A-570-886
POR: 01/26/2004-07/31/2005
Public Document
IA/08: WMQ/LRL

March 12, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2004-2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the first administrative review of the antidumping duty order on polyethylene retail carrier bags ("PRCBs") from the People's Republic of China ("PRC"). The period of review ("POR") covers January 26, 2004, through July 31, 2005. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and ministerial errors, to the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. We have provided a complete list of the issues raised in the case and rebuttal briefs.

Abbreviations used in this memorandum:

The PRCB Committee	Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC and Superbag Corp. (petitioners in the underlying investigation)
Crown	Crown Polyethylene Products (International) Ltd.
High Den	High Den Enterprises, Ltd.
Nozawa	Dongguan Nozawa Plastic Products Co., Ltd. ("NPP"), United Power Packaging Ltd. ("UPP"), Kal Pac Corporation ("Kal Pac"), and Packaging Solutions Inc. ("PSI")

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BACKGROUND

On September 28, 2005, the Department of Commerce ("the Department") initiated this administrative review with respect to Nozawa, Crown, Rally Plastics Co., Ltd. ("Rally"), Sea Lake Polyethylene Enterprise Ltd. ("Sea Lake"), Shanghai Glopack, Inc. ("Glopack"), High Den, and Shanghai New Ai Lian Import & Export Co., Ltd. ("New Ai Lian").[1] On October 25, 2005, the Department amended its initiation to include Ampac Packaging (Nanjing) Co. ("Ampac"), which was inadvertently omitted from the September 28, 2005, initiation notice.[2]

On November 16, 2005, New Ai Lian withdrew its request for an administrative review. On November 22, 2005, Rally withdrew its request for an administrative review. On December 27, 2005, Sea Lake and Glopack withdrew their requests for an administrative review. On February 23, 2006, Ampac withdrew its request for an administrative review.

On September 13, 2006, the Department published the preliminary results in the *Federal Register*.[3] On October 20, 2006, High Den submitted its Third Supplemental Questionnaire Response ("3rd SQR"). On October 26, 2006, the PRCB Committee, Crown, High Den, and Nozawa submitted case briefs and, on November 6, 2006, rebuttal briefs.

On January 10, 2007, the Department determined that it was not practicable to complete the final results of the administrative review of PRCBs from the PRC within the 120-day period due to complex issues the parties have raised regarding the selection of appropriate financial statements for the calculation of surrogate financial ratios. Therefore, in accordance with section

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 70 FR 56631, 56632 (September 28, 2005) ("*Initiation Notice*"), which refers to Nozawa with the following names: Dongguan Nozawa Plastics and United Power Packaging (collectively "Nozawa"), Dongguan Nozawa Plastics, Dongguan Nozawa Plastic Co., Ltd., Dong Guan (Dong Wan) Nozawa Plastic Co., Ltd., Dongguan Nozawa Plastic Products Co., Ltd., United Power Packaging, United Power Packaging Limited, United Power Packaging Ltd.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 61601 (October 25, 2005).

[3] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 54021 (September 13, 2006) ("*Preliminary Results*").

751(a)(3)(A) of the Act, the Department extended the time period for completion of the final results until February 12, 2007.[4]

On February 2, 2007, the Department published the revised "Expected NME Wages" applicable to 2004 on its website.[5] On February 2, 2007, the Department informed all interested parties of the revised non-market economy ("NME") wage rate applicable to this review and gave the parties the opportunity to comment on this issue prior to the final results.[6] In order to give parties an opportunity to comment on the Department's revised calculations of expected NME wages, the Department extended the deadline to complete the final results to February 26, 2007.[7] We extended the deadline to complete the final results due to complex issues related to the calculation of surrogate financial ratios to March 12, 2007.[8]

No party provided comments on this issue. Thus, we calculated the surrogate value for labor using the Department's revised expected NME wage rate of $0.83 for the PRC.

CHANGES FROM THE PRELIMINARY RESULTS

Surrogate Financial Ratios

- We excluded Arvind Chemi Synthetics Pvt., Ltd. ("Arvind") and Jain Raffia Industries, Ltd. ("Jain Raffia") from the companies used to calculate the surrogate financial ratios because they did not produce merchandise that was identical or comparable to the subject merchandise. *See* Comment 1 of this memorandum.

- Of the seven surrogate financial statements provided by the PRCB Committee in its October 3, 2006, surrogate value submission, we based our determination of the surrogate financial ratios on the financial statements of: A.P. Polyplast Private Limited ("A.P. Polyplast"), Kuloday Technopack Pvt. Ltd. ("Kuloday"), Sangeeta Poly Pack Limited ("Sangeeta"), Smitabh Intercon Ltd. ("Smitabh"), Synthetic Packers Pvt. Ltd. ("Synthetic") and Tims Polymers Pvt. Ltd ("Tims"). *See* Comment 2 of this memorandum.

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[4] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 1216 (January 10, 2007).

[5] *See* http://ia.ita.doc.gov/wages/index.html.

[6] *See* Memorandum from Matthew Quigley, International Trade Compliance Analyst, Through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, To The File, "Polyethylene Retail Carrier Bags from the People's Republic of China: Request for Comments on Revised Expected Non-Market Economy Wages" (February 2, 2007).

[7] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 7417 (February15, 2007).

[8] *See Polyethylene Retail Carrier Bags from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 9731 (March 5, 2007).

- We made the following changes to the calculations of the surrogate financial ratios provided in the PRCB Committee's case brief:

    a. We did not allocate "salary and wages" between labor and SG&A based upon industry-wide information published by the Indian government. Rather, we classified "salary and wages" in a manner consistent with each of the surrogate company's audited financial statements. *See* Comment 3a of this memorandum.

    b. We classified "salaries" as SG&A and "wages" as direct labor for A.P. Polyplast. *See* Comment 3b of this memorandum.

    c. We classified "consumable stores" for A.P. Polyplast and Sangeeta as an overhead expense. *See* Comment 3c of this memorandum.

    d. We offset SG&A by the amount of short-term interest reported on Sangeeta's, Smitabh's and Tims' financial statements. *See* Comment 3g of this memorandum.

    e. We decreased material cost by the amount of the increase of stock-in-process for Sangeeta, Smitabh and Tims. *See* Comment 3i of this memorandum.

    f. We did not adjust the audited financial statements for unacknowledged accruals for leave encashment and employee gratuity for A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims. *See* Comment 3j of this memorandum.

    g. We offset SG&A by foreign exchange gains and losses for Kuloday, Smitabh and Tims. *See* Comment 3k of this memorandum.

    h. We did not adjust the audited financial statements for subsidies for Smitabh and Tims. *See* Comment 3l of this memorandum.

Change in the Expected Wage Rates for NME Countries

- We calculated the surrogate value for labor for Nozawa, Crown and High Den using the Department's revised expected NME wage rate of $0.83 for the PRC.

Nozawa

- We applied AFA to those sales of Nozawa where the corresponding CONNUM in the U.S. sales database was not based on the product's physical characteristics (*e.g.*, those sales lacking factors of production ("FOP") data) rather than to all sales whose corresponding CONNUMs matched to more than one set of physical characteristics. *See* Comment 4b of this memorandum.

- We made no inland freight adjustment to Nozawa's ME material input purchases which Nozawa reported as delivered prices. *See* Comment 7 of this memorandum.

- We adjusted U.S. prices for further manufacturing costs on a transaction-specific basis rather than a CONNUM-specific basis, thereby limiting the adjustment only to sales of product further manufactured in the United States. *See* Comment 8 of this memorandum.

- We treated Nozawa's export price ("EP") sales as though the entered values were unknown and calculated a per-unit assessment rather than an *ad valorem* assessment rate for Nozawa's EP sales. We based these changes on Nozawa's December 23, 2005, original section C questionnaire response, which in response to field 47.0 states that the entered values of Nozawa's EP sales are unknown.[9]

Crown

- We corrected the ministerial error in the SAS program representing the value of ME freight for four transactions. *See* Comment 9 of this memorandum.

- We valued paper cardboard using the value of harmonized tariff schedule ("HTS") number 4819.10.10. *See* Comment 12 of this memorandum.

High Den

- We recalculated High Den's antidumping duty without regard to international freight. *See* Comment 14 of this memorandum.

- We deducted from the starting price handling charges that were recorded on the commercial invoices of the U.S. sales, but were not reported in the section C databases. *See* Comment 14 of this memorandum.

- We recalculated the value of High Den's ME purchases of polyethylene resins, correcting the ministerial errors contained in the Excel chart. *See* Comment 15 of this memorandum.

[9] *See* Memorandum to the file through Charles Riggle, Program Manager, AD/CVD Operations Office 8, from Matthew Quigley, International Trade Compliance Analyst, "Analysis for the Final Results of the 2004-2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Dongguan Nozawa Plastic Products Co. Ltd. and United Power Packaging Ltd. (collectively "Nozawa") (March 12, 2007) at 6.

COMMENTS WITH RESPECT TO SURROGATE FINANCIAL RATIOS

Comment 1: Exclude Arvind and Jain Raffia from the Calculation of the Surrogate Financial Ratios

The PRCB Committee argues that the Department should not use the audited financial statements of Arvind and Jain Raffia to determine the surrogate financial ratios because neither company produces products that are either identical or comparable to the subject merchandise. The PRCB Committee contends that in the *Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China*, 69 FR 34125 (June 18, 2004) ("*PRCB Final Determination*"), and accompanying Issues and Decision Memorandum at Comment 2, the Department stated that it will only use financial statements of companies that produce merchandise that is, at the very least, similar to the subject merchandise in calculating the surrogate financial ratios.

According to the PRCB Committee, Arvind manufactures only high-density polyethylene and polypropylene woven sacks, tarpaulins, fabrics, and sand bags, and that Jain Raffia manufactures only woven sacks and fabrics. Thus, the PRCB Committee argues that neither company produces blown-film polyethylene bags, which are identical to the subject merchandise. Further, the PRCB Committee claims that neither company uses the blown-film manufacturing processes used by PRCB manufacturers to produce any type of blown-film bag that would be similar to the subject merchandise.

The PRCB Committee also argues that Arvind's manufacturing processes and cost experience are not representative of the experience of producers of the subject merchandise. Although the PRCB Committee did not address Jain Raffia's manufacturing processes or overhead experience in detail, it also argues that because Jain Raffia produces woven, rather than blown-film extrusion products, its manufacturing processes and cost experience are also not representative of producers of the subject merchandise.

Finally, the PRCB Committee states that the Department should not use the financial statements of Arvind and Jain Raffia because there are numerous other financial statements on the record for companies that produce merchandise identical to the subject merchandise.

Nozawa argues that the Department should not exclude Arvind and Jain Raffia from the surrogate financial ratio calculations. Nozawa asserts that in the original investigation, the Department recognized that the record only contained financial statements of producers of similar, not identical, merchandise, and that the Department should recognize that the same situation exists in the instant review.

Nozawa also argues that the PRCB Committee has not demonstrated that any of the different products produced by Arvind and Jain Raffia would result in a surrogate financial ratio that would not be representative of an NME producer. Nozawa argues that although the PRCB Committee alleged that the machinery and manufacturing processes for producing woven goods

are completely different from those used to produce subject merchandise, Nozawa also asserts that the PRCB Committee did not address whether the companies which produce woven bags, rather than extruded bags, would have higher, lower, or identical overhead and SG&A expense ratios.

Nozawa concludes that only producers of similar merchandise are being included in the group of financial statements to be used to calculate surrogate financial ratios, and Arvind and Jain Raffia have not been shown to be unrepresentative of NME producers.

Department's Position: Section 773(c)(1)(B) of the Tariff Act of 1930, as amended, ("the Act") requires the Department to value the FOPs "on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." Section 351.408(c)(4) of the Department's regulations further stipulates that the Department will value MOH, general expenses, and profit using "nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country."

Normally, it is the Department's practice in NME proceedings to use, whenever possible, surrogate-country producers of identical merchandise for surrogate-value data, provided that the surrogate data are not distorted or otherwise unreliable.[10] The Department's criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.[11] The Department also has an established practice of rejecting financial statements of surrogate producers whose production process is not comparable to the respondent's production process.[12]

We used the financial statements of Arvind and Jain Raffia in the *Preliminary Results* because Nozawa provided the statements stating that they were producers of identical or comparable merchandise, and pursuant to section 773(c)(1)(B) of the Act these financial statements

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[10] *See* 19 CFR 351.408(c)(4). *See also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) ("*Persulfates"),* and accompanying Issues and Decision Memorandum at Comment 1*; Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3; *Heavy Forged Hand Tools From the People's Republic of China: Final Results of New Shipper Administrative Review*, 66 FR 54503 (October 29, 2001), 66 FR 54503 (October 29, 2001), and accompanying Issues and Decision Memorandum at Comment 18.

[11] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997 (December 8, 2004), and accompanying Issues and Decision Memorandum at Comment 9F.

[12] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183, 22193 (May 3, 2001); ((unchanged in the final determination) *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China,* 66 FR 49632 (September 28, 2001)), where the Department rejected the surrogate financial statements of a producer because "its financial information would be less comparable to that of the respondents."

constituted the best available information then on the record with which to calculate surrogate financial ratios.[13] However, the PRCB Committee submitted information on the record demonstrating that Arvind and Jain Raffia produce either high-density polyethylene and polypropylene woven sacks, tarpaulins, fabrics, and sand bags and/or woven sacks and fabrics which do not have the same physical characteristics or uses as PRCBs, and thus, do not represent merchandise that is identical or comparable to the subject merchandise.[14] The PRCB Committee also explained that Arvind's and Jain Raffia's production process consists of producing polyethylene and polypropylene filaments, twisting the filaments into yarn, weaving the yarn into fabric, and cutting and sewing the fabric into bags, tarps, or other products. In contrast, the PRCB manufacturers' process consists of blowing polyethylene film into large tubes of polyethylene that are spooled into rolls, called "blown-film extrusion." Thus, Arvind's and Jain Raffia's production process is not comparable to that of the producers of the subject merchandise. As a result, we have determined not to include their financial statements among the companies used to determine the surrogate financial ratios for the final results.

Comment 2: Determine the Surrogate Financial Ratios Based on the Seven Financial Statements Provided by the PRCB Committee

The PRCB Committee contends that, in its surrogate value submission of October 3, 2006, it submitted financial statements for seven additional significant producers in India of merchandise that is identical or comparable to the subject merchandise: Nova Plast Industries Pvt. Ltd. ("Nova Plast"), Carry Print (i) Pvt. Ltd. ("Carry Print"), Priti Plastics Pvt. Ltd. ("Priti"), Sangeeta, Smitabh, Synthetic, and Tims. The PRCB Committee argues that the Department should use the audited financial statements of these companies to determine the surrogate financial ratios for the following reasons: 1) Priti, Sangeeta and Nova Plast produce merchandise that is both identical and similar to the subject merchandise; 2) Synthetic produces merchandise that is either identical or comparable to the subject merchandise; 3) Smitabh and Tims produce merchandise that is similar to the subject merchandise, as explained in the *PRCB Final Determination* at Comment 2; and 4) Carry Print's fixed assets schedule indicates that it is a producer of "flexible packaging" material, rather than a trading company. Therefore, the PRCB Committee argues that the Department should include Carry Print's financial statements in the group of companies used to determine the surrogate financial ratios if it continues to include the financial statements of Arvind and Jain Raffia, which the PRCB Committee maintains, do not produce either identical or comparable merchandise.

Nozawa argues that it is difficult from the limited information available to determine whether any of the proposed surrogate companies produces identical merchandise. Nozawa asserts that the financial statements and website pages do not provide enough information to determine whether the bags are only for packaging and carrying merchandise from retail establishments.

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[13] *See* the cover page of the letter from Nozawa, "Polyethylene Retail Carrier Bags from the People's Republic of China," (July 26, 2006) ("Nozawa's Surrogate Value Submission").

[14] *See* letter from the PRCB Committee, "Polyethylene Retail Carrier Bags from China: Submission of Rebuttal Factual Information" (August 7, 2006), at Exhibits 1 and 2.

For example, Nozawa submits that the website for Smitabh, which was selected as a producer of similar merchandise in the original investigation, identifies a broad range of bags including polypropylene ("PP") raffia, PP woven sacks/bags – printed and laminated – and its financial statements only indicate that it produced high-density polyethylene ("HDPE") bags. Nozawa argues that the PRCB Committee acknowledged on page 5 of its case brief that Arvind, like Smitabh, produces both HDPE and PP woven sacks. Nozawa, therefore, argues that, to the extent that Smitabh is considered a producer of similar merchandise, Arvind should also be considered a producer of similar merchandise.

Nozawa and Crown both assert that the Department should not use the financial statements of Nova Plast and Carry Print because these two companies rely on job work as a major source of income. As a result, Nozawa and Crown contend, the financial ratios would be distortive and not representative.

Nozawa and Crown argue that Nova Plast's profit and loss statement, submitted in the PRCB Committee's October 3, 2006, submission at Exhibit 3, clearly indicates that in the year ending March 31, 2005, Nova Plast's income was predominantly sourced from "job work," as opposed to "sales" or "other income." Nozawa further contends that Nova Plast's enormous decrease in raw material costs, from 10,993,770 Rs. in 2005 to 324,107 Rs. in 2004, resulted from its change from a manufacturer that produces merchandise from purchased raw materials to a toll processor that relies on revenue from job work.

Nozawa further asserts that section 351.401(h) of the Department's regulations prevents toll producers from being considered a manufacturer:

> Treatment of subcontractors ("tolling" operations). The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale, of the subject merchandise or foreign like product.

Since job-work processors do not own the raw materials that they process, Crown and Nozawa also argue that Nova Plast's and Carry Print's financial statements do not reflect the value of the raw materials consumed and/or processed. Thus, Crown and Nozawa maintain, the raw material consumption costs reported in Nova Plast's income statement do not reflect the raw materials that it processes. Crown and Nozawa further argue that, because Nova Plast's overhead and SG&A expenses are predominately the result of job-work processing, the resulting overhead and SG&A ratio as a percentage of the raw materials it owned and consumed would not be reflective of the expenses of manufacturers, such as Crown and Nozawa, which both own and process their own raw materials.

Nozawa argues further that Carry Print should not be included in the surrogate-financial-ratio calculation because there is insufficient information to determine whether Carry Print produces products similar to the subject merchandise. Nozawa argues, in agreement with the PRCB

Committee, that the only information about Carry Print's production on its website, www.flexpack.org, is that it produces "flexible packaging" material, which is quite broad. Nozawa alleges that the PRCB Committee has relied on the name, Carry Print, to determine that it produces printed carrier bags. Nozawa argues that, unlike Arvind and Jain Raffia, Carry Print does not identify anything that suggests it is producing subject merchandise.

Neither Nozawa nor Crown identified any other companies that should be specifically excluded from the calculation of the surrogate financial ratios.

The PRCB Committee replies that the Department should utilize the financial statements of Nova Plast because the revenue items relating to Nova Plast's "job work" can be excluded from the surrogate financial calculations. The PRCB Committee, however, adds that if the Department agrees with Nozawa and determines not to use the financial statements of Nova Plast for this reason, it should also exclude the financial statements of Arvind and Jain Raffia because these companies, like Nova Plast, reported substantial revenues and expenses from "job work."

Department's Position: When selecting surrogate producer financial statements for the purpose of deriving surrogate value ratios, the Department's preference is to use, where possible, the financial data of surrogate producers of identical merchandise, provided that the surrogate value data are not distorted or otherwise unreliable.[15] In the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producers' experience.[16] The Courts have held that: that the Department is neither required to "duplicate the exact production experience of the Chinese manufacturers,"[17] nor undergo "an item-by-item analysis in calculating factory overhead."[18]

After examining the audited financial statements of A.P. Polyplast, Kuloday, Nova Plast, Carry Print, Priti, Sangeeta, Smitabh, Synthetic and Tims, we have determined not to use the financial statements of Nova Plast and Carry Print because they represent tolling operations, and therefore, do not approximate the Chinese producers' production experience.[19] Consistent with

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[15] *See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004) ("*Mushrooms")*, and the accompanying Issues and Decision Memorandum at Comment 8. *See also Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 47887, 47890 (August 6, 2004); *Persulfates* (unchanged in the final results); and, *Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China*, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum at Comment 5.

[16] *See Rhodia, Inc. v. United States*, 240 F.Supp. 2d 1247, 1253-1254 (CIT 2002) ("*Rhodia").*

[17] *See Nation Ford Chemical Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999).

[18] *See Magnesium Corp. of America v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999) ("*Mag Corp.*").

[19] *See* the PRCB Committee's October 3, 2006, Surrogate Value Submission at Exhibit 3 for Nova Plast and Exhibit 4 for Carry Print.

the practice established in the original investigation of this case, we have determined not to use Priti's audited financial statements because Priti is the only potential surrogate company considered in this review whose financial statements do not have a level of specificity that allows the Department to determine the overhead, SG&A and profit ratios exclusive of packing expense.[20] As a result, Priti's financial ratios would be distorted in relation to those of the other companies used to determine the surrogate financial ratios.

Therefore, for the final results, we have based our calculation of the surrogate financial ratios on the financial statements of A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims. All of these companies produce merchandise that is either identical or comparable to the subject merchandise. Their financial statements are contemporaneous with the POR, and have a level of specificity that allows us to value MOH, SG&A and profit exclusive of packing expense. Moreover, none of the parties to this proceeding has contested the use of any of these companies for the purposes of determining the surrogate financial ratios in this review.

Comment 3: Methodological and Clerical Errors in the Surrogate Financial Ratio Calculations Either Used by the Department or Proposed by the PRCB Committee

The PRCB Committee, Nozawa and Crown identified a number of companies that they each believe should not be used in the calculation of the surrogate financial ratios. However, in the event that the Department determines to use the financial statements of any of the contested companies, each party provided methodological and/or clerical changes that it believes should be made to the calculations that the Department used in the *Preliminary Results* or to the calculations proposed by the PRCB Committee. For ease of reference, we will address each of these proposed changes in turn, based on the methodological issue raised, rather than by company.

a. Allocate "Salary and Wages" Between Direct Labor and SG&A Expenses Based upon Industry-Wide Information Published by the Indian Government

The PRCB Committee claims that, although the financial statements for some Indian companies (*i.e.*, A.P. Polyplast, Arvind, Carry Print, Priti and Sangeeta) separate factory labor costs from SG&A labor costs, some do not (*i.e.*, Jain Raffia, Kuloday, Nova Plast, Smitabh, Synthetic and Tims). The PRCB Committee maintains that, in the *Preliminary Results*, the Department resolved this problem by applying all salaries and wages to direct labor. The PRCB Committee argues that this methodology overstates the denominator for materials, labor and energy ("MLE"), and understates the SG&A numerator, thus artificially depressing the surrogate financial ratios.

The PRCB Committee submits that the Department's methodology may be the only possible solution in the absence of more information. However, it maintains that the Labour Bureau of the Government of India conducts an annual survey of labor costs of "wages" and "salaries" in

[20] *See PRCB Final Determination*, at Comment 2.

various industries within India, and that this information, which is grouped by industry as classified under the Indian National Industrial Classification, allows the Department to disaggregate factory and SG&A labor in an accurate and reasonable manner.

The PRCB Committee maintains that the data relevant to plastic bags production are compiled under the three-digit classification, 252 "manufacture of plastic products," which shows that private companies in the plastics industry incurred costs for "all workers" (*i.e.*, wage earners) of Rs. 1,597,812,000, and costs for "all employees" (*i.e.*, including all wage earners and all salaried employees) of Rs. 3,163,467,000. Thus, the PRCB Committee argues, the costs for factory workers amounted to 50.51 percent of total labor costs, and for the final results, the Department should allocate 50.51 percent of line items that include both wages and salaries to direct labor, and the remaining 49.49 percent to SG&A.

Nozawa and Crown disagree that the Department should allocate the line item for salaries in the financial statements for Jain Raffia, Kuloday, Nova Plast, Smitabh, Synthetic and Tims between labor and SG&A using the Indian labor statistics proposed by the PRCB Committee. Nozawa and Crown argue that the PRCB Committee has not provided sufficient information to demonstrate that its proposed allocation methodology, which, in their opinion, erroneously treats half of each surrogate company's salary and wages as labor and half as SG&A, accurately reflects the ratio of factory labor to SG&A labor expenses for the companies under review.

Crown contends that when the financial statements do not clearly distinguish between wages and salary for labor and wages and salary for SG&A personnel, the Department normally treats the entire line item for salary and wages as labor. For example, in the *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) ("*Wooden Bedroom Furniture*"), and accompanying Issues and Decision Memorandum at Comment 3, the Department declined to allocate salary line-items between MLE and SG&A expenses.

Nozawa asserts that in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004) ("*CTVs*"), and accompanying Issues and Decision Memorandum at Comment 19, the Department rejected similar proposals to disaggregate amounts reported in the Indian surrogate financial statements for "wages and salaries" in order to distinguish production labor from SG&A labor. Nozawa argues, the Department concluded in *CTVs* that there is "no accurate method of performing such an allocation given the level of detail shown on {the surrogate financial statements}." Thus, Nozawa argues that for certain Indian financial statements with a combined wages and salary category, it is not possible to accurately disaggregate factory labor from SG&A labor in a non-arbitrary manner.

Crown and Nozawa also argue that the Department has a long-standing practice of not adjusting the figures recorded on a surrogate producer's audited financial statements. For example, Crown claims that in *CTVs* at Comment 15, the Department explained that its reason for not adjusting

figures on the financial statements of a surrogate company was because it did "not know all of the components that make up the costs of the surrogate producer, {and} adjusting these costs may not make them any more accurate and indeed may only provide the illusion of precision."

Crown argues further that the PRCB Committee's allocation factor and information source is unusable. According to Crown, the administrative record is completely void of any information regarding the methods and procedures used to compile the Indian labor statistics submitted by the PRCB Committee. Crown asserts that the Indian labor statistics do not indicate whether the statistics represent all companies in a particular industry sector or just a sampling of companies. Thus, Crown argues, without more precise information concerning the scope of the information included in the Indian labor statistics, the usefulness of this information cannot be determined.

Crown argues that the Indian labor statistics do not define "contract workers," "all workers," or "all employees." As a result, Crown claims, there is no way of knowing whether the ratio proposed is at all similar to the experience of either the Indian surrogate companies or the respondents in this administrative review, or even how the Indian government grouped the salary information that it compiled. For instance, Crown points out that the salaries compiled for "all workers" may not include wages for indirect labor positions, such as maintenance personnel or plant managers, whereas Crown contends that it has reported all such indirect labor in its section D database.

Nozawa and Crown argue further that the industry sector on which the PRCB Committee relied to derive its allocation factor is too broad to accurately represent the specific Indian surrogate companies in question. According to Nozawa and Crown, industry sector 252 is only specific to the manufacture of plastic parts, which includes semi-finished products of plastic, plastic lavatory pans and covers, plastic suitcases, plastic helmets, bathing tubs, wash-basins, flushing cisterns and similar sanitary-ware of plastics, plastic headgear and other plastic products.

Crown also contends that the Indian labor statistics are based on information from 2002 and 2003, whereas the financial statements of potential surrogate companies are based on the April 2004 through March 2005 accounting year. Thus, Crown asserts, the Indian labor statistics are not contemporaneous with the POR.

Therefore, Crown and Nozawa argue, the application of any ratios derived from the Indian labor statistics would be completely arbitrary, given how little is known about their scope and how tenuously they are related to polyethylene bag producers. Further, Crown argues that any costs associated with SG&A compensation in the surrogate financial statistics would be adequately captured in the calculation of the surrogate financial statements by the inclusion of SG&A line-items such as bonus, gratuity, staff welfare expenses, and director's remuneration.

Nozawa argues that the PRCB Committee's proposal is inconsistent with its argument that Arvind and Jain Raffia should be excluded from the surrogate financial ratio calculation because they are not producers of similar merchandise. Nozawa argues that if Arvind and Jain Raffia are not considered producers of similar merchandise, although they produce plastic woven sacks, it

would be inappropriate for the Department to use the "plastic products" category in the Indian Labour Bureau data to try to disaggregate factory labor from SG&A labor.

Nozawa claims that the PRCB Committee's proposed methodology is arbitrary and relies on an overly broad category of "plastic products manufacturers" for which the record contains insufficient detail describing these companies and the nature of the products produced. Nozawa contends that the Department's practice, established in the *Notice of Final Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001) ("*Honey"),* and accompanying Issues and Decision Memorandum at Comment 3, is not to make arbitrary adjustments to its financial ratio calculations. Thus, Nozawa argues that the Department should not reallocate the reported labor amounts between factory labor and SG&A labor for Jain Raffia, Kuloday, Nova Plast, Smitabh, Synthetic and Tims.

Department's Position: We have examined the financial statements of Kuloday, Sangeeta, Smithabh, Synthetic and Tims to determine whether the expenses identified as "salaries and wages" were separately classified as manufacturing and/or SG&A. We found that Kuloday and Sangeeta did not report any salaries, gratuities or employee benefits as administrative, selling and other expenses and classified labor charges as manufacturing expenses.[21] Kuloday classified salaries and wages, bonus and labor welfare as a single category of payment and provisions for employees,[22] and Sangeeta classified all salaries and wages, welfare expenses and managerial remuneration as a single category of employee remuneration and benefits.[23] Therefore, we disagree that Sangeeta and Kuloday separately classified "salaries and wages" as manufacturing and/or SG&A expenses.

Smitabh and Tims recorded salaries, wages, bonuses, employees' welfare expenses, pension fund and deposit-linked insurance expenses and supervision expenses in a single category called "Expenses."[24] Nevertheless, we were able to appropriately re-classify these expenses as labor, overhead and SG&A for the purposes of determining the surrogate financial ratios.[25]

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[21] *See* Nozawa's July 26, 2006, Surrogate Value Submission at Exhibit 4 ("Kuloday's Financial Statements"), Schedule 18; and the PRCB Committee's October 3, 2006, Surrogate Value Submission at Exhibit 2 ("Sangeeta's Financial Statements"), Schedules 17 through 19.

[22] *See* Kuloday's Financial Statements, Schedule 18.

[23] *See* Sangeeta's Financial Statements, Schedules 17 and 18.

[24] *See* the PRCB Committee's October 3, 2006, Surrogate Value Submission at Exhibit 7 ("Smitabh's Financial Statements, Schedules 3 and 4 and Tims' Financial Statements, Schedule 14.

[25] *See* memorandum to Wendy J. Frankel, Director, AD/CVD Operations, Office 8 through Charles Riggle, Program Manager, from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, "Final Results of the 2004-2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Surrogate Value Memorandum"(March 12, 2007) ("Final Surrogate Value Memorandum"), at 3, and Attachment II.

We found that Synthetic, contrary to the PRCB Committee's claims, separately classified wages and bonus to workers as manufacturing expenses and bonus to employees, employees provident fund, employees state insurance, gratuity, salary to staff and staff welfare expenses as administrative and operating expenses.[26] Thus, we disagree that Synthetic did not separately classify "salaries and wages" as manufacturing and/or SG&A expenses.

Although we agree with the PRCB Committee that the financial ratio for SG&A is understated when salaries and staff are not included in SG&A, we disagree with the appropriateness of the PRCB Committee's proposed remedy of allocating wages and salaries between labor and SG&A based on the Indian National Industrial Classification statistics. First, the three-digit classification code, 252 "manufacture of plastic products," which includes semi-finished products of plastic, plastic lavatory pans and covers, plastic suitcases, plastic helmets, bathing tubs, wash-basins, flushing cisterns and similar sanitary-ware plastics, plastic headgear and other plastic products, is too broad to represent the experience of polyethylene bag producers. Furthermore, there is no information on the record explaining the methods and procedures used to compile these statistics, which companies are included in them, or whether the information is tax exclusive. Absent more precise information concerning the scope of the data included in the Indian labor statistics, we find these data to be unreliable for the purpose of allocating salaries and wages between direct labor and SG&A. Further, the PRCB Committee's proposed Indian labor statistics are based on information from 2002 and 2003. As a result, they are not contemporaneous with the POR or with the financial statements for the surrogate companies, which are all based on the year ending March 31, 2005.

Further, as Crown noted in its case brief, the Department has a long-standing practice of not adjusting the figures recorded on a surrogate producer's audited financial statements.[27] In fact, the Department normally classifies the entire value of the salary and wages recorded on the surrogate producer's financial statements as labor expenses when the financial statements do not clearly distinguish between wages and salaries attributed to manufacturing and/or SG&A personnel.[28] As a result, for the final results of review, we have treated salaries in a manner consistent with each of the surrogate company's audited financial statements.[29]

b. ***Classify "Salaries" as SG&A and "Wages" as a Part of Direct Labor***

The PRCB Committee claims that in their financial statements, A.P. Polyplast and Arvind separate manufacturing labor expenses from general and administrative ("G&A") salaries paid.

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[26] *See* the PRCB Committee's October 3, 2006, Surrogate Value Submission at Exhibit 5 ("Synthetic's Financial Statements"), Schedules 3 and 4.

[27] *See CTVs* at Comment 19; *see also, Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (August 11, 2003) ("*PVA*"), and accompanying Issues and Decision Memorandum at Comment 10.

[28] *See Wooden Bedroom Furniture* at Comment 3.

[29] *See* Final Surrogate Value Memorandum at 2 and Attachment II.

For example, the PRCB Committee notes that, for each company, the detailed break out of the line item for "manufacturing expenses" includes "wages" and the line item for "administrative and other overheads" includes a line item for "salary." The PRCB Committee notes, however, that the Department treated both items as direct labor in its *Preliminary Results*. Therefore, for the final results, the PRCB Committee argues that the Department should reclassify "salaries" as an SG&A expense.

Department's Position: We have re-examined the audited financial statements of A.P. Polyplast and determined that A.P. Polyplast separately reports wages for manufacturing expenses and salaries for administrative expenses and other overhead expenses.[30] Therefore, for the final results, we have reclassified "salaries" as an SG&A expense for A.P. Polyplast.[31] We have made no changes for Arvind because we are not using its financial statements for the final results.[32] We addressed the separation of wages for manufacturing expenses and salaries for administrative expenses with respect to Kuloday, Sangeeta, Smitabh, Synthetic and Tims in Comment 3a of this memorandum.

c. Reclassify Consumable Stores as MOH Rather than Direct Materials

The PRCB Committee argues that, if the Department continues to use A.P. Polyplast's financial statements to calculate the surrogate financial ratios, it should reclassify consumable stores as MOH rather than as direct materials. The PRCB Committee maintains that it has been the Department's longstanding practice to treat consumable stores as MOH. It further claims that there is no evidence that A.P. Polyplast's line item for consumable stores represents purchases of direct materials.

Nozawa argues that in *PRCB Final Determination* at Comment 3, the Department explained that any statement that refers to a general practice of treating stores and spares as factory overhead expenses must be qualified with an assumption that "the stores in question are related to production and/or maintenance of production facilities." Nozawa thus asserts that the Department recognized that "stores" could relate to packing materials, and that if this were the case, "it would be inappropriate to include stores in the fixed overhead expenses."

Nozawa disputes the PRCB Committee's assertion that there is no evidence in this review that consumable stores represent direct materials. Moreover, Nozawa alleges that the PRCB Committee has failed to provide evidence that consumable stores are exclusively overhead items or do not include packing materials. Nozawa further argues that, in *Wooden Bedroom Furniture* at Comment 6, the Department stated that double-counting would occur if it valued certain inputs separately in the FOP database, while these same items were considered "store and

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[30] *See* Nozawa's July 26, 2006, Surrogate Value Submission at Exhibit 1 ("A.P. Polyplast's Financial Statements"), Schedules J and K.

[31] *See* Final Surrogate Value Memorandum at 2 and Attachment II.

[32] *See* Comment 1 of this memorandum.

spares" by the Indian surrogate companies. Nozawa contends that the Department's concerns with respect to the double-counting of direct materials are still valid and that the Department should not reclassify "consumable stores" as an overhead expense for the final results.

Crown contends that in the *Preliminary Results*, the Department properly determined that consumable stores should be regarded as direct materials, and agrees with Nozawa that the PRCB Committee's proposed calculation would double-count FOPs that Crown had already reported.

Department's Position: For purposes of determining normal value in NME cases, the Department has a long-standing history of defining as direct materials such items as: process materials, materials required for a particular segment of the production process, items consumed continuously with each unit of production, and materials used regularly and in significant quantities as a necessary part of the production process, as direct materials.[33]

It is the Department's practice, absent any information to the contrary, to consider items such as "consumables" generally as an indirect material.[34] Further, we have stated previously that indirect materials are defined as:

> items used in the production process but not traceable to a particular product. This category also includes items that are added directly to products but whose cost is so small that the effort of tracing that cost to individual products would be greater than the benefit of accuracy (*e.g.*, the cost of glue used in furniture manufacturing).[35]

When valuing factory overhead in an NME case, the Courts have ruled that the Department has broad discretion and is not required to dissect the surrogate company's financial information.[36]

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[33] *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304, (November 14, 2006) ("*Brake Rotors*"), and accompanying Issues and Decision Memorandum at Comment 7; *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) ("*Sawblades"),* and accompanying Issues and Decision Memorandum at Comment 2; *Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 31514 (May 18, 2000) ("*Silicomanganese*"), and accompanying Issues and Decision Memorandum at Comment IV-1; *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160 (February 28, 1997)*; and Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) ("*Manganese Metal*"), at Comment 11.

[34] *See Persulfates* at Comment 4.

[35] *See Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 27991 (May 15, 2006) ("*PVA")* and accompanying Issues and Decision Memorandum at Comment 7.

[36] *See Rhodia*, 240 F. Supp. 2d at 1250.

For instance, the Court of International Trade ("CIT") recognized that when using financial statements of surrogate companies, the Department is not required to do an item-by-item analysis in calculating factory overhead.[37] In affirming the CIT's decision, the Court of Appeals of the Federal Circuit ("CAFC") said that factory overhead is composed of many elements, and in valuing the FOPs, section 773(c)(4) of the Act provides the Department broad discretion to decide how factory overhead is calculated.[38]

In the instant review, we have no evidence that the "consumables stores" are traceable to a particular product. None of the parties has claimed that the Department calculated surrogate values for any materials that might be classified as "consumable stores" on the surrogate financial statements. Similarly, none has argued that any material that might be classified as "consumable stores" on the Indian financial statements has been physically incorporated into the subject merchandise, or should be included in the calculation of direct materials in the normal value calculations. Moreover, none of the respondents reported using any material inputs that might be classified as "consumable stores" on the Indian surrogate financial statements.[39]

An examination of the financial statements of A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims reveals that only A.P. Polyplast and Sangeeta record separate line items for consumable stores.[40] Kuloday, Smitabh, Synthetic and Tims do not.[41] Further, all six of the companies used to determine the surrogate financial ratios record packing materials as a separate line item under manufacturing expenses.[42] Thus, we have no reason to believe or suspect that any of the materials included in "consumable stores" on the Indian surrogate financial statements represent direct materials, or are physically incorporated into the subject merchandise or valued in the Department's normal value calculations. Because "consumable stores" are not otherwise valued in the Department's normal value calculations, classifying them as MOH will not double count any of the respondents' reported FOPs. Therefore, we have classified "consumable stores" as overhead expenses for the purposes of determining the surrogate financial ratios in the final results.

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[37] *See Mag Corp.* 166 F.3d at 1372.

[38] *Id.*

[39] *See* Nozawa's December 23, 2005, section D questionnaire response ("DQR") at 9; Crown's December 23, 2005, DQR at Exhibits 2 and 9; and High Den's December 23, 2005 DQR at Exhibit 2.

[40] *See* Nozawa's July 26, 2006, Surrogate Value Submission at Exhibit 1 ("A.P. Poyplast's Financial Statements"), Schedule I; and, Sangeeta's Financial Statements, Schedule 17.

[41] *See* Kuloday's Financial Statements, Smitabh's Financial Statement, Synthetic's Financial Statements, and the PRCB Committee's October 3, 2006, Surrogate Value Submission at Exhibit 6 ("Tims' Financial Statements").

[42] *See* A.P. Poyplast's Financial Statements, Kuloday's Financial Statements, Sangeeta's Financial Statements, Smitabh's Financial Statements, Synthetic's Financial Statements, and Tims' Financial Statements.

d. Offset the Value of Raw Material by Sales of Scrap

The PRCB Committee contends that the Department inappropriately excluded the amount of revenues that Arvind reported from "sales of waste/scrap materials" from the surrogate-financial-ratio calculations in the *Preliminary Results*. The PRCB Committee contends that this item represents scrap recovery that directly offsets the company's raw material costs, and should be reclassified as an offset to raw materials for the final results.

Crown contends that the Department appropriately adjusted the surrogate financial ratios for scrap sales in *Brake Rotors from the People's Republic of China: Final Results of the Tenth New Shipper Review*, 69 FR 52228, 52229 (August 25, 2004) ("*Brake Rotors 2004*") where it reduced the respondent's cost of manufacturing by the scrap offset prior to the application of the surrogate financial ratios. However, Crown claims that in the *Preliminary Results*, the Department incorporated Crown's sales of scrap into the calculation of normal value after it applied the surrogate financial ratios to the cost of manufacturing. Therefore, if the Department adopts the PRCB Committee's proposal, Crown argues that the Department must revise the calculation of normal value to offset the cost of manufacturing by scrap sales prior to the application of the surrogate financial ratios.

Department's Position: We have determined not to use Arvind's financial statements for the final results of review. Thus, this issue is moot with respect to Arvind. However, we examined the financial statements of A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims and determined that none of the companies recorded sales of scrap on their audited financial statements.[43] As a result, we did not adjust the value of the material costs recorded on the financial statements of these companies for sales of scrap. The Department's recent practice has been to deduct scrap or by-product offsets from normal value in instances where the surrogate company's financial statements do not indicate by-product sales revenue, but the respondent sells its by-products.[44] Further, we have stated that where a by-product is sold, a company necessarily incurs overhead and SG&A expenses in selling that by-product and it is thus appropriate to deduct the by-product credit at the normal value stage, after the application of overhead, SG&A, and profit.[45] However, in past cases, the Department has not been consistent in its treatment of offsets for scrap or by-product sales in the calculation of normal value and has

[43] *See* A.P. Poyplast's Financial Statements, Kuloday's Financial Statements, Sangeeta's Financial Statements, Smitabh's Financial Statements, Synthetic's Financial Statements, and Tims' Financial Statements.

[44] *See PVA* at Comment 10; *Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review*, 71 FR 4112 (January 25, 2006), and accompanying Issues and Decision Memorandum at Comment 3; *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

[45] *See PVA* at Comment 10.

not explained its practice well.[46] Notwithstanding the *Brake Rotors 2004* and *Vietnam Shrimp*, which were decided based upon the specific facts on the record of those cases, the Department sees no reason to depart from our longstanding practice in applying a respondents' by-product or scrap offset to normal value when the surrogate financial statements do not report scrap or by-product sales. Therefore, for the final results, we applied Crown's by-product offset to normal value after the application of the surrogate financial ratios to the cost of manufacturing using our standard calculation methodology.

e. Reclassify Depreciation as Factory Overhead

The PRCB Committee contends that, in the *Preliminary Results*, the Department mis-classified Arvind's depreciation expense as an energy cost. In particular, the PRCB Committee argues that depreciation relating to the following fixed assets should be reclassified for the final results as factory overhead: "factory building," "plant and machinery," "electrical fittings," "fire extinguishers," "generator," "cooler," "air conditioner," and "water purifier."

Department's Position: We have determined not to use Arvind's financial statements for the final results of review. In addition, we have examined the financial statements of A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims and determined that depreciation was not classified as energy expenses in any of their audited financial statements.[47] As a result, this issue is moot.

f. Offset Direct Labor Expenses With Job Work Revenue

The PRCB Committee argues that in calculating the surrogate financial ratio for Arvind, the Department appropriately offset direct labor expenses for job work with revenues from job work. The PRCB Committee argues that the Department should make a similar adjustment for Jain Raffia, whose financial statements include job work expenses in the line item for direct labor. Thus, for the final results, the PRCB Committee argues that the Department should offset Jain Raffia's direct labor with revenues from "job work" revenue.

Nozawa and Crown disagree that the Department should offset direct labor with job work revenue. They contend that job work revenue is comparable to sales income and should be omitted from the surrogate financial ratio calculation. Nozawa argues that offsetting job expenses with job work revenue overstates the deduction because job work revenue includes amounts for overhead, SG&A and profit that are not included in job work expense. Thus,

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[46] *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004) ("*Vietnam Shrimp*") and accompanying Issues and Decision Memorandum at Comment 4B where we stated "that it is appropriate to apply the surrogate financial ratios to the respondents' cost of manufacturing in a manner consistent with the surrogate companies' treatment of the item" and *Brakerotors 2004* at Comment 3, where we stated that "it is the Department's practice to offset sales of scrap from the COM."

[47] *See* A.P. Poyplast's Financial Statements, Kuloday's Financial Statements, Sangeeta's Financial Statements, Smitabh's Financial Statements, Synthetic's Financial Statements, Tims' Financial Statements.

Crown and Nozawa argue, the Department should not deduct job-work revenue from job-work expenses in Jain Raffia's financial ratio calculation and should continue to treat Arvind's job work as part of manufacturing and labor expenses. Alternatively, Crown argues that if the Department continues to include job-work revenue in its calculations, it should use it to offset SG&A expenses since job work is related to the operations of the company as a whole.

Department's Position: We have determined not to use Arvind's and Jain Raffia's financial statements for the final results of review. In addition, we have examined the financial statements of A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims and determined that none of these companies reported job work revenue in their audited financial statements.[48] As a result, this issue is moot.

g. Offset SG&A Expenses by Short-Term Interest Income

Crown maintains that the Department should offset SG&A expenses with short-term interest income for Arvind, Carry Print, Jain Raffia, Priti, Sangeeta, Smitabh and Tims in accordance with the Department's normal methodology. Crown contends that the Department routinely offsets SG&A expenses with short-term interest income. For example, in *Persulfates* at Comment 5, Crown argues that the Department offset SG&A expenses with interest income, reasoning that the interest income is short-term because the surrogate company classified the relevant interest-bearing accounts as current assets. Crown contends that the interest income of these companies should also be regarded as short-term because all of the interest-bearing accounts are classified under "Current Assets Loans and Advances."

Department's Position: It is the Department's practice to adjust interest expenses for interest income earned only on short-term instruments.[49] We examined the financial statements of the A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims and found that only Sangeeta, Smitabh and Tims received interest income.[50] Therefore, the issue is moot with respect to A.P. Polyplast, Kuloday and Synthetic. We examined Sangeeta's, Smitabh's and Tim's balance sheets and determined that none of them contained interest-bearing long-term assets.[51] Further, we determined that all of the interest-bearing assets recorded in Sangeeta's, Smitabh's and Tims' balance sheet are recorded in the line item "loans and advances" within the category of "current assets, loans and advances."[52] As a result, any interest income earned by these companies constitutes short-term interest income. In *Wooden Bedroom Furniture*, we stated that it was our

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[48] *Id.*

[49] *See Persulfates* at Comment 5 and *Wooden Bedroom Furniture* at Comment 3.

[50] *See* Sangeeta's Financial Statements, Smitabh's Financial Statements, and Tims' Financial Statements.

[51] *Id.*

[52] *Id.*

standard methodology to offset SG&A expenses with short-term interest income.[53] Thus, for the final results, we offset Sangeeta's, Smitabh's and Tim's SG&A expense with the amount of bank interest recorded on its financial statements. We made no changes for Arvind, Carry Print, Jain Raffia and Priti because we have determined not to use their financial statements for the calculation of the surrogate financial ratios in this review.

h. Reclassify Coolie and Cartage from MOH to Labor Expense

Crown contends that Priti's and Sangeeta's detailed schedules for "manufacturing expenses" include a line item for "coolie and cartage" which may be greater than the amount reported for "factory wages and salaries." Thus, Crown argues that Priti and Sangeeta use a substantial amount of coolie labor in their operations. According to Crown, in India, the term "coolie" refers to an unskilled laborer or porter, hired for low or subsistence wages. Crown argues that these cheap laborers are not likely to be considered company employees, even when they account for a large portion of the labor-related expenses. Crown argues that coolie labor could be used to deliver raw materials to the factory, to pack finished goods, or to perform manufacturing work as contract laborers that do not enjoy the benefits of full employment by the company.

Crown contends that, although it did not have any contract labor during the POR, it reported all of the labor hours it used to produce the subject merchandise in direct, indirect or packing labor. Crown further contends that if it had used contract labor, it would have captured contract labor hours in either direct, indirect, or packing labor. Therefore, Crown contends, "coolie and cartage" should be included in the denominator of the surrogate financial ratios because it accounts for labor and freight-in expenses incurred by the company.

Nozawa asserts that the PRCB Committee identified the line item "coolie and cartage" as an overhead expense in the financial statements for Priti and Sangeeta. Nozawa, however, argues that this line item reflects expenses paid to unskilled workers who are involved in carting the merchandise. Thus, Nozawa concludes that the Department should not treat this line item as an overhead expense, but rather should include this item in the denominator of the surrogate financial ratio calculation.

Department's Position: We examined the financial statements of A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims, and determined that only Sangeeta recorded expenses for coolie and cartage on its audited financial statements.[54] As Crown and Nozawa explained, the line item for "coolie and cartage" may refer to certain general subcontracting expenses such as movement of goods within a facility, or other similar activities. Although coolie and cartage expenses may include payments for subcontracted labor, the expense category can just as easily include costs for related overhead or general expenses. More importantly, we cannot conclude from the above-mentioned financial statements that these expenses, as recognized by Sangeeta,

[53] *See Wooden Bedroom Furniture* at Comment 3; s*ee also Persulfates* at Comment 5.

[54] *See* Sangeeta's Financial Statements, Schedule 17.

should be classified as direct or indirect manufacturing labor. Rather, because Sangeeta did not classify coolie and cartage as labor expenses, the evidence on the record does not support their treatment as labor expenses for purposes of calculating surrogate financial ratios. Therefore, following our standard practice of not adjusting the figures recorded on a surrogate producer's financial statements,[55] we have continued to classify coolie and cartage expenses as overhead expenses for the final results.

i. Reduce Material Costs by the Increase in Stock of Finished Goods and Scrap

Crown asserts that the PRCB Committee's proposed calculations reduce Smitabh's and Tim's reported material expenses by the increase in stock. However, Crown points out that the increase in stock for both companies represents the aggregate increase in stock of finished goods, stock-in-process, and scrap. As a result, Crown notes that the increase in stock attributable to stock-in-process is very small. Therefore, Crown contends, if the Department should account for change in stock-in-process inventories, it should only include the amount attributable to stock-in-process, and exclude any changes in finished-goods and scrap inventories.

Department's Position: It is the Department's practice to exclude from its calculation of surrogate financial ratios increases or decreases in finished-goods inventory and to include changes to work-in-process ("WIP") inventory[56] in order to capture all direct expenses comprising the surrogate company's cost of manufacturing during its fiscal year in the MLE denominator.[57] Therefore, we examined the financial statements of A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims to determine whether they reported net changes in inventory and its separate components of finished goods, scrap and WIP inventory. We found that: 1) A.P. Polyplast, Kuloday and Synthetic reported the total value of opening and closing stocks, without identifying separate values for finished goods, WIP or scrap inventory;[58] and 2) Sangeeta, Smitabh and Tims recorded net changes in total inventory, and separately recorded the changes in its finished-goods, stock-in-process and scrap inventories.[59] Therefore, consistent

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[55] *See CTVs* at Comment 19; *see also PVA* at Comment 10.

[56] *See Certain Malleable Iron Pipe Fittings From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 76234 (December 23, 2005); *Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 37051 (June 29, 2006); *Malleable Iron Pipe Fittings From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 71 FR 45016 (August 8, 2006) (unchanged in the final results) ("*Malleable Pipe Fittings*"); *see also CTVs* at Comment 18.

[57] *See Wooden Bedroom Furniture* at Comment 3.

[58] *See* A.P. Poyplast's Financial Statements, Schedule I; Kuloday's Financial Statements, Schedule 16, and Synthetic's Financial Statements, Schedule 2.

[59] *See* Sangeeta's Financial Statements, Schedule 15, Smitabh's Financial Statements, Schedule 17, and Tims' Financial Statements, Schedule 11.

with our past practice, for the final results, we have decreased Sangeeta's, Smitabh's and Tim's material costs by the value of the increase in stock-in-process (WIP inventory).[60]

j. Adjust Audited Financial Statements for Leave Encashment and Employee Gratuity Accruals

Crown notes that Smitabh did not identify any expenses for "leave encashment" or "employee gratuity" in its profit and loss account. However, Crown points out that in a footnote included in Exhibit 5 of the PRCB Committee's case brief, the PRCB Committee states that the "auditor's report noted that these expenses were not properly accrued" and thus, according to Crown, the PRCB Committee added these expenses to its proposed surrogate financial ratio calculations. First, Crown contends that the Department should not add any expenses into the calculation of the surrogate financial ratios that were not recognized in Smitabh's profit and loss statement. Second, Crown argues that the PRCB Committee's proposed calculation does not accurately incorporate the impact this adjustment would have on Smitabh's profit.

Crown states that the proposed adjustment to Smitabh's expenses was not incorporated in its profit and loss account, citing the Auditors' Report to the Members, which states the profit and loss account does not include a provision for two contingent liabilities, leave encashment and gratuity to employees. Crown contends that the auditors note explains that if the members (of Smitabh) consider these two contingent liabilities to be accrued during the accounting year, then profit for the year would be decreased by the designated sum. Thus, Crown argues, Smitabh did not regard contingent liabilities for leave encashment and gratuity to employees as accrued during the accounting year, and that if the Department uses Smitabh's financial statements for the final results, it should calculate surrogate financial ratios using the figures reported in Smitabh's profit and loss account, not amounts that Smitabh did not consider to be accrued. Alternatively, if the Department determines to include contingent liabilities for encashment and gratuity to employees in the surrogate financial ratios, Crown argues that it should reduce Smitabh's profit before tax by the amount of the respective contingent liabilities, not the profit after adjustment.

Department's Position: We examined the financial statements for A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims to determine whether they reported accrued expenses for leave encashment and employee gratuity. We found that: 1) A.P. Polyplast was the only company to report accruals for leave encashment on its audited financial statements, but that it made no provision for gratuity;[61] 2) Sangeeta was the only company to report gratuity for employees on its income statement;[62] 3) Kuloday reported that it made no provision for gratuity

[60] *See Wooden Bedroom Furniture* at Comment 3.

[61] *See* A.P. Poyplast's Financial Statements, Schedules K and L.

[62] *See* Sangeeta's Financial Statements.

as no employee has yet put the qualifying period of services for entitlement to this benefit;[63] 4) Sangeeta, Smitabh and Tims each stated that provisions for leave encashment and gratuity would be acknowledged in the year in which the liability arises and is paid for;[64] and, 5) Synthetic stated that provision for gratuity and leave encashment is made on the basis of valuation by the management.[65]

The limited information presented in these audited financial statements does not permit us to accurately determine the amount of the accruals for leave encashment and employee gratuity. Therefore, following the Department's longstanding policy, we have not adjusted the figures the labor and/or overhead expenses recorded in the audited financial statements of A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims for the final results of review.[66]

k. Offset Financial Expenses by Foreign Exchange Gains

Crown contends that it is the Department's practice to offset financial expenses with gains resulting from foreign exchange as it did in *Wooden Bedroom Furniture* at Comment 3. Thus, Crown contends, if the Department uses Smitabh's audited financial statements for the final results, it should reduce Smitabh's reported SG&A expense by the amount of the net gain on foreign exchange.

Department's Position: It is the Department's practice to offset financial expenses with gains resulting from foreign exchange gains or losses.[67] We examined the financial statements of A.P. Polyplast, Kuloday, Sangeeta, Smitabh, Synthetic and Tims and determined that only Kuloday, Smitabh and Tims recorded foreign exchange gains and/or losses on their income statements.[68]

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[63] *See* Kuloday's Financial Statements, Schedule 21(A)5.

[64] *See* Sangeeta's Financial Statements at note A-6(a) of Schedule 21, Smitabh's Financial Statements at note A-9 of schedule, and Tims' Financial Statements at note A-9 of Schedule 19.

[65] *See* Synthetic's Financial Statements at note 1-(G) of Schedule L.

[66] *See Persulfates from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 64 FR 69494, 69497 (December 13, 1999) ("*1996-1998 Persulfates*"); *CTVs* at Comment 19; *PVA* at Comment 10; *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 2 (*Magnesium from Russia*); *Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 58514, 58518 (November 15, 1996); *Persulfates from the People's Republic of China; Final Results of Antidumping Administrative Review*, 64 FR 69494, 69497 (December 13, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation*, 60 FR 16440, 16446-7 (March 30, 1995).

[67] *See Wooden Bedroom Furniture* at Comment 3.

[68] *See* Kuloday's Financial Statements, Smitabh's Financial Statements, and Tims' Financial Statements.

Therefore, for the final results, we have offset Kuloday's, Smitabh's and Tims' financial expense by the amount of the foreign exchange gains.[69]

l. Adjust Energy, Overhead, SG&A and Profit by the Amount of Subsidy Receivable

Crown and Nozawa note that the PRCB Committee did not provide a narrative explanation in its case briefs of the adjustments to Smitabh's and Tims' audited financial statements for certain subsidies that the PRCB Committee proposed for the first time in its case brief. Specifically, Crown and Nozawa contend that the PRCB Committee increased Tims' energy, overhead, and SG&A expenses by the amount of subsidies received and/or receivable identified in Note B(2) of Tims' audited financial statements, and Schedule 20, A-5(I) and B-1(ii) of Smitabh's without citing any authority for this adjustment. Moreover, Crown and Nozawa contend that it is the Department's long-standing practice not to adjust the figures recorded in the surrogate producers' audited financial statements. Thus, Crown and Nozawa argue that, for the final results, the Department should use Smitabh's and Tims' overhead and SG&A expenses as reported on its audited financial statements.

Department's Position: The PRCB Committee provided Smitabh's and Tim's audited financial statements in its October 3, 2006, surrogate value submission filed 20 days after the publication of the *Preliminary Results*. In that submission, the PRCB Committee provided the financial statements of seven different companies without providing any narrative description of how it expected the Department to use that information for the final results. In its case briefs, the PRCB Committee argued that the Department should use the audited financial statements of the 7 companies included in its October 3, 2006, surrogate value submission, and, it provided calculations showing how it believed the Department should use the information included in the financial statements to determine the surrogate ratios for overhead, SG&A and profit. The PRCB Committee did not cite any precedent or authority for adjusting the figures recorded on the audited financial statements for the amount of the subsidies.

Furthermore, the limited information provided in the audited financial statements does not provide sufficient information to warrant overturning the Department's established practice of using the figures as recorded on the surrogate company's audited financial statements.[70] Therefore, for the final results, we will use the expenses recorded on the audited financial statements to determine the surrogate financial ratios.[71]

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[69] *See* Final Surrogate Memorandum at Attachment II.

[70] *See, CTVs* at Comment 19 and *PVA* at Comment 10.

[71] *See Wooden Bedroom Furniture* at Comment 3.

COMMENTS WITH RESPECT TO NOZAWA

Comment 4a: Partial AFA for Nozawa

Nozawa argues that, in the *Preliminary Results,* the Department inappropriately applied AFA to Nozawa's sales where the corresponding CONNUMs in the U.S. sales database matched to more than one set of physical characteristics. Nozawa claims that AFA was inappropriate for three reasons: correct reporting was not possible, it cooperated fully and acted to the best of its ability, and the Department has used alternative reporting methodologies as neutral facts available in similar situations in the past.

First, Nozawa asserts that the Department justified the application of AFA by stating that Nozawa reported CONNUMs with more than one set of physical characteristics. Nozawa claims that this description inaccurately reflects how Nozawa actually reported its data and thus the application of AFA is unjustified. Nozawa concedes that it assigned CONNUMs more than one set of physical characteristics; however, it argues that it properly reported physical characteristic information. Therefore, Nozawa asserts that the Department could create CONNUMs with unique physical characteristics with the data that Nozawa reported.

Nozawa argues that the real problem with its databases is that it does not have FOP data for merchandise produced prior to the POR. Nozawa explains that if it did not have matching FOP data for a sale of merchandise, it assigned that sale the CONNUM of merchandise for which it did have matching FOP data. Nozawa argues, if it had assigned CONNUMs based on physical characteristics, the Department still would not have been able to calculate a margin for all sales because Nozawa does not have FOP data for the merchandise that was produced prior to the POR, for which Nozawa assigned CONNUMS not based on their physical characteristics.

Nozawa asserts that it should not be penalized for not reporting FOP data when the FOP data do not exist. Nozawa, moreover, argues that its alternative reporting method, *e.g.*, reporting CONNUMs not based on physical characteristics, would allow the Department to calculate a margin with the most accurate FOP data possible.

Second, Nozawa argues that it cooperated fully and acted to the best of its ability. Nozawa contends that the Department's original October 21, 2005, section D questionnaire instructed Nozawa to "calculate the per-unit factor amounts based on the actual inputs used by your company during the POR as recorded under your normal accounting system." Nozawa argues that, in its June 5, 2006, supplemental questionnaire response ("SQR"), it reported FOP data from a 22-month period, rather than the 18-month POR, in order to try to capture FOP data for products produced prior to the POR. Nozawa also asserts that it notified the Department in its June 5, 2006, submission at page 13 that it lacked FOP data for certain sales, stating that some "product codes lacked corresponding FOP data because the FOP data was based only on products produced during the POR."

Nozawa argues that in the same June 5, 2006, submission, in addition to reporting an expanded POR, it provided, in Exhibit C-17, an alternative reporting methodology which matched product codes lacking FOP data to product codes with FOP data.

Nozawa argues that the Department asked Nozawa, in its July 20, 2006 second supplemental questionnaire ("SSQ") at 9, to explain why the 22-month "prior period FOP database should be used rather than the FOP information in the POR FOP database." Nozawa argues that it complied with these instructions by reporting FOP data from the limited period to the best of its ability.

Nozawa asserts that in *Nippon Steel Corp. v. United States*, 337 F.3d 1373 (Fed. Cir. 2003), the CAFC ruled that the Department's standard does not require perfection and recognizes that mistakes sometimes occur; however, it does not condone inattentiveness, carelessness, or inadequate record keeping. Nozawa also argues that in *Peer Bearing Co v. United States*, 182 F. Supp 2d 1286 (CIT 2001) (citing *Olympic Adhesives v. United States*, 899 F.2d 1565 (Fed. Cir. 1990)), the CIT acknowledged that the Department cannot penalize a respondent for not reporting information that does not exist. Nozawa contends that it was not inattentive, careless or inadequate in its record keeping, and that the information the Department requested does not exist.

According to Nozawa, the Department's standard for applying AFA requires it to show that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Nozawa alleges that the Department did not explain why Nozawa's alternative methodology was not reasonable, why the Department's own methodology would have been more appropriate, or how Nozawa could have reported its data in a more satisfactory manner. Therefore, Nozawa maintains that partial AFA is not appropriate in the instant review.

Third, Nozawa submits that the Department has used alternative reporting methodologies as neutral facts available in similar situations in the past. Nozawa argues that its alternative FOP data are consistent with the statute's mandate to use the best facts available. Nozawa asserts that section 782(e) of the Act provides that the Department:

> {cannot} decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission, if
>
> (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and (5) the information can be used without undue difficulties.

Nozawa argues that the Department has acknowledged that using FOP data of similar products is appropriate when certain products sold during the POR were produced prior to the POR.[72] Nozawa contends that in both *Diamond Sawblades* and *Malleable Pipe Fittings*, the Department acknowledged that FOP data were not available, found that AFA was not warranted and applied neutral facts available.

Nozawa argues that, similar to the situation in *Diamond Sawblades* and *Malleable Pipe Fittings*, it sold certain merchandise that was not produced during the POR. Nozawa submits that, similar to *Diamond Sawblades*, it reported FOPs for a period greater than the POR, and similar to both *Diamond Sawblades* and *Malleable Pipe Fittings*, it was unable to provide FOP data for certain products that were not produced during the POR.

The PRCB Committee asserts that for the final results the Department should continue to apply partial AFA with respect to certain of Nozawa's sales because Nozawa failed to report FOP data for certain sales in its section C questionnaire response ("CQR") on December 23, 2005, its CQR on June 5, 2006, or in its second supplemental questionnaire response ("2nd SQR") on August 7, 2006. The PRCB Committee further alleges that in response to the Department's instructions in its SSQ to report FOP data, Nozawa "collapsed multiple CONNUMs in the U.S. sales database, thereby matching sales of products that should fall under different CONNUMs to single CONNUMs in the FOP database."

The PRCB Committee alleges that Nozawa failed to comply with its reporting obligations despite clear instructions from the Department, failed to disclose how it had prepared its response, and failed to disclose how that methodology departed from the required format. The PRCB Committee also submits that Nozawa does not deny that its FOP file: 1) remains inaccurate, 2) improperly combines products with different physical characteristics into aggregated CONNUMS, and 3) does not contain FOP data for each sale in the U.S. sales file.

The PRCB Committee asserts that Nozawa has claimed that these issues can be remedied if the Department creates the CONNUMs in its database from the reported physical characteristics. The PRCB Committee, however, argues that it is the respondent's burden to establish the record and to provide its information in the form and manner requested. The PRCB Committee argues that the Department should not permit Nozawa to revise its files at this time based on Nozawa's assertions that those revisions would remove distortions from the response.

The PRCB Committee further alleges that Nozawa's proposed revisions would not remedy the absence of FOP data for certain products. The PRCB Committee argues that Nozawa has acknowledged that its proposed revisions would create CONNUMs that "would not match to any FOP data reported by Nozawa because they were produced prior to the POR."

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[72] *See Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 70 FR 77121, 77132 (December 29, 2005); *Sawblades* (unchanged in the final results); and *Malleable Pipe Fittings*.

First, the PRCB Committee argues that *Diamond Sawblades* and *Malleable Pipe Fittings* are inapplicable because there is no evidence in those proceedings that the respondents failed to report their CONNUMs in the form and manner requested by the Department. The PRCB Committee submits that the respondents in *Diamond Sawblades* and *Malleable Iron Pipe Fittings* reported their CONNUMs as required, and explained from the start that certain FOP data were unavailable because those products were manufactured before the POR. The PRCB Committee argues that Nozawa did not report its CONNUMs in the form and manner required by the Department, and it was not forthcoming in explaining to the Department why it did not report FOPs for all such CONNUMs.

For example, the PRCB Committee argues, the Department in its July 20, 2006, SSQ at 4, specifically instructed Nozawa that "for CONNUMs sold during the POR and produced before the POR, please provide weighted-average FOP data for the months January 2003 - December 2003." The PRCB Committee argues that Nozawa declined to provide the requested information in its August 7, 2006, 2nd SQR at 8-9.

The PRCB Committee argues that the full context of this review shows that Nozawa significantly impeded this proceeding. The PRCB Committee submits that Nozawa gave no explanation for the lack of FOP data for certain CONNUMs in its original sections C and D responses on December 23, 2005. The PRCB Committee argues that Nozawa declined to report missing FOP data in response to the Department's first supplemental questionnaire, in its SQR on June 5, 2006. The PRCB Committee asserts that Nozawa's SQR on June 5, 2006, at 13, was the first time that it explained that these CONNUMs were produced before the POR. The PRCB Committee asserts that the Department requested, in its SSQ on July 20, 2006 at 1 and 4, that Nozawa provide FOP data for these CONNUMS using 2003 production data and warned Nozawa that failure to do so would result in the use of facts available. The PRCB Committee argues that Nozawa declined to provide the requested information due to a claim of limited time, but did not ask for the additional time that would be required to provide the requested information in its 2ndSQR on August 7, 2006.

For the above reasons, the PRCB Committee argues that the cases cited by Nozawa where the Department applied neutral facts available, rather than AFA, had different circumstances than those of the instant review because Nozawa significantly impeded this proceeding by failing to comply with repeated requests for additional information.

Comment 4b: Should AFA Be Limited Only to CONNUMs Not Defined by Their Physical Characteristics or to All CONNUMs with More than One Set of Physical Characteristics?

Nozawa requests that, if the Department decides that partial AFA is appropriate, AFA should be applied only to sales assigned CONNUMs not defined according to their own physical characteristics rather than applying AFA to all CONNUMs that lack uniquely defined physical characteristics. Nozawa argues that many of the sales to which the Department applied AFA involved sales properly assigned CONNUMs defined according to their own physical characteristics and, therefore, these particular sales do not lack appropriate FOP data.

Further, Nozawa asserts that, although the Department stated in the *Preliminary Results* that it "was unable to identify which products within the collapsed CONNUMs are matched to appropriate FOP data," because the variable "MATPRODU," which Nozawa described as a proxy-CONNUM identifier, only contains data for those sales which were assigned proxy CONNUMS, the Department could rely on this variable to distinguish which sales were assigned CONNUMS based on their physical characteristics and which sales were assigned proxy CONNUMs based on similar products.

The PRCB Committee did not comment on this issue.

Department's Position: The Department continues to find that it is appropriate to apply AFA to Nozawa's sales of CONNUMs not defined by their physical characteristics, *i.e.*, Nozawa's sales that do not have matching FOP data, because Nozawa failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department, and failed to provide information in the form and manner requested.

On December 23, 2005, Nozawa's initial CQR did not report CONNUMs and physical characteristics for a significant portion of its sales. The sales file and the FOP file contained CONNUMs with unique physical characteristics. Although Nozawa did not state in the narrative of its response that it had used a 22-month period to report its FOPs, the subheading of exhibit 8 in its DQR reported that Nozawa had developed its standard consumption for FOP data over a 22-month period rather than the 18-month POR. The Department requested, in its April 14, 2006, first supplemental questionnaire, that Nozawa provide CONNUMs and physical characteristics for all sales and explain why it had used a 22-month period to report its standard consumption for FOP data.

On June 5, 2006, Nozawa stated that it had corrected the problem of missing CONNUMs and physical characteristics by correcting data entry errors, filling in the product characteristics, excluding products that were not subject merchandise, and filling in the missing CONNUM data with similar products. Nozawa also explained that some CONNUMs had not been produced during the 18-month POR, so it had used the 22-month period in order to report FOP data for merchandise sold during the POR but produced before the POR. However, despite the extended period used to report FOP data, Nozawa's June 5, 2006, FOP file still lacked data for a significant number of sales.

The Department requested on July 26, 2006, that Nozawa report FOP data for all sales. The Department also stated that it would accept FOP data even if such data were as much as 13 months before the POR. Nozawa responded in its August 7, 2006, submission that "it is not possible to provide the requested weighted-average FOP data for the full year 2003,"[73] but that it had "revised the FOP databases so that they contain matching CONNUMs for all sales reported

[73] *See* 2nd SQR at page 8.

in the combined U.S. sales database"[74] and that "there was no substantive change in the physical characteristics reported for each CONNUM."[75]

However, when the Department examined the U.S. sales file it discovered that certain CONNUMs no longer contained a unique set of physical characteristics. It was apparent that, in response to the request for FOP data, Nozawa modified the U.S. sales file. Rather than adding data to its FOP file, for CONNUMs which lacked FOP data, it altered the CONNUMs assigned to sales in the June 5, 2006, submission. As a result of this alteration, in the August 7, 2006, submission, all CONNUMs in the U.S. sales file had matches in the FOP file, but not necessarily to the same set of physical characteristics.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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. Section 776(b) of the Act also authorizes the Department to use as AFA, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Companion section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that 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

[74] *See* 2nd SQR at page 1.

[75] *See* 2nd SQR at page 4.

interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

The Department determines that pursuant to sections 776(a)(2)(A)-(C) and 776(b) of the Act, application of partial AFA is appropriate because Nozawa failed to explain, in its initial CQR, that it would be unable to report POR FOP information, failed to report certain FOP data, failed to compensate for missing POR FOP data by providing FOP data for the year prior to the POR, compensated for the lack of FOP data by assigning CONNUMs not based on the physical characteristics for sales missing FOP data, failed to inform the Department of its methodology of modifying its U.S. sales file to compensate for missing FOP data, and obfuscated the fact that FOP data had not been reported for a significant number of products by responding to the Department's request for FOP information by stating that it had revised the FOP file when it actually revised the U.S. sales file instead. Furthermore, Nozawa never explained the criteria it used in assigning CONNUMs to sales with no FOP data.

Nozawa did not satisfy the requirement set in section 782(c)(1) of the Act because it did not fully explain the limitations of its data in the CQR, declined to report FOP data for the expanded period the Department requested, and failed to notify the Department of the modification of its U.S. sales file.

Upon discovering that Nozawa failed to report FOP data for certain CONNUMs in both the POR and the expanded POR that Nozawa itself selected, the Department met the requirements of section 782(d) by giving Nozawa the opportunity to provide the missing FOP data in its first and second supplemental questionnaires. When Nozawa reported that it could not report FOP data for either the POR (18 months) or the expanded period (22 months) that Nozawa had selected for itself, the Department also gave Nozawa the opportunity to provide FOP information for a further expanded period (31 months). However, Nozawa also declined to report FOP data for this period.

Therefore, for the final results, the Department has continued to apply AFA to certain sales made by Nozawa which lack FOP data because Nozawa withheld information that the Department requested, failed to provide information in the form and manner requested, significantly impeded this proceeding, and failed to provide a full and timely explanation that it was unable to provide the information in the form and manner requested together with an alternative form of reporting.

In the *Preliminary Results,* the Department stated that it "was unable to identify which products within the collapsed CONNUMs are matched to appropriate FOP data." As a result, the Department applied AFA to all sales assigned CONNUMs without unique physical characteristics. However, based on Nozawa's description of the variable "MATPRODU" in its case brief, the Department is now able to identify which products within the collapsed CONNUMs are matched to appropriate FOP data. Therefore for the final results, the

Department has applied AFA only to the sales with CONNUMs not defined according to their physical characteristics.

Comment 5: Appropriate AFA Rate for Nozawa

The PRCB Committee argues that the Department did not choose the appropriate AFA rate for Nozawa's sales assigned CONNUMs without unique physical characteristics. The PRCB Committee submits that in the *Preliminary Results* the Department used, as the AFA rate, the PRC-wide 77.57-percent rate calculated in the original investigation. However, the PRCB Committee proposes that the Department select the highest non-aberrational margin calculated for any U.S. transaction on the basis of three criteria.

First, the PRCB Committee argues that using the highest non-aberrational margin calculated for any U.S. transaction as the AFA rate is consistent with the Department's longstanding practice as demonstrated by *CTVs* at Comment 27 and *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China*, 58 FR 48833, 48839 (September 20, 1993) ("*Lock Washers*").

Second, the PRCB Committee argues that this practice was upheld by the CIT in *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841 (2000), *affirmed* 298 F.3d 1330 (Fed. Cir. 2002), *certiorari denied*, 538 U.S. 1031; 123 S. Ct. 2073; 155 L. Ed. 2d 1059 (2003) and *Hyundai Elecs. Indus. Co., Ltd v. United States*, 395 F. Supp. 2d 1231, 1236 (CIT 2005).

Third, the PRCB Committee argues that using the highest non-aberrational margin calculated for any U.S. transaction would better serve the purpose of the AFA provision by ensuring that the respondent does not obtain a more favorable result through non-cooperation. The PRCB Committee asserts that the Department, in the *Preliminary Results*, stated that it would choose an AFA rate that (a) "is sufficiently adverse as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner" and (b) "ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." However, the PRCB Committee asserts that the number of sales in the *Preliminary Results* for which the Department calculated a margin greater than the 77.57-percent PRC-wide rate prevents the 77.57-percent rate from serving the purpose of the AFA provision.

Nozawa argues that the PRCB Committee incorrectly asserts that the Department's normal practice when applying AFA is to use "the highest non-aberrational margin calculated for any U.S. transaction." Nozawa argues that section 776(b) of the Act provides that the Department may select, as AFA, information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review, or (4) any other information placed on the record. Nozawa concedes that "the Department has the authority to exercise its discretion" when selecting an AFA rate; however, it argues that the CIT and the CAFC do not require the Department to select the highest rate available when applying AFA to a respondent deemed uncooperative as evidenced by *National Candle Association v. United States*, 366 F. Supp.2d

1318 (CIT 2005) ("*National Candle Association*"); *F.lli De Cecco di Filippo Fara S. Martino S.p.A v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) ("*F.lli De Cecco di Filippo Fara S. Martino S.p.A*"); and *Ferro Union, Inc v. United States*, 23 CIT 178, 205, 44 F. Supp. 2d 1310, 1335 (CIT 1999) ("*Ferro Union*").

Nozawa further asserts that the CIT has recognized that "it is not unusual for Commerce to select a rate other than the highest available rate when applying adverse inferences," as shown by *National Candle Association* 366 F. Supp at 1325 (*citing Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) ("*Fresh-Cut Flowers"*); and *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan,* 64 FR 24329, 24369 (May 6, 1999) ("*Hot Rolled Carbon Steel*")).

Nozawa argues that the Department has in the past rejected claims that the application of the PRC-wide rate as AFA was insufficient to encourage cooperation.[76] Nozawa asserts that the CIT agreed with the Department's conclusion in *Shandong Huarong* that the PRC-wide rate was adequate to encourage participation in future reviews. Nozawa asserts that because the PRC-wide rate of 77.57 percent is approximately a 300-percent increase over Nozawa's 23.22-percent rate from the investigation, the PRC-wide rate is high enough to provide Nozawa with an incentive to cooperate better in future reviews.

Nozawa argues that the PRCB Committee's only criterion for selecting its standard for non-aberrational margins is that the highest non-aberrational margin is higher than the PRC-wide rate of 77.57 percent. Nozawa argues that the Department should reject the PRCB Committee's proposal to use the highest non-aberrational margin because this proposal is arbitrary and excessively punitive.

Department Position: Section 776(b) of the Act states that:

> the Department may select, as AFA, information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review, or (4) any other information placed on the record.

Accordingly, the Department has the discretion in determining the appropriate AFA rate.

The CIT affirmed, in *National Candle Association* and *Ferro Union,* that the highest available rate is not the only appropriate rate. In addition, the PRCB Committee did not argue that the highest non-aberrational margin would reflect more accurately Nozawa's own data. Although the Department did not use Nozawa's own data, *e.g.*, the highest non-aberrational margin, to calculate the AFA rate, Nozawa has argued that, if AFA were applied to certain of its sales, the PRC-wide rate would be an appropriate rate in the instant review.

[76] *See Shandong Huarong Machinery Co., Ltd. et al. v. United States*, 435 F. Supp. 2d 1261, 1270 (CIT 2006) ("*Shandong Huarong*").

The Department has determined that in the instant review the PRC-wide rate is appropriate to use in the application of AFA. The PRC-wide rate of 77.57 percent from the original investigation is also sufficient to encourage cooperation from Nozawa in the future and to effectuate the purpose of AFA because this rate is significantly higher than the 23.22-percent rate the Department calculated for Nozawa in the original investigation.[77] Therefore, for partial AFA in the final results, the Department has continued to apply the PRC-wide rate of 77.57 percent to certain sales of Nozawa which were not assigned CONNUMs based on their physical characteristics.

Furthermore, pursuant to section 776(c) of the Act, we corroborated our AFA margin using information submitted by Crown and Nozawa. See Memorandum to the File from Matthew Quigley, International Trade Compliance Analyst, through Charles Riggle, Program Manager, China/NME Group, "2004-2005 Antidumping Duty Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Corroboration of Adverse Facts Available" (March 12, 2007).

Comment 6: Surrogate Value for Colored Ink

First, the PRCB Committee argues that the Department's color-specific ink methodology, which applies the weighted-average price of all ME color ink purchases to all ink that is not black, distorts CONNUM-specific costs because the ink prices vary by color. Therefore, the PRCB Committee argues that the Department should value color-specific inks using the color-specific ink ME purchase prices reported by Nozawa. Second, the PRCB Committee argues that the Department should use Indian surrogate data to value color ink for the color-specific inks which Nozawa purchased from NME suppliers.

The PRCB Committee also argues that the Department should implement the new policy announced in *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61618 (October 19, 2006) ("*New Policies on ME Inputs, Wages and Duty Drawback*"). The PRCB Committee submits that with this new policy, for each color-specific ink where Nozawa obtained more than 33 percent from ME suppliers, the Department should calculate a value using the weighted-average of Nozawa's ME prices and surrogate data. Where Nozawa purchased less than 33 percent of a color-specific ink from ME suppliers, the PRCB Committee submits that the Department should use surrogate data to value the input.

Nozawa contends that the Department should not revise its decision in the *Preliminary Results* to use a weighted-average of its color ink ME purchases to value color ink. First, Nozawa claims that the methodology in the *Preliminary Results* for valuing Nozawa's colored ink is reasonable and not distortive, noting that, in the original investigation, the Department valued colored ink for Nozawa without attempting to break down the color ink into color-specific inks. Nozawa

[77] In the less-than-fair-value investigation, the Department used the short cite "United Wah" to refer to Nozawa.

argues that any concerns about potential distortions caused by the color ink value used by the Department in the *Preliminary Results* is already addressed because the Department calculated a weighted-average price based on the quantities of colored ink purchased by Nozawa.

Second, Nozawa observes that the PRCB Committee's proposal would not necessarily produce more accurate CONNUM-specific costs because the Department is already using a weighted-average ME purchase price that is representative of all of Nozawa's ME color ink purchase prices. Further, Nozawa argues that the PRCB Committee's proposal would require significant revision to the Department's margin calculation program.

Third, Nozawa claims that the PRCB Committee's proposal is inconsistent with the Department's valuation of color ink in the other respondents' margin calculations. Nozawa argues that the Department's use of a single weighted-average value for color ink based on ME purchases promotes consistency in the overall margin calculation methodology used for all Chinese producers of subject merchandise.

In addition, Nozawa argues that the Department should reject the PRCB Committee's proposal to implement the Department's new policy for valuing ME purchases. Nozawa asserts that the Department's notice, *New Policies on ME Inputs, Wages and Duty Drawback*, stated that its policy change for ME inputs "will take effect for all segments of NME proceedings that are initiated after publication of this notice in the *Federal Register*" and the Department initiated the instant review prior to the publication of new policy.

Department's Position: For the final results, the Department has continued to divide ink only into the categories of black and color ink. This methodology is consistent with the Department's treatment of the other respondents in the instant review and with the original investigation, where parties had the opportunity to participate in the determination of the physical characteristics used in this proceeding as the basis for defining the CONNUMs assigned to each unique set of product characteristics. Although Nozawa reported color-specific ink purchases, the Department's questionnaire did not require this level of specificity.[78]

The Department has also continued its practice of using a respondent's ME purchase price when a significant portion of an input is purchased from ME suppliers.[79] Section 351.408(c)(1) of the Department's regulations states that "where a portion of the input is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, the Secretary normally will value the factor using the price paid to the market economy supplier." In practice, the Department uses the price paid for the inputs sourced from ME suppliers to value all of the input, provided the volume of the ME inputs as a share of total purchases from all sources is

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[78] *See* questionnaire at C-8 - C-12.

[79] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2004-2005 Administrative Review and Partial Rescission of Review,* 71 FR 75936 (December 19, 2006); *see also Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 71 FR 71509 (December 11, 2006)

"meaningful."[80] The Department has determined on a case-by-case basis whether the volume of ME inputs was meaningful.

Section IV of the Department's Section D questionnaire requires respondents to report for each raw material the percentage purchased from an ME country and the percentage purchased from an NME. Nozawa reported the percentage color ink purchased from ME countries and from NME suppliers.[81] Based on this information, the Department determined that Nozawa's percentage of color ink purchased from ME suppliers was meaningful. Therefore, in accordance with section 351.408(c)(1) of our regulations, for the final results, the Department will continue to use Nozawa's own ME color ink purchase prices to value Nozawa's NME color ink purchases.

Finally, the Department's ME purchases policy announced in *New Policies on ME Inputs, Wages and Duty Drawback*, stated that the new policy would take effect for all segments initiated after the date of publication. As the Department initiated this review before the publication of the new policy's announcement, the Department did not apply the new policy for the final results.

Comment 7: Nozawa's Further Manufacturing

Nozawa argues that, for the final results, the Department should value further manufacturing costs on a transaction-specific basis rather than a CONNUM-specific basis. Nozawa asserts that in its June 5, 2006, submission, it reported that customized hot-stamping or printing jobs may involve bags with the same CONNUM, but use significantly different amounts of foil and ink. Nozawa, therefore, reported further manufacturing costs on a transaction-specific basis because its further manufacturing was performed on a custom-ordered basis.

Nozawa alleges that the Department directed PSI to use CONNUM characteristics rather than product codes for its section E file. Nozawa, however, argues that the CONNUM characteristics are not detailed enough to capture the customer-specific and order-specific details that are reflected in the product code. Accordingly, Nozawa maintains that the Department inappropriately disregarded the product code-specific and transaction-specific data in favor of the CONNUM-specific data which, Nozawa maintains, had a distortive effect.

Nozawa further argues that constructed export price ("CEP") transactions are reviewed on a transaction-specific basis and adjustments are made for movement and selling expenses only if they relate to the particular CEP transaction. Nozawa argues that the Department should also analyze further-manufacturing expenses on a transaction-specific basis.

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[80] *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2906 (January 18, 2006), and accompanying Issues and Decisions Memorandum, at Comment 2.

[81] *See* Nozawa's December 23, 2005, section D response at Exhibit 6 and Nozawa's June 5, 2006, supplemental response at Exhibit D-17.

Nozawa further argues that if the Department does not decide to calculate further manufacturing on a transaction-specific basis, then the Department should, for the final results, reallocate the weighted average of the further-manufacturing costs for each CONNUM. Specifically, Nozawa proposes summing the cost of further manufacturing for each CONNUM and dividing it by the quantity of bags in each CONNUM.

The PRCB Committee did not comment on this issue.

Department's Position: The data that Nozawa submitted on August 7, 2006, has information in the field FURMANYESNO which allows the Department to identify transactions that underwent further manufacturing from those that did not. Subtracting further manufacturing costs only from the sales which underwent further manufacturing will improve the accuracy of the margin calculation for all of Nozawa's sales. Therefore, for the final results, the Department only subtracted further manufacturing costs from the U.S. sales involving merchandise which actually underwent further manufacturing.

Comment 8: Freight on Nozawa's ME Purchases

Nozawa argues that the Department's normal practice in NME cases does not include a surrogate freight adjustment for factors sourced from ME suppliers, if those factors are purchased on a delivered basis.[82] Nozawa argues that exhibit 14 of its June 5, 2006, questionnaire response demonstrates that its factors sourced from ME suppliers were purchased on a delivered basis. However, in the *Preliminary Results,* the Department added a surrogate inland freight adjustment to the ME purchase prices for these factors. Nozawa argues, for the final results, the Department should eliminate any surrogate freight adjustment that it added to the value of Nozawa's ME purchases.

Although the PRCB Committee acknowledges that the Department added surrogate inland freight to both ME purchase prices and surrogate vales, it maintains that if the Department agrees with Nozawa with respect to inland freight for factors valued with ME purchase prices, the Department must still add inland freight for those factors not based on ME purchase prices.

Department's Position: The Department determined that no adjustment should be made to ME purchase prices for inland freight which are based on delivered prices. This decision conforms to the Department's practice as described in *Tapered Roller Bearings* and *CTVs Amended Final*. In both of these cases, the Department found that record evidence indicated that the reported prices were delivered prices, and made no adjustment for inland freight. Likewise, for the final results of the instant review, the Department did not adjust the ME purchase prices Nozawa

[82] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517, 2522 (January 17, 2006) (*"Tapered Roller Bearings"*); *see also Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers From the People's Republic of China*, 69 FR 28879, 28880 (May 19, 2004) ("*CTVs Amended Final*").

reported for inland freight because the record of this segment indicates that Nozawa's ME purchase prices are delivered prices.

COMMENTS WITH RESPECT TO CROWN

Comment 9: International Freight

Crown contends that the Department applied an erroneous and unexplained amount for international freight ("INTNFRU") as facts available to four observations in Crown's section C U.S. sales database, in which Crown used an NME freight service provider. For these transactions, Crown contends, the Department set INTNFRU equal to 500 Hong Kong dollars ("HK$") for sales observations where the terms of sale ("SALETERU") were either cost insurance and freight ("CIF") or cost and freight ("C&F") and for which Crown did not report a per-unit value in the INTNFRU field. Crown contends that the Department did not explain the origin of the HK$500 amount other than to state that it is "a market-economy surrogate value for international freight." Thus, for the final results, Crown argues, the Department should take the international freight expenses that it incurred on its other ME shipments into account in determining the international freight applicable to these four transactions in a reasoned calculation that takes into account the weight of the merchandise shipped.

Crown contends that for the final results, the Department should base the INTNFRU for these transactions on the weighted-average value of ME INTNFRU expenses incurred to ship the subject merchandise to the same zip code. Crown provided in the proprietary portion of its brief the SAS computer language to accomplish this task and the resulting per-unit weighted-average value of INTNFRU for merchandise shipped to the same zip code. As an alternative, Crown provides the proprietary value of the weighted-average INTNFRU expense to all destinations for which an ME shipper was used. Thus, Crown contends that the Department should apply either of these weighted-average international freight amounts to the four observations at issue.

The PRCB Committee argues that the Department should reject Crown's proposal that the Department recalculate INTNFRU for four observations based on the freight rates paid for shipments to the same customer location rather than use the surrogate values that were used in the *Preliminary Results*. The PRCB Committee claims that the four observations at issue have different sales terms than the sales which Crown proposes to use to establish the freight rate. The PRCB Committee thus contends, based on proprietary information, that none of the sales that Crown proposed that the Department use to establish the freight rate is indicative of the international freight that would have been incurred for the four transactions at issue.

The PRCB Committee also claims that the Department should also apply a surrogate value for the freight for two additional observations, which the PRCB Committee claims have a reported value for INTNFRU that is inconsistent with the rates applicable to any other sale to its destination (or any other destination).

Department's Position: The application of HK$500 as facts available to four observations in Crown's U.S. sales database for which Crown reported no international freight despite sales terms of CIF and C&F, was made in error. However, for the reasons specified by the PRCB Committee, we disagree that Crown's freight rates paid for shipments to the same customer location are the most appropriate surrogate value for international freight for these observations. Therefore, we have revised our freight calculations for those sales, using the international freight rates quoted on the Maersk Line website, http://www.maerskline.com, for the relevant ports of export and import on the date of sale.[83]

Comment 10: Negative Sales Values in the Denominator Used to Calculate Importer-Specific Assessment Rates

Crown contends that in the *Preliminary Results*, the Department calculated negative net U.S. prices for some of Crown's sales. Although it disagrees that it is appropriate to include negative net U.S. prices to calculate per-unit dumping margins, it acknowledges that the Department has declined past requests to exclude negative U.S. prices from the calculation of unit margins and from the denominator of the weighted-average margin calculated for cash deposit purposes.

Nevertheless, Crown argues that it is unreasonable to include negative net U.S. prices in the denominator of the importer-specific assessment rates. Crown contends that unlike the overall margin calculated for cash deposit purposes, the Department calculates the "assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of the subject merchandise for normal customs duty purposes" as stated in section 351.212(b) of the Department's regulations. Crown contends that it did not import the subject merchandise into the United States, and therefore does not know the precise entered value declared to U.S. Customs and Border Protection ("CBP"). However, Crown argues that the entered value cannot be below zero since there is no provision in U.S. customs law that would permit an importer to report a negative entered value for an imported item. Accordingly, if the Department is going to calculate net negative U.S. prices, Crown argues that the negative values calculated for entered value cannot be included in the calculation of the importer-specific assessment rates because entered values cannot logically be below zero.

The PRCB Committee contends that the Department should dismiss as moot Crown's argument that certain U.S. sales with negative entered values should be excluded from the calculation of the importer-specific assessment rates. The PRCB Committee argues that, because the Department calculated the importer-specific assessment rates on a per-unit, rather than on an *ad valorem* basis, entered values, whether positive or negative, were not used in the calculation of the assessment rate.

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[83] *See* Memorandum to the File from Laurel LaCivita, Senior International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, "Analysis for the Final Results of the 2004-2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Crown Polyethylene Products (International) Ltd. ("Crown")" (March 12, 2007) ("Crown Final Analysis Memorandum") at Attachment II.

The PRCB Committee argues that even if the Department were to calculate the assessment rate on an *ad valorem* basis, the facts of this matter present no specific mathematical impediment to using these sales in the calculation of the importer-specific assessment rates. Further, the PRCB Committee argues that there is no basis in the statute or regulations to exclude any sales to the United States, including negative-priced sales, from the assessment rate calculations, and claims that Crown has not cited any legal authority, or any precedent, for such a methodology.

Rather, the PRCB Committee contends that Crown's proposal would violate the requirement established in section 351.212.(b)(1) of the Department's regulations that the total amount of duties due ("TOTPUDD") be used as the numerator in the assessment rate calculations. By excluding negative-priced sales, the PRCB Committee argues that Crown's methodology would result in the failure to allocate TOTPUDD to entries of the subject merchandise, and thus understate the margin. Therefore, for the final results, the PRCB Committee argues the Department should not change its methodology with respect to the inclusion of the negative-priced sales from the calculation of the importer-specific assessment rates.

Department's Position: In previous cases involving negative net prices,[84] the Department explained that it calculated the antidumping duty margins by deducting the selling expenses applicable to the reviewed sales in accord with section 772(c) of the Act. In those cases, we determined that negative prices resulted from the fact that the U.S. price was not high enough to cover the costs associated with making the sale, and a negative net U.S. sales price was the result.[85] In *Wire Rod*, we stated that there is nothing in the statute or regulations that would allow us to mitigate the effect on the margin of highly dumped sales with negative net U.S. prices.[86] We calculated the U.S. net price for all sales in this review in accord with section 772(c) of the Act. In those instances where the U.S. price did not cover the selling or movement expenses applicable to the sale, the net price fell below zero. Therefore, consistent with the practice established in *Pasta* and *Wire Rod*, we have made no changes to our calculation methodology for the final results of review.

Comment 11: Valuation of Cardboard Paper Inserts

Crown argues that the Department erroneously valued its reported factors for cardboard paper inserts using the weighted-average value of the import prices for HTS 4810.29.00 and 4805.92.00 instead of the more appropriate category 4810.32.00. Crown contends that the Department's Analysis Memorandum for Crown in the *Preliminary Results* indicates that HTS 4810.29.00 represents "paper and paper board of a kind used for writing, printing or other graphic purposes: other," and that HTS 4805.92.00 represents "other uncoated paper and

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[84] *See Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006) ("*Wire Rod*"), and accompanying Issues and Decision Memorandum at Comment 7; and *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000) ("*Pasta*"), and accompanying Issues and decisions memorandum at Comment 26.

[85] *See Pasta* at Comment 26 and *Wire Rod* at Comment 7.

[86] *See Wire Rod* at Comment 7.

paperboard, in rolls or sheets, weighing 150 g/m2 or less, other than fluting paper and other than test liner," whereas HTS category 4810.32.00 represents "kraft paper and paperboard, other than that of a kind used for writing, printing, or other graphic purposes: bleached uniformly throughout the mass and weighing more than 150 g/m2." Crown contends that neither of the HTS categories that the Department used in the *Preliminary Results* corresponds in physical characteristics to the cardboard paper inserts that Crown consumed during the POR.

Crown maintains that if the Department had conducted an on-site verification of its questionnaire responses, Crown would have provided the Department with a physical sample of the cardboard inserts to demonstrate that the HTS category that Crown suggested to the Department is an appropriate and precise basis on which to value this material. Alternatively, Crown maintains that the Department could have requested additional information to support the company's assertion that the HTS category it suggested is the most appropriate source for valuing its cardboard inserts. However, Crown argues, absent any information on the administrative record that contradicts Crown's assertion, the Department should not depart from the information contained in Crown's questionnaire responses and surrogate value submission in determining the physical characteristics of an input that Crown consumes. Further, Crown argues, since Crown and its counsel have certified the accuracy of its questionnaire responses, the Department should rely on Crown's description of its cardboard inserts, rather than the Department's best guess, in selecting a surrogate value for this input. Thus, for the final results, Crown contends that the Department should use HTS 4810.32.00 to value Crown's cardboard paper inserts.

The PRCB Committee contends that Crown provides no valid reason to depart from the HTS codes used to determine the surrogate value for cardboard paper inserts. The PRCB Committee contends that the two HTS codes that the Department used in the *Preliminary Results*, HTS 4810.29.00 and HTS 4805.92.00, are the same codes that the Department used in the original investigation. The PRCB Committee contends that Crown cites no record evidence to support its claim that its suggested HTS code, 4810.32.00, more accurately describes the cardboard paper inserts that it consumes, but rather makes conditional statements indicating that if the Department had conducted further research, requested additional information, or verified the information on the record, it would have received additional information that would support its contention that HTS 4810.32.00 is the most appropriate source for valuing cardboard inserts.

The PRCB Committee claims that in a number of previous cases, the CIT established that the burden of creating an adequate record lies with respondents and not with the Department. *See Shandong Huarong Mach. Co. v. United States*, No. 03-00676, 2005 (CIT 2005); *Chia Far Industry Factory Co. v. United States*, 343 F. Supp. 2d 1344 (CIT 2004); *Tianjin Machinery Import and Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992). The PRCB Committee argues that Crown had every opportunity to provide evidence to support the use of its suggested HTS category, and it is not the Department's fault that Crown failed to do so. Thus, the PRCB Committee argues, the Department should not make any changes to its calculations with respect to this issue for the final results.

Department's Position: Section 773(c)(1) requires the Department to value FOPs "based on the best available information regarding the values of such factors in a market economy country." The Department's regulations state that "interested parties may submit publicly available information to value factors" within a specified deadline.[87] This information is not a formal request for factual information like the type specified in section 351.301(c)(2)(ii) of the Department's regulations where the failure to submit a response may result in the use of facts available under section 776 of the Act and section 351.308 of the Department's regulations. The request for publicly available information to value FOPs is to assist the Department in its analysis and utilize its discretion in determining the efficacy of the submitted information, not to enhance, supplement or replace information provided in the questionnaire responses. While the Department will consider surrogate value information voluntarily submitted by the interested parties, the Department must still determine the most appropriate surrogate value based on the best available record information.[88]

Consequently, in the *Preliminary Results,* we valued Crown's FOPs based on the description of the inputs provided in the questionnaire response. Page D-8 of the Department's original questionnaire requires respondents to "describe each type and grade of material, as appropriate, used in the packing process." Crown's December 23, 2005, section C and D response describes the product, which Crown described in its case brief as "cardboard inserts," as "different kinds of ropes and cardboard."[89] Various exhibits to Crown's DQR refer to "paper cardboard."[90] Question 59 of the Department's first supplemental questionnaire explained that Crown should "provide detailed technical specifications for each of the raw materials, energy and packing materials used to produce the subject merchandise. The technical specifications should be in sufficient detail to allow the Department to ascertain the HTS category under which the material falls."[91] In response, Crown's 1st SQR reported that field number 2.9, PAPERCB, paper cardboard, was "rude paper cardboard."[92] Thus, Crown did not provide sufficient information in its 1st SQR to determine the HTS category under which the material falls or to distinguish between the two HTS numbers that we used in the original investigation. As a result, for the *Preliminary Results*, we valued the cardboard inserts using HTS 4810.29.00 and HTS 4805.92.00, the same codes that we used in the original investigation. We have determined not to value this input using Crown's proposed HTS number, 4810.32, which represents kraft paper, because there is nothing in the questionnaire response to indicate that Crown used kraft paper for this material.

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[87] *See* 19 CFR 351.301(c)(3).

[88] *See Allied Pac. Food (Dalian) Co., Ltd. v. United States*, 435 F. Supp. 2d 1295, 1313 (2006); *Guangdong Chemicals Imp. & Exp. Corp. v. United States*, 30 CIT ____, 2006 Ct. Intl Trade LEXIS 142, Slip Op. 06-142, at 8 (September 18, 2006).

[89] *See* Crown's DQR at D-8.

[90] *See* Crown's DQR at Exhibits D-1, D-6, D-7 and D-9.

[91] *See* the Department's first supplemental questionnaire for Crown dated March 15, 2006.

[92] *See* Crown's 1st SQR at Exhibit 26.

Moreover, we disagree with Crown's assertion that the Department should use the HTS number that it recommended because Crown and its attorney both certified that the information in the questionnaire responses is accurate. For the reasons explained above, the information provided in the surrogate value submission is not mandatory, and cannot supplement, enhance, or substitute for information that should have been timely filed in its questionnaire responses. Therefore, for the final results, we have made no changes to our calculations for this item.

Comment 12: Valuation of Corrugated Cardboard Carton

Crown contends that in the *Preliminary Results*, the Department erroneously valued Crown's corrugated cardboard packing cartons using HTS 4819.10.90, which includes corrugated paper or paperboard items other than boxes. In addition, Crown notes that the Department used HTS 4819.10.10 to value the corrugated cardboard packing boxes or cartons reported by the other two respondents. Crown contends that the Department did not explain why it used a different source to value Crown's cardboard packing containers than it used to value the identical packing materials that the other respondents consumed.

Crown argues that its surrogate value submission specifically identified HTS 4819.10.10 as the most appropriate tariff classification for valuing the corrugated cardboard packing cartons it used to pack the subject merchandise. Crown points out that Webster's online dictionary (http://webster.com/dictionary/carton) defines cartons as "a box or container usually made of cardboard and often of corrugated cardboard." Accordingly, Crown argues, when constructed of corrugated cardboard, a box and a carton are synonymous terms. Thus, Crown maintains that since the primary packing material that it consumed during the POR is most accurately described as corrugated cardboard boxes, the use of the catch-all "other" category of HTS 4810.10.90 produces a less accurate result. Therefore, for the final results, Crown contends, the Department should value its consumption of packing cartons using the same HTS category that it used for the other two respondents.

The PRCB Committee argues that Crown does not provide any valid reason for the Department to change the HTS code that it used to value corrugated cardboard cartons in the *Preliminary Results*. Rather, the PRCB Committee contends that Crown's section D response identifies the packing material use exclusively as "cartons" and not "boxes." Thus, the PRCB Committee disagrees with Crown's assertion that the HTS category for boxes is more appropriate than the HTS category for cartons.

Department's Position: For the reasons explained in Comment 11, section 773(c)(1) of the Act directs Department to value FOPs "based on the best available information regarding the values of such factors in a market economy country." As the PRCB Committee noted, Crown's sections C and D questionnaire responses identify the packing material used as "cartons."[93]

[93] *See* Crown's DQR at D-11, which states that Crown packs the subject merchandise into "cartons," and CQR at C-26, which identifies "cartons" as a packing material. In addition, Exhibit D-11 identifies the variable "CARTONU" as "carton."

Question 59 of our first supplemental questionnaire requested Crown to "provide detailed technical specifications for each of the raw materials, energy and packing materials used to produce the subject merchandise. The technical specifications should be in sufficient detail to allow the Department to ascertain the HTS category under which the material falls."[94] Crown's 1st SQR reported that field number 49.1, CARTONU, CARTONs, were "boxe{s} made by corrugated paper."[95] Thus, Crown did not describe the product in sufficient detail to allow us to determine the appropriate HTS category for the material. As a result, for the *Preliminary Results*, we determined that HTS 4819.10.90, which represents "cartons and cases of corrugated paper and paper board" most closely represents the product described in the questionnaire responses. However, a further evaluation of the information presented in the questionnaire responses reveals that the information that Crown reported with respect to the technical specifications of its corrugated cardboard boxes is in line with the information reported by the other companies in this review. Therefore, for the final results, we have used HTS 4819.10.10, boxes of corrugated paper and paper board, to value Crown's consumption rate of corrugated carton boxes.

COMMENTS WITH RESPECT TO HIGH DEN

Comment 13: New Factual Information Submitted by High Den

In preparing its original section D database, High Den contends that it inadvertently placed the decimal point in the wrong position in reporting the consumption rate for dilute agent/solvent. As a result, High Den claims that the consumption rate used in the *Preliminary Results* overstates the actual consumption rate by a factor of 10. High Den argues that this error is egregious, since only small amounts of solvent/thinner are added to ink to achieve the appropriate consistency for the necessary application, and the erroneously reported usage rate for solvent/thinner is almost equal to the consumption of ink.

High Den claims that it notified the Department of this error in the narrative of its 3rd SQR, where it also provided a revised section D database. High Den argues that because it notified the Department of this error during the comment period subsequent to the *Preliminary Results*, the Department should incorporate the revised information in its final results in accord with *Timken U.S. Corp. v. United States*, 434 F.3d 1345 (Fed. Cir. 2006) ("*Timken*"). High Den contends that the correction of the usage factor is consistent both with common sense and the Department's previous experience with other respondents in this proceeding and in the original investigation with respect to the usage of ink thinner/solvent in the production process for the subject merchandise. Thus, for the final results, High Den argues that the Department should correct the decimal placement in the factor usage rate reported for ink thinner/solvent in the initial December 23, 2005, section D database.

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[94] *See* the Department's first supplemental questionnaire for Crown dated March 15, 2006.

[95] *See* Crown's 1st SQR at Exhibit 26.

The PRCB Committee contends High Den's October 20, 2006, submission of its 3rd SQR constitutes an untimely submission of new factual information. The PRCB Committee contends that the narrative of High Den's response reports that High Den revised the consumption rate for the solvent/dilute agent because it "inadvertently placed the decimal point in the wrong position." However, the PRCB Committee argues that High Den also made significant revisions to direct labor, indirect labor and electricity usage rates without disclosing, describing or explaining the revisions in the narrative of its questionnaire response. Thus, because this additional information was not submitted in response to a request for information by the Department, the PRCB Committee argues that the revisions constitute untimely new factual information under section 351.301(b)(1) of the Department's regulations. As a result, the PRCB Committee contends that this information must be returned to the submitter pursuant to section 351.302(d) of the Department's regulations.

The PRCB Committee disagrees with High Den's argument that the Department should accept these "corrections" pursuant to *Timken*. Without identifying the specific argument in question, the PRCB Committee claims that High Den's argument should be rejected because nothing in *Timken* precludes the Department from enforcing its regulations regarding the submission of untimely information. Accordingly, the PRCB Committee argues, the Department should enforce its regulations and not address the question of whether the new information "corrects" previously reported data.

Further, the PRCB Committee argues that even if the Department does not return the new information as untimely, there is no basis to make a "correction" to High Den's reported data. The PRCB Committee maintains that the Department's traditional test for determining whether or not to correct "clerical errors" in a respondent's submission is set forth in *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42834 (August 19, 1996) ("*Flowers*") as follows:

> We will accept corrections of clerical errors under the following conditions: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification.

The PRCB Committee maintains that, in *Timken*, the CAFC called into question the first prong of the *Flowers* test, holding that the Department is not precluded from fixing methodological or

substantive errors, provided the other factors have been satisfied. Nevertheless, the PRCB Committee argues that the CAFC ultimately upheld the Department's rejection of Timken's proposed "corrective information" because "none of the new evidence that Timken submitted adequately supported its position" that its original response was incorrect.

According to the PRCB Committee, High Den, like Timken, cannot satisfy the second prong of *Flowers*. Indeed, the PRCB Committee maintains, High Den points to no evidence demonstrating that its original usage rates were incorrect. The PRCB Committee maintains that High Den provided neither primary source documentation for its revised usage rates or worksheet demonstrating how it calculated them. Therefore, the PRCB Committee argues, High Den's case is far weaker than Timken's, where the respondent had at least produced purchase orders, invoices, and other sales documents in an attempt to demonstrate the appropriateness of its suggested correction.

The PRCB Committee contends that the Department should reject High Den's proposed correction for this reason alone. However, it also argues that High Den cannot satisfy the third and fifth prongs of *Flowers*. The PRCB Committee argues that High Den provides no explanation for why it did not submit these proposed revisions until less than one week before the due date for its case brief. Moreover, given the extent of the revisions, the PRCB Committee maintains that the new database clearly constitutes a "substantial revision" of information provided to the Department. For all of these reasons, the PRCB Committee argues that the Department should reject High Den's proposed revisions for the final results.

In its rebuttal brief, High Den stated that it agrees with the PRCB Committee that the section D database submitted on October 20, 2006, contains changes to the reported values for direct labor, indirect labor and electricity usage rates that were submitted prior to the *Preliminary Results*. High Den claims that the changes to direct labor, indirect labor and electricity usage rates were inadvertently submitted, and represent the values in a draft database that was not submitted to the Department. High Den agrees with the PRCB Committee that the October 20, 2006, database should not be used for the purposes of the final results. High Den claims that the previous draft was calculated using an incorrect allocation factor which understated the amount of labor and electricity attributable to the production of the subject merchandise. High Den asserts that the December 23, 2005, database contains the higher, and correct, labor and electricity usage factors based upon the correct allocation factors.

Consequently, High Den agrees with the PRCB Committee that the Department should not use the revised section D database submitted on October 20, 2006, for the final results. However, High Den argues that the Department should still take into account the corrections it made to its solvent/thinner usage factor as described in its 3rd SQR and described in its case brief. Further, High Den asserts that it is willing to provide a revised section D database that reflects only the change in the placement of the decimal for the ink thinner/solvent usage factor, if the Department requests such information.

High Den claims that it provided the revised database solely to correct a mathematical error, which amounted to the placement of a decimal point, in a consumption factor that was already in the administrative record. High Den claims that it was not seeking to place new information in the administrative record or to substantially revise its database.

Department's Position: High Den admitted that the information contained in its October 20, 2006, section D database was not accurate. Therefore, we have not used that information in the final results.

High Den argues that, because it notified the Department of the inadvertent placement of a decimal point in its consumption rate for dilute agent/solvent during the comment period subsequent to the *Preliminary Results*, the Department should incorporate the revised information in its final results in accord with *Timken*. However, High Den did not identify the provision of *Timken* which it believes confers authority on the Department to accept unsupported clerical errors after the *Preliminary Result*s. In *Timken*, the CAFC stated, "we hold that Commerce is free to correct any type of importer error - - clerical, methodology, substantive, or one in judgement - - in the context of making an antidumping duty determination, provided that the importer seeks correction before Commerce issues its final results and adequately proves the need for the requested corrections."[96]

High Den's 3rd SQR described its need to correct its consumption rate for solvent/thinner as follows:

> In preparing the Section D response, High Den inadvertently placed the decimal point in the wrong position for the consumption rate of factor for dilute agent of solvent in the field 2.6 in the D-3 FOP database and therefore overstated the consumption of solvent or dilute agent by a factor of 10. High Den would like to take this opportunity to correct this error. The previously reported consumption rate for this factor was [* * *]. The correct consumption rate should be changed to [* * *].
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> A revised FOP listing correction filed 2.6 is provided in Appendix S3-5. Because this correction is being made prior to the end of the comment period (and we will incorporate this comment into our case brief) the Department should correct this error in the final results. *See Timken.*

High Den's 3rd SQR at S3-4.

High Den failed to provide any primary source documents, supporting documentation, or revised calculations or other information that demonstrates the accuracy of the revised information. In providing ***no*** supporting documentation, High Den failed to meet the standard established in *Timken* for accepting clerical corrections to respondents' submitted information after the

[96] *See Timken,* 434 F.3d at 1353.

preliminary results (and/or verification) of "adequately" proving the need for the requested corrections. As a result, we have made no changes in our calculations for High Den's usage rate for solvent/thinner for the final results, and will not address the issue of timeliness for High Den's submission of the revised information.

Comment 14: International Freight Expenses for Transaction Number 2

High Den contends that the documentation provided in its questionnaire responses demonstrates that both of its U.S. sales during the POR were made on the basis of FOB Chinese port and that neither sale incurred international freight expense. As a result, High Den contends that the Department incorrectly applied a surrogate value to international air freight expenses which it deducted from gross unit price for sale number 2. High Den contends that the improper deduction of international air freight expenses resulted in a total net sales value of less than zero for not only that shipment by also for the total net sales value of both of High Den's sales. High Den argues that because it did not incur international air freight expenses on the sale which was shipped by air, for the final results, the Department should recalculate the U.S. price without consideration for international air freight.

High Den claims that *Preliminary Results* did not cite the administrative record to support the Department's claim that High Den incurred air shipment expense in Chinese foreign currency ("*renminbi*"). Rather, High Den explains that the record explicitly establishes that it did not incur any air shipment expenses for this transaction. According to High Den, the record states:

1. High Den's November 21, 2005, section A response ("AQR"):

    - reports that its two U.S. sales were sold FOB, Shenzhen;
    - provides shipping documentation for sale number 1 (which was shipped by ocean freight) that was consistent with its statement that both U.S. sales were made FOB, Shenzhen; and,
    - provides a purchase order for sale number 1 which stated explicitly that freight would be charged separately to the customer.

2. High Den's December 23, 2005, section C response CQR:

    - states that High Den did not purchase any ME movement expenses during the POR;
    - reports that sales were made on an FOB basis;
    - reports a "0" in field 21.0., international freight expenses, of the section C database for both sales, because it stated in the narrative that it did not "undertake the expenses of international freight; and,

- states that High Den reported the port of exit as Yantian for the ocean freight sale, and Shenzhen airport for the air freight sale.

3. High Den's April 17, 2006, SQR:

   - reiterates that the FOB port of export for observation 1 (the ocean freight sales); was Yantian and the port of export for observation 2 (the air freight sale) was Shenzhen airport;

   - explains that the reported entered value of the U.S. sales was identical to the reported gross unit price of the sale, because the sales were made on a FOB basis; and,

   - continues to report that the sales terms for the sale as FOB and the international freight expenses for each sale as zero.

4. High Den's July 27, 2006, 2nd SQR:

   - states that for the sale subject to air freight, the U.S. customer ordered the product on a rush basis and requested delivery via air freight, and that its U.S. customer also agreed to pay for air freight; and,

   - states that the shipment shipped by air was a rush shipment and the purchaser was willing to pay both a higher sales price to High Den for the rush order and to incur the air freight charges in order to get the merchandise as soon as possible.

5. High Den's October 20, 2006, Third Supplemental Questionnaire Response ("3rd SQR"):

   - reiterates that High Den prepaid the international freight charges on both shipments to a Hong Kong freight forwarder in Hong Kong dollars;

   - provides freight forwarder invoices and payment documents;
   - establishes that for each transaction, the U.S. customer paid the invoice purchase amount, then separately reimbursed High Den for the international freight charges incurred by High Den on behalf of the U.S. customer, in a manner consistent with the terms of sale, FOB Chinese port of exit.

Consequently, for the foregoing reasons, High Den argues, the Department should correct its calculation of U.S. price by not deducting air freight from High Den's reported transaction price.

The PRCB Committee contends that High Den failed to provide a satisfactory explanation of the delivery terms of its two sales. Although High Den claimed many times that the terms of its sales were FOB China, and that it incurred no expenses for international movement, the PRCB

Committee contends that High Den's 3rd SQR, submitted days before the case briefs were due, acknowledged that High Den not only incurred expenses for ocean freight and air freight (claiming that the customers subsequently reimbursed these costs), but also incurred additional, previously unreported charges for which High Den made no claims of reimbursement. Thus, the PRCB Committee contends, it is unclear whether High Den incurred any additional movement or direct selling expenses (whether or not subsequently reimbursed by its customers) that have not been reported.

Thus, the PRCB Committee contends that High Den has not acted to the best of its ability to report its international movement expense, and that the Department should apply AFA to High Den's international movement expense. However, even if the Department does not apply AFA to High Den's international movement expense, the PRCB Committee contends that record evidence demonstrates that High Den's gross unit prices are stated on a delivered basis, so in its margin calculations the Department should deduct all international movement and other proprietary expenses.

The PRCB Committee contends that High Den has failed to demonstrate that it receives separate reimbursement for international freight costs. The PRCB Committee cites the record evidence of its failure:

- The PRCB Committee contends that beginning with its original questionnaire response, High Den claimed that both of its U.S. shipments were "FOB Chinese port."

- The PRCB Committee claims that in its SQR, High Den explained that the very great difference in per-unit price between the two sales was that one sale was shipped by ocean freight and the other was shipped by air freight. The PRCB Committee contends that High Den's explanation indicates that the price difference is entirely explained by the fact that international movement charges are *included* in the gross unit prices.

- The PRCB Committee claims that the Department's SSQ requested High Den to provide copies of any relevant documentation, including proof of payment, in the event that High Den separately invoiced the customer for any freight expenses applicable to the sale. The PRCB Committee claims that in its 3rd SQR, High Den both acknowledged and provided invoices showing that it paid ocean freight expenses for observation number 1 and air freight expenses for observation number 2. The PRCB Committee also notes that, in this response, High Den claimed that the customers separately reimbursed it for these expenses, and argued that the Department should not have deducted international freight expenses from the gross unit price.

The PRCB Committee contends that a fully developed factual record would not support High Den's claims that its customers reimbursed it for international freight expense. The PRCB Committee notes that, despite a direct request from the Department, High Den failed to provide any invoices showing that its customers reimbursed it for international freight charges. Thus, the PRCB Committee contends that record evidence demonstrates that High Den, not its customers,

paid for international freight which, the PRCB Committee argues, is consistent with High Den's initial explanation that the difference in the gross unit price between the two sales resulted from the fact that one was shipped by ocean freight and the other by air.

The PRCB Committee argues that the Department should reject High Den's argument that international freight expenses should not be deducted from the gross unit price for the final results. The PRCB Committee contends that High Den has not explained why it failed to disclose that it incurred, and then recouped, international freight charges, until its 3nd SQR, which was filed days before the case briefs were due, when provisions for such a payment situation are included in the Department's standard questionnaire.

Therefore, the PRCB Committee contends, for the final results the Department should continue to treat High Den's gross unit prices as reported on a delivered basis and either: 1) deduct the actual international shipping charges for observation numbers 1 and 2, as reported in High Den's 3rd SQR; or 2) continue to deduct international movement charges using the methodology that was employed in the *Preliminary Results*.

Finally, the PRCB Committee argues that High Den's 3rd SQR indicates that the gross unit prices reported in the section C database cover additional and previously unreported movement expenses. The PRCB Committee contends that, for the final results, the Department should also deduct these charges from the gross unit price, adjusting the computer program as necessary, since High Den did not include these charges in the revised section C database that was submitted with its 3rd SQR.

Department's Position: An examination of the information provided in High Den's 3rd SQR indicates that High Den's customers reimbursed it for international freight expenses that it incurred to ship the merchandise sold to the United States during the POR.[97] Specifically, High Den provided invoices from its freight forwarder demonstrating the value and type of international movement expenses.[98] In addition, it provided subsequent credit advices from its bank in China demonstrating that its U.S. customers deposited an amount equal to the value of the freight invoices into High Den's account.[99] Further, each credit advice identified the purpose of the payment (merchandise, ocean freight or air freight) and the invoice to which the payment applied. Based on record evidence, we have re-calculated High Den's antidumping duty margins exclusive of international movement expenses. In addition, for the final results, we adjusted the gross unit price for the value of the handling charges that were recorded on High Den's commercial invoice but not reported to the Department in its section C database.

[97] *See* High Den's 3rd SQR at Exhibits 1 and 2.

[98] *Id.* at Exhibit 1.

[99] *Id.* at Exhibit 2.

Comment 15: **Calculation of Weighted-Average Value of High Den's ME Purchases of Polyethylene Resins**

High Den contends, in the *Preliminary Results*, the Department incorrectly calculated the weighted-average price of its ME purchases of HDPE and LDPE resin. High Den argues that it does not object to the steps in the methodology that the Department used to calculate the per-unit value of the ME purchases: such as excluding High Den's ME purchases of HDPE and LDPE resin from India, Indonesia, South Korea and Thailand; however, it claims that the spreadsheets used by the Department to calculate the weighted-average price of High Den's ME purchases of HDPE and LDPE resins from ME countries contained numerous mathematical errors which resulted in an overstatement of the weighted-average value of High Den's HDPE and LDPE resin purchases.

High Den contends that the Department sought to calculate separate weighted-average ME purchase prices (exclusive of imports from India, Indonesia, Korea and Thailand) for HDPE and LDPE resin purchases that: 1) were subject to ME freight charges from Hong Kong, and to which ME freight charges were added; and, 2) were not subject to ME freight costs, to which a surrogate value for domestic freight was added. High Den contends that the Department properly calculated the weighted-average ME purchase price of HDPE resin that was subject to ME freight, but that all other calculations were inaccurate and difficult to follow. Therefore, High Den provided proprietary sample calculations demonstrating how the weighted-average purchase price for each type of resin should be calculated based on the type of freight that was used. High Den argues that, for the final results, the Department should recalculate the weighted-average ME purchase price of HDPE and LDPE resin based upon the quantity and value of the purchases reported in High Den's ME input purchases spreadsheet.

Department's Position: The spreadsheet that the Department used to calculate the value of HDPE and LDPE resins contained numerous errors. Further, High Den accurately described the Department's intended methodology for calculating the value of the weighted-average purchase price for HDPE and LDPE resin. Therefore, for the final results, we have revised our calculations, correcting the errors in addition and subtraction that occurred within the spreadsheet used to calculate the ME purchase prices, and certain other linking errors that occurred in transmitting the calculated figures from the calculation worksheet to the master surrogate value worksheet that was read into the SAS computer program.

Comment 16: Valuation of High Den's Scrap Resin

High Den contends that in the *Preliminary Results*, the Department double counted the value of High Den's recycled HDPE and LDPE scrap resin inputs used in the production of the subject merchandise.

High Den explains that the technical description of the production process used to manufacture the subject merchandise provided in its December 23, 2005 section D response ("DQR") demonstrates that High Den employed HDPE and LDPE resins in the production of the subject

merchandise and that HDPE and LDPE scrap resins were generated during the extrusion, printing, gusseting and converting stages of production. High Den maintains that its technical description demonstrated that the HDPE and LDPE scrap resins were collected and recycled into the production process. Further, High Den maintains that it used additional labor and electricity to prepare the HDPE and LDPE scrap resins for reintroduction in the production process. Thus, High Den argues that its questionnaire responses document that it did not purchase recycled HDPE and LDPE scrap resins from outside vendors, but obtained them solely from production scrap. Therefore, High Den argues, the Department erroneously valued recycled HDPE and LDPE scrap resin using a surrogate value for scrap resin. As a result, High Den claims, the Department double counted the amount of the scrap resin used in the production of the subject merchandise because it did not credit High Den for the scrap resin by-product that was reintroduced into the production process.

High Den further argues that, in the original investigation, the Department valued the reported factors for HDPE resin, LDPE resin, and the labor and electricity required to reintroduce the recycled HDPE and LDPE scrap resins into the production process, but did not value the material inputs for recycled HDPE and LDPE scrap resin. Thus, consistent with the methodology used in the original investigation, High Den claims that it did not report the FOPs for the amount of HDPE and LDPE scrap resin by-products that were generated during the production process in the current review.

High Den argues that for the final results, the Department should continue to value the reported FOPs for HDPE and LDPE resin and the additional amount of electricity and labor required to reintroduce the scrap resins into the production process, without valuing the amount of HDPE and LDPE scrap resin that was reintroduced into the production process. Alternatively, High Den argues, should the Department continue to value the reported recycled scrap inputs, it must request High Den to report factors for the scrap by-products generated during the production process and value the scrap by-products with the same surrogate value used for scrap resin. Thus, High Den contends that the Department's final results cannot fully value resin inputs and recycled scrap inputs in the absence of granting High Den a by-product offset for scrap produced in the production process.

The PRCB Committee disagrees with High Den's assertion that the Department erroneously employed a surrogate value for HDPE and LDPE scrap resins consumed in the production process. The PRCB Committee contends that High Den cites no record evidence for its claim that the Department's method resulted in a double counting of the scrap resin. The PRCB Committee further claims that High Den has provided no record evidence to support its claim that it made no purchases of scrap inputs from outside vendors. Thus, the PRCB Committee argues that, for the final results, the Department should continue to value High Den's reported consumption of HDPE and LDPE scrap resins.

Department's Position: We disagree that the standard methodology that we employed in the *Preliminary Results* double counted the amount of the resin that High Den used to produce the subject merchandise during the POR. In its DQR, High Den reported material factors for HDPE

resins, LDPE resin and recycled scrap.[100] It reported that each of the above-named fields represents the kilograms of the respective material used to produce one thousand PRCBs.[101] High Den also reported factors for electricity and labor,[102] and additional electricity and labor required to recycle one kilgram of scrap.[103] Contrary to High Den's assertion, the flow chart describing the production process does not address the issue of scrap.[104] High Den's technical description of the production process states that "{f}rom the first four stages, scrap will be collected and recycled," and that "{r}ecycled scrap will be used a material input for certain type of bags."[105]

It its first supplemental questionnaire, the Department requested High Den to "identify whether the reported factor values for HDPE, LDPE resin, color concentrate ("CONCEN"), ink color ("CLINK"), and solvent ("SOLVENT") include any amounts for recycled scrap."[106] In its first supplemental questionnaire response (1st SQR") High Den responded, "They do not include any amounts for recycled scrap. These materials are virgin or fresh material. High Den reported recycled scrap separately."[107] Thus, High Den established that its reported factors for LDPE and HDPE resins did not incorporate the consumption of recycled scrap resin, and the quantity of scrap resin was consumed in addition to the reported quantity of LDPE and HDPE resins.

As a result, in the *Preliminary Results*, the Department valued High Den's consumption of HDPE and LDPE resin using High Den's reported ME purchase prices of HDPE and LDPE resin. We valued High Den's consumption of recycled scrap resin with the surrogate value for scrap resin derived from *World Trade Atlas* ("WTA").[108] We disagree that High Den's proposed methodology takes into account the consumption of the additional recycled materials that it re-introduced into production and consumed while producing the subject merchandise. Recovered scrap material has a monetary value, exclusive of any additional labor and electricity required to prepare it for reintroduction into the production process. Had High Den reported that it collected and sold the scrap material generated during the production process, the Department would have

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[100] *See* High Den's DQR at D8.

[101] *Id.*

[102] *Id.* at D9 and D10.

[103] *Id.* at D12.

[104] *Id.* at Exhibit D-1.

[105] *Id.* at Exhibit D-2.

[106] *See* the Department's March 15, 2006, supplemental questionnaire for High Den.

[107] *See* High Den's 1st SQR, "Polyethylene Retail Carrier Bags from China; Sections C and D Response of High Den Enterprises, Ltd." (April 12, 2006).

[108] *See* Attachment I of the Department's preliminary analysis memorandum "Analysis for the Preliminary Results of the 2004-2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: High Den Enterprises Ltd. ("High Den")" (August 31, 2006).

granted a by-product offset for the quantity of material sold, by valuing the scrap material sold using the same HTS number that we used to value scrap in the *Preliminary Results*.

Alternatively, should High Den dispose of its scrap material rather than recycle it, High Den would have to purchase additional material (either scrap or virgin material) in order to produce the quantity of merchandise that it reported in its questionnaire response. In that case, we would not grant a by-product offset, but rather, we would value any additional quantity of scrap or virgin material consumed. However, in this instance, High Den reported that it consumed an additional quantity of recycled scrap resin which we valued using a surrogate value for scrap resin, without granting a by-product offset (which was properly not reported). High Den also reported using additional labor and electricity to prepare scrap resin for re-introduction into the production process, which we valued. Thus, the calculations in the *Preliminary Results* accurately reflect the value of High Den's consumption of HDPE resin, LDPE resin, scrap resin, labor and electricity reported in the questionnaire response. As a result, we have made no changes to our calculations for the final results.

Recommendation

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

_____ _____

Agree Disagree

_____

David M. Spooner
Assistant Secretary
for Import Administration

_____

Date