues that this same principle applies to other selling expenses, such as advertising and marketing. Petitioner claims that DunAn should not have excluded any such expenses from the derivation of the SG&A numerator.

Department's Position: At the outset, we note that Petitioner has not identified a specific set of financial statements with respect to this issue; however, we agree with Petitioner that the Department has a clear practice of treating "commission expenses" as SG&A in the surrogate financial ratio calculations. In prior cases, the Department has determined that the total selling expenses of the surrogate producer represent the total expenses incurred for selling the product, including commissions. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China, 70 FR 7475 (February 14, 2005) ("Tissue Paper"), and accompanying Issues and Decisions Memorandum at Comment 2; Freshwater Crawfish Tail Meat from the People's Republic of China; Final Results of New Shipper Review, 64 FR 27961 (May 24, 1999) ("Crawfish"), and accompanying Issues and Decisions Memorandum at Comment 8; and Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("OTR Tires"), and accompanying Issues and Decisions Memorandum at Comment 18.C. Accordingly, we have treated "commission expense" as SG&A for the purpose of determining the surrogate financial ratios for these final results. Because the Petitioner's comment with respect to other such selling expenses that DunAn might have excluded in its proposed surrogate valuation calculations does not identify either specific expenses or financial statements, we are unable to address this issue further. Nevertheless, we calculated the surrogate SG&A ratio using the complete and appropriate set of SG&A expenses identified in each of the three financial statements that we used for this final determination.

Comment 1c: Treatment of Other Income Earned From Non-Essential Business

Petitioner states that the Department normally excludes other income earned from non-essential business from the calculation of total selling, general, and administrative ("SG&A") expenses, on a line-by-line basis and cites Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan, 64 FR 17,336, 17,338 (April 9, 1999) ("Stainless Steel Round Wire from Taiwan") (stating that "{w}e agree that machinery repair income is not part of the general operations of the company and therefore should be excluded from the calculation of G&A expenses.") Petitioner argues that DunAn miscalculated the surrogate financial ratios for Batra by including in the ratios income that is not part of the general operations of the company. Petitioner further argues that although Batra operates as a manufacturer of industrial goods, DunAn has subtracted over 3 million Rupees in rental income from manufacturing overhead, thereby improperly eliminating its entire factory maintenance and depreciation.

Department's Position: Because we are not using the Batra financial statements we are not addressing this issue with respect to that statement. However, the issue of which expenses are appropriately classified as SG&A continues to be relevant to this proceeding. It is the Department's practice to calculate the SG&A expense ratio using income and expenses relating to the general operations of the company. See, e.g., Stainless Steel Sheet and Strip in Coils from

Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7519 (February 13, 2006) ("SSSS Coils from Taiwan"), and accompanying Issues and Decisions Memorandum at Comment 18. In deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to MLE, factory overhead, SG&A and profit, and excludes expenses such as certain movement expenses, consistent with the Department's practice of accounting for these expenses elsewhere. See Freshwater Crawfish Tailmeat from the People's Republic of China: Final Results of Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007) ("Crawfish 4/17/07"), and accompanying Issues and Decisions Memorandum at Comment 1. However, in NME cases, it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding, as the Department has no authority to either ask questions or verify the information from the surrogate company. See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews, 71 FR 70739 (December 6, 2006) ("WBF"), and accompanying Issues and Decisions Memorandum at Comment 5. Because we cannot go behind the financial statements, in determining the appropriateness of including an item in the financial ratio calculations, we look to information within the respective financial statements to determine the possible nature of the activity generating the potential adjustment, to determine whether a relationship exists between the activity and the principal operations of the company. See e.g., Brake Rotors from the People's Republic of China: Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review, 72 FR 42386 (Aug. 2, 2007) "(Brake Rotors"), and accompanying Issues and Decisions Memorandum at Comment 3. See Silicomanganese from Brazil; Notice of Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004) ("Silicomanganese"), and accompanying Issues and Decisions Memorandum at Comment 10; Final Determination of Sales at Less Than Fair Value, Live Swine From Canada, 70 FR 12181 (Mar. 11, 2005) ("Swine"), and accompanying Issues and Decisions Memorandum at Comment 62 (where the Department found, specifically, that rental income related to the general operations of the company should be allowed as an offset to the G&A expenses); SSSS Coils, at Comment 18; and OTR Tires, at Comment 18.D. Therefore, Stainless Steel Round Wire from Taiwan is distinguishable from this case.

Comment 1d: Treatment of Taxes Other Than Corporate Income Tax or VAT

Petitioner states that DunAn has excluded from SG&A such line items as "sales tax" and "fringe benefit tax" in its calculations. Petitioner argues that with the exception of the corporate income tax and value-added tax ("VAT"), such line items are normally included in the Department's calculation of SG&A and cites Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008) ("PRCBs"), and accompanying Issues and Decisions Memorandum at Comment 2 in support.

Department's Position: The Department has determined to treat the "fringe benefit tax" line item in Dharpat's financial statements as SG&A for calculating the surrogate financial ratios for

the purposes of the final determination. The Department has reviewed the line items "fringe benefit tax" in Dharpat's financial statements. Our review of the "fringe benefit tax" recorded in the financial statements indicates that such expenses are part of Dharpat's administrative and selling expenses. As such, they are not a part of the income taxes or VAT, which the Department would normally exclude from the calculations. It is the Department's practice to include rates and taxes in the surrogate financial ratio for SG&A unless the taxes are related to the income tax or VAT. See PRCBs at Comment 2. Thus, the Department has included the "fringe benefit tax" line item in Dharpat's financial statements in the surrogate financial ratio for SG&A.

With regard to Petitioner's claim regarding "sales tax," Petitioner did not identify the financial statement in which this is an issue, and the Department did not find this item in any of the financial statements we are using for the final determination. Therefore, we are not addressing this issue for the final determination.

While the Department is unable to address Petitioner's concerns due to lack of specificity, we can address how we classify tax liabilities as a whole. In Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 52645 (September 10, 2008) ("Chlorinated Isocyanurates"), the Department stated that as financial statements represent the overall operations of a company, which can include tax liabilities incurred in the normal course of operations, inclusion of these taxes in the surrogate financial ratios, when not related to income, VAT, or excise taxes accurately reflects the financial experience of a surrogate company. See Chlorinated Isocyanurates and accompanying Issues and Decisions Memorandum at Comment 5.A. Therefore, for purposes of these final results, we have included rates and taxes in the surrogate financial ratio for SG&A unless the taxes are related to the income or VAT category.

Similarly, consistent with the practice explained in PRCBs at Comment 2 and Chlorinated Isocyanurates, the Department has included the following taxes in SG&A: "profession tax" for Dharpat; "sales tax demand" for Pyrocast; and "professional tax" for Siddhi. See memorandum regarding "Antidumping Duty Investigation of Frontseating Service Valves from the People's Republic of China: Factor Valuations for the Final Determination," dated March 6, 2009, ("Final FOP Memo") at Attachment 3. Each of these taxes are recorded as SG&A expenses in the respective company's audited financial statements and thus represent liabilities that are incurred in the normal course of operations. Consistent with Chlorinated Isocyanurates the Department excluded from its surrogate financial ratio calculations all excise taxes, duties, income or expense. See Final FOP Memo at Attachment 3.

Comment 1e: Treatment of Generator Expenses

Petitioner states that DunAn has treated Pyrocast's generator expenses as if the upkeep of the generator, a plant asset, were a direct energy cost in its calculations. Petitioner argues that, unlike the costs of fuel for the generator, the cost of the generator, as a transformer of one type of energy into another (e.g., into electricity), is a factory overhead cost and should be included in the manufacturing overhead denominator.

Department's Position: We agree with Petitioner and have treated the line item "generator expenses," listed under manufacturing expenses in Pyrocast's financial statements, as overhead for purposes of calculating the surrogate financial ratios.

The Department's normal practice is to treat obvious manufacturing power expenses such as electricity, fuel oil or coal on a company's profit and loss statement as energy. These items would be the result of a power source (e.g., generator, power lines into factory, oil truck, coal mining, etc.). Conversely, the power source infrastructure (e.g., generator, power lines, oil truck, etc.) is generally depreciated and included in depreciation expense, which we treat as overhead. Additionally, we treat the general upkeep and maintenance of a factory's fixed asset as overhead expense. See e.g., Final FOP Memo for discussion of financial ratios and Attachment 3.

Comment 1f: Treatment of "Gratuity" Benefit Program Expenses

Petitioner argues that DunAn properly included Upadhaya's gratuity expenses in SG&A, and the Department should do the same for the final results.

Department's Position: For the final determination, Department has determined to use the surrogate financial statements of Batra, Siddhi, Pyrocast, and Dharpat which do not contain "gratuities" line items in their financial statements. Thus, we do not address the issue of the classification of gratuities for purposes of this final determination.

Comment 2: Whether Critical Circumstances Exist for Both Respondents and the PRC-Entity

Petitioner argues that the Department should make a final finding of critical circumstances with respect to imports of FSVs from DunAn, Sanhua, and the PRC-entity. Specifically, Petitioner argues that importers knew or should have known that the exporter was selling at less than fair value (in accordance with section 733(e)(1)(A)(ii) of the Act) if the respondents' final dumping margins are above 15 percent. Further, Petitioner contends that importers knew or should have known that there would be material injury by reason of dumped imports based on the preliminary affirmative determination of injury by the International Trade Commission ("ITC"). See INV No 731-TA-1148 (Preliminary), Front Seating Valves from China, Determination, 73 FR 28507 (May 16, 2008); see also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30578 (June 8, 1999) ("SSSS from Japan"). Finally, Petitioner asserts that there have been massive imports of subject merchandise from the PRC over a relatively short period, in accordance with 19 CFR 351.206(h)(1). See Policy Bulletin 98/4: Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations 63 FR 55364 (October 15, 1998) and Notice of Final Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 68 FR 66800 (November 28, 2003) ("CTVs from the PRC"). Specifically, according to Petitioner, the company-specific data submitted by DunAn and Sanhua show that both companies had a surge in imports in the comparison period (April 2008 through July 2008) in contrast to the base period (December 2007 through March 2008) above the threshold

necessary to find massive imports. Petitioner contends that notwithstanding a potential peak in air conditioning sales during summer months, there exists no such seasonality with respect to imports of FSVs. Rather, according to Petitioner, FSVs sales generally increase in January, reach their peak in March, flatten out in April through May, and drop of precipitously in July through August.[1] With respect to the PRC-entity, Petitioner claims the Department should base its massive imports finding on facts otherwise available, and should rely on the Sanhua and DunAn data for this purpose.

Sanhua contends that with respect to whether importers knew or should have known that exports were sold at less than fair value, the Department will issue a final margin of less than 15 percent for its exports, and therefore, it believes this criterion of a critical circumstances determination is not met. Further, Sanhua argues, that even if its margin is 15 percent or greater, its import data do not support a finding of massive imports in a relatively short period of time, regardless of whether the Department uses three month or four month base and comparison periods.

DunAn argues that data on the record, including its company-specific shipment data, support a conclusion that the FSVs industry operates on a seasonal basis, coinciding with that of air conditioners, with peak months from April to July, and that any increase in its imports after the filing of the petition relate solely to this seasonality. Citing Notice of Preliminary Determination of Sales at Less Than Fair Value and of Critical Circumstances in Part: Lemon Juice from Mexico 72 FR 20830, 20835 (Apr. 26, 2007) ("Lemon Juice from Mexico"), DunAn suggests that in cases where seasonality exists, the Department's practice is to disregard its standard measure of massive imports (i.e., a comparison of the months immediately preceding and following the filing of a petition). According to DunAn, such seasonality is evidenced here by the 2005- 2008 Air-Conditioning and Refrigeration Institute[2] data regarding air conditioning unit sales, which it claims show increased sales between May and August of each year. Moreover, according to DunAn, its own export data (based on pieces, kilograms, and dollars) mirror this trend, demonstrating increased exports during the period April through June in both 2007 and 2008. Furthermore, according to DunAn, this coincides with and explains the post-petition increase in imports, consistent with prior Department determinations incorporating a seasonality analysis. See Notice of Negative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers from Malaysia 68 FR 66810, 66815 (November. 28, 2003) ("CTVs from Malaysia"). DunAn refutes Petitioner's claim regarding the shipment trends of FSVs, which it claims is directly contradicted by its own export levels in 2007 and 2008, neither of which, it argues, demonstrate a seasonal peak in March. Moreover, DunAn claims that its exports in 2007 exceeded its exports during the same period in 2008, i.e., the post-petition period, while its imports in the base period of both years remained relatively constant, thus demonstrating that seasonality, not an attempt to flood the market, accounts for the increase.

[1] Petitioner cites to the "Declaration of Daryl Miller", attached as Exhibit 1 to their Critical Circumstances Analysis submitted to the Department on November 3, 2008, and to Exhibits 2 and 3 of this same submission.
[2] Air-Conditioning and Refrigeration Institute, monthly Statistical Release Documents, issued monthly , as submitted in DunAn's October 14, 2008, submission Re: Shipment Data for Critical Circumstances Analysis: Frontseating Valves from the People's Republic of China (Investigation No. A-570-933).

Department's Position: Based on a thorough review of record evidence we find that critical circumstances do not exist with respect to imports of subject merchandise. Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

We found no history of dumped imports in the United States or elsewhere. However, we find that importers of FSVs knew, or should have known, that exporters were selling subject merchandise at less than fair value, and that there was likely to be material injury by reason of such sales. The Department normally considers dumping margins of 25 percent or more, for export price sales, or 15 percent or more, for constructed export price sales, sufficient to impute knowledge of the exporter selling the subject merchandise at less than its fair value. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from Indonesia, 71 FR 15162, 15166 (March 27, 2006), unchanged in Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia, 71 FR 47171 (August 16, 2006). In this proceeding, both respondents' sales were constructed export price transactions. We have calculated final dumping margins of 12.95 percent for DunAn and 28.44 percent for Sanhua, based on each company's respective constructed export price sales. See Frontseating Service Valves from the People's Republic of China: Final Affirmative Finding of Critical Circumstances, In Part, dated March 6, 2009. Since the final dumping margin for Sanhua is greater than 15 percent, we find that this margin provides a sufficient basis for imputing knowledge of sales of subject merchandise at less than fair value to the importers. However, because DunAn's final dumping margin is less than 15 percent, we find that it does not provide a sufficient basis for imputing such knowledge. The final margin for the PRC-entity is 55.62 percent, the margin from the initiation of this proceeding.

Further, based on the International Trade Commission's preliminary affirmative finding of dumping we find that the importers knew or should have known that there was likely to be material injury by reason of the dumped imports. See INV No 731-TA-1148 (Preliminary), Front Seating Valves from China, Determination, 73 FR 28507 (May 16, 2008), see also SSSS from Japan.

Because DunAn did not meet the first prong of the critical circumstances test, that is the margin was not sufficient to impute knowledge of dumped sales or injury by reason of such dumped sales pursuant to section 733(e)(1)(a) of the Act, we are not examining whether imports from DunAn were massive over a relatively short time pursuant to section 733(e)(1)(B). Further, for the same reason, we are not addressing DunAn's claim of a seasonal trend in subject imports. However, because Sanhua met the first prong of the critical circumstances test according to section 733(e)(1)(A)(ii) of the Act, we examined whether imports from Sanhua were massive over a relatively short period of time in accordance with section 733(e)(1)(B) of the Act.

Pursuant to 19 CFR 351.206(h), the Department will not consider imports to be massive unless imports during the relatively short period ("comparison period") have increased by at least 15 percent over imports in an immediately preceding period of comparable duration ("base period"). The Department normally determines that the comparison period begins on the date that the proceeding began (i.e., the date the petition was filed), and ends at least three months later. See 19 CFR 351.206(i). Since the Department typically uses monthly import/shipment data in its analysis, if a petition is filed in the first half of the month, the Department's practice has generally been to consider the month in which the petition was filed as part of the comparison period. In the instant investigation, the petition was filed on March 19, 2008, the second half of the month; thus, we have considered March 2008 as part of the base period. Also, the Department's practice is to base its critical circumstances analysis upon the longest period for which information is available from the month the petition is filed through the date of the preliminary determination. See CTVs from the PRC. Accordingly, we used November 2007 through March 2008 as the base period, and April 2008 through August 2008 as the comparison period.

In reviewing these data, we find that there were not massive imports of subject merchandise from Sanhua because its increase in exports during the comparison period was less than 15 percent over its exports during the base period.

With respect to the non-market economy ("NME") entity, we do not agree with Petitioner that we should rely on the shipment data provided by the mandatory respondents to ascertain whether an increase in shipments occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely. Rather, in such cases, it is the Department's general approach to examine U.S. Customs and Border Protection ("CBP") data on overall imports from the country in question. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329 (May 6, 1999). However, we are unable to rely on information supplied by CBP in this investigation because the harmonized tariff system ("HTS") categories listed in the scope of the investigation are basket categories that include non-subject merchandise. Because they are basket categories, we are unable to separate subject from non-subject merchandise. Accordingly, we lack the information to determine whether there was a massive import surge with respect to subject merchandise by the PRC-wide entity, and are therefore, unable to determine whether there have been massive imports of FSVs from the producers included in the PRC-wide entity. See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products from India, 71 FR 19706, 19713 (April 17, 2006) (unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India, 71 FR 45012 (August 8, 2006)); see also Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan, 68 FR 71072, 71077 (December 22, 2003) (unchanged in Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan, 69 FR 11834 (March 12, 2004)).

For additional discussion of this issue, please see the memorandum regarding: "Antidumping Duty Investigation of Frontseating Service Valves from the People's Republic of China: Final Negative Finding of Critical Circumstances" dated March 6, 2009, and on file in the CRU, Room 1117 of the main Commerce Department building.

Comment 3: Regression Analysis for the Labor Wage Rate

DunAn argues that the Department should not use its regression analysis for determining a labor wage rate as set forth in 19 CFR 351.408(c)(3). Quoting section 773(c)(4) of the Act, DunAn states that the Department must use, to the extent possible, the prices or costs of FOPs from one or more market economy countries that are economically comparable to the NME country and are "significant producers of comparable merchandise." However, DunAn asserts that the Department's regulation regarding the valuation of labor "disregards these criteria." DunAn alleges that the regulation is invalid because it does not require a case-specific valuation, since the wage rate is only calculated yearly; it does not consider the economic comparability of market economy countries used in the analysis to the particular NME country; and it does not consider whether the countries used in the analysis are "significant producers of comparable merchandise." See section 773(c)(4) of the Act.

DunAn refers the Department to the Court of International Trade's ("CIT") decision in Allied Pacific Food Co., Ltd. v. United States, 587 F. Supp. 2d 1330 (CIT 2008) ("Allied Pacific"), in which the CIT found 19 CFR 351.408(c)(3) to be contrary to section 773(c)(4) of the Act. DunAn cites to the CIT's determination that the regulation does not follow the Act's mandate to use "to the extent possible" the prices or cost of FOPs in market economy countries which are at a comparable level of economic development and are significant producers of comparable merchandise, where the regression analysis may only incidentally include countries which fit within both criteria. DunAn argues that Allied Pacific's emphasis was on the Department's failure to account for "information specific to the subject merchandise" and "the fact that this regulation (and its incapacity to comport with the statute) was entirely of the Department's making."

As an alternative to the regression analysis, DunAn argues that the Department should use India's labor rate of US $0.21, as compiled by the International Labour Organization ("ILO") and listed on the Department's website, as a surrogate value for labor in the PRC. DunAn asserts that because the Department has determined that India is at a comparable level of economic development to the PRC and is a significant producer of comparable merchandise, and has "publicly available and reliable data," India's labor rate is the only information on the record which satisfies the criteria of section 773(c)(4) of the Act.

Petitioner rebuts this argument by stating that Allied Pacific is not a final decision since the appeal period has not run, citing to Fed. R. App. P. 4(a)(1)(B), nor has the Department indicated that it will change its methodology. Therefore, Petitioner states, it remains Department practice to use the regression analysis methodology. Furthermore, Petitioner argues that it would be "arbitrary and unfair" for the Department to change its methodology at the final stages of this

proceeding without giving the parties sufficient notice of the new practice and permitting additional time to research new data and comment on data under consideration.

In addition, Petitioner maintains that the information which DunAn proposes as a valuation for the wage rate is not on the record, and should not be considered a "legitimate option" for purposes of this proceeding. However, if the Department were going to consider this information, Petitioner suggests it should also consider wage rates for other economically comparable countries, as determined at the start of the investigation. For instance, Petitioner notes that Colombia's wage rate, which is posted on the Department's website, is more contemporaneous with the POI. See "Expected Wages of Selected NME Countries," revised in May 2008, available at http://ia.ita.doc.gov/wages/index.html.

Department's Position: The Department disagrees that the regression methodology, provided for in 19 CFR 351.408(c)(3), is in contravention with our obligations under section 773(c) of the Act. Section 773(c)(1) of the Act provides that, where, as in this case, the subject merchandise is exported from a NME country, "the valuation of factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." See section 773(c)(1) of the Act. (Emphasis added). While the Act does not define "best available information," it provides that the Department, "in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are -- (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." See section 773(c)(4)of the Act. (Emphasis added).

In accordance with the guidance provided, and discretion permitted pursuant to section 773(c) of the Act, the Department calculates the labor wage rate using a regression analysis. Section 351.408(c)(3) of the Department's regulations provides that the Department:

> . . . will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

19 C.F.R. 351.408(c)(3).

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

To calculate the regression, the Department uses four separate data series: country-specific earnings data from the ILO's Yearbook of Labour Specifics; country-specific consumer price

index ("CPI") data from the International Monetary Fund ("IMF"); exchange rate data from the IMF; and country-specific GNI data from the World Bank. The wage rate data from the ILO are converted to hourly wage rates and adjusted using CPI data so that they are representative of the current "Base Year," the most recent reporting year, which is two years prior to the current year. These data are then converted into U.S. dollars using exchange rate data.

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

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

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

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

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

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

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

Although section 773(c) of the Act provides guidelines for the valuation of the FOPs, it also accords the Department wide discretion in the valuation of FOPs. Nation Ford v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999); accord Magnesium Corp. of America v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999). The statute requires the use of the "best available information," but it does not define the term, nor does it clearly delineate how the Department should determine what constitutes the best available information. See Shakeproof Assembly Components v. United States, 59 F. Supp. 2d 1354, 1357 (CIT 1999), aff'd Shakeproof Assembly Components v. United States, 268 F.3d 1376 (CIT 2001); China Nat'l Mach. Import & Export Corp. v. United States, 264 F. Supp. 2d 1229, 1236 (CIT 2003). The Department's regulation prescribes a methodology that reflects a permissible interpretation of what the statute allows with respect to the determination of labor wage rates, by calculating the market economy wage rate for a country at a comparable level of economic development, that is, for a market economy country with the same per capita GNI as the nonmarket economy.

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

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

Additionally, relying only on data from countries that are economically comparable to each NME would undermine, rather than enhance, the accuracy of the Department's regression analysis. The number of "economically comparable" countries would be extremely small. For example, when examining countries with GNIs that range between US$ 700 and US$ 2500 (e.g., countries that might be considered economically comparable to the PRC), there are just nine countries out of a full dataset of 61 countries used in the revised wage calculation in May 2008.[3] A regression based on such a small subset of countries would be highly dependent on each and every data point, and thus, the inclusion or exclusion of any one country could have an extreme effect on the regression results from case-to-case, and from year-to-year. Relying on a broad data set, as opposed to data from just the economically comparable countries, maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the basket, and provides predictability and fairness. See, e.g., Antidumping Duties; Countervailing Duties Part II, 62 FR 27296, 27367 (May 19, 1997) ("Final Rule"); see, also Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61720 (October 19, 2006).

DunAn's further arguments that the Department's labor regression is contrary to the statute, because it does not provide for a case specific analysis, or focus on the significant producer criterion, overlooks the purpose in using a regression methodology, which is to provide a more accurate labor value that is stable and predictable across all cases. The regression methodology accomplishes this by providing a variable average that "smoothes out" the variations in the data and permits, in a predictable manner, the estimation of a market economy wage rate relative to a level of GNI that is as accurate as practicable, with the least amount of volatility across cases. Furthermore, in determining surrogate values for FOPs, the Department need not "duplicate the exact production experience of the Chinese manufacturers." See Nation Ford Chemical Company v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (citing Magnesium Corp. of America v. United States, 938 F. Supp. 885 (CIT 1996), aff'd, 166 F.3d 1364 (Fed. Cir. 1999) (upholding the Department's use of a surrogate value for a primary input of production where the actual input differed from the production experience in the nonmarket economy)). See, also Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 268 F.3d 1376, 1381 (Fed. Cir. 2001) ("we have specifically held that Commerce may depart from surrogate values when there are other methods of determining the 'best available information' regarding the values of the factors of production.")

Finally, the Department does not find DunAn's reliance on Allied Pacific to be persuasive. For reasons previously stated, the Department finds 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 II, the Department's regression analysis was affirmed in its entirety. Furthermore, the decision in Allied Pacific is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted.

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

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

Because the Department's regression analysis utilizes the best available information for the calculation of a surrogate value for labor, complies with the Department's regulation, and comports with the statute, the Department continues to value labor in this case using its regression analysis, as provided in 19 CFR 351.408(c)(3).

Comment 4: Whether to Exclude Imports from Japan, France and the UAE in the Surrogate Value Calculation for Brass Bar

DunAn argues that the Department should disregard imports from Japan, France, and the United Arab Emirates ("UAE") in the World Trade Atlas ("WTA") data for Indian HTS category 7407.21.10 "Copper Bars, Rods, and Profiles; Of copper alloys; Of copper-zinc base alloys (brass)" for calculating the surrogate value for brass bar for the final determination. DunAn argues that for these three countries, the Infodrive India ("Infodrive") data show that 100 percent of the imports are misclassified. DunAn argues that all entries under these countries are more properly classified under other Indian HTS categories. DunAn cites to Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 Fed. Reg. 14216 (March 17, 2008), and accompanying Issues and Decision Memorandum at Comment 6; and Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 Fed. Reg. 4175 (January 24, 2008), and accompanying Issues and Decision Memorandum at Comment 2. DunAn claims that the entries of: 1) "beryllium flat copper bar" and "beryllium copper round bar" from Japan; 2) "Cupro Nickel Bar" from the UAE; and 3) "Barre B33/25 H Q1.5MM (Copper Bar)" and "Bronze Bars (Aircraft Raw

Materials for Defense Use) P.O.NO: 4160375" from France are misclassified entries under Indian HTS category 7407.21.10.

Petitioner argues that the Department should continue to include entries from Japan, France, and the UAE in the WTA data for Indian HTS category 7407.21.10. Petitioner states that DunAn repeats the same arguments rejected in the Prelim FOP Memo where the Department stated that the Infodrive data submitted did not show that the WTA data were inaccurate because the Infodrive data only accounted for 26 percent of the WTA data. Petitioner contends that these imports are brass bar and were not inaccurately classified. Further, Petitioner states that if the Department excludes France, Japan, and the UAE in the surrogate value calculation for brass bar, it must also exclude Sri Lanka. See Comment 5.

Department's Position: It is the Department's practice to carefully consider the evidence in light of the particular facts of each industry when valuing factors of production ("FOPs") and to value them on a case-by-case basis. See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006) ("Mushrooms from the PRC 07/17/06"), and accompanying Issues and Decision Memorandum at Comment 1. Furthermore, in accordance with section 773(c)(1) of the Act ("…the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country…"), the Department has concluded that for the final determination, we will continue to include the value of imports from Japan, France and the UAE in calculating the surrogate value for brass bar for the reasons discussed below.

First, with respect to the imports in question from Japan and France, we find that the Infodrive data contain insufficient product information in the description of the line items to enable the Department to make a definitive determination that these line items are misclassified. Specifically, the product description in the Infodrive data are such that, given the dependency upon the chemical make-up of the underlying products, they could be properly classified within the Indian HTS category where they are, or in the category addressed by DunAn. Thus, the Department cannot determine, due to lack of product detail, i.e., chemical properties, the precise chemical make-up of these line items. Accordingly, without clear evidence to the contrary, the Department will not speculate that these materials have been misclassified. Therefore, pursuant to section 773(c)(1) of the Act, the Department has determined to include imports from Japan, France, and the UAE in calculating the surrogate value for brass bar in the final determination because the record evidence does not demonstrate that the imports from these countries were misclassified.

Second, with respect to the UAE inputs, the Department analyzed DunAn's claim that the UAE's single entry of "Cupro Nickel Bar" belong to Indian HTS category 7408.22 "Copper Wire; Of copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver)" and concluded that this is incorrect. The primary description for this classification is "copper wire," while the "Cupro Nickel Bar" in question is clearly "bar."

Comment 5: Whether to Exclude Imports of Sri Lankan Re-Melted Brass Ingots and Cast "Wire Bars" from the Surrogate Value Calculation for Brass Bar

Petitioner argues that the Department should revisit its decision to include imports of brass bar from Sri Lanka in the WTA data from Indian HTS category 7407.21.10 used to value brass bar. Petitioner submits secondary and tertiary evidence in the form of newspaper articles and various internet website articles, as support for its contention that Sri Lanka does not have a brass bar industry, that Sri Lanka had banned the export of brass scrap, and that imports of brass bar into India from Sri Lanka were, in fact, brass scrap re-worked into brass ingots to circumvent the ban. Additionally, Petitioner argues that the verification report shows that DunAn used brass rod for the production of subject merchandise, and so its input should be valued using the WTA data for the Indian HTS category for brass rod. See Comment 12f.

DunAn rebuts Petitioner's claim that brass bar from Sri Lanka is actually brass scrap, stating that this is unfounded and directly contradicted by record evidence. DunAn states that allegations of misclassifications to obtain duty-free treatment for finished copper products by Sri Lanka is wholly unrelated to brass bar imports classified under Indian HTS category 7407.21.10 and offer absolutely no support for Petitioner's assertions regarding brass bar exports from Sri Lanka. Additionally, DunAn reiterates its concerns that the Infodrive data demonstrated that 14 percent of the quantity of imports under Indian HTS category 7407.21.10 do not consist of brass bar. See Comment 4. DunAn states that if the record as a whole establishes that the Indian import data cannot produce accurate or reliable surrogate values for brass, the Department may value brass bar using purchase data specific to the valve industry from the surrogate financial statements of Carbac 2006 – 2007, Pyrocast 2007 – 2008, and Upadhaya 2007 – 2008, and cites Hebei Metals v. United States, 366 F. Supp. 2d 1264 (CIT 2005) ("Hebei Metals") in support.

Department's Position: It is the Department's practice to carefully consider the evidence in light of the particular facts of each industry when valuing FOPs and to value them on a case-by-case basis. See Mushrooms from the PRC 07/17/06, and accompanying Issues and Decision Memorandum at Comment 1. Accordingly, pursuant to section 773(c)(1) of the Act ("…the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country. . ."), the Department has concluded not to exclude imports of brass bar from Sri Lanka from the WTA data used to calculate the surrogate value for brass bar because there is insufficient record evidence to substantiate Petitioner's claim that these data are misrepresented. Specifically, the Department finds that the evidence submitted by Petitioner, consisting of news articles and website articles, are not the type of primary source evidence that the Department considers reliable for calling into question the validity of government import data. Accordingly, we have continued to rely on the data as obtained from WTA for valuing FOPs. Furthermore, with regard to Petitioner's contention that the verification report shows that DunAn used brass rod instead of brass bar, we continue to find, as at verification, that DunAn used brass bar, not brass rod, in the production of subject merchandise. See Comment 12f) Brass Bar and other Materials.

With regard to DunAn's alternate proposal of using the purchase data of brass bar from the surrogate financial statements of Carbac 2006 – 2007, Pyrocast 2007 – 2008, and Upadhaya 2007 – 2008, we find that the WTA data represent the best surrogate value in this case because

they are publicly available, product-specific, contemporaneous, tax exclusive, and representative of brass bar prices. See Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 44827 (August 9, 2007) ("Mushrooms from the PRC 08/09/07"), and accompanying Issues and Decision Memorandum at Comment 2. In applying the Department's SV selection criteria, the Department has found in numerous NME cases that WTA import data are reliable information for valuation purposes because they consist of publicly available import prices, are representative of prices within the POR, are product-specific and tax-exclusive. See e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 11.c. More importantly, we note that the WTA data is a broad-based market average, and is, therefore, a better indicator of Indian prices as a whole, whereas the alternative data reflects the experience of only a few individual companies. See Laminated Woven Sacks from the People's Republic of China: Final determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 35646 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

After weighing the available information on the record, the Department has concluded that the WTA data for Indian HTS category 7407.21.10 are the most specific to DunAn's brass bar input and therefore represent the most appropriate surrogate value on the record for this input. The Department found that while the Pyrocast 2007 – 2008 financial statement is considered by the Department to be contemporaneous, complete and publicly available, the financial statement shows that this company consumed brass rod, not brass bar. With regards to Carbac 2006 – 2007 and Upadhaya 2007 – 2008, the Department is not using the financial statements for these two companies for the final determination. See Comment 1: Financial Statements. While the Department used Carbac 2006 – 2007 in the Preliminary Determination, we have determined that for the final determination, Carbac 2006 – 2007 will not be used because it is not contemporaneous with the POI. Further, Upadhaya 2007 – 2008, while contemporaneous with the POI, did not contain an income statement and was determined to be incomplete, therefore, the Department has determined this statement is not reliable and will not use it for the final determination.

DunAn has mistakenly relied upon Hebei Metals to contend that the Department should use purchase data specific to the valve industry from the surrogate financial statements of Carbac, Pyrocast, and Upadhaya, rather than the WTA Indian import data, when selecting a surrogate value for brass bar. In the present case, DunAn's argument is based on using a surrogate value for valuing an input that that is derived from individual company financial statements. Hebei Metals referred to the use of a product-specific surrogate value based on Tata Energy Research Institute's Energy Data Directory & Yearbook ("TERI data"), not an individual company's financial statement, rather than the less product-specific surrogate value derived from an "all others" Indian HTS category from WTA Indian import data where there was no evidence on the record that the category included the input in question. Thus, Hebei Metals is not analogous to the situation here.

In this case, pursuant to section 773(c)(1) of the Act, we continue to find it appropriate to use values derived from Indian HTS category 7407.21.10 as the best available data because they are contemporaneous values derived from publicly available import statistics, which are representative of a range of prices throughout the POR, and specific to the input in question. Accordingly, we have made no changes to our valuation of brass bar and have used the Indian import statistics as the basis of this valuation.

Comment 6: Valuation of Valve Components Other Than Valve Cores

Petitioner argues that Indian HTS category 8481.90.90 "Taps cocks, valves, and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure reducing valves, and thermostatically controlled valves; Parts; other" is the best available and most specific valve part category for valuing valve stems, valve caps, charge ports, charge port caps, valve bodies, connection tube heads, connection tube nuts, and connection tube caps and valve charge port caps. Petitioner states that Infodrive demonstrates that this category is more specific to these inputs because it includes entries of each of them. Petitioner notes that the Department valued valve stems, valve caps, charge ports, charge port caps, valve bodies, connection tube heads, connection tube nuts, and connection tube caps and valve charge port caps using Indian HTS category 7412.20.19 "Copper Tube or Pipe Fittings; Of copper alloys: Brass: Other." The Department valued Sanhua's input of brass Connection Tube Heads and Connection Tube Caps using Indian imports under HTS 7412.20, the basket category covering all general brass fittings, "including subcategories that are definitely not brass components of valves, such as garden hose connectors and tube well strainers." Petitioner argues that this is the least accurate category for valuing FSV components.

DunAn argues that the Department should continue to value DunAn's brass valve stems and brass valve caps using Indian HTS category 7412.20.19 as it did in the Preliminary Determination, rather than Indian HTS category 8481.90.90. DunAn states that Indian HTS category 7412.20.19 is specific to pipe and tube fittings made of brass whereas Indian HTS category 8481.90.90 is not specific to brass or any other material. In addition, DunAn argues that caps should properly be classified as "pipe fittings" and cites Allegheny Bradford Corp. v. United States, 28 CIT 830, 833 (2004) ("Allegheny") ("pipe fittings come in a variety of shapes, with the following five shapes the most basic: 'elbows', 'tees', 'reducers', 'stub ends', and 'caps'") (quoting Initiation of Antidumping Duty Investigations: Certain Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea and Taiwan, 57 FR 26,645 (June 15, 1992) ("Stainless Steel Pipe from Korea and Taiwan")). DunAn does not address the valuation of Sanhua's inputs of charge ports, charge port caps, valve bodies, connection tube heads, connection tube nuts, and connection tube caps and valve charge port caps. Sanhua did not address any of the valve components.

Department's Position: It is the Department's practice to carefully consider the evidence in light of the particular facts of each industry when valuing FOPs and to value them on a case-by-case basis. See Mushrooms from the PRC 07/17/06 and accompanying Issues and Decision Memorandum at Comment 1. In accordance with section 773(c)(1) of the Act ("…the valuation

of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country. . ."), we have determined that for the Final Determination, we will continue to value valve stems, valve caps, charge ports, charge port caps, valve bodies, connection tube heads, connection tube nuts, and connection tube caps and valve charge port caps using the Indian HTS category 7412.20.19 because it is more specific to the inputs, i.e., pipe or tube fittings of brass. Further, we have determined to use the more specific Indian HTS category 7412.20.19 to value Sanhua's inputs of connection tube heads and connection tube caps rather than the general Indian HTS basket category 7412.20, covering all general brass fittings.

The record evidence is clear that all of the above inputs are composed of brass. Indian HTS category 7412.20.19 specifically covers only brass components. Record evidence shows that Indian HTS category 8481.90.90 encompasses materials other than brass. See Petition at pp. 63 and 66. Further, Indian HTS category 8481.90.90 explicitly states that it does not cover "…similar articles of other base metals (Chapters 74 to 76 or 78 to 81)." See Final FOP Memo at Attachment 3. Accordingly, we find that Indian HTS category 7412.20.19 is more specific based on the material of the components.
Indian HTS category 7412.20.19 also specifically covers tube or pipe fittings. The Department has found that the type of components at issue would fall into the HTS category that specifically covers tube or pipe fittings. See Stainless Steel Pipe from Korea and Taiwan; see also Allegheny, at 833. Petitioner provided limited and parsed Infodrive data that it claimed demonstrated that Indian HTS category 8481.90.90 is overwhelmingly composed of valve stems, valve stem caps, charge ports, charge port caps, valve bodies, connection tube heads, connection tube nuts, and connection tube caps. Record evidence, however, shows that valve stems are only 1.1 percent by value and valve caps are only 0.7 percent by value of this category. Further, our own analysis of the Infodrive data on the record, showed that the entries under Indian HTS category 8481.90.90 for charge ports, charge port caps, valve bodies, connection tube heads, connection tube nuts, and connection tube caps and valve charge port caps to be only .03 percent, .7 percent, .25 percent, .08 percent, and 0.5 percent by value of this category, respectively. We do not find these entries to be significant enough in value to conclude that valve stems, valve stem caps, charge ports, charge port caps, valve bodies, connection tube heads, connection tube nuts, and connection tube caps are more accurately valued under Indian HTS category 8481.90.90. Accordingly, pursuant to section 773(c)(1) of the Act, we find that Indian HTS category 7412.20.19 is also more specific to the type of input.

For the same reasons, we find that the inputs of brass connection tube heads and connection tube caps should also be valued using Indian imports under Indian HTS category 7412.20.19. For the Preliminary Determination we valued these inputs with a broad basket category of Indian HTS category 7412.20. However, because that category includes subcategories for items such as garden hose connectors and tube strainers, items that are less similar to the brass components at issue, we have determined that it is less specific to the input than Indian HTS category 7412.20.19.

Comment 7: Valuation of Valve Cores

Petitioner argues that the Department should use WTA data for Indian HTS category 8481.90.10, "Taps, Cocks, Valves, & Similar Appliances for Pipes, Boiler Shells, Tanks, Vats or the like, including Pressure-Reducing Valves & the Thermostatically Controlled Valves; Parts; Bicycle Valves", to value Sanhua and DunAn's inputs of valve cores as it is the most specific classification for these parts. Petitioner asserts that Indian HTS category 8481.90.10 covers the threaded check valve cores that are of the type used in subject merchandise and commonly used in bicycle tire valve stems and commonly referred to as "Schrader" type valve cores. Petitioner asserts further that Infodrive data shows that at least two entries under Indian HTS category 8481.90.10 are identified explicitly as valve cores. Further, Petitioner maintains that the Department should use the Indian HTS category 8481.90.10 because it is limited to the very few components of bicycle valves, which always include Schrader-type valves, which it claims are more similar on the component level to FSVs than other valve cores which are included in Indian HTS category 8481.90.90. Petitioner states that, therefore, the highest degree of specificity for valuing "VLVCRE" reported by DunAn and "VALCO" reported by Sanhua would be achieved by using Indian HTS category 8481.90.10.

DunAn argues that the Department should value valve cores using WTA data for Indian HTS category 8481.90.90 "Taps, Cocks, Valves, & Similar Appliances for Pipes, Boiler Shells, Tanks, Vats or the like, including Pressure-Reducing Valves & the Thermostatically Controlled Valves; Parts; Other." DunAn states that the descriptions for Indian HTS category 8481.90.10 and Indian HTS category 8481.90.90 are identical with the exception that the former is reserved exclusively for bicycle valve parts and the latter is for all uses other than bicycle valve parts and, therefore, Indian HTS category 8481.90.90 should be used since FSVs are not bicycles.

Department's Position: It is the Department's practice to carefully consider the evidence in light of the particular facts of each industry when valuing FOPs and to value them on a case-by-case basis. See Mushrooms from the PRC 07/17/06, and accompanying Issues and Decision Memorandum at Comment 1. Furthermore, in accordance with section 773(c)(1) of the Act ("…the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country. . ."), the Department has determined to value valve cores using WTA data for Indian HTS category 8481.90.90. Indian HTS category 8481.90.10 explicitly states that it covers bicycle valve parts while Indian HTS category 8481.90.90 covers valve parts other than for bicycles. We do not find Petitioner's claim that the Schrader-type valves that are used for bicycles are more similar on the component level to the valves used for FSVs than other valve cores a sufficient reason to value valve cores with a category that is explicitly reserved for bicycle valve parts. Similarly, we did not find that Infodrive data describing two Schrader valve stems in Indian HTS category 8481.90.10 compelling justification to use that HTS category.

Therefore, for the final determination, the Department will value valve cores using WTA data for Indian HTS category 8481.90.90 because this category is applicable for all valve parts other than bicycle valve parts, and more appropriately reflects the input being valued in this case.

Comment 8: Surrogate Value Source for Electricity

DunAn argues that the Department should value electricity using updated price data put on the record by DunAn from the Central Electricity Authority ("CEA") of the Government of India in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated June 2008. DunAn asserts that these data are contemporaneous with the POI and represent prices that are not below the cost of production.

Petitioner argues that while DunAn's submitted June 2008 CEA price data has an average that is more contemporaneous than that derived from the July 2006 CEA price data, used by the Department for the Preliminary Determination, the below-cost rates charged by Indian utilities remain a concern. Petitioner claims that the July 2006 and June 2008 CEA data publication of regional tariffs provide explicit proof of the distortion inherent in the rates by showing the tariff lifespan. Petitioner asserts that the Department should not use the updated June 2008 CEA price data unless it also adjusts for the values below the cost of acquisition. Petitioner supports its assertion by citing H.R. Conf. Rep. No. 100-576 (1988), at 590 (stating that "Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices").

Petitioner further argues that the Department should use the valuation methodology set forth by Petitioner in its February 3, 2009 rebuttal brief rather than the valuation methodology that was used in the Preliminary Determination, because a report published by The Energy and Resources Institute ("TERI") in May 2007, commissioned by India's Ministry of Power, concluded that the electricity rates are below the power utility's production cost and these rates are heavily supported and subsidized by the Indian government. Petitioner argues that the Department should use either (a) a rate with an increase of 30.18 percent to adjust the average applicable rate, as the official bench-mark from this report that shows that rates are, on average, 30.18 percent below cost, or (b) use the costs in the May 2007 TERI report to adjust each below-cost entry in the CEA data.

Department's Position: It is the Department's practice to carefully consider the evidence in light of the particular facts of each industry when valuing FOPs and to value them on a case-by-case basis. See Mushrooms from the PRC 07/17/06 and accompanying Issues and Decision Memorandum at Comment 1. Furthermore, in accordance with section 773(c)(1) of the Act ("…the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country. . ."), the Department has determined to continue valuing electricity using data from the CEA of the Government of India in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated July 2006, for the final determination. While the Department prefers to use pricing data that is contemporaneous with the POI in calculating surrogate values, the June 2008 CEA price data submitted by DunAn is incomplete. The June 2008 CEA rates provided by DunAn do not contain the complete industry rates, i.e., small industry at 5 KW, 10 KW, 15 KW, 50 KW; medium industry at 50 KW and 100 KW, etc., that the Department uses to calculate the surrogate value for electricity. See Prelim FOP Memo at Attachment 4: Electricity. Further, the Department must be provided with the entire source data in order to determine how the updated June 2008 CEA data is compiled and how usage rates are recorded. See Amended Final Results

of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture from the People's Republic of China, 72 FR 46957 (August 22, 2007), and accompanying Issues and Decision Memorandum ("WBF from the PRC – 08/22/2007") at Comment 15. In WBF from the PRC, the Department examined the CEA data the respondents put on the record and declined to adopt the CEA data because the Department "could not determine how the CEA data were compiled" and the "estimated average rates chart did not demonstrate how usage rates were recorded." See also Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture from the People's Republic of China, 72 FR 46957 (August 22, 2007), and accompanying Issues and Decision Memorandum ("WBF from the PRC – 08/22/2007"), and accompanying Issues and Decision Memorandum at Comment 3 (explaining that "significantly more information from the CEA, including the whole report entitled Electricity Tariff & Duty and Average Rates of Electricity Supply in India" was placed on the record of the review thereby allowing the Department to ascertain "how the data were compiled and information on the 'estimation' of these rates"). DunAn, however, provided only partial source data and limited industry data in its submission. Therefore, the Department is unable to use the June 2008 CEA data submitted on the record by DunAn in its calculation of the surrogate value for electricity.

With regards to Petitioner's argument that the electricity rates are below the CEA's production cost and that these rates are heavily supported and subsidized by the Indian government, the Department finds insufficient evidence to substantiate Petitioner's claims. Specifically, Petitioner has not submitted the complete May 2007 TERI report and without having the entire report on the record, we are unable to completely determine the relevance of the limited information Petitioner did submit.

With regards to Petitioner's argument that the Department must adjust for the subsidy distortion in electricity rates, the Department has made no finding that the Indian electricity sector received any countervailable subsidies. Further, while legislative history and recent Department determinations support the principle that we should disregard prices that we have "reason to believe or suspect may be dumped or subsidized prices," (see H.R. Rep. Conf. 100-576 at 590), we are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. See Id. Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, based on the information available to us on the record of this proceeding, we have determined that the July 2006 CEA data is the best available information on the record to value electricity.

II. Sanhua-Specific Issues

Comment 9: Whether to Apply Total Adverse Facts Available to Sanhua

Petitioner argues that the Department should apply total adverse facts available ("AFA") to Sanhua because it withheld requested information and failed to provide reliable and verifiable

information. Petitioner contends that Sanhua failed to report complete FOP data despite numerous requests by the Department in the form of multiple supplemental questionnaires. See Comment 10h: Unreported Electricity Consumption, Comment 10i: Unreported Ammonia Consumption, Comment 10j: Weight of Cardboard Cartons, and Comment 10k: Plastic Bags for Scrap. Petitioner further argues that Sanhua withheld information regarding the tolling operations it used for production, which made the reporting of raw materials consumption and scrap impossible (see Comment 10g: Scrap Offsets) and resulted in the necessity of submitting multiple "quasi" FOP databases.

Petitioner argues that Sanhua's U.S. sales database is flawed because Sanhua failed to report re-palletizing costs incurred in the United States by its U.S. affiliate (see Comment 10c: Unreported Shrink Wrap and Comment 10d: Unreported Pallet Use), and it failed to provide information to value inventory carrying costs from the time its goods arrived in its customers' warehouses until the goods were withdrawn. Petitioner alleges that these problems call into question the reliability of Sanhua's U.S. sales data. See Comment 10a: Certain Unreported U.S. Sales, Comment 10b: Certain Omitted Credit Memos, Comment 10e: Material and Exchange Rate Surcharges, and Comment 10f: Missing Sales and International Movement Expenses. Citing section 776(a) of the Act, and Nippon Steel Corp. v. United States, 337 F.3d 1373, 1381 (Fed. Cir. 2003) ("Nippon Steel"), Petitioner asserts that the Act requires the Department to resort to facts available if necessary information is not on the record, or a respondent fails to provide requested information. Citing sections 782(d) and (e) of the Act and Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite from the PRC, 74 FR 2049, 2051 (January 5, 2009) ("Graphite from the PRC") and accompanying Issues and Decision Memorandum at Comment 1, Petitioner further argues that the Department should disregard the information submitted by Sanhua and apply total AFA. Petitioner states that in Graphite from the PRC, the Department applied total AFA because the respondent failed to report fully and accurately the disposition of by-products, the consumption of FOPs, and its ability to obtain information from its tollers. Finally, citing section 776(b) of the Act, Petitioner argues that the Department should use an adverse inference in applying the facts available because Sanhua has not acted to the best of its ability to comply with the Department's requests for information.

Sanhua asserts that Petitioner's argument that Sanhua withheld information and did not provide reliable information is baseless. Sanhua contends that the multiple FOP databases submitted by Sanhua (i.e., those referred to as "quasi" databases by the Petitioner) were not proffered from an inability to provide information nor an attempt to hide information. Sanhua asserts that it proffered these multiple databases based on multiple calculation methodologies for inputs and by-products so that the Department would have full information from which to choose the reported methodology it deemed appropriate. Accordingly, Sanhua argues that the Department selected one methodology and verified that the data provided pursuant to that methodology was complete, with very minor exceptions.

Sanhua also argues that its U.S. sales database is not "significantly flawed," and refutes Petitioner's claim that Sanhua failed to report re-palleting costs is without basis in fact. Sanhua asserts that its U.S. affiliate did not incur re-palleting costs, but merely re-organized boxes on the pallets sent from the PRC, which were reported in its FOP database. Regarding inventory

carrying costs, Sanhua asserts that it used the average turnover to calculate inventory carrying costs, and this average reflected all of the time that the goods remained in the consignment warehouse. Sanhua asserts that this is an acceptable method to calculate inventory carrying costs, and Petitioner's allegation is baseless.

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

The Department has determined that the application of total AFA is not warranted because we have not reached a finding that Sanhua did not cooperate to the best of its ability to provide the the requested information by the deadlines established by the Department, and that information was verified. Although verification demonstrated that Sanhua did not report two minor production inputs prior to verification, we were able to value those inputs with information from the verification. See Comments 10h and 10i. Moreover, we conclude that, after valuing the unreported inputs found at verification, the information on the record is sufficient to serve as a reliable basis for determining dumping margins for Sanhua in this investigation.

Additionally, because Sanhua has provided the necessary information, we do not find the application of adverse inferences, pursuant to section 776(b), is warranted. Therefore, the Department will not apply total AFA to determine the final margin for Sanhua in this investigation, but will instead use the facts otherwise available pursuant to section 782(d) of the Act. In Graphite from the PRC, the Department rejected respondent Fushun Jinly's untimely and unsolicited new information consisting of substantial revisions to its FOP database, and other previously undisclosed information.[4] The Department explained that respondent's

[4] The Department noted that this new submission: "(1) revealed for the first time that it sold by-products during the POI, although it had repeatedly stated that it reused its by-products; (2) admitted for the first time that the subcontractors who performed graphitization would not provide any documents to support the FOP data they had submitted; (3) reported substantial reductions to consumption quantities for major graphitization inputs consumed by

> "untimely FOP submission contained information that the Department had repeatedly sought throughout the investigation, yet Fushun Jinly repeatedly failed to provide the requested information by the deadlines established for submitting such information. Thus, we have determined that Fushun Jinly's actions significantly impeded the proceeding. Moreover, Fushun Jinly's untimely FOP submission and subsequent related submissions demonstrated that important elements of the FOP data on the record were either inaccurate, improperly reported, and/or could not be verified. Additionally, Fushun Jinly's actions demonstrate that it failed to cooperate by not acting to the best of its ability to comply with requests from the Department. Accordingly, pursuant to sections 776(a)(2)(A), (B), (C) and (D) and 776(b) of the Act, we have used AFA in reaching our final determination with respect to Fushun Jinly."

Id.

We find Petitioner's reliance on Graphite from the PRC unpersuasive. While Sanhua's description of its tolling process was somewhat incomplete (see Comment 10g), as was its reporting of some inputs (see Comments 10h and 10i) we find, pursuant to section 782(d) of the Act, that Sanhua provided the necessary information to calculate an accurate margin. Furthermore, we were able to verify the information. Accordingly, we do not find the facts of Graphite from the PRC apply to the instant case in regards to Sanhua.

Petitioner is correct, however, in stating that Sanhua did not properly report inventory carrying costs. At verification, Sanhua notified the Department that it had discovered that it had incorrectly calculated the average number of days in inventory used to calculate inventory carrying costs. The Department verified the corrected calculation and notes here that the error was minor. See Sanhua U.S. Verification Report at 12. The Department's practice is to accept minor corrections based on our findings at verification. See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (January 13, 2006) ("Orange Juice from Brazil"), and accompanying Issues and Decision Memorandum at Comment 6. Accordingly, we directed Sanhua to submit the corrected calculation in its U.S. sales database and will use the corrected information in the margin calculation.

For a further discussion of Petitioner's allegations regarding specific deficiencies in Sanhua's U.S. sales and FOP data, see Comments 10a-10k, below. The Department incorporates the above comments into each of these comments below.

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the same subcontractors whose records could not be verified; (4) provided company records which call into question the number of subcontractors reportedly used in the graphitization process during the POI, and whether Fushun Jinly accurately and fully reported to the Department its FOP data for such a process; (5) provided production documents indicating that it could have reported the FOP data using control number (CONNUM) characteristics in addition to power level, which it had repeatedly denied it was able to do prior to the preliminary determination; and (6) reported FOP data for certain graphite electrodes and connecting pins separately, contrary to its repeated contention that it could not do so." See Graphite from the PRC 74 FR at 2051.

Comment 10: Whether to Apply Partial Adverse Facts Available to Sanhua

Petitioner argues that, if the Department does not apply total AFA to Sanhua, it should apply partial AFA in multiple instances, discussed below. Petitioner asserts that 776(b) of the Act allows the Department to apply an adverse inference if it "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." Petitioner further observes that the Federal Circuit has held that "the statutory mandate that a respondent act 'to the best of its ability' requires the respondent to do the maximum that it is able to do." See Nippon Steel, 337 F.3d at 1382.

Citing Certain Steel Nails from People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33,977 (June 6, 2008) ("Nails from the PRC"), and accompanying Issues and Decision Memorandum at Comment 20E, Petitioner asserts that the inclusion of all material inputs in the calculation of normal value is essential so that normal value is not understated. Petitioner further asserts that where a respondent fails to report the consumption of a material input and that input is found at verification, the Department will apply partial AFA to ensure that the respondent does not obtain a more favorable result by failing to cooperate than it would if it had cooperated. See Id.

Petitioner asserts that at verification the Department found previously unreported data, mistaken data, and unverifiable data which, pursuant to the above, require either the application of total AFA or partial AFA with an adverse inference.

Sanhua responds that Petitioner's arguments that the Department should apply total or partial AFA are without merit.

Department's Position: We address each issue individually, below.

Comment 10a: Certain Unreported U.S. Sales

Petitioner asserts that the constructed export price ("CEP") verification of Sanhua International revealed that Sanhua omitted certain sales from its U.S. sales database. See Sanhua U.S. Verification Report at 3. Petitioner asserts that this sales information was specifically requested in section C of the Department's Original Questionnaire dated June 30, 2007 ("Original Questionnaire"), and Sanhua had multiple opportunities to report this information during the course of the investigation. Petitioner contends that the Department should apply, as partial AFA, the higher of the initiation margin or the highest individual calculated margin of any sale to these previously unreported sales.

Sanhua contends that it did not fail to report these certain sales, and Petitioner's allegation is without merit. Sanhua asserts that it detected the missing sales and reported that fact to the Department in its November 3, 2008, Second Supplemental Response ("Second Supplemental Response") before verification. Sanhua claims that it did not include these sales in its U.S. sales database submitted in its Second Supplemental Response, because the Department's October 23,

2007, Second Supplemental Sections C and D Questionnaire ("Second Supplemental Questionnaire") specified that it could not make changes to its databases other than those directed by the supplemental questionnaire. Finally, Sanhua asserts that it presented these unreported sales as a minor correction at verification, which was accepted and verified by the Department. See Sanhua U.S. Verification Report at 3.

Department's Position: The Department has determined to include these sales in the margin calculation and not apply partial AFA to value these previously unreported sales. First, while Sanhua did not provide the details of these sales, it notified the Department of their existence in its Second Supplemental Response. Further, Sanhua presented these previously unreported sales to the Department at the outset of verification as a minor correction. See Sanhua U.S. Verification Report at 3. It is standard Department's practice to accept corrections of minor errors identified by respondents at the outset of verification. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China, 68 FR 10685 (March 6, 2003), and accompanying Issues and Decision Memorandum at Comment 51. We stated in the December 3, 2008, Verification Outline sent to Sanhua that new information will be accepted at verification under certain circumstances, such as when the information makes minor corrections to information already on the record. We determined that the previously unreported sales presented to the Department at the initiation of verification represented a correction that was minor in that they comprised a very small percentage, by quantity and value, of the total U.S. sales of subject merchandise. See Sanhua U.S. Verification Report at VE 1.

However, Sanhua's statement that it was prohibited from submitting the information in its supplemental response because the Department's supplemental questionnaire specified that it could not make changes other than those directed in the supplemental questionnaire is incorrect. Rather, the Department's supplemental questionnaire clearly instructed Sanhua not to make changes other than those requested by the Department's supplemental questionnaire without first consulting with the Department. See Second Supplemental Questionnaire at 6.

We do not find that Nails from the PRC, cited by Petitioner, has any relevance to the facts of this issue. In Nails from the PRC, the Department applied partial AFA to material inputs not reported by the respondent, but found by the Department at verification, because the Department determined that the respondent had failed to cooperate fully by not acting to the best of its ability to provide the information. Because we find that these previously unreported sales were properly presented to the Department as minor corrections, and because there is no evidence that Sanhua failed to cooperate to the best of its ability, the Department will include these sales reported as a minor correction at verification in the calculation of the margin.

Comment 10b: Certain Omitted Credit Memos

Petitioner contends that Sanhua revealed at verification that it had omitted certain credit memos from its U.S. sales database. Petitioner asserts that these credit memos must be included in the calculation of the margin.

Sanhua argues that the application of partial AFA to these credit memos would be inappropriate. Sanhua asserts that it detected the unreported credit memos and reported that fact to the Department in its Second Supplemental Response, well before verification. Sanhua states that it did not include these credit memos in its U.S. sales database because the Department's Supplemental Questionnaire specified that it could not make changes other than those directed in the supplemental questionnaire. Further, Sanhua states that it presented these unreported credit memos as a minor correction at verification, which was accepted and verified by the Department. See Sanhua U.S. Verification Report at 3.

Department's Position: The Department is including the value of these previously unreported credit memos in the margin calculation. These previously unreported credit memos were presented to the Department at the outset of verification as a minor correction. As discussed above, it is standard Department practice to accept corrections of minor errors identified by respondents at the outset of verification. See Comment 10a. We determined that the previously unreported credit memos presented to the Department at the initiation of verification represented a correction that was minor in that they comprised a very small percentage of the value of the total U.S. sales of subject merchandise. See Sanhua U.S. Verification Report at VE 1.

Because we find that these credit memos were properly presented to the Department as minor corrections, and because we do not find that Sanhua failed to cooperate by not acting to the best of its ability to provide this information, we do not find that Nails from the PRC is relevant to this issue. See Comment 10a, above.

Comment 10c: Unreported Shrink Wrap

Petitioner contends that the Department found an unreported input of shrink-wrap used to re-pack merchandise in the United States at the CEP verification. Petitioner argues that this information was specifically requested in section C of the Original Questionnaire and Sanhua had multiple opportunities to report this information during the course of the investigation. Petitioner argues that, pursuant to the statute and Nails from the PRC, the Department should apply to all subject merchandise, as partial AFA, the highest per-unit consumption rate of shrink wrap for any one model in the data examined.

Sanhua contends that it did not fail to report shrink-wrap. Sanhua asserts that it presented the data for the shrink wrap as a minor correction at verification, which was accepted and verified by the Department.

Department's Position: The Department has determined to include these data in the margin calculation and not apply partial AFA to the previously unreported input of shrink-wrap. Sanhua reported its consumption of shrink-wrap to the Department at the outset of verification as a minor correction. As discussed above, it is standard Department practice to accept corrections of minor errors identified by respondents at the outset of verification. See Comment 10a. We determined that the shrink-wrap consumption represented a correction that was minor in that it comprised a very small percentage of the cost of the subject merchandise. See Sanhua U.S. Verification Report at VE 1.

Because we find that the previously unreported input of shrink-wrap was properly presented to the Department as a minor correction, and because we do not find that Sanhua failed to cooperate by not acting to the best of its ability to provide this information, we do not find that Nails from the PRC, cited by Petitioner as precedent for applying partial AFA to unreported inputs, has any relevance to the facts of this issue. See Comment 10a, above. Accordingly, we will use the verified shrink-wrap consumption in Sanhua's margin calculation.

Comment 10d: Pallet Use

Petitioner argues that it was revealed at verification that Sanhua did not report pallets used to re-pallet the merchandise in the U.S. warehouse. Petitioner contends that because Sanhua did not report this cost, and the cost was found at verification, the Department should apply to all subject merchandise, as partial AFA, the highest reported consumption rate for pallets used by Sanhua in the PRC.

Sanhua argues that it did not consume pallets in the United States and Petitioner's allegation is without merit. Sanhua states that the Petitioner's allegation appears to be predicated on the statement in the Sanhua U.S. Verification Report that Sanhua International re-palleted subject merchandise. Sanhua asserts that this does not mean that additional pallets were consumed, but only that the subject merchandise was re-organized on the same pallets on which it was shipped to the United States.

Department's Position: The Department has determined that there is no evidence that Sanhua consumed additional pallets in its U.S. operations. At verification, the Department examined the warehouse used by Sanhua at its Ohio facility and found no indication of any pallets in addition to those on which the merchandise was shipped to the warehouse. See Sanhua U.S. Verification Report at 3. The Department also examined the accounting books and records of Sanhua International, including those showing its warehousing expenses, and saw no evidence of purchases of pallets. See Sanhua U.S. Verification Report at 12. Thus, the Department finds no evidence to indicate that Sanhua International purchased pallets for use in its U.S. operations.

Accordingly, because there is no unreported input, Nails from the PRC is not analogous to this situation, and it is necessary to apply partial AFA with respect to pallet consumption.

Comment 10e: Material and Exchange Rate Surcharges

Petitioner contends that Sanhua failed to provide documentation to support its reported POI material and exchange rate surcharges. Petitioner contends that Sanhua's narrative in its Second Supplemental Response stated that third quarter 2007 material surcharges were based on second quarter London Metal Exchange pricing, which indicates that material surcharges were retroactively based and so would be adjustments to pre-POI second quarter sales. Petitioner contends that it is possible that surcharges applied only to non-subject merchandise, and that Petitioner has found no mention of material surcharges in any of the sample documentation.

Petitioner also contends that the exchange rate surcharge documents provided in Exhibit SC2-2B of the Second CD SR indicate by their dates that the surcharge would pertain to pre-POI sales.

Petitioner further argues that Sanhua failed to support its reported surcharges at verification. Petitioner claims that Sanhua merely provided a "master list" of POI surcharges, which were only traced to monthly surcharge worksheets. See Sanhua U.S. Verification Report at 8. Petitioner argues that Sanhua never provided any explanation how surcharges were governed, determined, executed and supported, and thus the accuracy and completeness of the surcharges, the very bases for the master list, were not verified. Petitioner states that, because the surcharges were not verified, the Department should apply partial facts available and deny surcharges reported by Sanhua.

Sanhua argues that Petitioner's allegations are unsupported. Sanhua asserts that surcharges were assessed based on contractual agreements, and the amount of the surcharges assessed were the amounts paid. Sanhua contends that the Department verified the total surcharges paid, and traced them from the financial statements to monthly surcharge worksheets to sale-specific surcharge amounts. Sanhua asserts that, as both the amount of surcharge imposed and the receipt of payment for the surcharges were verified, the Department should not exclude surcharges from the margin calculation.

Department's Position: The Department has determined that Sanhua properly reported material and exchange rate surcharges. The Department examined Sanhua's reported surcharges at verification. The Department traced the reported surcharges from Sanhua's financial statements, through a master worksheet for the entire POI, through monthly worksheets, to transaction specific invoices within the POI. See Sanhua U.S. Verification Report at 8.

Further, the Department does not agree with Petitioner that the fact that third quarter 2007 material surcharges were based on second quarter pricing indicates that material surcharges were retroactively based adjustments to second period sales. Rather, this only means that third quarter surcharges were issued during the third quarter based on second quarter prices. Finally, we do not agree with Petitioner's contention that the exchange rate surcharge documents provided in Exhibit SC2-2B of the Second Supplemental Response indicate by their dates that the surcharge would pertain to pre-POI sales (i.e., April sales) because they show a base price from April. The surcharges in question are being applied to July 2007 sales. Sanhua provided the invoice for this surcharge to those July 2007 sales, which is dated August 2, 2007. Therefore, the record evidence shows that the July 2007 surcharges were invoiced immediately after the end of the month in which the merchandise was sold.

Accordingly, because there is no unreported input, Nails from the PRC is not analogous to this situation, and it is unnecessary to apply partial AFA with respect to surcharges.

Comment 10f: Missing International Movement Expenses

Petitioner asserts that Sanhua failed to report movement expenses for two invoices for sales from Sanhua to Sanhua International that it claimed were sample sales and made outside of its

"ordinary business." Petitioner contends that these sales should not be treated as sample sales because these sales were made for consideration, and it is the Department's practice not to treat a sale as a sample sale if it is made for consideration. See Final Results of Redetermination Pursuant to Court Remand, NTN Bearing Corporation of America, et. al. v. United States and The Timken Company, Slip Op. 02-07 (CIT January 24, 2002). Petitioner claims that Sanhua should have reported these sales and the costs associate with their movement expenses, and that, as AFA, the Department should apply the higher of the highest initiation margin or highest individual calculated margin to the volume of these sales.

Sanhua asserts that the sales associated with the invoices in question were fully reported in the U.S. sales database. Sanhua states that it was only the movement expenses associated with these invoices that were not reported, but that it fully disclosed the nature of the shipment method in its responses. Sanhua asserts that the Department has full data regarding these sales and can elect to treat air freight by whatever method it deems appropriate.

Department's Position: The Department has determined to value the international freight expenses associated with these two transactions using a surrogate value for air freight. The Department notes that the transactions in question were shipments from Sanhua in the PRC to its affiliate in the United States, not sales to an unaffiliated customer. Sanhua ships its merchandise to its U.S. affiliate's warehouse, or the customer's warehouse, in the United States, and then invoices the merchandise when it is withdrawn from the respective warehouse. See Sanhua's Original Section C Questionnaire Response , dated August 25, 2008 ("Section C Response"), at 27. Because Sanhua's merchandise is fungible, it does not track its specific merchandise from the PRC to the customer. Therefore, Sanhua based its international movement expenses on the total expenses incurred for shipments from the PRC to the United States during the POI. Accordingly, it is only the international movement expenses associated with the shipments from the PRC to the United States that are at issue, not the quantity and value of Sanhua's CEP sales.

Sanhua reported in its Section C Response that it had excluded the international movement expenses associated with two invoices for shipments from the PRC to the United States from its allocated international movement expenses. See Sanhua's Section C Response at Ex. C-4. Sanhua referred to these sales in its responses as "sample sales" and sales made out of its "ordinary business," and noted that the sales comprised only a small amount of the total value of the invoices for the shipments to the United States, and therefore would have no effect on the calculation of any international movement expenses. It was not until verification, however, that the Department found the exact nature of these sales. At verification, the Department found that these sales were shipped by air freight, using an NME provider. Because air freight expenses are relatively high, we find that, despite the small quantity of these sales, not valuing the air freight expense will affect the margin calculation. Therefore, for the final results, we have valued the international freight expense for the sales using a surrogate value for air freight. See Sanhua Analysis Memorandum for the Final Determination (March 6, 2009) ("Sanhua's Final Analysis Memo").

We further find, however, that the other movement expenses which are based on value (i.e., customs duties and brokerage and handling) are not affected by the omission of these sales from

their calculation due to the very small value of these sales. Accordingly, we did not re-calculate those expenses for the final determination.

Also, because there is no unreported input, Nails from the PRC is not analogous to this situation, and it is unnecessary to apply partial AFA with respect to international movement expenses.

Comment 10g: Scrap Offsets

Petitioner contends that Sanhua did not provide accurate and reliable FOP input, output and scrap offset factors. Petitioner argues that Sanhua's inability to report consumption of raw brass, semi-finished brass bodies and brass components, together with accurate brass scrap amounts, rests on its belated admission that it was co-producing the subject merchandise using a toller. Citing Graphite from the PRC at Comment 1, Petitioner contends that despite numerous opportunities provided in the questionnaire and supplemental questionnaires, Sanhua did not disclose its use of a toller in time for the Department and Petitioner to fully consider the implications, and request tolling FOPs, if necessary.

Petitioner contends that, because none of the scrap allocation methodologies provided by Sanhua are complete and accurate, the Department should disallow any byproduct offset claim, or at the least, allow only the lowest per-unit offset claimed under any single methodology. Petitioner asserts that the Department should not allow, under any circumstances, Sanhua's first reported methodology of valuing only the amount of brass equal to the net unit brass weights of the subject merchandise.

Sanhua argues that it provided actual and reliable scrap offset factors that the Department verified without any discrepancies. Sanhua contends that the Department examined three methods of allocating the scrap over subject merchandise and each method was accurate within its own parameters. Arguing that all allocation methodologies by their nature have some inaccuracies, Sanhua contends that there is no perfect representation of the actual scrap produced per-unit of merchandise; thus, the relevant question is which is best allocation methodology. Sanhua asserts that it provided all the information necessary and the question left to the Department is only how, not whether, to allocate its scrap consumption.

With respect to the FOPs associated with the tolling operation, Sanhua asserts that the Department is valuing the semi-finished valve bodies received back from its toller as a direct input, and therefore capturing all of the costs and FOPs associated with tolling the scrap into brass semi-finished valve bodies.

Department's Position: The Department has determined to allow, in part, the scrap by-product offset requested by Sanhua. It is the Department's practice to allow a by-product offset for scrap that has been generated and collected from the production of subject merchandise and re-entered into production of the subject merchandise, or sold. See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Eighth New Shipper Review, 70 FR 42034, 42037 (July 21, 2005), unchanged in Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Eighth New Shipper Review, 70 FR 60739 (October 19,

2005). In this proceeding, while not clearly articulating this, Sanhua essentially requested a byproduct offset for scrap that was converted into different products and re-used in its production. The first product, brass scrap converted into semi-finished valve bodies by a toller, is used in the production of subject merchandise. The second, brass scrap converted into brass bar by a toller is used in production of certain merchandise. However, Sanhua could not state definitively that it was used in the production of subject merchandise. The third, copper tube, is described as being recycled. However, Sanhua does not explain whether it is re-introduced into the production of subject merchandise.

It is established Department practice that the interested party that is in possession of the relevant information has the burden of establishing the amount and nature of a particular adjustment to normal value. See 19 CFR 351.401(b) and Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008), and accompanying Issues and Decision Memorandum at Comment 7. In the instant case, we find that Sanhua has substantiated the amount of scrap generated from production of subject merchandise. We further find that Sanhua has substantiated the re-introduction of its recycled brass scrap in the form of semi-finished valve bodies. However, we do not find that Sanhua substantiated the re-introduction of any materials other than those associated with the semi-finished valve bodies.

At verification, we were able to confirm the re-introduction of the tolled materials in the form of semi-finished valve bodies. We looked at inventory records showing the receipt of the semi-finished valve bodies into the semi-finished brass body inventory and the quantity of semi-finished valve bodies going into production to produce the subject merchandise. We traced these amounts through Sanhua's accounting books and records and we identified the supplier as the toller identified in Sanhua's submitted tolling contracts for semi-finished valve bodies. Specifically, we observed in the documentation that the brass scrap went out to this certain toller, and we observed in the documentation that semi-finished valve bodies came back through this certain toller. We tied these quantities to the company's underlying records and worksheets presented to confirm the reported amount of semi-finished valve bodies. See Sanhua PRC Verification Report at 25.

However, Sanhua has not met its burden of substantiating the re-introduction of materials other than the semi-finished valve bodies. As stated above, the party that is in possession of the relevant information has the burden of establishing the amount and nature of a particular adjustment to normal value. Analysis of the record evidence shows that Sanhua was not forthcoming in its reporting of its production process and by-products. In the Original Questionnaire, we ask for a complete and detailed narrative of the production process, including a diagram of the process, a technical description of each stage of the process, and "any subsidiary products generated as a result of the production of the merchandise." See The Department's Original Questionnaire at Section D.II.A.2. In its August 20, 2008, Section D response ("Section D response"), Sanhua's description of its production process, and its submitted production flow chart, Sanhua made no mention of the use of outside tollers or by-products re-introduced to production. See Section D response at 1-2 and Exhibit D-1.

In its description of raw material consumption amounts in its Section D response, Sanhua stated that "during the POI, all semi-finished valve bodies for subject merchandise were processed from the brass scrap generated," but in reference to the input of brass bar only that "brass bar from scrap might not be physically re-entered into the production of subject merchandise." See Section D response at 10-11. Additionally, Sanhua's FOP database reported net amounts of brass inputs, with by-product offsets already incorporated, rather than properly reporting total gross inputs and generated scrap separately. Further, Sanhua provided no indication of how it determined the amount of scrap used in its by-product offset claim.

In our September 10, 2007, Supplemental Section D questionnaire ("Supplemental Section D questionnaire") we solicited clearer responses regarding inputs and by-products, but Sanhua's responses continued to be less than forthcoming. We repeated our request for adequate descriptions of inputs. See Supplemental Section D questionnaire at question 6.b. In its response, Sanhua described its semi-finished valve bodies as "processed from brass scrap generated from the production by tolling manufacturer" but did not describe any other inputs as produced from scrap. See Supplemental Section D response at 8. We asked for source documentation of each input (see Supplemental Section D questionnaire at question 6.b), Sanhua provided documentation for only brass bar and copper tube. See Supplemental Section D response at 10. We requested "documentation, such as vendor agreements, invoices, etc., demonstrating how Sanhua consumed rectangular brass bar and/or round rod." See Supplemental Section D questionnaire at question 8. Sanhua responded that it only consumed rectangular brass bar, but did not provide the requested documentation. See Supplemental Section D response at 11.

We asked seven more questions, requesting that Sanhua report its inputs of brass bar, semi-finished valve bodies, and scrap generated and re-introduced into production, explain its production process, and provide supporting documentation showing that Sanhua either fully recycled or sold all brass scrap generated and collected from production of subject merchandise. See Supplemental Section D questionnaire at questions 10 -17. Sanhua did not provide answers to the majority of these requests, repeated its answers from the Section D response, and continued to report its scrap quantity as the difference between its inputs and finished product, rather than the actual amount of scrap generated and collected from production of subject merchandise. In answer to our request to provide supporting documentation of scrap re-entered into production, Sanhua submitted: (1) a ledger covering the POI showing brass scrap sent to a toller; (2) a November 2007 ledger of semi-finished valve bodies received from a toller; (3) an invoice for a tolling fee of "brass bar/rod" from a toller; and (4) an invoice for tolling fee for semi-finished valve body from a toller. See Supplemental Section D response at Exhibit SD-8. Sanhua provided no explanation of how these documents support the claim that scrap from production of subject merchandise was collected and re-entered into production.

In our October 23, 2007, Second Supplemental D questionnaire ("Second Supplemental D questionnaire"), we stated that Sanhua's description of its production process with regard to tolling operations had been inconsistent, and we directed Sanhua to provide a complete and comprehensive description of its tolling process and "provide copies of all tolling agreements in effect during the POI." See Second Supplemental Section D questionnaire at question 16. We

further stated that Sanhua had not responded to the Department's multiple requests to report the total amount of scrap generated in production and provide supporting documentation, and stated that continued failure to respond to the Department's request in this supplemental questionnaire may result in the Department not allowing a by-product offset for the final determination. See Second Supplemental Section D questionnaire at question 17. We also explained that our scrap methodology required the respondent to provide evidence of all scrap generated from production, and re-introduced to production of subject merchandise.

In response, Sanhua stated that it uses either brass bar or semi-finished valve bodies to make subject merchandise, and that the semi-finished valve bodies are produced by a toller from scrap, but Sanhua does not state how any other scrap is re-introduced to the production of subject merchandise. See Sanhua's Second Supplemental Response at 3. In response to our request to provide any and all tolling agreements in affect during the POI, Sanhua responded that it used two kinds of tolling arrangements for scrap during the POI: (1) "price approval for tolled valve body and copper tube", and (2) a "price agreement for brass rod." Sanhua submitted two price approvals for semi-finished valve bodies (one for semi-finished valve bodies for subject merchandise and one for semi-finished valve bodies for non-subject merchandise), one price approval for copper tube, and one price agreement for brass rod. See Sanhua's Second Supplemental Response at 4 and Exhibit SD2-3.

Based on all the record evidence, we have determined that the record does not support a by-product offset claim for the by-products other than the semi-finished valve bodies. The record shows that all brass bar used in production was sourced from two suppliers, neither of which is a party to any of Sanhua's submitted tolling agreements. See Sanhua's FOP Worksheets in Section D Response at Exhibit D-2 and Supplemental Section D Response at Exhibit SD-3, and price approvals in Second Section D Response at Exhibit SD2-3. Further, the sole tolling document submitted by Sanhua that refers to the tolling of brass rod specifies that the toller will process brass scrap into rods of a certain specification. Documents examined at verification, however, identify all brass bar used in production of subject merchandise as a different specification from the brass bar Sanhua uses in its production, which was also demonstrated at verification to be supplied by parties other than the previously identified toller. See Sanhua's Second Section D Supplemental Response at SD2-3, and Sanhua's PRC Verification Report at VE 7. Further, the only two inputs that Sanhua used in production of the subject merchandise produced from brass of the specification in the price approval (i.e., tolling agreement), valve caps and connection nut tubes),were also sourced from suppliers that are not parties to any of the tolling agreements submitted by Sanhua. See FOP Worksheet in Sanhua's Section D response at Exhibit D-2 and Sanhua's Supplemental Section D Response at Exhibit SD-3. Finally, all copper tube inputs reported by Sanhua were likewise sourced from suppliers other than the toller named in the submitted price approval for copper tube. See Sanhua's Supplemental Section D Response at Exhibit SD-3, and Sanhua's Second Supplemental Response at Exhibit SD2-3.

Accordingly, because we find that Sanhua substantiated the scrap generated and collected from the production of subject merchandise and re-entered into the production of subject merchandise in the form of semi-finished valve bodies, we have determined to grant the by-product offset for the amount of scrap used to produce the semi-finished valve bodies. See Sanhua's Final Analysis Memo. However, because Sanhua did not substantiate the re-introduction to production

of any of the other materials for which by-product offsets were claimed, we will not grant a by-product offset for these materials.

Comment 10h: Unreported Electricity Consumption

Petitioner asserts that the Department discovered unreported electricity consumption used to run air compressors used in the production of subject merchandise at verification. Petitioner states that, at verification, the Department requested that Sanhua report the total electricity consumed by these air compressors for the production of subject merchandise and allocate it over the weight of the subject merchandise, but that Sanhua stated it could not do this.

Petitioner asserts that the Department's standard questionnaire requires the respondent to report all FOPs, and inclusion of this input is necessary for the accurate calculation of normal value. Petitioner contends that, if the Department does not apply total AFA, it should apply partial AFA, as in Nails from the PRC. As partial AFA, Petitioner argues that the Department should apply the single highest consumption rate of electricity used for the air compressors calculated for any model of subject merchandise. Petitioner further contends that, if the Department does not apply partial AFA, it should use the method of allocating this electricity by each workshop section, as collected as verification.

Sanhua contends that the Department should use the data collected at verification to allocate the electricity consumed to run the air compressors. Sanhua notes that, although it should have reported these data in the questionnaire responses, the Department was able to collect all relevant data at verification. Sanhua contends that Petitioner is incorrect in saying that Sanhua was unable to allocate this electricity over the weight of the subject merchandise at verification, but rather Sanhua was unable to allocate the electricity over the weight of all merchandise, as requested by the Department.

Sanhua contends that the Department should allocate the electricity over each section that used the air compressors, as this would more accurately allocate the associated costs with the sections that used the air. Citing Dorbest Ltd. v. United States, 547 F. Supp. 2d 1321 (CIT 2008), Sanhua contends that the Department should not apply partial AFA to value the electricity because it has more accurate and verified data to use in the form of the data collected at verification.

Department's Position: The Department has determined to value the electricity used to run the air compressors with the data collected and substantiated at verification. See Sanhua PRC Verification Report at 19. Further, the Department has determined to allocate the verified consumption data over all workshop sections that used the compressors.

In Nails from the PRC the Department applied partial AFA to value certain material inputs because the information had not been reported and the inputs "did not fully verify within the meaning of section 776(a)(2)(D) of the Act" (allowing for the application of facts available where information has been provided but cannot be verified under section 782(i) of the Act). The Department further used an adverse inference under section 776(b) of the Act, finding that

the respondent had not put forth sufficient efforts to report this information, despite the Department's repeated, unambiguous requests.

However, in this case, the Department was able to verify the electricity usage of the air compressors and to allocate this usage over each workshop section. Since electricity usage was verifiable under section 776(a)(2)(D) of the Act, unlike in Nails from the PRC, the application of facts available is not warranted. Therefore we will value the electricity usage for the air compressors using data collected and substantiated at verification.

Comment 10i: Unreported Ammonia Consumption

Petitioner contends that the Department discovered unreported ammonia consumption at the verification of Sanhua. Petitioner argues that if the Department does not apply total AFA, it should apply to all models of subject merchandise, as facts available with an adverse inference, the highest single consumption rate found at verification for unreported ammonia gas. Petitioner contends that Sanhua was aware of the need to report ammonia gas as an input because Petitioner identified ammonia gas as an input in the Petition at 75-78, in its September 5, 2008, Comments on Sanhua's Section C and D questionnaire at 27, in its November 5, 2008, Comments on Sanhua's 2nd Supplemental Section C and D Response at 7, and because the other respondent in this investigation reported it as an input. Petitioner asserts that the Department asked for the respondent to report all inputs used in the production of subject merchandise in its standard questionnaire, and inclusion of this input is essential for calculating normal value.

Sanhua contends that it reported the use of ammonia gas its Original Section D Response. Sanhua states that it argued then, and continues to argue now, that since ammonia gas is not incorporated into the final product, it is not a material input and should be valued as part of overhead. Sanhua contends that, if the Department disagrees that ammonia gas should be part of overhead; it has data from verification to value ammonia inputs for the final.

Department Position: The Department has determined to value the ammonia gas with the data collected and substantiated at verification. Section 782(d) of the Act provides that where a response to a request for information does not comply with the request, the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. Sanhua informed the Department in its Original Section D Response that it used "some gas" in the production of the subject merchandise, but it considered it overhead and so did not report consumption quantities for this item. Because the Department did not pursue this matter and provide Sanhua an opportunity to remedy or explain the deficiency, we have determined not to apply partial AFA to value the input of ammonia gas.

In Nails from the PRC, because the respondent did not inform the Department of the existence of the inputs in question, the Department was unable to provide the respondent with an opportunity to remedy or explain the deficiency, pursuant to section 782(d) of the Act. Additionally, the Department found that it did not have verifiable information on the record to value the inputs. See Comment 10h, above. In the instant case, Sanhua informed the Department in its Original Questionnaire Response that it used an input of gas; however, we did not pursue this issue until

verification. Moreover, we have verified information on the record to value ammonia. Accordingly, we find the facts of Nails from the PRC distinguishable from the instant case.

Comment 10j: Weight of Cardboard Cartons

Petitioner asserts that the Department found at verification that the unit weight of cardboard boxes consumed by Sanhua was greater than that reported by Sanhua in its FOP database. Petitioner notes that Sanhua stated that this excess weight was due to humidity absorbed by the cardboard and that the Department then had Sanhua dry the boxes in the sun and weigh them a second time. Petitioner observes that, though this second weight was less than the first, it was still more than that reported by Sanhua. Petitioner contends that, if the Department does not apply total AFA to Sanhua, it should apply to all subject merchandise, as partial AFA, the highest "sun-dried" weight of the cartons found at verification.

Sanhua contends that the fact that the weights of several cardboard boxes were greater than that reported in its FOP database was due in large part to humidity absorbed by the cardboard. Sanhua asserts that the difference in weight is small, but that if the Department decides to re-calculate the FOPs for the cardboard cartons, it should use the weights of the dried cartons measured at verification.

Department's Position: The Department has determined to use the "sun-dried" weights recorded at verification to calculate Sanhua's FOPs for cardboard cartons. It is the Department's practice to accept minor corrections to data based on our findings at verification. See Orange Juice from Brazil, and accompanying Issues and Decision Memorandum at Comment 6. We determine that this correction to the reported data is small because the difference in the weights reported by Sanhua, and those found by the Department, was minimal.

Also, because there is no unreported input, Nails from the PRC is not analogous to this situation, and it is unnecessary to apply partial AFA with respect to cardboard carton weights.

Comment 10k: Plastic Bags for Scrap

Petitioner contends that verification revealed that Sanhua did not report consumption of plastic bags that it used to collect scrap at its factory. Petitioner contends that, because Sanhua did not report this input in its responses, the Department should apply to all subject merchandise, as partial AFA, the single highest consumption rate to value this input and to apply an offset to the reported scrap. Petitioner states that, as a surrogate value, the Department should use the surrogate value already on the record for plastic insert liners used by DunAn, or re-open the record to allow Petitioner to submit a surrogate value.

Sanhua asserts that the use of plastic bags was not a verification finding by the Department, but a reported minor correction by Sanhua at the PRC verification. Sanhua further asserts that the amount of this input is extremely small. Sanhua notes, however, that the figure of the highest

per-unit consumption weight cited by the Petitioner is incorrect. Sanhua concludes by stating that if the Department wishes to value this input it has all of the necessary data from verification.

Department's Position: The Department has determined not to apply AFA or partial AFA to this previously unreported input. The previously unreported input of plastic bags was presented to the Department at the outset of verification as a minor correction. As discussed above, it is standard Department practice to accept corrections of minor errors identified by respondents at the outset of verification. See Comment 10a. We determined that the previously unreported input of plastic bags presented to the Department at the initiation of verification represented a correction that was minor in that it comprised a very small percentage of the cost of the subject merchandise. See Sanhua PRC Verification Report at VE 1.

Further, because the reported weight of plastic bags is so small, and because the Department has determined not to allow the by-product offset for much of the scrap that the bags were used to collect (see Comment 10g), we have determined not to deduct the weight of the plastic bags from the by-product scrap adjustment allowed because it would be an insignificant adjustment. See 777A(a)(2) of the Act and 19 CFR 351.413.

We find that the previously unreported plastic bag use was properly presented to the Department as a minor correction and substantiated at verification. Therefore, the instant case is distinguishable from Nails from the PRC. See Comment 10a, above.

III. DunAn-Specific Issues

Comment 11: Whether to Apply Total Adverse Facts Available to DunAn

Petitioner argues that the Department should apply total AFA to DunAn pursuant to sections 776(a) and (b) of the Act. Petitioner asserts that DunAn failed to report complete and accurate FOP data, and that verification demonstrated numerous reporting deficiencies in both the FOP data and U.S. sales data. Petitioner further argues that the post-verification FOP database presented by DunAn reflects net material consumption weight of inputs that is lower than the reported weight of the merchandise. Petitioner addresses each of its allegations in individual comments, and argues that if the Department does not apply total AFA to DunAn, that it should apply partial AFA for each of the deficiencies identified.

DunAn argues that Petitioner's allegations are totally without merit and are unsupported by the record evidence. DunAn addresses each allegation in turn, below.

Department's Position: The Department has determined that the application of total AFA to DunAn is not warranted because DunAn provided the majority of the requested information by the deadlines established by the Department. Additionally, that information, with the exception of certain U.S. sales, was predominantly successfully verified. See Comment 9 for a discussion of section 776(a) of the Act. Although verification demonstrated that DunAn's reported U.S.

sales did not fully reconcile, we were able to isolate such information and apply partial AFA. See Comment 12c. Moreover, we conclude that after applying partial AFA to certain of DunAn's sales and a sales expense, the information on the record is sufficient to serve as a reliable basis for determining dumping margins for DunAn in this investigation. Therefore, the Department will not apply total AFA to determine the final margin for DunAn in this investigation.

We address each of the allegations raised by Petitioner as the basis for total AFA or partial AFA, and the arguments presented by DunAn, below, and provide the Department's positions. The Department incorporates the above comment into each of these comments below.

Comment 12: Whether to Apply Partial Adverse Facts Available to DunAn

Petitioner argues that if the Department determines not to apply total AFA to Sanhua, the Department should apply partial AFA pursuant to each of the comments below. We address each comment and the Sanhua's rebuttal individually, below.

Comment 12a: Affiliation with U.S. Customer

Petitioner argues that DunAn and its U.S. customer should be considered affiliates and the sales made by this customer should be the basis of DunAn's U.S. sales. Petitioner argues that DunAn is affiliated with its U.S. customer through an exclusive supplier/distributor relationship with DunAn Precision, DunAn's U.S. affiliate. Petitioner contends that DunAn Precision exists exclusively to serve it sole U.S. customer, as evidenced by the following facts: one of DunAn Precision's employees works out of the warehouse of the customer, DunAn Precision maintains four to six weeks of inventory for the customer, and DunAn Precision's general manager's duties revolve around tracking monthly usage reports from the customer and maintaining sufficient inventory.

DunAn argues that Petitioner's claim that DunAn is affiliated with its U.S. customer is unsupported by law or record evidence. DunAn asserts that affiliation is determined under section 771(33) of the Act, but observes that Petitioner fails to cite any record evidence that would satisfy these criteria. DunAn asserts that there is no cross ownership, no family relations, no sharing of directors or managers, and no other indicia of affiliation between it and its U.S. customer.

DunAn asserts that the Petitioner's sole basis for claiming that DunAn is affiliated with its customer is the assertion that DunAn Precision "exists exclusively to serve DunAn's sole customer," and argues that this claim is not supported by record evidence. DunAn asserts that the record evidence shows that (1) DunAn Precision was established to develop relationships with many U.S. customers, (2) DunAn did not make a sale to its U.S. customer until six months after the establishment of DunAn Precision, (3) DunAn Precision was established in Dallas,

while the U.S. customer is in Houston, and (4) DunAn is not an exclusive supplier to the U.S. customer.

Department's Position: The Department has determined that DunAn and its U.S. customer are not affiliated. Section 771(33) of the Act states that the following persons shall be considered to be "affiliated" or "affiliated persons": (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; (G) Any person who controls any other person and such other person. There is no record evidence that any of these conditions exist between DunAn, including DunAn Precision, DunAn's U.S. affiliate, and its U.S. customer.

In particular, we do not find DunAn and the customer to be affiliated based on control. Based on the record, the relationship between DunAn and its U.S. customer does not have the potential to affect either entity's decisions concerning the production, pricing, or cost of the subject merchandise and thus lacks the existence of a "control" requirement within the meaning of 19 CFR 351.102(b)(3). While the U.S. customer was the sole customer of the U.S. affiliate, DunAn Precision, during the POI, the record shows that DunAn, the parent company of DunAn Precision, had many other customers and sales, with the U.S. customer comprising only a small percentage of its overall sales. See DunAn PRC Verification Report at 11.

Comment 12b: Whether DunAn Reported the Wrong Date of Sale

Petitioner contends that DunAn incorrectly reported the sales invoice date as the date of sale. Petitioner asserts that the terms of sale to DunAn's customer were established by a request for quotation ("RFQ"), which Petitioner claims is essentially a requirements contract, whereby the prices for the POI were set and the customer withdrew merchandise at will. Petitioner contends that there was no price negotiation beyond this RFQ. Petitioner argues that, therefore, the date of the RFQ is the correct date of sale.

Petitioner contends that pursuant to 19 CFR 351.401(i), the Department may use a date of sale other than the sales invoice date if that date better reflects the date upon which the material terms of sale were established. Citing Final Determination of the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Thailand, 69 FR 34,122 (June 18, 2004) ("Retail Carrier Bags"), and accompanying Issues and Decision Memorandum at Comment 2, Petitioner asserts that in reviewing the terms of a sale pursuant to a reverse internet auction, the Department stated that it is appropriate to consider contract date as date of sale for requirements contracts where material terms of sale were set, including product specifications, ship-to locations, price, payment terms, and packaging. See id. Petitioner argues that the record evidence shows that DunAn's agreement with its customer established the price of goods that the customer could then withdraw from inventory at will.

Petitioner concludes that the Department should determine that DunAn failed verification with regard to date of sale and, if the Department does not apply total AFA to DunAn, it should apply as partial AFA the highest transaction margin for any individual transaction to all reported sales.

DunAn argues that it properly reported the sales invoice date as the date of sale. DunAn asserts that the Department's regulations state that the Department will normally use the date of invoice as the sales date. See 19 CFR 351.401(i). DunAn notes that, in adopting this regulation the Department specifically discussed the inherent problems in a sales agreement or supplier agreement date rather than the invoice date, because terms may change. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27348-49 (May 19, 1997) ("Final Rule"). DunAn argues that, in the instant case, the supply agreement between DunAn and its customer does not establish quantity, an essential term of sale. See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order in Part, 73 FR 79802, 79806 (December 30, 2008); 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 62465, 62467 (October 21, 2008); Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey, 65 FR 15123 (March 21, 2000) ("CRFR Steel from Turkey"), and accompanying Issues and Decisions Memorandum at Issue 2, Comment 1.

DunAn argues that Retail Carrier Bags, cited by Petitioner, is distinguishable from the instant case. DunAn contends that Retail Carrier Bags dealt with a reverse auction bid in which the party was required to accept all material terms of the contract, which included all the essential terms of sale, an exclusive sales agreement between supplier and buyer, and an established price that could only be changed based on publicly available price quotes for raw materials. DunAn argues that its supply agreement is not a binding sales contract establishing all essential sales terms, unlike the agreement in Retail Carrier Bags. See DunAn's September 22, 2008 Supplemental Response at Exhibit S1 (BPI).

Department's Position: The Department has determined that DunAn correctly reported the sales invoice date as the date of sale. See CRFR Steel from Turkey at Issue 2, Comment 1; see, also Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) ("Allied Tube"). It is the Department's normal practice to use the date of invoice as the date of sale, unless specific circumstances warrant otherwise. Specifically, pursuant to 19 CFR 351.401(i), the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, for example price and quantity. See id. The Department finds that the record evidence demonstrates that the RFQ established between DunAn and its customer, unlike the terms of the reverse internet auction in Retail Carrier Bags, does not set the essential terms of sale. In Retail Carrier Bags, all essential terms of the sale were set and the buyer was required to accept all the essential terms of the contract when it entered into it. Here, the record evidence shows that an essential term of the sale, quantity, is not set until the customer sends reports of its monthly withdrawal from inventory to DunAn at the end of each month, and DunAn confirms that quantity. See DunAn U.S. Verification Report at 5. For a further discussion addressing business proprietary information aspects of this issue, see DunAn Analysis Memorandum for the Final Determination, at Attachment 6.

Comment 12c: Whether DunAn Failed to Reconcile Quantity and Value and Completeness

Petitioner argues that DunAn failed the quantity and value, and completeness sections of the U.S. sales verification. Petitioner asserts that the monthly consumption reports discovered at verification differed significantly from the reported sales invoices for December 2007, and that DunAn failed to provide any explanation of this inconsistency. Petitioner contends that the Department should, at a minimum, apply partial AFA to the inconsistently reported sales by assigning an adverse margin based on the higher of either the highest transaction margin for any sale or the highest margin from the petition.

DunAn asserts that it properly reported quantity and value. DunAn argues that the verification report confirms that the Department was able to verify DunAn's sales data through documentation providing details of all POI sales. DunAn contends that the total value of all invoices was fully reconciled to the sales revenue amounts reported in DunAn's general ledger, financial statements and tax returns.

DunAn argues that it established at verification that the quantities recorded in its customer's December 2007 monthly consumption report were incorrect. DunAn contends that evidence submitted in Verification Exhibit 7 shows that it was physically impossible for there to be sufficient quantities of FSV's available in inventory to equal the quantity in the December 2007 monthly consumption report. DunAn further argues that a comparison of the December 2007 monthly consumption report to the reports of other months immediately preceding that month raises questions about its accuracy, as there is no other withdrawal of this magnitude for a certain model, and this alleged withdrawal exceeds usage of this model for five months of the POI.

DunAn further argues that reference to DunAn's internal inventory report is misplaced because the document is not a sales document and was not used to report sales to the Department. DunAn states that its personnel acknowledged that this document was incorrect, but that the mistake did not affect the accuracy of the reported sales data.

Department's Position: We find that the information to construct an accurate and otherwise reliable margin with respect to certain of DunAn's U.S. sales in the month of December, and the information to value inventory carrying cost ("ICC") for all sales for the months of October, November and December 2007, is not available on the record. For a comprehensive discussion of the business proprietary facts of this issue, see Memorandum to the File from Wendy J. Frankel to Edward C. Yang, "Application of Partial Adverse Facts Available for Zhejiang DunAn Precision Industries Co., Ltd., Zhejiang DunAn Hetian Metal Co., Ltd., and their U.S. subsidiary DunAn Precision Inc. in the Antidumping Investigation of Frontseating Service Valves from the People's Republic of China" (March 6, 2009) ("Partial AFA Memo").

At the U.S. verification, the Department found discrepancies in the December 2007 quantity and value submitted to the Department in DunAn's U.S. sales data. Specifically, DunAn's internal records showed significantly less sales of one model of subject merchandise, and significantly

more sales of another model, compared to its reported data. Accordingly, we find that DunAn provided information that could not be verified. See 776(a)(2) (D) of the Act.

Moreover, DunAn significantly impeded the Department's ability to conduct the proceeding by providing inaccurate data, not answering questions asked by the Department officials at verification, and withholding documents. See Partial AFA Memo at 8. Accordingly, we find that the application of facts available is warranted pursuant to section 776(a)(2)(C) of the Act. See Petroleum Wax Candles From the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review, 69 FR 77990, 77991 (December 29, 2004).

Section 782(d) of the Act provides that if a response to a request for information does not comply with the request, the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is (1) submitted by the deadline for its submission, (2) can be verified, (3) is not so incomplete that it cannot serve as a reliable basis for the applicable determination, (4) if the interested party demonstrated that it acted to the best of its ability in providing the information, and (5) the information can be used without undue difficulty.

DunAn's responses have not met the requirements for section 782 (e) of the Act, because DunAn did not submit the relevant information by the deadlines established by the Department and the information cannot be verified. Further, by withholding the information, DunAn did not act to the best of its ability in providing the information. Thus, DunAn has failed to satisfy the requirements of section 782(e) of the Act. Further, when the Department did discover the discrepant sales information, pursuant to 782(d) of the Act, it provided DunAn ample opportunity to explain the discrepancies, which DunAn failed to do. See Partial AFA Memo.

As the Department finds that necessary information is not on the record, and that DunAn significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a) (1) and (2) of the of Act, the Department finds that the use of facts otherwise available is necessary. See Comment 9 for a discussion of section 776(a) of the Act.

Once the Department determines that the use of facts available is warranted, the Department must then determine whether an adverse inference is warranted pursuant to section 776(b) of the Act, which permits the Department to apply an adverse inference if it makes the additional finding that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because the Department finds that DunAn has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying partial facts available for these sales. Due to the proprietary nature of the information related to this issue, we are unable

to discuss it further in this public memorandum. For a comprehensive discussion of this issue, see Partial AFA Memo.

The Federal Circuit has held that "the statutory mandate that a respondent act 'to the best of its ability' requires the respondent to do the maximum that it is able to do." See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003) ("Nippon Steel"). In considering this issue, the court explained that

> {a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made; i.e., under circumstances in which it is reasonable to conclude that less than full cooperation has been shown. While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element. 'Inadequate inquires' may suffice. The statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent.

Id. at 1383 (emphasis added).

We determine that, within the meaning of section 776(b) of the Act, DunAn failed to cooperate by not acting to the best of its ability to comply with the Department's request for information by not providing it with accurate and verifiable U.S. sales data, and that the application of partial AFA is therefore warranted. Without accurately reported U.S. sales for certain products for the month of December, the Department is not able to calculate a dumping margin for this merchandise. Further, without accurate inventory reports, the Department cannot calculate ICC. Accordingly, we find that necessary information is not on the record to calculate accurate margins for certain U.S. sales in the month of December, and ICC for all sales of subject valves in October, November, and December 2007.

We do not find persuasive DunAn's argument that it proved that it was physically impossible that there were sufficient quantities of FSV's available in inventory to meet the higher quantity found by the Department at verification. Due to the proprietary nature of this discussion, please, see Partial AFA Memo at 10. We also do not agree that the fact that the withdrawal in question is larger than other withdrawals on the inventory reports is evidence that the quantity is inaccurate. Again, DunAn attempts to demonstrate the accuracy of its records by pointing to the very records that could not be substantiated at verification. Further, the withdrawals on DunAn's inventory reports cover a broad range of quantity, and while the monthly withdrawal in question is the largest, we do not find that it is so much larger than the others as to be anomalous, and indicate that it is inaccurate. See Partial AFA Memo at 10. Finally, DunAn's argument that the Department should not rely on inventory records to determine the quantity of sales is misplaced. It is the Department's well documented practice to examine the records kept by respondents in the ordinary course of business to verify the accuracy of their reported data, including inventory records. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007), and accompanying Issues and Decision Memorandum at Comment 7. Further, as stated in the Department's

standard verification agenda we sent to DunAn on December 9, 2008, inventory records may be examined to verify the accuracy of the respondent's information.

Accordingly, as partial AFA for these certain U.S. sales, the Department is applying a rate of 55.62, (the rate from the initiation) which constitutes the highest rate from this proceeding. Additionally, to value ICC for sales that took place in the months of October, November or December 2007, we have selected as partial AFA the highest ICC expense calculated for any sale during the POI.

Comment 12d: Reported Weights

Petitioner argues that the reported weight of DunAn's subject merchandise is not verified. Petitioner argues that DunAn's methodology of taking the full weight of a carton of valves and dividing it by the number of valves in the carton in order to determine the gross weight of the valves provides no information as to the actual weight of the valve. Petitioner further argues that the gross weights reported by DunAn are based entirely on unsupported worksheets.

DunAn argues that the finished weights of its merchandise were verified by the Department and Petitioner's allegations are without merit. DunAn asserts that at verification the Department looked at schematics of the subject merchandise and tied them to the reported product characteristics. DunAn asserts further that the Department also performed a top-down reconciliation of reported gross packed weight to net valve weight for each model of subject merchandise, reviewed the packing reports which identify the weight of packing materials and net valve weight, and weighed each packing material.

Department's Position: The Department successfully verified the weights reported by DunAn. The Department examined the accuracy of the reported gross weight, standard weight and actual weight of the subject merchandise at verification. See DunAn PRC Verification Report at 14. We examined schematics and weighed materials at verification to confirm the accuracy of the reported weights. Further, because the reported gross weight was the weight of the merchandise plus packing materials, the Department finds DunAn's methodology of weighing the fully-packed weight of a carton of subject merchandise and dividing it by the number of valves contained in the carton to be reasonable because only one type of valve was packed in each carton. Therefore, we have used the weights provided by DunAn for the final results.

Comment 12e: Cost Reconciliation

Petitioner argues that DunAn's general ledger did not reconcile to its profit and loss statement in the cost reconciliation presented to the Department. Petitioner argues that DunAn's explanation that this was due to an auditor's adjustment to misclassified costs does not satisfactorily explain this discrepancy. See DunAn PRC Verification Report at 16. Petitioner asserts that the Department should apply an aggregate upward adjustment to reported consumption of all inputs based on the difference between the general ledger and the profit and loss statement costs.

DunAn argues that there were no discrepancies in its cost reconciliation. DunAn asserts that the Department noted that the cost of goods sold amount in the general ledger was larger than that in the financial statements, but that the Department verified that this was due to an auditor's adjustment. DunAn asserts that year-end adjustments are normal accounting procedures that occur with any accounting system.

Department's Position: The Department agrees with DunAn that we successfully verified DunAn's cost reconciliation. At verification, we examined DunAn's cost reconciliation, and we noted that the total cost of goods sold in the general ledger was larger than the cost of goods sold from the 2007 profit and loss statement. See DunAn PRC Verification Report at 16. We examined the auditor's adjustment for misclassified costs that created this difference, traced it through DunAn's accounting software, and found no evidence to support Petitioner's contention that the adjustment does not satisfactorily explain the difference between DunAn's general ledger and the profit and loss statement. Accordingly, we find that DunAn's cost reconciliation was accurate and successfully verified.

Comment 12f: Brass Bar and Other Materials

Petitioner argues that DunAn's brass inputs should be valued using a surrogate value for brass rod, not brass bar. Petitioner notes that, in one particular step of the PRC verification, the Department verified DunAn's brass inputs by identifying the brass in DunAn's books and records that was "suitable for frontseating valve production." See DunAn PRC Verification Report at 17-18. Petitioner claims that this step of the verification was "subjective" and "highly suspect." Citing at DunAn PRC Verification Report VE 11, Petitioner claims that the materials verified by the Department were not brass bar.

Petitioner also asserts that DunAn's original Section D response reported that it used brass bar and brass rod. Petitioner concludes that, accordingly, the Department should value DunAn's brass inputs using Indian HTS 7407.21.20 for rods of brass.

DunAn argues that it correctly identified and reported consumption of brass bar. DunAn asserts that the Department verified the type of brass bar used from the product specification sheets and traced this material through DunAn's books and records. DunAn further asserts that, contrary to Petitioner's claim, specifications for brass bar used to make FSVs are not subjective. Finally, DunAn asserts that every document collected at verification indicated that brass bar was used in the production of subject merchandise.

Department's Position: We find that DunAn used brass bar to produce its FSVs, not brass rod. At verification we examined accounting documents showing the brass materials sent to the workshop where FSVs were produced. See DunAn PRC Verification Report at VE 11. While verification exhibit 11 contained documents that showed that there were different types of brass inputs sent to the workshop, we were able to isolate the type of brass used to produce FSVs by examining the specification sheets for the subject merchandise and noting the type of brass needed, which was brass bar. Accordingly, we continue to value DunAn's brass input using a surrogate value for brass bar.

Comment 12g: Electricity Consumption

Petitioner asserts that the Department found an eight percent discrepancy between the consumption amount of electricity reported to the Department and the amount consumed by DunAn during the POI. Petitioner argues that the Department should adjust DunAn's electricity consumption upwards by eight percent to account for this discrepancy.

DunAn argues that it properly allocated and reported electricity consumption to the Department. DunAn asserts that at verification DunAn explained that the eight percent discrepancy between its internal meter readings and its electricity bill was due to electricity allocation to non-production purposes: administration offices, dormitories, and bicycle storage areas. DunAn states that it further explained that because there were no separate meters for these non-production areas during the POI, for purposes of reporting electricity consumption to the Department, DunAn allocated the electricity based on the readings of meters installed in these areas subsequent to the POI. DunAn asserts that it demonstrated to the Department, using these post-POI electricity bills and meter readings, that eight percent of the total electricity bill was properly allocated to these non-production areas.

Department's Position: We find that DunAn properly allocated and reported its electricity consumption, including its allocation of eight percent of total electricity consumption to the above referenced non-production areas. DunAn demonstrated at verification that the difference between its electricity bill, which covers the entire facility, and internal meter readings, which only cover production areas, was due to electricity consumed for purposes other than production. It is the Department's practice to accept reporting methodologies that are reasonable and are based on the records the respondent maintains in the normal course of business. See 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) ("FMTCs"), and accompanying Issues and Decision Memorandum at Comment 3. DunAn provided a reasonable explanation why it did not allocate the eight percent of electricity in question to production, and proposed a reasonable method of allocating the consumption based on the readings of electricity meters installed after the POI. Therefore, we are not adjusting DunAn's electricity as suggested by Petitioner.

Comment 12h: Ammonia Gas Consumption

Petitioner argues that DunAn did not properly report the consumption of ammonia gas used to produce subject merchandise. Petitioner notes that DunAn stated, at verification, that it began requesting from its supplier itemization of monthly consumption of ammonia gas used in brazing in October 2007, so that it could report consumption to the Department. Petitioner argues that, because DunAn's brazing services supplier was an affiliate, it is unacceptable that DunAn did not report actual consumption amounts for ammonia used in brazing for the entire POI. Petitioner argues that the Department should apply to all subject merchandise, as partial AFA, the highest per-unit ammonia consumption calculated for any model.

DunAn argues that it properly reported its ammonia gas consumption. DunAn notes that ammonia was the only input that was supplied by an affiliate and for which DunAn did not keep its own record of consumption, so that it had to request ammonia consumption data from its supplier. DunAn asserts that there is no indication in the verification findings that DunAn's reporting of ammonia was in any way deficient.

Department's Position: We find that DunAn properly reported consumption of ammonia and that consumption was verified successfully. It is the Department's practice to accept reporting methodologies that are reasonable and are based on the records it kept in the normal course of business. See FMTCs, and accompanying Issues and Decision Memorandum at Comment 3. At verification, DunAn provided a reasonable explanation of why it did not keep consumption records for ammonia gas in the months of July through September 2007. DunAn explained that it leased its brazing ovens, where the ammonia gas was consumed, and it paid a flat rate for the lease of the ovens and the ammonia consumed in the ovens. DunAn also proposed a reasonable method of allocating the consumption for those months, that is, based on the usage rates in a later month where DunAn did have a record of the amount of ammonia gas consumed. Because DunAn reported its ammonia gas consumption using a reasonable methodology based on the records it maintains in the normal course of business, and because the Department was able to successfully verify the information presented, we consider DunAn to have properly reported its consumption of ammonia gas.

Comment 12i: Labor Consumption

Petitioner argues that DunAn did not adequately support its reported labor consumption at verification. Petitioner notes that DunAn stated that it could not support its labor consumption with attendance sheets because it did not keep these attendance sheets in the normal course of business. Petitioner asserts that DunAn could have begun maintaining labor attendance sheets in October, at the same time it began requesting ammonia gas consumption amounts for the purposes of verification.

Petitioner argues that the Department should apply to all subject merchandise, as partial AFA, the highest per-unit labor consumption amount for any model. Additionally, Petitioner asserts that the Department should increase labor consumption to include labor of trainees, fixture administrators, and temporary laborers that were excluded from the reported labor by DunAn.

DunAn argues that it reported labor hours accurately using the documents kept in its normal course of business. DunAn asserts that it compiles hundreds of attendance sheets each month, so many that it is necessary, in its normal course of business, to summarize these attendance sheet hours into monthly summary salary worksheets. DunAn asserts that while it did not retain, and was not required to retain, the daily attendance sheets, it provided ample documentation for the Department to verify in the form of monthly summary sheets, selected daily attendance records and the full monthly payroll document listing each worker. DunAn asserts that, though it does not normally retain all attendance sheets, it kept every monthly summary sheet for every worker

and that the Department tied all of the hours reported to DunAn's accounting payroll system and through to the salary sub ledger and general ledger.

Department's Position: We have determined that DunAn adequately supported its reported labor consumption at verification. The Department cannot demand that a respondent provide documentary evidence that it does not have. See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007), and accompanying Issues and Decision Memorandum at Comment 14. DunAn explained that, in its normal course of business, it does not retain the daily attendance sheets. DunAn explained that it summarizes the information from the daily attendance sheets onto individual salary reports, which are further summarized on monthly summary sheets. We traced the labor hours reflected on the individual salary report through DunAn's books and records to its general ledger and we noted no discrepancies. Therefore, we have accepted DunAn's reported labor consumption.

Comment 12j: By-Product Offset for Brass Scrap

DunAn argues that, for the final determination, the Department should grant DunAn's by-product offset for scrap sold and brass scrap recycled into brass bar and re-introduced into the production of subject merchandise. DunAn notes that the Department denied DunAn's by-product offset for the preliminary determination due to discrepancies in the reported FOP data. DunAn asserts that these discrepancies have been resolved and that verification demonstrated that brass scrap is collected from and re-introduced into production. DunAn asserts that it is the Department's policy to apply an offset to the cost of manufacturing when a respondent has substantiated and quantified the amounts of scrap recycled into production. See Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 37051 (June 29, 2006), and accompanying Issues and Decision Memorandum at Comment 4 and Saccharin from the People's Republic of China: Preliminary Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 25247 (May 4, 2007).

Petitioner argues that DunAn has not supported its claimed by-product offset for brass scrap. Petitioner asserts that the "scrap recording vouchers" used to confirm scrap amounts at verification are not an indicator of scrap recovered and re-introduced to production because they indicate that the amount of brass bar returned is not always the same as the amount of brass scrap sent out to the toller.

Petitioner further asserts that the Department disallowed DunAn's brass bar scrap offset at the Preliminary Determination because DunAn's net FOPs, after the deduction of scrap, were insufficient to account for the reported weight of the finished products, and that DunAn continues to report material quantities lower than the total weight of a finished product. Citing Pineapple from Thailand, Petitioner asserts that the fact that FOPs are insufficient to account for the weight of the merchandise shows that DunAn's by-product offset calculation is inherently flawed, and the Department should determine that DunAn failed the domestic verification with respect to its by-product offset. See Final Results of the Antidumping Duty Administrative

Review: Canned Pineapple Fruit from Thailand, (November 10, 2003) ("Pineapple from Thailand") and accompanying Issues and Decision Memorandum at Comment 20c. Petitioner contends that if the Department does not apply total AFA to DunAn, it should, as partial AFA, either disallow any claimed by-product offset for scrap, or apply to all models the lowest per-unit scrap amount reported for any model.

DunAn argues that Petitioner misconstrues the facts by stating that the verification showed that the amount of brass bar returned is not the same as the amount sent out to the toller. DunAn asserts that while the discrete amounts of brass scrap sent out may be different from the quantities of bar returned due to timing, the overall quantity of scrap sent out and bar returned is roughly the same. DunAn asserts that the Department verified the actual quantity of scrap sent to the toller and the actual amounts of bar returned. See DunAn PRC Verification Report at 24.

Department's Position: The Department has determined to allow, in part, the by-product offset claimed by DunAn for brass scrap. It is the Department's practice to accept allocation methodologies that are shown to be reasonable. See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) ("Lined Paper Products from the PRC"), and accompanying Issues and Decision Memorandum at Comment 22 and Brake Rotors From the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 65 FR 64664 (October 30, 2000), and accompanying Issues and Decision Memorandum at Comment 5. The fact that an allocation, by necessity, attributes more or less of the material allocated to each product than the product actually uses does not render the allocation methodology unreasonable. See Lined Paper Products from the PRC at Comment 22.

In Lined Paper Products from the PRC, the respondent's allocation methodology allocated more labor hours to some materials, and less labor hours to others, than was actually experienced in the production of the products. The Department examined the books and records of the respondent to determine if it was feasible to allocate labor on a more product-specific basis, and found that it was not. The Department then examined the data to determine if the allocation caused distortions. The Department determined that the allocation did not cause distortions because it did not result in a pattern of underreporting across products. See id.

We have determined, based on our analysis of the record, that DunAn's allocation methodology is reasonable. DunAn allocated its brass scrap by taking the total actual amount of brass scrap generated and collected in those workshops that produce subject merchandise (these workshops also produce non-subject merchandise) and dividing it by the total standard amount of scrap expected to be generated in the production of all merchandise in those workshops, to derive a variance of between the actual and standard scrap values. DunAn then applied this variance to the per-unit standard amount of scrap of each model of subject merchandise to allocate the scrap to the subject merchandise as specifically as possible. At verification, DunAn supported its total amount of actual scrap generated, collected and re-introduced into the production of the subject merchandise, with its books and records. DunAn also supported the accuracy of the standards used to calculate the standard amount of scrap with its bills of materials kept in the normal course of business. See DunAn PRC Verification Report at 17 and 24.

Based on the record and our observations at verification, we find that it is not feasible for DunAn to report its brass scrap on a product-specific basis. At verification, we toured DunAn's factory and saw that the subject merchandise was made in certain workshops along with non-subject merchandise. We observed that the scrap from the production of both subject and non-subject merchandise was collected and sent to a warehouse. We examined DunAn's books and records that recorded the scrap amounts generated in production at the relevant warehouses, and noted that it did not track whether the scrap was generated in the production of subject or non-subject merchandise. See DunAn Verification Report at 9 and 24. Accordingly, based on our observations of DunAn's production process and bookkeeping, we find that the company does not maintain product-specific scrap records.

Furthermore, we have determined that DunAn's allocation methodology is not distortive. For the preliminary determination, we denied DunAn's claimed by-product offset for scrap, in part because the weight of the reported FOPs, once the by-product scrap offset was deducted (i.e., the net FOPs), was less than the weight of the finished products. See Preliminary Determination, 73 FR at 62957. However, DunAn identified errors in its bookkeeping (see Third Supplemental Response at 3-4) and a mathematical error (see Minor Correction 2 of the DunAn PRC Verification Report) that it claimed caused this discrepancy. DunAn's most recent database, incorporating changes pursuant to the errors, above, now reports net FOPs slightly less than the weight of the products for two models, and slightly more than the weight of the product for the rest of the models. The total net FOPs for all products, however, are now greater than the total weight of all products. Accordingly, we find that there is no longer a pattern of underreporting across products. Furthermore, because we do not find that Dunan's by-product methodology is inherently flawed, we do not find that we should apply partial AFA to DunAn pursuant to Pineapples from Thailand.

We disagree with Petitioner that the "scrap recording vouchers" used to confirm DunAn's recycled scrap are unreliable, and that the amount of scrap sent to the toller and returned from the toller as brass bar was not substantiated at verification. At verification we examined the total amounts of brass scrap sent to the toller, and the amounts of recycled brass bar received back from the toller and re-entered into production of subject merchandise. We examined the scrap recording vouchers showing the amounts of scrap collected from the workshops where subject merchandise was produced. We traced these amounts through DunAn's books and records to the general ledger. We examined vouchers showing the amounts of scrap sent to the toller each month, and the materials received back from the tollers. We also traced these amounts through DunAn's books and records to the general ledger. While the amounts of material sent out and received back each month may have varied, the overall quantity for the entire POI was very similar. DunAn provided a reasonable explanation that the monthly discrepancy was due to a timing difference in transferring the scrap to the toller for processing, i.e., scrap collected and moved into the warehouse at the very end of the month may be included in warehouse inventory records, but not included on the accounting records of scrap sent out to the toller until the next month.

Accordingly, we determine to accept, in part, DunAn's by-product allocation methodology because it is on the whole reasonable, it is not feasible for DunAn to report scrap on a more product-specific basis, and the allocation is not overly distortive. However, because it is the

Department's practice not to accept inputs insufficient to produce the merchandise (see Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 69546 (December 1, 2006) we will nonetheless reduce the amount of the by-product offset for the two models for which the net FOPs weigh less than the weight of the finished products, so that their net FOPs equal the actual weight of the finished products.

Comment 13: Weight of Pallets Consumed

DunAn argues that the Department did not use the actual pallet weight reported by DunAn when it converted the surrogate value for pallets from a per-piece basis to a per-gram basis. DunAn states that it calculated its consumption of pallets in pieces and then converted that amount to grams for reporting purposes by using the actual weight of its pallets: 12,500 grams/pallet. See DunAn's Section D Questionnaire Response dated August 13, 2009, ("DunAn's Section D Questionnaire Response") at page 21 and Exhibit D-9, page 1. DunAn argues that the Department should revise its surrogate value calculation for DunAn's pallets in the final determination by using the actual pallet weight of 12,500 grams reported by DunAn.

Petitioner argues that the Department's use of a 7.5 kilogram pallet weight was recognized as a standard weight for a normal pallet. Petitioner asserts that the Department calculated a per-gram value using this standard weight, and it should apply that per-gram value to DunAn's pallets. Petitioner further argues that DunAn's argument should be rejected for the final determination and the Department should continue to use the standard per-piece value and apply that to DunAn's reported factor consumption for wood pallets.

Department's Position: The Department will value DunAn's pallet consumption based on the weight reported in DunAn's Section D Questionnaire Response of 12,500 grams for the final determination. The surrogate value for pallets used by the Department (Indian HTS category 4415.20.00) is reported in pieces and does not specify the weight of the pallets. Therefore, because the Department prefers to be as specific as possible in the surrogate valuation of reported inputs, the Department will use the actual weight of DunAn's pallets to convert the surrogate value.

RECOMMENDATION:

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

AGREE_____ DISAGREE_____

_____
Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____
Date