

May 15, 2006

MEMORANDUM TO: David Spooner
Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Antidumping Duty Investigation of diamond sawblades and
Parts Thereof from the People's Republic of China

SUMMARY:

We have analyzed the briefs and rebuttal briefs of interested parties in the investigation of diamond sawblades and parts thereof from the People's Republic of China ("PRC"). As a result of our analysis, we have made certain changes from the *Preliminary Determination*. 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 (December 29, 2005) ("*Preliminary Determination*"). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this investigation:

Changes from the Preliminary Determination

General Issues

- Comment 1: Whether the Department Should Revise its Selection of Surrogate Financial Ratios
- Comment 2: Whether Process Materials and Energy Inputs Should be Valued As Factors of Production ("FOPs")
- Comment 3: Preliminary Scope Determinations
- Comment 4: Country of Origin Determination
- Comment 5: Whether the Department Should Revise the Physical Characteristics and Model Match Criteria

- Comment 6: Whether Employee Benefits Should Be Moved from Direct Labor to Manufacturing Overhead
- Comment 7: Treatment of Negative Margins
- Comment 8: Application of Sigma Cap
- Comment 9: Treatment of Packing Costs and Byproducts
- Comment 10: Whether the Department Should Reevaluate its Preliminary Partial Determination of Critical Circumstances
- Comment 11: Surrogate Value Issues
 - A. Cores
 - B. Oxygen
 - C. Graphite and Steel Molds
 - D. Copper Powder
 - E. Diamonds
 - F. Steel Sheet 5

Separate Rate Applicant-Specific Issues

- Comment 12: Separate Rate Status of Electrolux Construction Products (Xiamen) Co., Ltd. (“Electrolux”)
- Comment 13: Separate Rate Status of Danyang Huachang Diamond Tool Co., Ltd. (“Huachang”)
- Comment 14: Separate Rate Status of Quanzhou Shuangyang Diamond Tool Co., Ltd. (“QSY”), Shanghai Robtol Tool Manufacturing Co., Ltd. (“Robtol”), and Shijiazhuang Global New Century Tools Co., Ltd. (“Global”)
- Comment 15: Separate Rate Status of Qingdao Shinhan Diamond Industrial Co., Ltd.’s (“Qingdao Shinhan”)

Company-Specific Issues

AT&M Entity Issues:

- Comment 16: Whether the Department Should Deny a Separate Rate to Beijing Gang Yan Diamond Products Company (“BGY”), Yichang HXF Circular Saw Industrial Co., Ltd. (“HXF”), and Advanced Technology & Materials Co., Ltd. (“AT&M”)
- Comment 17: Whether BGY Was the Seller of Sawblades to the United States
- Comment 18: Whether the Department Should Revise the Combination Rates for BGY
- Comment 19: Whether the Department Should Apply Total Adverse Facts Available to BGY
- Comment 20: Whether the Department Should Calculate CEP Profit Based on BGY’s U.S. and Third Country Sales
- Comment 21: Whether the Department Should Adjust BGY’s Reported Electricity and Labor FOPs
- Comment 22: Whether to Modify the Steel Surrogate Values for BGY

- Comment 23: Whether to Continue to Apply an Inflation to Market Economy (“ME”) Purchases of Diamond Powder Made Prior to the Period of Investigation (“POI”)
- Comment 24: Whether the Department Should Revise the Surrogate Value for Gasoline
- Comment 25: Whether to Deduct BGY’s Reported Interest Revenue from Gross Unit Price
- Comment 26: Whether BGY’s Reported Billing Adjustments Should Be Considered Direct Selling Expenses
- Comment 27: Whether the Department Erred in Certain Statements in the BGY and GYDP Verification Reports

Bosun Tools Group, Ltd. (“Bosun”) Issues:

- Comment 28: Whether Returns Should Be Treated as a Selling Expense
- Comment 29: Whether Bosun’s U.S. Indirect Selling Expenses Should Be Revised
- Comment 30: Whether Movement Expenses and Repacking Expenses Should Be Included in the Calculation of CEP Profit
- Comment 31: Surrogate Value for Tape
- Comment 32: Surrogate Value for Acrylic Lacquer and Pallet Lacquer
- Comment 33: Whether the Department Should Correct Certain Ministerial Errors
- Comment 34: Whether the Surrogate Value for International Freight Should Be Revised
- Comment 35: Whether the Department Should Make Additional Adjustments to Bosun’s U.S. Sales Data and Supplier Databases

Hebei Jikai Group Industrial Co., Ltd. (“Hebei Jikai”) Issues:

- Comment 36: Whether the Department Should Apply AFA to Usage Rates for Certain Materials
- Comment 37: Whether International Freight to Two U.S. Customers Should Be Deducted
- Comment 38: Whether Labor and Electricity Should Be Adjusted for Certain Product Codes
- Comment 39: Surrogate Value for Nickel
- Comment 40: Surrogate Value for Copper Plate
- Comment 41: Surrogate Value for Packaging Film
- Comment 42: Valuation of Steel

Background

We published the preliminary determination of sales at less than fair value in the *Federal Register* on December 29, 2005. *See Preliminary Determination*. The period of investigation (“POI”) is October 1, 2004, through March 31, 2005. We received a case brief from respondents Hebei Jikai Group Industrial Co., Ltd. (“Hebei Jikai”), Beijing Gang Yan Diamond Products Company (“BGY”), and Bosun Tools Group, Ltd. (“Bosun”) (collectively, “respondents”) on April 4, 2006. We also received case briefs from the Diamond Sawblades Manufacturers

Coalition (“Petitioner”), on April 4, 2006. Case briefs were received on April 4, 2006, from the following separate rate applicants: Danyang Huachang Diamond Tool Co., Ltd. (“Huachang”), Electrolux Construction Products (Xiamen) Co., Ltd. (“Electrolux”), Quanzhou Shuangyang Diamond Tool Co., Ltd (“QSY”), Shijiazhuang Global New Century Tools Co., Ltd. (“Global”), and Shanghai Robtol Tool Manufacturing Co., Ltd. (“Robtol”). We received rebuttal briefs on April 10, 2006, from the following companies: Bosun, BGY, and Qingdao Shinhan Diamond Industrial Co., Ltd. (“Qingdao Shinhan”). The Department of Commerce (“the Department”) rejected Petitioner’s case brief and rebuttal brief on April 14, 2006, because the briefs contained untimely submitted new information. *See* Letter from James Doyle to Daniel Pickard of Wiley Rein & Fielding LLP dated April 14, 2006. The Department rejected BGY’s rebuttal brief on April 14, 2006, because the brief contained untimely submitted new information. *See* Letter from James Doyle to Jeffrey Neeley of Greenberg Traurig, LLP dated April 14, 2006. BGY re-filed its rebuttal brief, and Petitioner re-filed both its case and rebuttal briefs on April 18, 2006.

DISCUSSION OF THE ISSUES:

Changes from the Preliminary Determination

Based on the discussions below, we have made revisions to the data used for the final determination. For further details, please see memorandum to the File from Candice Kenney Weck, Re: Hebei Jikai Group Industrial Co., Program Analysis for the Final Determination of Review (“Hebei Jikai Final Analysis Memorandum”); memorandum to the File from Anya L. Naschak, Re: Advanced Technology & Materials Co., Ltd. Entity Program Analysis for the Final Determination (“AT&M Final Analysis Memorandum”); and memorandum to the File from Carrie Blozy, Re: Program Analysis for the Final Determination: Bosun Tools Group Co. Ltd. (“Bosun Final Analysis Memorandum”), all dated May 15, 2006, which are on file in Import Administration’s Central Records Unit, room B-099 of the Department of Commerce building.

Comment 1: Whether the Department Should Revise its Selection of Surrogate Financial Ratios

Petitioner argues that the Department should calculate surrogate financial ratios using financial statements from companies that produce identical or comparable merchandise. Citing *Fresh Garlic from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum (“*Garlic Decision Memorandum*”), at Comment 5, Petitioner asserts that it is the Department’s policy to use data from market-economy surrogate companies based on the “specificity, contemporaneity, and quality of the data.” Petitioner explains that for purposes of the *Preliminary Determination*, the Department utilized data from the Reserve Bank of India’s (“RBI”) publication *Reserve Bank of India Bulletin* to value the respondents’ financial ratios. Petitioner notes that the Department utilized this source “in the absence of industry-specific or comparable financial data.” *See* Memorandum from Catherine Bertrand to the File Re: Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People’s Republic of China: Surrogate Values for the Preliminary Determination at 11 (December 20, 2005) (“*Surrogate Value Memorandum*”). However, Petitioner explains that after the

Preliminary Determination, it timely placed on the record of this investigation the 2002 annual report for Grindwell Norton Ltd. (“Grindwell Norton”), an Indian company that produces grinding wheels, coated abrasive products, and both diamond and cubic nitride cutting blades, and the 2004-05 annual report for Carborundum Universal Limited (“Carbonrundum”), an Indian company that produces abrasives, grinding wheels, and other grinding solutions. Petitioner requests that the Department value respondents’ financial ratios using an average of the data from these two companies.

Petitioner argues that the Department has stated that the use of aggregate data from the RBI is inappropriate when there is financial data of producers of identical or comparable merchandise on the record. See *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People’s Republic of China*, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum (“*CVP Decision Memorandum*”), at Comment 1. Additionally, Petitioner asserts that the Department has expressed a preference for calculating surrogate financial ratios on the performance of multiple producers of comparable merchandise. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People’s Republic of China*, 69 FR 34125 (June 18, 2004), and accompanying Issues and Decision Memorandum, at Comment 2. Petitioner cites to a recent decision memorandum issued by the Department in a review of garlic from the PRC decision memorandum where the Department stated it agreed with respondents that the average of multiple financial statements captures the most complete financial experience of the surrogate industry. See *Garlic Decision Memorandum*, at Comment 5. Petitioner also points out that in color televisions from the PRC, the Department combined the financial statements of companies that produced identical merchandise, but were outside of the POI, with financial statements that were contemporaneous with the POI. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People’s Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum (“*Color TVs from the PRC Decision Memorandum*”), at Comment 14. Petitioner also cites to the investigation of wooden bedroom furniture from the PRC where the Department used financial statements from surrogate companies that were not predominately furniture makers. See *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People’s Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum, at Comment 3. Petitioner argues that the financial statements are not distorted or otherwise unreliable and, therefore, should be used for purposes of the final determination. Petitioner also claims that the statements are publicly available as the statements have been published on the Internet and made available to the public.

Respondent Bosun argues that the Department should not use the two financial statements submitted by Petitioner because they are not based on publicly available information. Bosun maintains that in accordance with 19 C.F.R § 351.408(c)(4), the Department will normally use non-proprietary information for valuation of the surrogate financial ratios. Bosun asserts that Petitioner has provided no information on the case record to support a determination that their proposed financial statements are public information or even a certification from their market researcher that provided the data that the financial statements are authentic. Accordingly, Bosun argues that absent such information, the data cannot be used for the final determination.

Moreover, Bosun claims that Petitioner has failed to demonstrate any extraordinary circumstances to justify the Department's departure from using the publicly-available RBI data. Citing shrimp from Vietnam, where the Department rejected surrogate values proposed by respondent after finding them to be not publicly available, Bosun contends that it is the Department's long-standing practice to use publicly available information when calculating normal values for NME producers. *See 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), and accompanying Issues and Decision Memorandum ("*Shrimp from Vietnam Decision Memorandum*"), at Comment 1. Additionally, citing non-frozen apple juice concentrate from the PRC, Bosun argues that the Department has, in the past, rejected the use of information from a surrogate producer because the information was proprietary. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 64 FR 65675 (November 23, 1998). Bosun asserts that, as supported by the Department's precedent, there is a fundamental distinction between information which is available to the public at large and proprietary information that is shielded from the public. Bosun argues that absent evidence from Petitioner that the two financial statements submitted are public, the Department must assume that they are from private companies. Bosun also notes that the financial statements submitted by Petitioner reflect data for Indian producers for abrasives and cupwheels, which Bosun alleges are not comparable to diamond sawblades in terms of production or end-use. Consequently, for these reasons and because the data is not publicly available, Bosun contends that the Department must reject their use in the final determination.

Respondent BGY argues that the financial ratios proposed by Petitioner are inappropriate and distortive and should not be used. BGY first discusses the inappropriateness of using Grindwell Norton. First, BGY asserts that the 2002 annual report provided by Petitioner has no information showing that Grindwell Norton produces diamond sawblades. Moreover, BGY argues that abrasives such as grinding wheels, which Grindwell Norton produces, cannot serve as products similar to diamond sawblades because they use resin powder and corundum powder rather than diamonds and, therefore, have a much lower cost of manufacturing. BGY also claims that the two products have different end-use sectors. Second, BGY notes that the Grindwell Norton financial data are from two years before the POI. Third, BGY argues that the quality of the information in the Grindwell Norton annual reports makes it unreliable. Noting that Grindwell Norton produces and sells ceramics and plastics in addition to abrasives, BGY maintains that the financial data are not broken out between the two sectors and, therefore, it is not possible for the Department to determine whether the factory overhead and SG&A expenses are allocated reasonably. BGY also claims that the manufacturing costs are not broken out from the SG&A costs.

With respect to Carborundum, BGY states that Carborundum does not sell or produce diamond merchandise, but rather is an abrasives producer. BGY asserts that the abrasives produced by Carborundum cannot serve as a reasonable surrogate for diamond sawblades. Additionally, BGY claims that although the company is composed of three segments (abrasives, ceramics, and electrominerals), there are no separate financial breakouts for the three sectors. BGY contends that the profit margins for the three sectors range from 4 percent for abrasives to a negative 19 percent for ceramics to 236 percent for electrominerals. BGY asserts that there is no discussion

in the financial statements as to the allocations that led to such results. BGY also argues that the consolidation of the financial information of the Indian and foreign operations makes the use of the financial information unreliable. BGY claims that, as with Grindwell Norton, the distortions will be magnified by relying on information from one or more companies rather than a broader range of Indian manufacturers, as was done in the *Preliminary Determination*. BGY notes that in the apple juice investigation the Department rejected the use of company-specific financial statements in favor of the RBI data finding that the revenues of the company-specific financial statement were primarily derived from service-oriented operations rather than manufacturing expenses. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000), and accompanying Issues and Decision Memorandum, at Comment 8. BGY alleges that while there are not service-oriented operations in the companies proposed by Petitioner, the manufacturing operations are unlike the diamond sawblades industry. Therefore, BGY argues that the Department should use the broader RBI data.

Department's Position: We agree in part with Petitioner, and for purposes of the final determination find the 2004-2005 financial statements of Carborundum to be the best available information for valuing the surrogate financial ratios in this investigation.

In valuing factors of production, section 773(c)(1) of the Tariff Act of 1930, as amended ("the Act"), instructs the Department to use "the best available information" from the appropriate market economy country. In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data." See, e.g., *Garlic Decision Memorandum*, at Comment 5. In addition, the Department prefers to rely on publicly available data. See, e.g. *Shrimp from Vietnam Decision Memorandum*, at Comment 1. Moreover, for valuing factory overhead, SG&A, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. See 19 CFR 351.408(c)(4) and Section 773(c)(4) of the Act. Finally, the Court has recognized the Department's discretion in selecting surrogate values. In *FMC*, the U.S. Court of International Trade ("CIT") upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." See *FMC Corporation v. United States* ("FMC"), Slip Op. 03-15 (CIT 2003) at 15 (affirmed 2004 U.S. Appeals Lexis 3096 (Fed. Cir. February 9, 2004). (citing *Technoimportexport, UCF America Inc. v. United States*, 783 F. Supp. 1401, 1406 (CIT 1992)). Similarly, in *Polyethylene Retail Carrier Bag Committee*, the CIT stated "in determining the valuation of the factors of production, the critical question is whether the methodology used by Commerce is based on the best available information and establishes antidumping margins as accurately as possible." *Polyethylene Retail Carrier Bag Committee, et al., v. United States*, Slip Op. 05-157 (December 13, 2005), (citing *Shakeproof Assembly Components v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001)) ("*Polyethylene Retail Bag Committee*"). Also, in *Crawfish Processors Alliance*, the Court held that "If Commerce's determination of what constitutes the best available information is reasonable, then the Court must defer to Commerce." *Crawfish Processors Alliance v. United States*, 343 F. Supp 2d at 1242 (CIT 2004). For the reasons discussed below, we find that the 2004/2005 Carborundum financial statements are the best available information for valuing financial ratios to establish

antidumping margins as accurately as possible, because they are contemporaneous, publicly available audited financial statements of an Indian producer of comparable merchandise.

As noted by parties, in the *Preliminary Determination* the Department utilized data from the Reserve Bank of India's publication *Reserve Bank of India Bulletin* from August 2005 to value the respondents' financial ratios. The RBI data includes the experience of 2201 public limited companies in India, including Tea Plantations, Mining & Quarrying, Food Products & Beverages, Sugar, Edible Oils, Cotton, Paper Products, Chemical Products, Paint, and Medicines. See Memorandum to the File, from Bobby Wong, dated December 15, 2005, which placed the complete copy of the August 2005 RBI Bulletin as published by the Reserve Bank of India on the record. In its surrogate valuation memorandum, the Department explained that it was using the RBI data "in the absence of industry-specific or comparable financial data." See Surrogate Value Memorandum, at page 11. After the *Preliminary Determination*, Petitioner placed on the record the financial data for Grindwell Norton and Carborundum. Therefore, for purposes of the final determination, the Department has three possible sources for valuing respondents' financial ratios.

For purposes of this investigation, Petitioner has claimed that Grindwell Norton is a producer of diamond sawblades. However, there is no evidence on the record that demonstrates that Grindwell Norton is a producer of diamond sawblades. Grindwell Norton's financial statements indicate that it is a producer of abrasives (bonded and coated) and ceramics and plastics (silicon carbide and refractories). See Petitioner's February 7, 2006, submission, at Exhibit 4 at pages 8-9. Petitioner states that Carborundum is a producer of abrasives, grinding wheels, and other grinding solutions. Carborundum's financial statements indicate that it is a producer of abrasives (bonded abrasives, coated abrasives, and allied products), ceramics, and electrominerals. See Petitioner's February 7, 2006, submission, at Exhibit 5 at page 9. The Annexure to the Director's Report in the financial statements indicate that R&D efforts during the year resulted in the "development of new products such as thread grinding wheels, sol gel wheels, ball lapping wheels, synthetic belts, alpha supreme discs, zircon products, surface modification of grains, grinding aids, and specialty grains and powders." See *Id.*, at 7.

Respondents have argued that the Grindwell Norton and Carborundum financial data are inappropriate because neither is specific to diamond sawblades and that abrasive manufacturers cannot serve as a reasonable surrogate because of different markets (construction market for sawblades versus automotive market and bearings, general metal fabrication and woodworking for bonded grinding wheels) and manufacturing costs. With respect to the argument regarding different markets, the financial statements for Carborundum indicate that the market for abrasive products includes the construction and infrastructure industry. See *Id.*, at 11. Accordingly, we disagree with respondents that abrasive products necessarily have different markets than diamond sawblades. Moreover, we disagree with respondents that to be "comparable", merchandise must have the same end-users. We note that in the antidumping order on garlic from the PRC, the Department relies on the financial experience of tea producers. See, e.g., *Garlic Decision Memorandum*, at Comment 5.

Regarding the products themselves, we note that diamond sawblades and abrasives such as grinding wheels function by abrading the materials against which they are placed in a grinding

process. *See* May 3, 2005, Petition, at page 5 (explaining that “unlike other sawblades, diamond sawblades do not actually cut materials; rather, diamond sawblades mill (i.e., grind) them”) and Petition Exhibit I-10, which is a brochure explaining how a diamond sawblade works.

Although abrasive products and diamond sawblades may have different costs of manufacturing (*see* Bosun’s February 17, 2006, submission, at pages 7-8),¹ we find the presented information of limited value in resolving this issue. While it shows that different products have different production rates, and they may require more or less equipment or labor hours, such information does not definitively establish what the resulting financial ratios would be as, for example, the type of equipment could vary widely. For merchandise to be comparable, the cost structure of the two products does not have to be identical. For example, in a recent review of garlic from the PRC, we valued the surrogate financial ratios based on the experience of multiple tea companies. *See Garlic Decision Memorandum*, at Comment 5. Significantly, we note that each of the three mandatory respondents’ data shows that they produce cupwheels, the very product upon which Bosun relies to demonstrate a purported difference so large as to render the products incomparable. Specifically, on page A-27 of its August 25, 2005, Section A Questionnaire Response, Bosun states that it produces “Grinding cup wheels and core bits, which share a similar production method as the segments.” Similarly, Hebei Jikai also produces grinding cup wheels per its product brochure on page 13, Exhibit 8 of its August 26, 2005, Section A Questionnaire Response. Finally, although it specifically references diamonds, BGY’s product catalog submitted in its August 25, 2005, Section A Questionnaire Response notes it produces five different types of “diamond grinding wheels.” Thus, each of the three mandatory respondents produces an overlapping product (while recognizing the addition of diamonds as a specific abrading component is a difference) with Carborundum and Grindwell Norton, enhancing the conclusion that their financial ratios are comparable to the respondents. Therefore, given the choice between the extraordinarily broad based RBI data, and Carborundum and Grindwell Norton’s data, we find Carborundum and Grindwell Norton’s focus on abrasives to more comparable to diamond sawblades than RBI data. Given that we have contemporaneous and public financial statements of a producer of comparable merchandise, we find that it would be distortive to rely on the non-contemporaneous RBI data. *See CVP Decision Memorandum*, at Comment 1. Accordingly, we find that the use of RBI data is not appropriate because we have more specific financial data on the record.

With respect to Bosun’s arguments that Grindwell Norton and Carborundum’s financial statements are not publicly available, the annual reports for both companies, which Petitioner put on the record in full, indicate that the financial statements are displayed on the companies’ websites and the half-yearly and quarterly results are posted in newspapers. For Grindwell Norton, *see* Petitioner’s February 7, 2006, submission, at Exhibit 4 at page 13. For Carborundum, *see* Petitioner’s February 7, 2006, submission at Exhibit 5 at page 27. Using the web addresses provided, any party, including the respondents, is able to view the financial statements provided by Petitioner. Accordingly, we determine that both Grindwell Norton’s and Carborundum’s financial statements are publicly available.

For purposes of valuing respondents’ financial ratios, we have determined to use only the financial data of Carborundum, because while Grindwell Norton is also a producer of abrasives,

¹ We note that the experience of the company Bosun presented may not be reflective of the industry in general.

its financial statement is not contemporaneous with the POI. Although Petitioner correctly notes that in color televisions, the Department averaged financial data of companies whose statements were a year prior to the POI with statements that were contemporaneous, (*see Color TVs Decision Memorandum*, at Comment 14), Grindwell Norton's financial data predates the POI by almost three years. The Department therefore finds that averaging Grindwell Norton's data with Carborundum's would not produce a more accurate financial ratio.

Moreover we disagree with BGY's argument that because the Carborundum financial statements include segments not related to abrasives, the data is unusable. We note that sales of abrasive products during the fiscal year represented over 77% by value of total sales. *See* Petitioner's February 7, 2006, submission, at Exhibit 5, page 10. We also reject BGY's argument that Carborundum's financial statements are unusable because of the consolidation of the financial information. We note that while the annual report includes the consolidated results, it also includes the unconsolidated results. For purposes of calculating the financial ratios, we have relied on the unconsolidated results.

For details regarding the calculation of the financial ratios, *see* Memorandum from Anya Naschak to the File Re: Recalculation of Financial Ratios, dated May 15, 2006.

Comment 2: Whether Process Materials and Energy Inputs Should Be Valued As Factors of Production

Petitioner argues that respondents have omitted steps from the production process and have failed to fully identify all factors of production. Petitioner argues that the Department should recognize process materials as factors of production and that process materials may only be included in factory overhead when they are used in production infrequently and in small quantities. *See Silicomanganese from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 31514 (May 18, 2000), and accompanying Issues and Decision Memorandum ("*Silicomanganese from the PRC Decision Memorandum*"), at Comment 1. Petitioner asserts that the Department's practice on this issue is clear: when process materials are used frequently, constitute a significant portion of the cost of the finished product, or are required for the production process, the Department must separately value those materials rather than include them in overhead. Petitioner discussed in detail the valuation of the following materials as factors.

Graphite and Steel Molds

Petitioner argues that graphite molds are a process material that should be valued as a factor of production. Petitioner states the molds are used in the production of segments for laser-welded and sintered diamond sawblades. Petitioner notes that two of the three respondents reported molds as raw materials and furthermore states that Bosun's data shows that graphite molds constitute a major input in the production of diamond sawblades. Petitioner argues that graphite molds constitute a major cost of production. In addition, Petitioner claims that graphite molds are

analogous to the copper wire found to be a factor of production in preserved mushrooms from the PRC. *See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review* ("*Preserved*

Mushrooms”), 70 FR 54361 (September 14, 2005), and accompanying Issues and Decision Memorandum, at Comment 15. Finally, Petitioner argues that small pieces of the graphite become part of the final segment, which provides an additional reason for the Department to value graphite molds as a factor of production.

Machine Oil, Isopropyl Alcohol, and Acetone

Petitioner argues that machine oil, isopropyl alcohol, and acetone are process materials. Petitioner notes that Bosun stated that it uses machine oil, isopropyl alcohol and acetone and claims that these materials vaporize during the heating process, and are therefore not physically incorporated in the diamond sawblades and thus are not process materials. *See* Bosun’s February 13, 2006, Submission, at 3. Petitioner argues that vaporization does not impact their status as process inputs because these materials are required for a particular segment of the production process. *See 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*”). Petitioner asserts that in the past the Department has consistently valued necessary production materials as factors of production even if they do not end up in the final product. As an example, Petitioner argues these factors are similar to limestone and dolomite in the production of steel, which Petitioner has claimed the Department valued in various steel cases. *See, e.g., Certain Hot-Rolled Steel Flat Products From Romania*, 70 FR 34448 (June 14, 2005) (final); *Carbon Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002) (final); and *Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China*, 62 FR 61694 (November 20, 1997) (final).

Gas Mixtures

Petitioner argues that gas mixtures, nitrogen, carbon dioxide, helium and oxygen are energy inputs. Petitioner contends that these inputs are used to generate the lasers used in the manufacturing process and that such energy inputs are required to be included as factors of production. In support, petitioner cites section 773(c)(3)(C) of the Act and the Department’s *Antidumping Manual* Chapter 8, at 88-89 (“Most production processes use a variety of energy sources. These may include the use of electricity, steam, natural gas, oil or water. We value these inputs by determining the amount of each energy source or utility used in the production process and applying the appropriate per-unit surrogate values.”) available at <http://www.trade.gov/ia>. Petitioner argues that consistent with the statute the Department valued argon as a factor of production in the *Preliminary Determination*. *See* Surrogate Value Memorandum, at 4. Petitioner contends that information placed on the record since the *Preliminary Determination* has demonstrated that the gases listed above are energy inputs. Petitioner notes that Bosun stated that nitrogen, helium and carbon dioxide are used “in the laser-cutting machine to generate the laser” and that “oxygen is used as a comburent in laser cutting.” *See* Bosun’s February 13, 2006, submission, at 5 and 7.

Bosun argues that the materials listed by Petitioner should continue to be captured by factory overhead and should not be included in Bosun’s FOP database to avoid double counting. Bosun refers to its February 13, 2006, submission, where it provided factors of production for certain materials which Bosun considers to be overhead, but the Department may find to be factors. In this submission, Bosun provided arguments for why each of the materials should be excluded. Specifically, Bosun argues that water, machine oil, paint thinner, liquid ammonia, argon,

nitrogen, isopropyl alcohol, acetone, gas mixture, grinding wheels, sand paper, steel wire brush, graphite and steel molds, oxygen, nitrogen, carbon dioxide, and helium should be classified as factory overhead materials and not treated as factors. Bosun asserts that many materials were not used in the production of diamond sawblades and that the Department verified these materials were not consumed in production-related activities. With respect to graphite molds, Bosun argues that the Department must reject Petitioner's argument that graphite molds are a major input in the production of diamond sawblades.

BGY argues that there are no consumables to add to their factors of production for the final results. BGY states that it previously reported graphite molds as a material input, and that the other items listed by Petitioner are either not applicable to BGY, have already been reported as factors, or are small and insignificant items which should be considered overhead.

Department's Position: We agree with Petitioner in part, and have determined to value the following so-called process materials and chemicals as factors of production for the final determination: machine oil, liquid ammonia, argon, nitrogen, isopropyl alcohol, acetone, blocking or binding agents, chromium trioxide, NaOH, rust removal lubricant, N₂O, gas mixture, graphite molds, oxygen, CO₂, and helium in accordance with sections 773(c)(3)(B) and (C) of the Act. As detailed below, we have valued all materials that are required for a particular segment of the production process as factors except where the record indicates that the input is not replaced so regularly as to represent a direct factor rather than overhead. This is consistent with the Department's practice. For example, in manganese metal from the PRC, the Department valued certain chemicals, which respondent treated as overhead, as a direct material based on a determination that these chemicals were required for a particular segment of the production process. *See Manganese Metal*, 60 FR at 56051. *See also Silicomanganese from the PRC Decision Memorandum*, at Comment 1. As a result of the Department's analysis, we are valuing additional factors, which were reported by Bosun in its February 13, 2006, submission, and valuing factors for Hebei Jikai which the Department discovered at verification (for further details, *see* Comment 36). We do not find that any changes to BGY's factors are required as the information on the record indicates that its factors database is complete and no party has provided evidence to the contrary.

Water

Bosun explained in its February 13, 2006, submission that it used water to cool the sinter furnaces and welding equipment. Bosun further explained that the actual consumption of water used in the production process is limited because the water is recycled in the cooling system. Moreover, Bosun noted that the consumption of water by the South Factory includes water which is used for watering vegetative plants. Because the actual net usage of water in the consumption process is so small due to the recycling, we do not find it appropriate to value water as a direct input.

Machine Oil

Bosun explained in its February 13, 2006, submission that machine oil is used when mixing metal powders to facilitate the adhesion of the metal powders. Although Bosun reported that machine oil vaporizes during the heating process and is not physically incorporated into the product, we find that it should be treated as a process material because it is consumed in the production process of the segments.

Paint Thinner

Bosun explained in its February 13, 2006, submission that it used paint thinner to dilute lacquer and varnish. Because it is necessary to dilute lacquer and varnish prior to their use, and Bosun reported both, we find that paint thinner should be treated as a direct material input.

Liquid Ammonia, Argon, and Nitrogen

Bosun explained in its February 13, 2006, submission that it used these three inputs to prevent oxidation during the heating process (furnace sintering and laser welding). The two inert gases are used directly in the production process while liquid ammonia is decomposed automatically by a machine into hydrogen and nitrogen gases. Accordingly, because these inputs are used directly in the production process, we find that they should be treated as factors.

Isopropyl Alcohol and Acetone

Bosun explained in its February 13, 2006, submission that it used isopropyl alcohol and acetone in the hot press workshop to mix powders. Although Bosun reported that these inputs vaporize during the heating process and are not physically incorporated into the product, we find that they should be treated as inputs because they are consumed in the production process of the segments.

Blocking or Binding Agents, Chromium Trioxide (CrO₃), NaOH and Rust Removal Lubricant, and N₂O

Bosun explained in its February 13, 2006, submission that the above inputs are used in the copperization process. Specifically, after the cores have been copperized, they are dipped into a solution of blocking agents to strengthen the antirust effect. Bosun explained that if cores have not been correctly copperized, they are dipped into a solution of CrO₃, after which they can again be copperized. Bosun stated that NaOH and rust removal lubricant are used in the derusting operations of cores and that N₂O is used to remove any oil from the sawblade's surface. We find that all five inputs are properly classified as factors because they are consumed in the copperization process.

Gas Mixture and Oxygen, Nitrogen, CO₂, and Helium

Bosun explained in its February 13, 2006, submission that it used the gas mixture and these other inputs in the laser-welding machine to generate the laser. Because the laser-welding machine cannot operate without the gas mixture, oxygen, nitrogen, CO₂, and helium, we find that these gases are a type of energy input, and, therefore, should be valued as factors.

Grinding Wheels, Abrasive Paper and Steel Wire Brush

Bosun explained in its February 13, 2006, submission that it used grinding wheels to adjust core thickness by grinding the surface and by grinding the surface of diamond segments to expose the diamond powder abrasive layer. Also, Bosun stated that it used abrasive paper and steel wire brush to polish the diamond tools' surfaces. We do not find any indication that these three inputs are replaced so regularly as to represent a direct factor as opposed to being an overhead item. *See, e.g.*, Bosun Verification Report. Therefore, we are continuing to value these inputs as overhead.

Graphite and Steel Molds

Bosun explained in its February 13, 2006, submission that for segments used on welded sawblades, it uses graphite or steel molds to shape the powders into a segment shape. Bosun stated that steel molds have a long usage life. Similarly, Hebei Jikai explained at verification that steel molds are replaced less frequently than graphite molds. *See* Hebei Jikai Verification Report, at page 3. Due to the relatively long usage life of a steel mold, we do not find that that it should be valued as a direct input. However, given the short usage life of a graphite mold, we determine that it is replaced so regularly as to constitute a direct input that is consumed in the production process. Moreover, because a portion of the graphite is absorbed into the finished segment, we find this is analogous to the copper wire found to be a factor of production in *Preserved Mushrooms*. Accordingly, we have determined to value graphite molds as a factor of production.

Regarding the surrogate valuation for those inputs which the Department previously did not value, except where there was disagreement among parties as to the appropriate surrogate value (*see* discussion of the valuation of oxygen and graphite molds below), we have relied on the undisputed data proposed by parties.² *See* Bosun's February 7, 2006, filing, Petitioner's February 7, 2006, filing, and Bosun's February 17, 2006, filing. For the valuation of nitrogen, we note that although both parties suggested the same World Trade Atlas ("WTA") data for the same period, there were different average unit values calculated. We have relied on Bosun's calculation as Petitioner's calculation contained an error. For acetone, we have continued to rely on the surrogate value used by the Department to value acetone in the *Preliminary Determination* because it is most comparable to the factor used by respondents. For further information, *see* Bosun Final Analysis Memorandum and Hebei Jikai Final Analysis Memorandum.

² Where applicable, we have recalculated the surrogate value to exclude imports statistics from countries the Department has determined to subsidize exports (*i.e.*, Indonesia, South Korea, and Thailand), unspecified or NME countries.

Comment 3: Preliminary Scope Determinations

Petitioner argues that the Department's conclusions in the *Preliminary Determination* with regard to scope were correct and should be adopted in the final determination. Petitioner states that the Department concluded that it is not necessary to clarify the scope of this investigation regarding specifications or end-use, because all products that meet the physical descriptions contained in the plain language of the scope are included, irrespective of their intended end-use. Petitioner maintains that the Department preliminarily concluded that concave/convex cores and diamond sawblades produced from such cores are included in the scope of this investigation. Petitioner contends that the Department also concluded that grinding wheels are included in the scope of this investigation if they meet the physical description in the scope and that the Department preliminarily concluded that granite contour diamond sawblades are within the scope of this investigation.

Petitioner argues that, with respect to Diamax's request, because information related to the hardness of Diamax's granite contour diamond sawblades was placed on the record only one week before the preliminary determination, the Department recommended revisiting this decision after it had a chance to analyze the new information. Petitioner asserts that further analysis of the hardness of Diamax's granite contour diamond sawblades is unnecessary because the hardness exception in the scope definition applies only to cores, and not to finished diamond sawblades which the Department itself determined in its May 23, 2005, Amendment Clarification Letter.

Petitioner argues that a determination that the Rockwell hardness test should apply only to cores, rather than to finished sawblades, is consistent with industry standards for measuring hardness. Petitioner further argues that a system in which the Rockwell hardness requirement applied to both cores and finished blades would be impractical for the reason that, as counsel for Ehwa (a respondent in the concurrent Korean investigation) stated, the Rockwell hardness of a core can be affected by the incorporation process. *See* Letter from Akin Gump Strauss Hauer and Feld LLP to the Department, Re: Antidumping Petition on Diamond Sawblades and Parts Thereof from the Republic of Korea (May 26, 2005), at 2. Petitioner argues that because hardness is rarely, if ever, measured post-incorporation by the industry, this situation would serve only to create confusion. Petitioner argues that the Department should adhere to the determination it made earlier in its Amendment Clarification Letter, and continue to find that the requirement of a Rockwell hardness over 25 applies only to unincorporated cores, and is not applicable to finished sawblades.

Petitioner argues that for the final determination, the Department should reaffirm all of its preliminary scope conclusions. Further, Petitioner contends that in its instructions to U.S. Customs and Border Protection ("CBP"), the Department should explicitly state that concave/convex cores and diamond sawblades produced from such cores, grinding wheels that meet the physical description, and diamond sawblades of any hardness are included in the scope.

We did not receive any rebuttal comments for this issue.

Department's Position: The Department reaffirms its preliminary determination that: (1) concave/convex cores and diamond sawblades produced from such cores are covered by the scope of investigation; (2) granite contour diamond sawblades and grinding wheels that meet the physical description contained in the plain language of the scope are covered by the scope of investigation; and (3) the Rockwell C hardness exclusion test applies only to cores and does not apply to finished diamond sawblades produced from such cores. In particular, we reaffirm that metal-bonded, diamond 1A1R grinding wheels that meet the physical description contained in the plain language of the scope are covered by the scope of investigation since the physical characteristics of a DSB are defined by the 1A1R specification. *See Preliminary Scope Determination Memorandum at page 11.* In addition, we note that since the Department issued its preliminary determination scope conclusions, no party in this proceeding has submitted evidence or argument to suggest that the Department should revise its preliminary findings. Therefore, since no evidence has been submitted on the record of this investigation to demonstrate that the Department should revise its preliminary scope conclusions, the Department is re-affirming its preliminary determination scope conclusions for the final determination.

In addition, we will explicitly clarify these scope conclusions in our instructions to CBP. Specifically, in our instructions to CBP, we will clarify that the following items are covered by the scope of investigation: (1) concave/convex cores, (2) diamond sawblades produced from concave/convex cores, (3) metal-bonded, diamond 1A1R grinding wheels that meet the physical descriptions set forth in the scope language, and (4) that the hardness threshold applies to cores, not diamond sawblades. Further, we will clarify that diamond segments must be attached to the outer periphery of the core.

Comment 4: Country of Origin Determination

Petitioner argues that the country of manufacture of the diamond segments used in the finished sawblade should be treated as the finished sawblade's country of origin. Petitioner maintains that the basis for the Department's country of origin analysis is the "substantial transformation" rule. Petitioner argues that joining diamond segments to a core does not create a product of a different class or kind.

Petitioner contends that as the Department noted in *Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea*, the most important element considered by the Department in determining whether the conversion of an upstream into a downstream product results in a "substantial transformation" for country of origin is whether the upstream and downstream products are of a different "class or kind." *See Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea*, 69 FR 17,645, 17,647 (April 5, 2004) ("*TTR from Korea*"). Petitioner argues that joining two in-scope products, without changing the class or kind of merchandise, does not change the country of origin from the location where the diamond segments are manufactured. Petitioner maintains that consistent with the vast weight of the Department's prior practice, the joining of diamond segments to a core, which does not result in a new class or kind of merchandise, should not be considered as a substantial transformation, and should not form the basis of the Department's country of origin determination.

Further, Petitioner argues that diamond segments give a diamond sawblade its essential character. Petitioner states that, since the diamond segments contain the essential qualities of the product the place of manufacture of the diamond segments, rather than the place where they are joined to a core, should be considered the country of origin of the finished diamond sawblade. Petitioner asserts that diamond sawblades are physically distinguished from all other types of sawblades by the presence of diamond segments in the working part of the blade. Petitioner argues that the Department should consider the segments to be the essential component of a finished diamond sawblade and determine that the location where the segments are manufactured should be considered the country of origin of the finished sawblade.

Petitioner argues that diamond segment manufacturing requires a substantial capital investment and significant technical expertise in comparison to the joining process, which demonstrates that the former requires significantly greater technical expertise and capital investment, and typically accounts for a substantially larger percentage of the cost of production, than the latter. Petitioner also notes that diamond segments often constitute the largest cost component of a finished diamond sawblade.

Petitioner argues that the situation in this investigation is analogous to *TTR from Korea*, where the Department found that processing of an intermediate product did not constitute substantial transformation where the manufacturing of the intermediate product was substantially more capital intensive, required significantly more skill, expertise, and research and development, and accounted for a higher percentage of the total cost of production.

Finally, Petitioner argues that the Department's proposed country of origin methodology poses significant circumvention concerns. Petitioner argues that if the Department's country of origin analysis remains unchanged in the final determination, Korean and Chinese manufacturers may move joining operations to third countries in an attempt to avoid antidumping duties, particularly since many of these entities are sophisticated multinational corporations that already have substantial experience manufacturing across borders.

Petitioner maintains that the Department's preliminary determination to treat the location where segments and cores are joined as the country of origin of the finished diamond sawblade is contrary to Department precedent and wholly unsupported by an understanding of the essential character of a diamond sawblade and the manufacturing processes involved in its production.

We did not receive any rebuttal comments to this issue.

Department's Position: We disagree with Petitioner, and continue to find that the country of origin should be determined by the location of where the segments are joined to the core. For the *Preliminary Determination*, the Department found that the country of origin should be determined by the location where diamond segments and cores are attached to create a finished diamond sawblade. See December 16, 2005, Country of Origin Memorandum, at page 5.³ The Department made this decision after analyzing whether the product, *e.g.*, segments and/or cores, is substantially transformed in the country where the attachment process occurs. While the Petitioner is correct that, in certain cases, the Department has determined that substantial

³ Placed on the record of the PRC investigation on May 15, 2006.

transformation does not occur when the upstream (cores and segments) and downstream (finished DSB) products remain within the same class or kind of merchandise, the Department's decisions reflect that this is not a controlling factor. Specifically, in *Erasable Programmable Read Only Memories ("EPROMs") From Japan; Final Determination of Sales at Less than Fair Value*, 51 FR 39680 (October 30, 1986), the Department determined that even though the upstream and downstream products remained within the same class or kind of merchandise, substantial transformation still occurred. *See also Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof From Japan*, 54 FR 6433 (February 10, 1989) ("*Microdisks*"). In *EPROMs* and *Microdisks*, as in the instant investigation, the Department determined that the controlling factor in a substantial transformation determination is not whether there is a change in class or kind of merchandise; rather, the Department examined where the essential quality of the imported product was imparted, as well as the extent of manufacturing and processing in the exporting country and in the third country.

Petitioner argues that the Department's preliminary country of origin determination failed to explain why the Department departed from its practice of determining that substantial transformation does not occur when a product does not change class or kind of merchandise. However, as is the Department's practice in every antidumping investigation and administrative review, the Department examines the facts and issues in each proceeding on a case-by-case basis. The facts of this instant investigation are most similar to the facts of *EPROMs* and *Microdisks*, where the Department determined country of origin based upon an examination of essential qualities and the manufacturing process.

Petitioner argues that diamond segments are what give a diamond sawblade its essential character, and, therefore, the location of their manufacture should be used to determine the country of origin. However, in this case, when focusing on the essential qualities of the imported components, it appears that neither the cores nor the segments alone constitute the essential component of the product under investigation. A finished diamond sawblade is not functional until the segments are attached to the core. In the Petition, Petitioner stated the following: (1) diamond cores and diamond sawblade segments are not perceived to be part of the same market because they can only be used to produce a finished diamond sawblade; (2) the diamond core and the diamond sawblade segments are incorporated into the final product but, standing alone, lack the functionality of the finished product; (3) diamond cores and diamond sawblade segments have significantly different prices than the finished diamond sawblade; and (4) a significant and extensive transformation process is required to turn the diamond core and the diamond sawblade segments into a finished sawblade." *See* Petition, Volume I at page 10. In its own submissions, Petitioner recognizes the importance of the attachment process in imparting the essential quality of the finished product. Therefore, given the priority that Petitioner has placed on the importance of attaching cores and segments, both through meetings with Petitioner and through verification, the Department finds that the essential quality of the product is not imparted until the cores and segments are attached to create a finished diamond sawblade. *See* February 14, 2006, Memorandum to the File: Meeting with Counsel for Petitioner; *see* Memorandum to the File: Verification of the Sales and Factors Response of Beijing Gang Yan Diamond Product Company in the Antidumping Duty Investigation on Diamond Sawblades and Parts Thereof from the People's Republic of China, dated March 27, 2006 ("*BGY Verification Report*"), *see* Memorandum to the File from Carrie Blozy, Verification of the Sales and Factors

Response of Hebei Jikai Group Industrial co., Ltd. in the Antidumping Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China, ("Hebei Jikai Verification Report"), March 23, 2006; and *see* Memorandum to the File from Carrie Blozy, Verification of the Sales and Factors Response of Bosun Tools Group Co., Ltd. in the Antidumping Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China, ("Bosun Verification Report"), March 24, 2006.

Next, Petitioner argues that a comparison of the segment manufacturing process to the attachment process demonstrates that the former requires greater technical expertise and capital investment. However, even though the Department acknowledges that a significant capital investment is associated with segment manufacture, the Department has also determined that a substantial capital investment and great technical expertise is required for the attachment process. Specifically, as noted above, the manufacturing process of attaching segments to a core is essential to the performance of the finished diamond sawblade. *See, e.g.*, Petition at page 10; *See* February 14, 2006, Memorandum to the File: Meeting with Counsel for Petitioner; *see* BGY Verification Report, *see* Hebei Jikai Verification Report; *see* Bosun Verification Report. Given that diamond sawblades are used to cut particularly hard materials (*e.g.*, concrete) and generate high levels of heat during operations, the type of attachment used to bind segments to cores is important. *See* Country of Origin Memorandum at page 4. Furthermore, respondents in this investigation reported three major methods to attach segments to cores: (1) laser welding, (2) silver soldering (or brazing), and (3) sintering. *See, e.g.*, Hebei Jikai's September 20, 2005, questionnaire response at Exhibit D-1 (indicating that they produce sintered sawblades and silver and laser welded sawblades and utilize different production processes depending on the type of weld), Bosun's September 20, 2005 questionnaire response at Exhibit D-3 (diagram of production process), and BGY's November 3, 2005, supplemental questionnaire response at Exhibit SD- 8 (diagram of production process).

Moreover, as discussed above, the Department has determined that it is the attachment of cores to segments that gives finished diamond sawblades their essential quality, not the manufacture of diamond segments. Even though there is a significant capital investment also associated with manufacturing diamond segments, given the fact that the attachment process imparts the essential quality of the diamond sawblade, coupled with the substantial capital investment and technical expertise that is required for the attachment process, we continue to find that the country of origin is determined by the location where segments and cores are attached to create finished diamond sawblades.

Petitioner argues that the minimal capital investment required for the attachment process poses circumvention concerns. As discussed above, the Department finds that the capital investment required for attaching segments to cores is substantial. In addition, country of origin determined by the location of segment manufacture would still pose circumvention concerns, as a producer of diamond sawblades could transfer aspects of segment manufacturing to third countries, *e.g.*, shipping pre-mixed bond powder and diamonds to third countries for pressing and baking into segments. In any event, the Department retains that statutory authority to address circumvention concerns as appropriate.

Comment 5: Whether the Department Should Revise the Physical Characteristics and Model Match Criteria

Petitioner argues that the Department should consider implementing certain changes to the physical characteristics and model match criteria for the final determination as well as for future reviews of any order resulting from this investigation. Petitioner claims that since the Department released the physical characteristics and model match hierarchy to parties in this investigation, the Department and interested parties have gained significant knowledge regarding how diamond sawblades are produced, marketed, and sold. Additionally, Petitioner argues that the current model match criteria have yielded an unexpectedly large number of control numbers, which Petitioner claims makes the databases unwieldy.

Petitioner first argues that in future reviews the Department should require respondents to report both actual measurements and the appropriate basket code with respect to segment length, segment thickness, segment width, and core thickness. Also, Petitioner argues that the Department should require respondents to report the following additional physical characteristics: average bond density, diamond depth, actual diamond concentration, actual core diameter, and arbor diameter. Petitioner maintains that these added actual measurement fields would not be used for model match, but rather would be informational only. Petitioner claims that the addition of these new fields, along with the reporting of actual measurements for existing fields, will result in beneficial information, such as the ability to link sales, cost, and factors data in the response to information in the bill of materials and the ability to determine whether the basket designations are correct. Petitioner also maintains that by using the actual measurements of the physical characteristics, the Department can derive other values (*e.g.*, diamond weight, powder weight, segment weight, steel weight) using SAS programming and that the resulting values can be used to determine whether the factors of production for steel, metal powders, or diamonds are properly reported. Petitioner claims that there is ample precedent for the Department to require actual measurement data in addition to the model match data, citing decisions in Steel Concrete Reinforcing Bars from Latvia and Korea and Structural Steel Beams from Japan and Korea.

As a second point, Petitioner argues that the field “Diamond Concentration” should be relabeled “Total Diamond Weight” because the data in this field capture the total diamond weight per blade or segment rather than the relative concentration. Petitioner also argues that, consistent with the treatment of other physical characteristics, the Department should group the total diamond weight into baskets. Petitioner claims that under the current model match, the Department requires respondents to report the total diamond weight in hundredths of a carat, which it maintains leads to a large number of control numbers. Petitioner notes that given the Department’s current surrogate value for diamonds at approximately \$.30 per carat, this methodology results in non-identical matches for models that differ by less than a third of a penny per blade. For purposes of the final determination, Petitioner proposes that the Department revise the model match and recalculate control numbers by rounding the data to a whole carat. If the investigation were to go to order, Petitioner urges the Department to consider comments at the start of the first administrative review as to appropriate baskets for diamond weight.

Respondent Bosun argues that the Department must reject Petitioner's request to revisit the model match criteria. Bosun claims that Petitioner's request for a modification represents a clear disregard for the Department's deadlines for all parties in this investigation. Bosun notes that on July 14, 2005, the Department provided interested parties in the investigation an opportunity to propose physical characteristics and that the deadline to file rebuttal comments was July 22, 2005. Bosun asserts that providing the Department with actual measurements for nine additional fields is overly burdensome and will not provide the Department with any critically important supplemental information.

Respondent BGY also argues that the Department should reject Petitioner's proposed revisions to the model match. BGY asserts that Petitioner always has a huge advantage when it proposes model matches at the beginning of the case because Petitioner has months to prepare and consider the implications of the model matches. BGY also notes that in this case most of Petitioner's model match proposals were accepted by the Department. BGY characterizes Petitioner's request to change the model match as an effort to find matches that yield the highest margins. BGY argues that there is good reason for the Department to put an end to such arguments by imposing deadlines at the beginning of the case and that the transparent manipulation of the process by Petitioner should not be allowed.

Department's Position: We agree with respondents and we are not making any changes to the product characteristics or model match criteria at this time. We find that the appropriate time to consider comments with respect to the physical characteristics and model match criteria is at the beginning of the proceeding. As noted by respondents, the Department solicited comments from all interested parties at the beginning of the investigation regarding the appropriate product characteristics and model match criteria. Specifically, on July 14, 2005, the Department issued a letter requesting comments from all parties on the appropriate product characteristics and model match criteria. Petitioner and respondents both submitted comments and rebuttal comments on this issue and the Department considered these comments in developing the final model match criteria, which were issued to all interested parties in a letter dated August 5, 2005. Having addressed the substantial comments on this issue at the beginning of the investigation, we do not find that it is appropriate to address the issue again at the end of the proceeding.

Moreover we disagree with Petitioner's first request to add additional product characteristics for informational purposes for any future reviews resulting from an antidumping order of this investigation. If the investigation goes to order and a review is requested, we will solicit comments from all interested parties on the appropriateness of any changes to the product characteristics and model match criteria at the beginning of that review, consistent with the Department's practice. *See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta From Italy*, 68 FR 6882 (February 11, 2003) and *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan: Amended Final Results of Antidumping Duty Administrative Reviews ("AFBs from Japan")*, 70 FR 58185 (October 5, 2005).

We also reject Petitioner's request to round the reported diamond weight to a whole carat for purposes of the final determination. As an initial matter, we note that respondents reported and the Department verified the diamond concentration weight to the nearest hundredth of a carat.

Contrary to Petitioner's claims, the accuracy of the margin calculation would not be enhanced by altering the control number because rounding the diamond weight to a whole carat would be decreasing the precision of the control number (*i.e.*, using less specific information for diamond weight than what was reported and verified). Moreover, we note that the Department required actual diamond concentration based in part on Petitioner's request at the beginning of the proceeding (*see* Petitioner's July 22, 2005, letter) to report actual diamond concentration. Finally, Petitioner's suggested change would require substantial changes by the Department to the U.S. and factors of production datasets in order to recode and then collapse these control numbers. Given the timing of Petitioner's request, even if we determined it to be appropriate to make changes to the product characteristics at the final determination, parties would not be afforded adequate time to consider the changes to the databases. Accordingly, we determine not to make any changes to the product characteristics and model match criteria for the final determination and will instead solicit comments on this issue at the beginning of the next proceeding if the investigation goes to order and a review is requested.

Comment 6: Whether Employee Benefits Should be Moved from Direct Labor to Manufacturing Overhead

BGY argues that the Department's proposal to revise the calculation of the financial ratios for the final determination by moving employee benefits from direct labor to manufacturing overhead would result in double-counting and therefore should not be made. BGY states that in the folding metal tables and chairs case, the Department explained that the wages category (Chapter 5) of the International Labour Organization ("ILO") statistics is exclusive of pension and social security benefits paid by the employer while the labor cost category (Chapter 6) is inclusive of such costs. *See Folding Metal Tables and Chairs from the People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum, at Comment 1B ("*Tables and Chairs Decision Memorandum*"). However, BGY also notes that the Department stated that the Indian wage rate is a comprehensive wage rate that includes such social security and similar expenditures, despite the intention of the ILO not to have such expenditures included. *Id.* Accordingly, BGY argues that the Department knows that the adjustment will overstate the social security item for at least one country, if not for many more. Because the Department lacks the information as to how many countries that are included in the ILO study are similarly situated, BGY asserts that the Department has no basis for making an adjustment to the overhead figure.

Petitioner argues that the Department should follow its precedent and treat certain financial employee expenses as overhead. Petitioner asserts that because expenses relating to items such as insurance, social security taxes, bonuses, gratuities, and food provided from a company canteen, are reconciled only in the total labor cost and not the direct wage rate, the Department is correct in valuing the items as functions of overhead. Petitioner notes that the Department reached this same conclusion in its final determination in persulfates from the PRC. *See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 7725 (February 14, 2006), and accompanying Issues and Decision Memorandum ("*Persulfates Decision Memorandum*"), at Comment 3. Petitioner provides

suggested changes to each of the financial statements in order to treat the employees' expenses as overhead.

Department's Position: After the preliminary determination was issued, the Department reexamined its calculation of the surrogate financial ratio and released to all interested parties a proposed recalculation of the financial ratios on February 6, 2006. As we explained in *Tables and Chairs Decision Memorandum* and *Persulfates Decision Memorandum*, moving the relevant **employee benefits** categories from direct labor to manufacturing overhead is consistent with our regression-based expected PRC wage rate calculation. See *Tables and Chairs Decision Memorandum*, at Comment 1 and *Persulfates Decision Memorandum*, at Comment 3. The Department based its calculation of the expected PRC wage rate on the ILO's categorization of information provided by the countries it surveys. Information from the ILO website defines wages and labor costs separately. Specifically, Chapter 5, "Wages," are defined thusly:

The concept of earnings, as applied in wages statistics, relates to remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers' contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay. See *Id.*

Chapter 6, "Labour Costs," are defined as including **employee benefits**:

For the purposes of labour cost statistics, labour cost is the cost incurred by the employer in the employment of labour. The statistical concept of labour cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost...*See Id.*

The wages category (Chapter 5) is exclusive of **employee benefits** such as pension and social security, while the labor cost category (Chapter 6) is inclusive of these employee expenses. As we stated in *Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005) the Department based its calculation of the regression-based expected PRC wage rate on data from Chapter 5B of the *Yearbook of Labour Statistics*. In the instant investigation, the detailed and well-defined surrogate financial data permitted the Department to easily segregate labor expenses into "Wages" (which corresponds to Chapter 5B of the ILO database and, therefore, to the Department's expected NME wage rate), and the other aforementioned labor costs (which are not included in the Department's calculated NME wage rate). Accordingly, to be consistent with the methodology employed in calculating the expected PRC wage rate, and as articulated in tables and chairs, we have determined that it is appropriate in the instant investigation to include these **employee benefit** categories in factory overhead in order to ensure that they are captured in our calculation of normal value.

We disagree with respondent's argument that the Department's wage rate calculation includes benefits. In a case involving pure magnesium from the PRC, the Department determined to include employee benefits as labor based on the consideration of *Yearbook of Labour Statistics'* description of Indian wage rates. See *Tables and Chairs Decision Memorandum*, at Comment 1. However, in *Tables and Chairs Decision Memorandum* and *Persulfates Decision Memorandum* and the instant investigation, the determination to classify employee benefits as overhead was determined based on Chapter 5, which is a basket of countries, not Indian wage rates alone. Accordingly, because we have relied on Chapter 5, which is exclusive of **employee benefits** such as pension and social security to value labor, for purposes of the final determination, we have classified the expenses "Contribution to Provident Fund" and "Staff Welfare" as overhead expenses.

Comment 7: Treatment of Negative Margins

Bosun argues that the Department should implement in this case its decision to comply with the decision of the WTO Appellate Body prohibiting the practice of zeroing when calculating antidumping margins in investigations. Bosun argues that by zeroing out margins on sales where the export price exceeds normal value before establishing the weighted-average dumping margin for the merchandise subject to investigation as a whole, the Department's existing practice does not take fully into account the entirety of the export price for those transactions where price exceeds normal value

Bosun argues that in the Department's request for comments on its proposed elimination of zeroing, the Department indicated that it intends to apply any changes in methodology, "in all investigations initiated on the basis of petitions received on or after the first day of the month following the date of publication of the Department's final notice of the new weighted average dumping margin calculation methodology." Bosun argues that there is no reason for the Department to limit its implementation of the WTO Appellate Body decision in this way. Bosun argues that the Department normally implements a change in practice, which results from an adjudicative ruling, in all proceedings in which the relevant determination is not yet final. Bosun argues that implementation of the Appellate Body decision in US-Zeroing on a fully "retroactive" basis, in the sense that it should be applied to all pending cases, is consistent with the basic norms of adjudication by which the Department should be guided.

Bosun asserts that failure to eliminate zeroing in this case would be unreasonable. Bosun argues that there is no reason to further delay implementation and to eliminate the practice in on-going investigations will promote efficiency and avoid additional costly WTO appeals that Bosun claims the United States has virtually no chance of winning. Further, Bosun maintains that implementation of the no-zeroing practice in this case is simple to do and provided the Department with the computer programming to accomplish this.

Petitioner argues that the Department is required by law to continue to use "zeroing" in this investigation. Petitioner asserts that while the Department recently announced its intention to eventually abandon its longstanding practice of not offsetting positive dumping margins with calculated negative margins (*i.e.*, "zeroing") to conform to WTO rulings, it is still in the process of considering comments regarding alternative price-comparison methodologies, and has

explicitly stated that it will continue to use zeroing in pending investigations. Petitioner argues that Bosun's request that the Department “short circuit” this administrative process is clearly prohibited by statute and must be rejected.

Department’s Position: Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise.” (Emphasis added). The Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute. *Timken Co. v. United States*, 354 F.3d 1334, 1342 (Fed. Cir.), *cert. denied sub nom., Koyo Seiko Co. v. United States*, 543 U.S. 976 (2004). *See also, Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347 (Fed. Cir. 2005), *cert. denied*, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006).

We recognize that the Department has initiated a process under section 123 of the URAA to address the potential implementation of the WTO panel’s recommendation regarding the calculation of the weighted average dumping margin in antidumping investigations. *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation*, 71 FR 11189 (March 6, 2006). To date, however, that implementation process has not run its course. *See* 19 U.S.C. § 3533(g). As such, it is premature to determine precisely how the United States will implement the panel recommendation. With respect to the recent Appellate Body Report in the same dispute, the United States has not yet gone through the statutorily mandated process of determining whether to implement the report. *See* 19 U.S.C. § 3533 and 3538.

As such, the WTO dispute settlement proceedings have no bearing on whether the Department’s denial of offsets in this investigation is consistent with U.S. law. *See Corus Staal*, 395 F.3d at 1347-49; *Timken*, 354 F.3d at 1342. Accordingly, the Department will continue in this investigation to deny offsets to dumping based on export transactions that exceed normal value.

Comment 8: Application of Sigma Cap

Petitioner argues that pursuant to the so-called *Sigma* rule, the Department caps the distance over which the inland freight surrogate for an input is calculated at the lesser of the distance between the production facility and the nearest port, or between the production facility and the domestic source of the input. Petitioner argues that in the *Preliminary Determination*, the Department deviated from this past practice arbitrarily and without explanation. *See Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997) (“*Sigma*”).

Specifically, Petitioner argues that the Department erred by applying the *Sigma* cap to the distance for each supplier before calculating the weighted-average freight distance. Petitioner contends that the Department has not been consistent with its past practice of first weight-averaging the individual freight distances from different suppliers to the factory, and then

comparing the weighted-average distance to the distance from the factory to the nearest port. Petitioner asserts that the Department now claims that capping the distance for each supplier before calculating the weighted-average freight distance yields a more accurate result.

Petitioner maintains that although the application of the *Sigma* rule in the *Preliminary Determination* is consistent with the methodology used in the Department's remand redetermination in the eleventh review of *Heavy Forged Hand Tools*, the Department's reasoning in that decision is based on the flawed assumption that "the prices before freight were the same from every possible supplier," and that a respondent, out of concern for transportation costs, would always choose a supplier that is closer to its factory over one that is farther away. See *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 68 FR 53347, 53349 (September 10, 2003), and accompanying Issues and Decision Memorandum, at Comment 15 ("*Heavy Forged Hand Tools*"). Petitioner argues that in this investigation there is no evidence on the record to suggest that the price before freight was the same from every supplier.

Petitioner argues that when a respondent uses multiple suppliers, as in this case, transportation costs cannot be the sole concern of the respondent because the fact that the respondent purchased from different domestic suppliers (each with a different distance to its factory) is itself evidence that the prices charged were different, or that transportation cost was not the only variable in decision-making. Petitioner asserts that by using a methodology with an underlying assumption of identical pricing, the Department is adopting a methodology that does not correspond to the reality of this case and that the Department should not adopt a methodology that does not reflect reality, nor does *Sigma* require such a methodology.

Petitioner argues that the Department should do the "capping" after the calculation of the weighted-average distance, because it acknowledges that the respondent would go to different suppliers for different reasons, including pricing consideration. Petitioner argues that this methodology is consistent with *Sigma* in its comparison of a weighted-average distance to the "capped" distance. Petitioner argues that the Department should revert to its prior practice of calculating the weighted-average distance before applying the cap.

Bosun disagrees with Petitioner's assertion that the Department should have first weight-averaged all distances from Bosun's factory to its different suppliers before comparing these to the distance from Bosun's factory to the nearest port. Bosun argues that Petitioner has both misconstrued the Court's decision in *Sigma* and has also failed to distinguish the facts of this investigation.

Bosun argues that Petitioner fails to account for the fact that Bosun's purchases of raw materials occurred over a 15-month period rather than at a single point in time. Bosun argues that over this 15-month period of time, domestic prices of raw materials, import values for those same raw materials, and transportation costs would necessarily have varied and Bosun had to decide for each input purchase whether to source the input from foreign or Chinese suppliers. Bosun argues that this purchase-by-purchase decision-making process was the rationale for the Court's holding in *Sigma*. Bosun asserts that the Department correctly applied the Court's directive in

Sigma in the *Preliminary Determination* by applying a cap on each supplier's reported distance and argues that this practice must also be followed in the final determination.

Bosun argues that it necessarily carries out this supplier-specific cost-comparison exercise each time it purchases a raw material input and as the Court in *Sigma* recognized, whether Bosun purchased a raw material input from a single supplier or multiple suppliers, it acted as a "rational manufacturer" on each occasion and chose the most cost-efficient input in terms of price and freight for each separate input purchase. Bosun argues that, based on the rationale of the *Sigma* decision, the Department's determination that NME respondents decide the most cost-efficient purchases of inputs on a transaction-specific basis is correct and the Department must follow its practice in the *Preliminary Determination* and continue to compare the distance for each purchase with the *Sigma* distance prior to weight-averaging the *Sigma* distances to derive the POI averages for supplier distances.

Department's Position: The Department has determined to continue to use the methodology used in the *Preliminary Determination*, which is to cap the distance for each supplier before calculating the weighted-average freight distance. This is consistent with the Department's remand determination in *Heavy Forged Hand Tools*. See *Final Results of Redetermination Pursuant to Court Remand Shandong Huarong Machinery Co. v. United States*, Court No. 03-00676 (November 30, 2005) ("*Hand Tools Remand*") available at <http://ia.ita.doc.gov/remands/05-54.pdf>.

In the *Hand Tools Remand*, we explained that the NME methodology attempts to construct production costs that would have been incurred if the producer had been located in a market economy, where companies are assumed to behave in a manner that minimizes expenses and maximizes profits. According to the Federal Circuit's reasoning, a rational company located in a market economy would purchase identically priced inputs only from those suppliers that are closer to its factory than the nearest port. Therefore, in the NME methodology, all suppliers are assumed to charge the same price for their input. When an NME company reports two or more input suppliers, where one supplier is farther from the nearest port than the other, the application of a single price means that a market-economy firm would not purchase inputs from the farther supplier, because purchasing from the farther supplier would not be rational under these conditions, due to the higher freight cost. As a consequence, applying the *Sigma* cap before calculating the weighted-average freight distance will result in a more accurate surrogate freight cost. We reject Petitioner's argument that the logic applied in the *Hand Tools Remand* was flawed. It is reasonable and appropriate to assume that all suppliers in an NME country charge the same price for the input. Moreover, in NME cases the Department does not analyze the price charged by suppliers, but rather relies on surrogate values and applies the same surrogate to the same input regardless of the NME supplier. Therefore, for the final

determination, the Department will continue to cap the distance for each supplier before calculating the weighted-average freight distance.

Comment 9: Treatment of Packing Costs and Byproducts

Petitioner argues that the Department should add respondents' packing costs to the total cost of manufacture ("TOTCOM") before applying the SG&A expense ratio, and deduct respondents' by-product offset from the calculated cost of manufacture rather than the calculated normal value. Petitioner argues that the underlying Indian financial statements capture all costs, whether they are for direct materials, scrap offsets, or packing materials, even if they are not identified as a separate line item or specifically mentioned elsewhere. Petitioner argues that the Department has recognized this in past cases. *See Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 35296 (June 24, 2004), and accompanying Issues and Decision Memorandum ("*Ironing Tables Decision Memorandum*"), at Comment 1. Petitioner contends it is reasonable to assume that packing costs and byproduct offset are included in the financial data in this investigation, and the Department's recent practice to not make the adjustments is flawed.

Bosun argues that the RBI data does not include a separate line item for packing expenses, and manufacturing expenses do not include packing expenses. *See* Memorandum from Bobby Wong to the File, Re: Reserve Bank of India Bulletin (RBI Bulletin), December 15, 2005, at Exhibit 1, page 651. Bosun asserts that the Department should continue to follow its precedent in market-economy and NME cases of adding packing expenses to the normal value after applying the SG&A ratio to TOTCOM. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005), and accompanying Issues and Decision Memorandum ("*Hand Tools Decision Memorandum*"), at Comment 8J. Bosun also argues that Petitioner's example from ironing tables does not apply to this investigation because it references the financial statements that are not based on RBI data.

Department's Position: We agree in part with respondents and in part with Petitioner. Regarding the Petitioner's argument on the application of packing materials, the Department was not able to determine whether the Carborundum data contains any evidence of how packing materials were accounted for. As explained in the *Hand Tools Decision Memorandum* and *Garlic 2004 Decision memorandum*, it is not appropriate to include packing expenses in the COM to which the surrogate financial ratios are applied when it cannot be ascertained that packing expenses are in the surrogate financial ratio calculations. *See Hand Tools Decision Memorandum*, at Comment 8J; and *Garlic 2004 Decision Memorandum*, at Comment 6. In both these cases, the Department could not identify where and to what extent packing expenses were accounted for in the surrogate company financial ratios. We concluded in those cases that applying the surrogate financial ratios to production costs that include amounts for packing materials would distort the amount of overhead, SG&A, and profit in the margin calculation. To avoid this distortion, the Department accounted for packing expenses in normal value. *See Hand Tools Decision Memorandum*, at Comment 8J; and *Garlic 2004 Decision Memorandum*, at Comment 6. In the instant investigation, a careful review of the Carborundum financial

statement reveals that there is no reference to packing materials in the calculations of surrogate financial ratios. The Department cannot assume, as the Petitioner suggests, that packing materials must be captured by TOTCOM. Accordingly, there is no reason for the Department to apply packing material costs to any amount other than to normal value. We note that the *Ironing Tables Decision Memorandum* cited by Petitioner is prior to the recent hand tools determination and is not reflective of the Department's current practice.

With respect to the application of the byproduct offset to normal value, the Department recently articulated its practice for treating byproducts in the remand re-determination of sebacic acid from the PRC. *See Final Determination Pursuant to Court Remand Guangdong Chemicals Import & Export Corporation v. United States*, Court No. 05-00023 (May 3, 2006) (“*Sebacic Acid Remand*”). In determining whether to apply the by-product offset to normal value or COM, in NME cases, we first look to the surrogate financial statements and treat the by-product offset in a manner consistent with those statements when a by-product offset is evidenced in those statements. *See Id.*, at page 8. However, as explained in the *Sebacic Acid Remand* where the surrogate financial statement does not indicate how the surrogate producer treated by-products in its financial statements, “it is appropriate to consider other information on the record, such as whether the by-product was re-introduced into the production process or sold for revenue purposes.” *See Id.*, at page 8. Where the by-product is sold, we deduct the by-product from normal value. This is consistent with accounting principles based on a reasonable assumption that if a company sells a by-product, the by-product necessarily incurs expenses for overhead, SG&A, and profit. *See Id.*, at page 12. Conversely, where the by-product is reused, we deduct the by-product from the cost of manufacture because by reintroducing the by-product into production, the material costs of the subject merchandise are directly reduced. *See Id.* at page 12.

In the instant investigation, a careful review of the Carborundum financial data reveals that there is no reference to byproducts in the calculations of surrogate financial ratios. Accordingly, the Department has treated by-products based on whether the respondent sold or reused them. For the byproducts sold by BGY and Bosun, the Department has applied the by-product offset to normal value. For the diamond recovery powder reused by Bosun, the Department has deducted the recovery powder from COM. Finally, for the steel scrap that is both re-used and sold by Hebei Jikai, the Department has deducted the proportion of the by-product that is sold from the normal value and the remainder from COM.

Comment 10: Whether the Department Should Reevaluate its Preliminary Partial Determination of Critical Circumstances

Petitioner argues in its case brief dated April 18, 2006, that the Department should reconsider its preliminary partial negative critical circumstances determination with respect to BGY and the separate rate applicants in light of new information on the record for the final determination. Petitioner notes that the Department preliminarily found “massive” imports with respect to BGY and the separate rate applicants, but did not find that the knowledge standard was met because preliminary margins were less than 25 percent for export price (“EP”) sales and 15 percent for constructed export price (“CEP”) sales. *See* Memorandum to the File from James C. Doyle to

Stephen J. Claeys: Antidumping Duty Investigation of Diamond Sawblades and Partial Thereof from the People’s Republic of China: Preliminary Partial Affirmative Determination of Critical Circumstances, signed December 20, 2006 (“Preliminary Critical Circumstances Memorandum”). Petitioner argues that information placed on the record since the *Preliminary Determination*, including the cost of graphite molds, may result in margins exceeding the threshold with which to impute knowledge of dumping. Further, Petitioner argues that because the ITC preliminarily found indication of injury to the U.S. industry, the Department should have sufficient evidence to establish that BGY and the separate rate applicants knew or should have known that there was a likelihood of material injury, and the Department should therefore revisit its critical circumstances determination in the final determination.

No other parties commented on this issue.

Department’s Position: The Department has re-examined its preliminary finding that critical circumstances exist for imports of diamond sawblades from Bosun and the PRC-wide entity, but that critical circumstances did not exist for the separate rates applicants,⁴ BGY, or Hebei Jikai, based on the changes made to Bosun, BGY, Hebei Jikai, and the separate rate applicants’ margins.⁵

Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that:

- (A) (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or
- (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and
- (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department’s regulations provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic

⁴ Danyang NYCL Tools Manufacturing Co., Ltd., Danyang Youhe Manufacturing Co. Ltd., Fujian Quanzhou Wanlong Stone Co. Ltd., Guilin Tebon Superhard Material Co. Ltd., Huzhou Gu Import & Export Co., Ltd, Jiangsu Fengtai Diamond Tools Manufacturing Co. Ltd., Jiangyin LIKN Industry Co. Ltd., Quanzhou Zhongzhi Diamond Tool Co., Ltd., Rizhao Hein Saw Co. Ltd., Shanghai Deda Industry & Trading Co. Ltd., Sichuan Huili Tools Co., Weihai Xiangguang Mechanical Industrail Co., Ltd., Wuhan Wanbang Laser Diamond Tools Company, Ltd., Xiamen ZL Diamond Tools Co. Ltd., Zhejiang Tea Import & Export Co. Ltd., Zhejiang Wanli Tools Group Co., Ltd. (“Wanli”), Zhenjiang Inter-China Import & Export Co., Ltd., (collectively, “preliminary separate rate applicants”)

⁵ Including the preliminary separate rate applicants and four additional companies granted a separate rate for the final determination, Qingdao Shinhan Diamond Industrial Co., Ltd., Shijiazhuang Global New Century Tools Co., Ltd., Shanghai Robtol Tool Manufacturing Co., Ltd., and Huachang Diamond Tools Manufacturing Co., Ltd. (collectively with preliminary separate rate applicants, “final separate rate companies”)

consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that, "In general, unless the imports during the 'relatively short period' . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as generally the period between the date the proceeding begins (*i.e.*, the date the petition is filed) and at least three months later. This section further provides that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time.

Analysis

In determining whether the above statutory and regulatory criteria have been satisfied, we examined: (1) the evidence presented in Petitioner's November 21, 2005, submission; (2) new evidence obtained since the initiation of the less-than-fair-value ("LTFV") investigation (*i.e.*, additional import statistics released by the U.S. Customs and Border Protection); and (3) additional information obtained from Bosun, BGY, and Hebei Jikai (collectively, "responsive companies") (*see* responsive companies November 30, 2005, and December 2, 2005, Critical Circumstances Questionnaire responses).

Section 733(e)(1)(A)(i): History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In determining whether a history of dumping and material injury exists, the Department generally considers current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country. With regard to imports of diamond sawblades from the PRC, Petitioner makes no statement concerning a history of dumping from the PRC. We are not aware of any other antidumping order in the United States or in any other country on diamond sawblades from the PRC. Therefore, the Department finds no history of injurious dumping of diamond sawblades from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

Section 733(e)(1)(A)(ii): Whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value, the Department must rely on the facts before it at the time the determination is made. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary antidumping duty determination and the ITC preliminary injury determination.

The Department normally considers margins of 25 percent or more for EP sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV. *See, e.g.*,

Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002). In the preliminary determination, among the responsive companies, Bosun had a margin of 16.34%, BGY had a margin of 0.11%, and Hebei Jikai had a margin of 10.07%. The preliminary separate rate applicants had a margin of 14.96%, based on a weighted-average of the margins of the responsive companies for which we calculated a separate rate excluding any de minimis margins and those margins based on total AFA. The PRC-wide entity had a margin of 164.09 %. See Preliminary Critical Circumstances Memorandum, at Attachment II. For this final determination, Bosun has a margin of 34.19%, the AT&M single entity⁶ has a margin of 2.50%, and Hebei Jikai has a margin of 48.50%. The final separate rate companies have a margin of 20.72%.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. See Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964 (November 20, 1997). In the present case, the ITC preliminarily found reasonable indication that an industry in the United States is materially injured or threatened with material injury by imports of diamond sawblades from the PRC. See *Diamond Sawblades and Parts Thereof from China and Korea* (Investigation No. 731-TA-1092-1093 (Preliminary), 70 FR 43903 (July 29, 2005)).

Based on the ITC's preliminary determination of material injury, and the final dumping margins for Bosun, Hebei Jikai, the final separate rate companies, and the PRC-wide entity, the Department finds that there is a reasonable basis to believe or suspect that the importers for Bosun, Hebei Jikai, and the PRC-wide entity knew or should have known that there was likely to be material injury by reason of sales at LTFV of subject merchandise from the PRC from these respondents. However, based on the final dumping margins for the AT&M entity and the final separate rate companies of less than 25 percent for EP sales and less than 15 percent for CEP sales, we do not find that there is a reasonable basis to believe or suspect that the importers for AT&M or the final separate rate companies knew or should have known that there was likely to be material injury by reason of sales at LTFV of subject merchandise.

Section 733(e)(1)(B): Whether there have been massive imports of the subject merchandise over a relatively short period.

Pursuant to 19 C.F.R. 351.206(h), we will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. The Department normally considers a “relatively short period” as the period beginning on the date the proceeding begins and ending at least three months later. See 19 CFR 351.206(i). However, “if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time.” The

⁶ Including BGY and HXF.

Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

As discussed in the Preliminary Critical Circumstances Memorandum, the Department determined that importers, exporters or producers in the PRC knew, or should have known, by May 2005, that their imports were likely to be subject to an antidumping duty investigation. The Department also found that imports were “massive,” pursuant to 19 C.F.R. 351.206(i), based on a six-month period, with a comparison period of May 2005 to October 2005, and a base period of November 2004 to April 2005 for Bosun, BGY, Hebei Jikai, the preliminary separate rate applicants, and the PRC-wide entity. *See* Preliminary Critical Circumstances Memorandum, at Attachment I. No party in this proceeding has called into question the Department’s preliminary determination of massive imports in this regard. Therefore, the Department continues to find imports to have been massive for Bosun, BGY, Hebei Jikai, the final separate rate companies, and the PRC-wide entity.

The Department continues to find that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by means of sales at less than fair value of subject merchandise from the PRC exported by Bosun and the PRC-wide entity, and now finds that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by means of sales at less than fair value of subject merchandise from the PRC exported by Hebei Jikai. The Department has continued to find margins of more than 25 percent for EP sales and more than 15 percent for CEP sales for Bosun and the PRC-wide entity. *Additionally, for Hebei Jikai, the Department has now found margins over 25 percent for EP sales. See also* Bosun Final Analysis Memorandum, Hebei Jikai Final Analysis Memorandum, and Memorandum to the File: Corroboration of the PRC-Wide Facts Available Rate for the Final Determination in the Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People’s Republic of China, dated May 15, 2006. *The Department also continues to find* that there have been massive imports of the subject merchandise over a relatively short period for Bosun, BGY, Hebei Jikai, the final separate rate companies, and the PRC-wide entity. *See* Preliminary Critical Circumstances Memorandum, at Attachment I.

Therefore, given the analysis above, we determine that critical circumstances exist for imports of diamond sawblades from Bosun, Hebei Jikai, and the PRC-wide entity. However, we do not find that critical circumstances exist for the AT&M entity and the final separate rate companies. *See also* AT&M Final Analysis Memorandum, Margin for Separate Rate applicants for the Final Determination in the Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People’s Republic of China, dated May 15, 2006, at Attachment I.

Comment 11: Surrogate Value Issues

A. Cores

Petitioner argues that the Department's surrogate value for sawblade cores is incorrect because it does not use the best available information. Petitioner explains that in the initiation of this investigation, the Department utilized data available from Infodrive India representing specific imports of cores from October 1, 2004, through March 31, 2005, on a per piece basis for Indian HTS headings 8202 and 8209. Petitioner states that Indian HTS number 8202.39.00 includes both finished blades and other parts, specifically including diamond sawblade cores. In order to be consistent with Department practice, Petitioner argues that it is more appropriate to value a surrogate that identically encompasses the material input than one that is significantly less advanced than the material input. Petitioner notes that the Department valued garlic bulbs using Indian import data for garlic. *See Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942, 69949-50 (November 18, 2005). Petitioner claims that concerns of potential under-statement or over-statement of normal value has not prevented the Department from utilizing a finished product to value an intermediate product in prior investigations.

Petitioner also argues that the respondents' proposed surrogate misstates the nature of the product. According to Petitioner, information on the record supports its assertion that all producers of diamond sawblade cores first cut with shears of a laser cutting device and then subsequently punch or drill a central mounting arbor hole. Petitioner argues that the production of a core requires more advanced manufacturing, such as adding notches or laser cutting sections. Petitioner contends that certain respondents have argued that the cutting performed on cores is not cutting, but is stamping, which Petitioner argues is a mischaracterization. However, Petitioner cites to its February 13, 2006, comments, where it claims that it demonstrated that stamping and cutting are completely different processes. Petitioner argues that Bosun's mischaracterization is intentional and is related to the company's desire to have the Department value cores utilizing Indian HTS number 7326.19.00, for "other articles of iron or steel, forged or stamped, but not further worked." Petitioner argues this category is incorrect because the cores are not forged nor stamped, and are further worked. Petitioner references information from Bosun's response which it argues demonstrates these activities are more advanced than simply forging or stamping.

In conclusion, Petitioner argues that various steps such as introducing slots, painting, polishing, etc. demonstrate that Indian HTS number 7326.19.90 is an inappropriate surrogate value for finished and cut diamond sawblade cores, and that the Department should use Indian HTS number 8202.39.00. Petitioner states that if the Department believes there are issues using this HTS number alone, the Department could utilize both Indian HTS numbers 8202.39.00 and 7326.19.90.

Bosun argues that the Department should reject Petitioner's suggestion to value cores with Indian HTS number 8202.39.33. Bosun argues that the Department correctly concluded in the *Preliminary Results* that this HTS number contains both cores and finished diamond sawblades, which would result in a potential under-statement or over-statement of normal value depending on the relative composition of the cores to other merchandise imported under this HTS number. *See Surrogate Value Memorandum*, at 6. Bosun argues that Petitioner avoids the principal argument that the value for a finished product cannot be the best available surrogate value for an

intermediate product. In conclusion, Bosun argues that the Department should continue its practice from the *Preliminary Determination* because this HTS number most closely resembles the cores consumed by Bosun and that using Indian HTS number 7326.19.00 ensures that the Department does not overstate the normal value.

Department's Position: We agree with Bosun that the Department should continue to use Indian HTS number 7326.19.00 to value cores. Section 773(c)(1)(B)(2) of the Act states that the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority. We find that the surrogate value used by the Department in the *Preliminary Determination* to value cores continues to represent the best available information on the record for establishing dumping margins as accurately as possible.

When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is (1) an average nonexport value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. *See CVP Decision Memorandum*, at Comment 3. In applying the Department's surrogate value selection criteria as mentioned above, the Department has found in numerous NME cases that the import data from WTA represents the best information available for valuation purposes because it is an average import price, representative of prices within the POI, product-specific and tax-exclusive.

As acknowledged by Petitioner, HTS number 8202.39.00 includes both diamond sawblades and parts of diamond sawblades, including diamond sawblade cores. For purposes of the initiation of this investigation, the Department determined not to rely on the Indian import statistics for this HTS number because it included values for finished diamond sawblades. *See Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea*, 70 FR 35625 (June 21, 2005) ("*Initiation*"). Accordingly, for the initiation, the Department relied on data from InfodriveIndia, which is a fee-based website providing in most cases partial Indian customs data for Indian imports under HTS categories 8202 and 8209. *See Initiation*, 70 FR at 35628. In utilizing Infodrive, Petitioner searched for cores utilizing the terms "circle," "blank," "core," "disc," "disk," "center," "centre," for these two HTS categories. *See* June 8, 2005, letter from Petitioner. In using the Infodrive data, the Department explained that that there was no better data currently on the record to value this input; and that the statutory standard Petitioner bears at initiation involving the provision of data reasonably available to it appears to be satisfied by the Infodrive data. *See Id.*

For purposes of the *Preliminary Determination*, the Department valued cores using HTS number 7326.19.00 ("Others of Other Articles of Forged or Stamped But Not Further Worked"), finding that the HTS description of stamped steel is comparable to the description of the core as provided in respondents' description of the manufacturing process. *See* Surrogate Value Memorandum, at 6. For example, the production flowchart provided by Hebei Jikai indicates that the first two steps of the production process are "cutting" and "punching." *See* Hebei Jikai's September 20, 2005, Questionnaire Response, at Exhibit D-3. *See also* Bosun's September 20, 2005, Questionnaire Response, at Exhibit D-3.

In determining to value cores using HTS number 7326.19.00, we explicitly rejected the use of both the Indian import data for HTS number 8202.39.00, because it included finished diamond sawblades, and the Infodrive data because it was incomplete and the Department had better information on the record with which to value steel cores. *See Id.*

In arguing for the final determination that the Department should value cores using HTS number 8202.39.00, Petitioner has maintained that cores for diamond sawblades are significantly further worked than stamped or forged, and as such, the use of the Indian HTS number 7326.19.00 is inappropriate. However, the extent to which cores used in the production of diamond sawblades are further worked in comparison to imports of stamped cores included in Indian HTS number 8202.39.00 has not been quantified by Petitioner. On the contrary, we know with certainty that the surrogate value proposed by Petitioner, HTS number 8202.39.00, includes finished diamond sawblades and parts thereof, including cores. Petitioner itself has stated that there are significant differences in the costs and values of diamond sawblade cores and finished diamond sawblades. *See* Petitioner's May 11, 2005, submission, at 13. Accordingly, given the choice between these two HTS subheadings, one of which we know with certainty includes products that are significantly worked beyond the factor being valued here (*i.e.*, cores), we find that the best available information on the record to value cores is the value used at the *Preliminary Determination*, HTS number 7326.19.00. With respect to Petitioner's argument that the use of a surrogate value that includes the finished product is consistent with Department's practice, we note that in the final determination of the garlic case, the Department did not value the garlic bulb using Indian import data for garlic. *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision Memorandum ("*Garlic 2006 Decision Memorandum*"), at Comment 2. As in the garlic final, the Department has used the least distortive and best available information on the record for calculating dumping margins as accurately as possible. *See FMC Corp.*, Slip Op. 03-15, at 17. (In this case, the CIT upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly," (citing *Technoimportexport, UCF America Inc. v. United States*, 783 F. Supp. 1401, 1406 (CIT 1992))).

B. Oxygen

Petitioner argues that the Department should continue to value oxygen using Indian HTS number 2804.40.90 and should not use Infodrive India data as suggested by Bosun. Petitioner argues that the Infodrive India data is flawed and incomplete.

Bosun argues that the Department should use Infodrive India data to more accurately analyze WTA data and determine which values are most similar to the oxygen consumed by Bosun. Bosun notes that in its February 17, 2006, response, it shows that WTA Indian import values from certain countries should be excluded if an oxygen surrogate value is calculated for the final determination because oxygen imported from those countries is different from that consumed by Bosun. Bosun argues that the Petitioner's assertion that the Infodrive India data contains information not included in WTA data does not support a conclusion that the Department must ignore the information. Additionally, Bosun argues that Petitioner cannot discredit Infodrive

India data on this issue while encouraging the Department to use it to value cores. *See* Petitioner’s Case Brief at 21 and footnote 43. Bosun asserts that the use of Infodrive India data is necessary in order for the Department to utilize the “best available information.” In their rebuttal brief, Bosun continues to assert that oxygen is not a material input, but if the Department does decide to classify it as such, then the Department should consider Infodrive India data.

Department’s Position: For purposes of the final determination, we have determined to value oxygen using publicly available information from Bhoruka Gases Limited (“Bhoruka”), an Indian manufacturer of industrial gases, based on a determination that it represents the best available information on the record for establishing dumping margins as accurately as possible. As indicated in Comment 2, we have determined to value oxygen as a factor of production.

When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is (1) an average nonexport value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. *See CVP Decision Memorandum*, at Comment 3. In applying the Department's surrogate value selection criteria as mentioned above, the Department has found in numerous NME cases that the import data from WTA represents the best available information for valuation purposes because it is an average import price, representative of prices within the POI, product-specific and tax-exclusive.

Both parties have suggested the use of the WTA data, which is contemporaneous with the POI, although Bosun argues that certain adjustments to the WTA data should be made. However, we have determined that the use of information from Bhoruka is the best available information because it is most specific to the input in question.⁷ While the Indian HTS category does not specify the purity level of the oxygen included, the Bhoruka data includes pricing for commercial gas oxygen (99 percent purity level) and oxygen group II (99.9 percent purity level). Although the Bhoruka data is not contemporaneous with the POI, we find that given the wide difference in oxygen prices depending on the type (*e.g.*, the Bhoruka data indicates that the price of high pure oxygen is over four times higher than the price for commercial gas oxygen), for this particular input, specificity outweighs contemporaneity as a factor in our selection. We note that there is no indication that the Bhoruka data includes taxes; accordingly, we have presumed that it is tax-exclusive like the WTA data.

Accordingly, for purposes of the final determination, we have valued oxygen using the Bhoruka price of commercial gas oxygen. Based on the data provided by Bosun, we find that this type of oxygen is most comparable to the type of oxygen used by Bosun, which is industry-grade, and is used for combustion and steel shaving removal in the laser cutting process. *See* Bosun’s February 17, 2006, submission, at 5. Moreover, we have inflated this value to be contemporaneous with the POI. For further details on the calculation, see Bosun Final Analysis Memorandum.

C. Graphite and Steel Molds

⁷ In the *Preliminary Determination*, the Department used Bhoruka data to value hydrogen. *See* Surrogate Value Memorandum, at page 5.

Petitioner argues that the Department should value graphite and steel molds using Indian HTS number 8480.60.00, submitted in Petitioner's February 7, 2006, surrogate value comments, at Exhibit 3. Petitioner argues that the Infodrive mold data provided by Bosun has significant errors and cannot be relied upon. Petitioner asserts that HTS number 8480.60.00 pertains to both commercial and industrial molds regardless of input material composition. Petitioner argues that valuing graphite molds using Bosun's proposed category would essentially classify processed, finished, isostatically molded graphite molds under the same HTS category as the granular graphite that BGY claims to use in the manufacture of its own graphite molds. Petitioner suggests in a footnote that the Department on its own initiative could use as an alternative the HTS number for 8480.41.00.

Bosun argues that if graphite molds are valued in the final determination, the Department should not use HTS number 8480.60.00 as suggested by Petitioner because it is not the best available information. Bosun argues that Indian HTS number 3801.90.00, used by the Department in the *Preliminary Determination* is more appropriate because HTS number 8480.60.00 does not specify *graphite* molds. Bosun argues that Infodrive India data is reliable and demonstrates that molds in HTS number 8480.60.00 are aluminum panels for forming concrete. Therefore, Bosun argues that the Department can value graphite molds and steel molds separately using HTS number 8480.60.00 for steel molds and HTS number 3801.90.00 for graphite molds.

Department's Position: We agree with Bosun and have valued graphite molds using HTS number 3801.90.00. As indicated above in Comment 2, we have determined that graphite molds should be treated as a factor of production, but that steel molds should be treated as overhead. For purposes of valuing graphite molds, we find that Indian HTS number 3801.90.00 should be used as it represents the best available information on the record.

When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is (1) an average nonexport value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. *See CVP Decision Memorandum*, at Comment 3. In applying the Department's surrogate value selection criteria as mentioned above, the Department has found in numerous NME cases that the import data from WTA represents the best information available for valuation purposes because it is an average import price, representative of prices within the POI, product-specific and tax-exclusive.

In this case, both parties have proposed the use of WTA data. The description of the category proposed by Petitioner, HTS number 8480.60.00, is "Moulding boxes for metal foundry; mold bases; moulding patterns, moulds for metal (other than ingot moulds), metal carbides, glass, mineral materials, rubber or plastics: Moulds for mineral materials." The description of the category proposed by Bosun is "preparations based on graphites or other carbon in the form of pastes, blocks, or other semi-manufactures." While the self-described factor of production is 'graphite molds,' respondents did not use molds in the sense that material poured into the molds then formed the shape of a finished product; instead the molds they used were a collection of thin rectangular blocks of pressed graphite. *See, e.g.*, May 3, 2005 Petition Volume II at 14 (explaining that "the {graphite} mold, powdered materials, and certain binding agents... are loaded into an induction press where the powders are compressed into the shape of the diamond

segment as defined by the shape of the graphite mold.”). These are closer to the description of a block based on graphite than a mold for hot liquid metals, minerals, glasses, or plastics, as suggested by HTS number 8480.60.00. Accordingly, we have valued graphite molds using Indian HTS number 3801.90.00 for purposes of the final determination.

D. Copper Powder

Bosun argues that for purposes of the final determination the Department must recalculate the surrogate value for copper powder to exclude import values from France, which Bosun characterizes as aberrational. Bosun claims that the import values from France are aberrational because the values are five times higher than “the world” data when imports from France and China are excluded. Additionally, Bosun asserts that the type of copper powder imported from France does not accurately reflect the copper powder used by Bosun. Bosun maintains that information it provided on February 7, 2006, establishes that Indian imports were predominately of “Metal Matrix Powder NXT 100” and that the chemical composition of “Metal Matrix Powders NEXT 100” is substantially different than the chemical composition of the copper powder consumed by Bosun. Specifically, the “Metal Matrix Powder NXT 100” includes 50% copper, cobalt 25%, and iron 25% while the type of copper powder used by Bosun contains more than 99.7% copper. Bosun explains that in the *Preliminary Determination* the surrogate value for cobalt powder was 79% higher than the surrogate value for copper powder. *See Chrome-Plated Lug Nuts from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 53872, 53873 (October 7, 1998) (“*Lug Nuts*”), Bosun argues that it is the Department’s practice to exclude certain countries’ import values in surrogate value calculations when such import data are aberrational. Accordingly, Bosun maintains that the Department must recalculate the surrogate value for copper powder to exclude imports of copper powder into India from France.

Petitioner argues that the data relied upon by Bosun in its analysis is unreliable and should not be considered by the Department. First, Petitioner claims that the Infodrive data used by Bosun represents only 35 percent of total French imports according to WTA data. Additionally, Petitioner notes that WTA data reports imports of copper products from several countries that do not appear in the Infodrive data and that overall imports of copper products according to the Infodrive data is substantially less than imports according to WTA. As a further example of errors in the Infodrive data, Petitioner cites to the fact Infodrive reports imports of bronze powder, which is classified under a different HTS number. Petitioner also rejects Bosun’s argument that the average unit value is aberrational. Petitioner argues that the average unit value from France is only 700 rupees higher than the average unit value for the next closest country and that there were substantial imports from France into India. According, Petitioner argues that because the quantity is significant and because there is no information on the record that demonstrates that the French data is unreliable, the Department should reject Bosun’s request to remove the French data from its analysis.

Department’s Position: We agree with Petitioner and find that imports from France should not be excluded from the WTA data. We continue to find that the WTA value used by the Department at the *Preliminary Determination* represents the best available information.

When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is (1) an average nonexport value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. *See CVP Decision Memorandum*, at Comment 3. In applying the Department's surrogate value selection criteria as mentioned above, the Department has found in numerous NME cases that the import data from WTA represents the best information available for valuation purposes because it is an average import price, representative of prices within the POI, product-specific and tax-exclusive.

Bosun has argued that the average unit value for copper powder from France is aberrational in comparison to imports from the "world" category when imports from France and China are excluded. Additionally, Bosun has argued that Infodrive data establishes that imports from France of copper powder do not accurately reflect the copper powder used by Bosun. As explained in prior cases, the Department prefers not to use Infodrive data to derive surrogate values or to use as a benchmark to evaluate other potential surrogate values because it does not account for all of the imports which fall under a particular HTS subheading. *See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum ("*Chlorinated Isos Decision Memorandum*"), at Comment 1 and *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum ("*Bedroom Furniture Decision Memorandum*"), at Comment 10. The Department has also determined that Infodrive India is unreliable because a majority of the HTS categories do not report the specific import items in a uniformly comparative manner (*i.e.*, cans, bottles, pieces, sets, or numbers) from which we can calculate a reliable or accurate surrogate value. *See Bedroom Furniture Decision Memorandum*, at Comment 10. We note that this is not a problem with the WTA data because every HTS category is reported using a single uniform measurement (*e.g.*, rupees per kilogram).

In this case, total Infodrive imports for this HTS number (7406.10.00) during the POI represent less than 30 percent of aggregate imports reported in WTA. Moreover, the Infodrive data with respect to France from this HTS subheading during the POI represent only 35 percent of total imports from France as reported by WTA. We also agree with Petitioner that the Infodrive data for this HTS subheading is flawed in other respects in that it excludes imports from five countries (Sweden, Greece, China, Canada, and Australia) that are included in the WTA data. *See Bosun's* February 7, 2006, submission, at Exhibits 4 and 5. Therefore, because the Infodrive data is not complete and is flawed in other respects, we find that it is inappropriate to consider that data in our analysis. While Bosun has established that certain imports from France during the POI may have been of a type of copper powder not used by Bosun, it has not established that all imports of copper powder from France during the POI were not of the type used by Bosun. Therefore, in the absence of complete information we find that to exclude the French imports on the basis of the Infodrive data, as suggested by Bosun, would result in decreased accuracy in the margin calculation. As it is not possible to determine whether only selected Infodrive datapoints favorable to Bosun have been provided to the Department, or even if all available Infodrive data have been provided, whether the underlying dataset contains data biasing the overall average in

the other direction than the one alleged by Bosun so that accepting Bosun's proposal would result in skewing the resulting data in only one direction.

We also disagree with Bosun that imports from France should be excluded as aberrational because the average unit value is five times higher than the average unit value for imports from the "world" category. First, we note that the quantity of imports of copper powders from France during the POI was significant: 19,342 kilograms. Of the 13 countries with imports under this HTS subheading during the POI, imports from France were the third largest in terms of quantity. Moreover, there are imports from other countries under this HTS subheading where the average unit value also exceeds the average unit value from the "world" category. Therefore, we do not find that the data provided by Bosun establishes that imports from France are aberrational. The subset of information on copper powder imports in the Infodrive data provided by Bosun shows a range of powders that are classified under this HTS subheading. For example, it includes Metal Matrix powder, which Bosun has shown is a mixture of copper, iron and cobalt, tamping copper powder, and bronze powder alloy. We note that the prices for these different types of copper powder vary considerably, ranging from 2108 Rs/kg for Metal Matrix powder to 1147.58 Rs/kg for tamping copper powder to 289 Rs/kg for bronze powder alloy. Accordingly, given the range of copper powders that are apparently classified under this HTS subheading, we do not find that the average unit value of the French imports is aberrational; rather, it represents the high-end in a broad range of prices. We note that Bosun has not made an argument about the exclusion of the lower-priced imports from the United States and United Kingdom. Therefore, for purposes of the final determination, we have continued to use the value for copper powder used at the *Preliminary Determination*, which includes imports from France.

E. Diamonds

Hebei Jikai argues that, in order to use the best available information (citing *NTN Bearing Corp. v. U.S.*, 74 F.3d 1204 (Fed. Cir. 1995)), to obtain the most accurate dumping margin possible (citing *Shandong Huarong General Corp. v. United States*, 25 CIT, 159 F. Supp. 2d 714, 719 (2001)), the Department must revise its surrogate value for diamonds by taking into account information from Infodrive India. Hebei Jikai states that the value used by the Department is highly aberrational and that the Department must "avoid the use of distorted surrogate prices." See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1378 (Fed. Cir. 1999).

Hebei Jikai contends that the appropriate HTS category to value diamonds in this investigation is HTS number 7102.29.10, which refers specifically to crushed industrial diamonds, and not the category relied upon by the Department in the *Preliminary Determination*. Hebei Jikai argues that HTS number 7102.29.10 is more appropriate because it refers specifically to crushed industrial diamonds, whereas the Department's selected category was less applicable because it did not specify the limitation of industrial grade diamonds and also specifies that it includes synthetic diamonds. Hebei Jikai asserts that if the Department relies on Hebei Jikai's proposed HTS category it must not rely on WTA data because, as Petitioner stated in the Petition, the WTA data overstated the value. Hebei Jikai explains that Petitioner relied on data from Infodrive India to value the industrial diamond powder. See May 3, 2005, Petition, at Volume II. If the Department does not use Infodrive India data, Hebei Jikai argues it should use the public version of the actual market prices paid by respondent BGY.

Petitioner argues that the Department should continue to value diamond powder using Indian HTS number 7105.10.00 because Hibe Jikai has provided no basis for departing from this surrogate and the suggested alternative of relying on ranged data from another respondent presents great difficulty in relating the information to actual input prices.

Department's Position: We agree with Petitioner that the Department should continue to value diamond powder using Indian HTS number 7105.10.00 as it represents the best available information .

When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is (1) an average nonexport value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. *See CVP Decision Memorandum*, at Comment 3. In applying the Department's surrogate value selection criteria as mentioned above, the Department has found in numerous NME cases that the import data from WTA represents the best information available for valuation purposes because it is an average import price, representative of prices within the POI, product-specific and tax-exclusive.

As noted in the Petition, the value for HTS number 7102.29.10 as reported in WTA for the POI was high and its use would yield inaccurate dumping margins. *See* May 3, 2005, Petition at Volume II at page 18. For purposes of the initiation, the Department valued diamonds using import data from Infodrive for the POI for Indian HTS number 7102.29.10 because it was the best information available to Petitioner. *See Initiation*. However, after the initiation, interested parties, including the other respondents, proposed the use of the HTS subheading 7105.10.00 ("dust and powders of diamonds") and the Department determined to rely on this value as it is more specific to the factor utilized by respondents. *See Surrogate Value Memorandum*, at page 4.

As discussed above, the Department prefers not to use Infodrive data to derive surrogate values because it does not account for all of the imports which fall under a particular HTS subheading. *See Chlorinated Isos Decision Memorandum*, at Comment 1 and *Bedroom Furniture Decision Memorandum*, at Comment 10. In this case, Hebei Jikai has failed to establish that the Infodrive data accounts for 100 percent of imports as reported by WTA. Accordingly, we do not find that we can rely on Infodrive data.

Moreover, other than noting that its proposed surrogate value is lower than the value used in the *Preliminary Determination*, Hebei Jikai has not established that the value used at the *Preliminary Determination* is unreliable. With respect to Hebei Jikai's request to rely on the actual market economy price information of respondent BGY, the market economy information provided by BGY is on a grade and size-specific basis and was applied as such. Accordingly, because the surrogate value represents an average price of all grades and sizes of diamonds, no meaningful comparison can be made. Finally, even if the Department were to conclude that the value used at the *Preliminary Determination* was not supported by substantial evidence, it is not the Department's normal practice to apply market economy purchase prices from another respondent as a surrogate. However, even if the Department were to find BGY's market

economy purchases to be an appropriate surrogate value information, the application of BGY's market economy information would not be possible because Hebei Jikai did not break out its diamond consumption between size and grade. Therefore, for the reasons discussed above, we find that the evidence on the record continues to demonstrate that the value used by the Department at the *Preliminary Determination* represents the best information available.

F. Steel Sheet 5

Bosun argues that, for purposes of the final determination, the Department should not use the WTA data relied upon in the *Preliminary Determination* to value the steel production input labeled "STEELSHEET05." Bosun explains that the WTA data used to value STEELSHEET05 in the *Preliminary Determination* reflects only one type of specialty steel from Austria that Bosun did not use in its production of diamond sawblades. Using Infodrive India data submitted by Bosun on February 7, 2006, Bosun claims that there was only one type of steel imported into India from Austria during the POI, "Bohler K100" and that this steel is unlike the steel used by Bosun, which is classified under STEELSHEET05, in every element in the steel's composition. Bosun notes that the carbon content in "Bohler K100," is eight times greater than the carbon content of Bosun's CrMo, the chromium content is 16 times greater in "Bohler K100" than Bosun's CrMo, and the "Bohler K100" does not contain any molybdenum. Accordingly, Bosun argues that the Department must exclude imports of "Bohler K100" steel from the WTA import data.

Also, Bosun argues that the value used by the Department is aberrantly high in comparison with Indian import values from Austria for the same category of steel in earlier time periods. Bosun claims that the average value of Indian imports from Austria during the fourth quarter of 2004 is double the value of such imports during the third quarter of 2004. Accordingly, Bosun argues that the Department must exclude fourth quarter 2004 WTA data when calculating the surrogate value for STEELSHEET05 and rely on third quarter 2004 WTA data instead. Bosun claims that the Department has in the past excluded certain countries' import values from its surrogate value calculations when these countries' import data were aberrational. Bosun cites to chrome-plated lug nuts where the Department excluded imports of steel from Germany from the surrogate value calculation. *See Lug Nuts*, 63 FR at 53873. Additionally, Bosun asserts that the Department has in the past calculated surrogate values based on data from an extension of the relevant review period when data from the relevant review period were aberrational. As an example, Bosun cites to heavy forged hand tools from the PRC where the Department relied on surrogate value data from the previous year after finding the surrogate value data from the current POR to be aberrational. *See Heavy Forged Hand Tools from the People's Republic of China: Final Results of New Shipper Administrative Review*, 66 FR 54503 (October 29, 2001), and accompanying Issues and Decision Memorandum ("*Hand Tools Decision Memorandum 2001*"), at Comment 1. Bosun argues that the Department must follow its precedent and use the WTA for the HTS number for third quarter 2004.

Petitioner argues that a review of the documentation provided by Bosun in addition to the facts underlying Bosun's arguments demonstrate that the Department should reject Bosun's arguments. Petitioner claims that the use of Infodrive India data, which Bosun relied upon in its analysis, has been discredited as source because of its failure to include all Indian import data, its

proneness to error, and its reporting of data on different bases. *See Bedroom Furniture Decision Memorandum* at Comments 5-6; and *Ironing Tables Decision Memorandum*, at Comments 5-6. Petitioner asserts that the Infodrive data relied upon by Bosun is erroneous because it reports entries of steel from Korea while the WTA data only reports entries from Austria. Petitioner also contends that while the Indian HTS category is for hot-rolled steel, the Infodrive data indicates that the entries were of specialized cold-rolled steel, which it argues is unlikely to enter under a hot-rolled HTS number. Finally, Petitioner maintains that the Infodrive data has underreported the official Indian import data by nearly 90 percent. Therefore, Petitioner argues that, the Infodrive data cannot be relied upon for comparison purposes.

Petitioner also rejects Bosun's argument that the average unit value for steel sheet is aberrantly high. Petitioner claims that the shift in pricing cited by Bosun from third to fourth quarter 2004 is not substantial and that the Department has previously rejected such arguments where the pricing shift is not substantial. Petitioner explains that in the hand tools case cited by Bosun, the change in the price of the average unit value from one period to the next was at least 440 percent. *See Hand Tools Decision Memorandum*, at Comment 1. Similarly, Petitioner notes that in glycine the Department excluded a surrogate value when there was an 800 percent shift in the average unit value from one period of review to the next. *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying Issues and Decision Memorandum, at Comment 1. Petitioner claims that shifts of 50 to 60 percent in the average unit value are minute in comparison to the aforementioned pricing changes that the Department has determined to be aberrational, and do not reflect aberrant price movements. Therefore, Petitioner argues that the Department should rely on the value used in the preliminary determination to value STEELSHEET05.

Department's Position: We agree with Petitioner and continue to find that steel sheet 5 should be valued using WTA data from the POI as it represents the best available information.

When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is (1) an average nonexport value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. *See CVP Decision Memorandum*, at Comment 3. In applying the Department's surrogate value selection criteria as mentioned above, the Department has found in numerous NME cases that the import data from WTA represents the best information available for valuation purposes because it is an average import price, representative of prices within the POI, product-specific and tax-exclusive.

Bosun has argued that the average unit value for imports under HTS number 7226.91.20 during the POI, which only includes Austria, is aberrational in comparison to imports from Austria from earlier time periods. Additionally, Bosun has argued that Infodrive data establishes that imports from Austria during the POI under the HTS subheading do not accurately reflect the type of steel used by Bosun. For the same reasons cited above in our discussion on the use of Infodrive data in analyzing WTA data for copper powder, we find that the Infodrive data is incomplete, and therefore is not reliable. In this case, total Infodrive imports for this HTS subheading during the POI represent only 53 percent of aggregate imports reported in WTA for the POI. We also agree

with Petitioner that the Infodrive data for this HTS subheading is flawed in other respects because it lists imports from Korea while the WTA data for the same period indicates no imports from Korea. Therefore, because the Infodrive data is not complete, we find that it is inappropriate to consider this data in our analysis. While Bosun has some information to indicate that certain imports from Austria during the POI may have been of a type of steel not used by Bosun in this category, it has not established that all imports of steel under this HTS subheading during the POI were not of the type used by Bosun. Therefore, in the absence of complete information, we do not find the Infodrive data to be reliable for our analysis.

We also disagree with Bosun that the WTA POI data is aberrational and therefore should not be used. As noted by Petitioner, the Austrian import data from the POI is 60 percent higher than the prior period. We do not find that such a shift in pricing is so significant as to warrant the exclusion of the POI data in favor of data from third quarter 2004. We note that in the hand tools case cited by Bosun, the Department's determination to exclude data from the period of review was based on a finding that the import quantities were based on relatively low quantities (*i.e.*, 293 kilograms during the review period compared to 19,324 kilograms during the prior review period). *See Hand Tools Decision Memorandum*, at Comment 1. Moreover, in contrast to the lug nuts case cited by Bosun, where the Department made its determination that imports from Germany were aberrational on the basis of comparing one month's worth of data to nine months (*see Lug Nuts*, 63 FR at 53872-73), we have only two quarters' worth of data on the record for which there were imports. We do not find that the comparison of two quarters of data demonstrates that the import average unit value from Austria in fourth quarter 2004 was aberrational. Accordingly, we continue to find that the WTA POI data for HTS number 7226.91.20 represents the best available information.

Separate Rate Applicant-Specific Issues

Comment 12: Separate Rate Status of Electrolux

Electrolux argues that the Department should grant it a separate rate in its final determination because, it fully documented that it had exported subject merchandise to, and had entered the exported subject merchandise in, the United States during the POI.

Electrolux contends that the Department's Separate-Rate Application did not require Electrolux to prove it had received payment for its exports of diamond sawblades to the United States, or that it retained the proceeds of those exports. Electrolux argues that the conjunction "or" that joins the first clause of subsection II.3.a. "it has exported" to the second clause "has sold for export," and the first clause of subsection II.3.b. "made a shipment of merchandise" to the second clause "sold the merchandise," signifies alternatives. Electrolux asserts that an applicant does not have to demonstrate that it exported and sold for export the subject merchandise, nor does an applicant have to demonstrate that it shipped and sold subject merchandise. Electrolux states that the statement in this section of the application which states – "there must be either a sale or entry during the period of investigation to proceed with the separate-rate request" supports its assertion that either a sale or entry is necessary, but both are not required. Electrolux argues that the application does not require that an applicant provide proof of payment receipt for the sale associated with an export before it can qualify for separate-rate treatment.

Electrolux contends that it fulfilled all requirements pertaining to the issue of whether it exported subject merchandise to, and had entered the exported subject merchandise in, the United States during the POI. Electrolux states that as required by sections II.3. and II.4. of the application, it fully documented that it had exported subject merchandise to the United States during the POI, and that the exported subject merchandise had entered the United States during the POI. Electrolux argues that it demonstrated an absence of both *de jure* and *de facto* governmental control over its export activities and that it timely filed answers to the separate-rate addendum on September 30, 2005. Electrolux asserts that it has met all requirements of the application and the Department should reverse its preliminary determination and grant Electrolux a separate rate. Petitioner did not file rebuttal comments on this issue.

Department's Position: We are continuing to deny Electrolux a separate rate for the final determination because we consider Electrolux's application to be deficient as it is missing critical documentation regarding payment receipt. Section II of the Application requires an applicant to provide certain information to support its claim that it has exported or sold for export subject merchandise to the United States during the POI. Contrary to Electrolux' claim, documentation demonstrating payment receipt was specifically included in the list of documents the Department stated were required to support the applicant's certification in question II.3. *See Separate Rates Application at 7.*

Instead of providing the specifically requested documents, Electrolux wrote "N/A" next to payment receipt in its application, and provided no payment documentation or explanation for its failure to do so. As the application itself requires the applicant to provide proof that it received payment for its export sales and retained proceeds of its export sales, Electrolux has not met the basic requirements of the Application. Proof of receipt of payment demonstrates that the sale was consummated which is a necessary requirement of the application and also demonstrates that a sale occurred. Although market economy-owned entities, such as Electrolux, were not required to complete certain sections of the Application, every applicant must provide the sales documents listed in the Application. Therefore, the Department finds that Electrolux's application is deficient. Moreover, because Electrolux did not submit its application until sixty days after publication of the *Initiation* notice (*i.e.* August 22, 2005), it was not entitled to a deficiency questionnaire. The Separate Rate Application stated:

The Department will, however, notify firms whose applications are incomplete or otherwise deficient, if those applications are filed within thirty calendar days after the publication of the initiation notice, giving such firms an opportunity to resubmit a corrected application, as long as the resubmitted applications are received by the deadline set forth in the header to the application. *See Separate Rate Application, at 3.*

Accordingly, all parties, including Electrolux, were on notice that they must file their application prior to the sixty day deadline to have an opportunity to correct deficiencies. Because Electrolux's application was deficient and was not submitted until day sixty, we will not conduct a separate rates analysis or grant Electrolux a separate rate.

Comment 13: Separate Rate Status of Huachang

Huachang argues that it is entitled to separate rate status in the final determination. Huachang contends that the Department's decision in the *Preliminary Determination* to deny separate status for Huachang, because the initial separate rate application did not contain the proprietary version of a Customs Form 7501, is unsupported by substantial evidence and is contrary to law.

Huachang asserts that both the antidumping statute and the Department's long-standing practice require the Department to identify deficiencies in a submitted application and to provide applicants with the chance to correct any such deficiencies. Huachang argues that because it filed its separate rate application by the July 21, 2005, deadline it was entitled to comments regarding deficiencies and incomplete portions of its application, as well as the opportunity to submit a revised, corrected application. Huachang asserts that the Department decided not to specify the deficiencies in its application because Huachang filed a letter with the Department on July 25, 2005, clarifying its July 21 application and therefore the Department determined that the application would be considered filed on July 25, 2005, after the 30-day deadline, as stated on page 1 of the Separate Rate Application. Huachang argues that it was penalized for trying to provide the Department with accurate and complete information as early as possible in the investigation process. Huachang contends that it should have received a deficiency notice because it filed the application by the 30-day deadline, and merely supplemented it on July 25, 2005.

Further, Huachang contends that a proprietary version of the Form 7501 was timely filed with the Department on January 11, 2006. Huachang states that the omission of the proprietary version of the Form 7501 for Huachang's first sale during the POI was clearly a clerical error as the public version of this document was included in the public version of Huachang's July 21, 2005, application. Huachang contends that this document was referenced in Huachang's July 25, 2005, letter filed with the Department. Huachang argues that the Department is required by law to accept the proprietary version of the Form 7501 as the Department is required by law, in all dumping investigations, to notify a party of deficiencies in a questionnaire response and to provide a party with the opportunity to correct those deficiencies. Huachang asserts that calling a questionnaire response an "application" does not alter the Department's statutory obligations.

Huachang argues that the Department's refusal to follow the terms governing its Separate Rate Application is an unlawful, retroactive change of policy and that the Courts have consistently instructed the Department that it may not retroactively change methodologies in the course of an antidumping proceeding as this violates the Department's obligation to fairly administer the antidumping laws. Huachang argues that in *Shinkoku Chemicals Corporation v. United States*, 795 F. Supp. 417 (CIT 1992), for example, the Court found that the Department had abused its discretion and acted unreasonably where the Department changed a repacking allocation followed in the initial investigation and prior administrative reviews.

Huachang asserts that the Department notified the parties to this proceeding of its policy that if the application was filed by July 21, 2005, then the applicant would receive comments on deficiencies and would have the opportunity to submit a corrected application. Huachang states that the Department, without any notice to the parties who relied upon its announced policy, changed its policy for purposes of its separate rate determination for Huachang by applying it in

a retroactive fashion, directly contradicting its obligation to fairly administer the antidumping law.

Further, Huachang contends that it was entitled to deficiency comments and the opportunity to remedy such deficiencies as a matter of law because the antidumping statute requires the Department to notify respondents, such as Huachang, of deficient submissions and provide an opportunity to remedy any deficiencies. *See* section 782(d) of the Act.

Petitioner did not file rebuttal comments regarding Huachang.

Department's Position: The Department denied Huachang a separate rate in the *Preliminary Determination* because it failed to provide a copy of the Customs Form 7501 for one of its sales. However, upon consideration of the arguments and the record, the Department now considers Huachang's separate rate application to be complete because Huachang did file a public version of the Form 7501 in its public version of the separate rates application. The Department inadvertently overlooked the public version of Form 7501 in its analysis for the *Preliminary Determination*. We have determined that the public version of this document contains the necessary information to demonstrate that there was an entry for the sale in question and it can be tied to the remainder of the sales documents in the application, because information concerning the customer, date, and product are still present in the public version. Therefore, we are granting Huachang a separate rate. *See* Final Determination *Federal Register* notice. Because we have determined that Huachang's separate rate application was not, in fact, deficient it is not necessary to address Huachang's arguments as to whether it was entitled to a deficiency questionnaire or whether its January 11, 2006, proprietary version of the Form 7501 form was timely filed.

Comment 14: Separate Rate Status of QSY, Robtol, and Global

QSY, Robtol, and Global argue that Department should take into account that this investigation was the first time that the Department put into practice the new separate rate application procedure. QSY, Robtol, and Global assert that the applicants did not have any established guidelines and decisions to rely upon in preparing and submitting their separate rate applications.

Robtol and Global argue that their separate rate applications were denied because they did not provide any sales documentation regarding their sales to an unaffiliated party in the United States. Robtol and Global contend that this requirement was not made clear in the instructions of the Department's original separate rate application and also in the deficiency questionnaire. Robtol and Global argue that they prepared and submitted their complete separate rate application on July 21, 2005, within the 30-day deadline, entitling both companies to a deficiency questionnaire. Robtol and Global contend that the Department's original separate rate application instructed the applicants to submit the sales documentation for the first and last sale to the United States but did not specify anywhere that the sale documentation could not consist of sales that were made to an affiliated party.

Robtol and Global argue that they followed the Department's instructions and provided the documentation for their first and last sale during the POI, which happened to be made to

affiliated parties. Robtol and Global assert that the affiliation was duly disclosed and documented in their application. Robtol and Global further argue that the Department, while pointing out deficiencies such as legibility of the documentation, never indicated that the sale documentation itself was deficient by nature due to the fact that they involved affiliated importers. Robtol and Global contend they should not be penalized for following the Department's literal instructions.

QSY argues that it was denied a separate rate because it did not provide its Customs Form 7501 for its first sale during the POI and did not provide documentation to demonstrate that it attempted to obtain it. QSY argues that the Form 7501 is a document that is in the possession and control of the importer and not by the exporter such as QSY and obtaining such documents depends on the cooperation of the customer.

QSY argues that it explained in its August 22, 2005, response that it "has made efforts to ask their customers 7501 Entry Summary," but was unable to obtain it. QSY contends that to the extent that the document was outside of QSY's control and possession, it should not be unduly punished for the actions of unaffiliated parties. QSY states that the Department, neither in its original separate rate application nor in its deficiency questionnaire, required a specific type of documentation showing efforts made to obtain the Form 7501.

QSY argues that it explained its inability to obtain this document and also certified that its entire response was accurate and complete. QSY contends that the Department's conclusion that QSY failed to demonstrate its inability is not supported by the record and the Department never required QSY to submit a specific type of statement or affidavit concerning its efforts. QSY argues that it should not be penalized for not complying with a requirement that did not exist at the time it filed its submissions.

Petitioner argues that the Department should deny the applications of Robtol, Global, and QSY for separate rate status. Petitioner argues that despite the fact that the application process was new, and supposedly unclear, not one of the applicants contacted the Department to ask for guidance or clarification regarding their applications and that they submitted their applications through their attorneys - experienced trade counsel. Petitioner contends that since these applicants failed to address the deficiencies identified by the Department, these applicants cannot receive a separate rate in the final determination.

Petitioner argues that even if the language of the original application was unclear, the Department's deficiency questionnaires to Robtol and Global put them on notice of their responsibilities to provide sales documentation to an unaffiliated customer. Petitioner maintains that Robtol and Global failed to abide by the Department's clear direction and the Department should not reconsider the applications submitted by Robtol and Global.

Petitioner argues that QSY's deficiency questionnaire clearly stated that, "if a document is not provided in response to our request, you must explain in detail why you cannot provide this document, and provide supporting documentation for this explanation." Petitioner contends that QSY still did not provide this document and therefore the Department should continue to deny QSY's separate rate application.

Petitioner argues that QSY's contention that the Department's application did not state what specific type of explanatory documentation should be provided is without merit because QSY did not attempt to submit any type of documentation, nor does it appear that QSY made any effort to seek clarification of this documentation requirement from the Department. Petitioner argues that QSY decided to ignore a clear requirement and the Department should not reconsider its denial of QSY's application in the final determination.

Department's Position: We are granting Robtol and Global a separate rate in the final determination and we are continuing to deny QSY a separate rate for the final determination.

With regard to Robtol and Global, the Department denied a separate rate in the Preliminary Determination because Robtol and Global provided sales documentation to affiliated customers in their separate rates applications. The Department did issue these companies a deficiency questionnaire which included general guidelines, such as a stating that the Department requires sales documentation to unaffiliated customers. However, in the company-specific section of the deficiency questionnaires, the Department did not specifically state that Robtol and Global's sales documentation was deficient because it was to an affiliated party. Further, the Department asked additional specific questions regarding the sales documentation that was provided, without indicating that we considered it to be deficient because the documentation was to affiliated customers. Therefore, because Robtol and Global were not informed by the Department that their specific sales information and documentation was considered deficient, we have now analyzed Robtol and Global's separate rate applications and are granting them each a separate rate. *See* Final Determination Federal Register notice.

With regard to QSY, the Department denied it a separate rate in the Preliminary Determination because QSY did not provide a Customs Form 7501 or documentation demonstrating that it could not obtain the form. We issued QSY a deficiency questionnaire and in the company-specific section informed QSY that it must provide the Form 7501 or provide documentation that it could not obtain it. In its response, QSY only stated that it could not provide this document. *See* QSY's August 22, 2005, submission, pages 1 and 2. The original separate rates application and the specific deficiency questionnaire explicitly stated that QSY was required to provide the Form or document that it could not obtain it. Further, QSY was represented by experienced counsel who had business proprietary access to all documentation in this case and could have seen that other companies provided documentation when they were unable to provide their Form 7501. Because QSY did not provide the requested document or provide documentation that it had made efforts to obtain it, its separate rates application remains deficient and we will not analyze it for a separate rate.

Comment 15: Separate Rate Status of Qingdao Shinhan

Petitioner argues that the Department should find that Qingdao Shinhan's separate rate application was untimely and should not grant Qingdao Shinhan a separate rate. Petitioner contends that it was clear in the initiation notice of this investigation that the separate rates application was due within 60 calendar days of the publication of the initiation notice in the *Federal Register*. Petitioner argues that the February 1, 2006, application of Qingdao Shinhan indicated that it was aware that its related party, Shinhan Diamond Industrial Co., Ltd

("Shinhan"), resold Qingdao-Shinhan produced merchandise in Korea, the United States, and third-country markets; yet, Petitioner argues, Qingdao Shinhan asserted in its application that the due date for separate-rates applications did not apply to it.

Petitioner argues that Qingdao Shinhan did not address the legal framework for the Department's country of origin determination in its request to file its separate rates application. Petitioner contends that Qingdao Shinhan claims that according to Korean customs practice such merchandise would be considered a product of Korea, and Qingdao Shinhan submitted excerpts from some Korean regulations. Petitioner maintains that Qingdao Shinhan has not submitted any formal ruling from the Korean government that would confirm this analysis, and it appears that Qingdao Shinhan's interpretation of these regulations is self-serving and potentially inaccurate.

Petitioner argues that Qingdao Shinhan has failed to demonstrate how Korean customs practice is in any way relevant to this investigation, or how conclusions purportedly based on Korean customs practice provide an excuse for Qingdao Shinhan to ignore the Department's published deadlines.

Petitioner argues that Qingdao Shinhan has completely failed to show how, under U.S. law and regulations, the Department's country-of-origin analysis was not foreseeable. Petitioner contends that Qingdao Shinhan's decision not to undertake this analysis is no justification for its failure to comply with the Department's published deadline for its separate-rates application. Petitioner argues that requiring the Department to make an affirmative determination of the country of origin of each product before the 60 day separate-rates application period begins to run would undermine the stated deadlines and defeat much of the purpose of the Department's decision to impose such deadlines in the first place. Petitioner argues that the Department should reject Qingdao Shinhan's February 1, 2006, separate-rates application as untimely, and apply the PRC-rate to subject merchandise exported by Qingdao Shinhan.

Qingdao Shinhan argues that it qualifies for a separate rate, and because Petitioner's objections to the timeliness of Qingdao Shinhan's application are untimely and procedurally inappropriate, the Department should reject Petitioner's attempt to reopen this issue and should reaffirm its conclusion that Qingdao Shinhan is entitled to a separate rate.

Qingdao cites to a memorandum by the Department that states that it "...did not have notice before the preliminary determination that the Department would consider the merchandise to be of Chinese origin. Therefore, Qingdao was not on notice that it would have to file a separate rates application until the preliminary determination was released. Therefore, we find that Qingdao's separate rates application is timely, and will remain on the record of this investigation." *See* February 24, 2006, Memorandum to the File.

Qingdao Shinhan argues that Petitioner has not pointed to any way in which it has been prejudiced by the Department's decision to accept Qingdao Shinhan's application beyond the normal deadline. Qingdao Shinhan argues that the Department has already completed its substantive analysis of the application, an analysis that Petitioner has not challenged, and therefore, no administrative burden was placed on the Department related to the application.

Qingdao Shinhan states that the Department found its separate rate application was timely because it did not have notice prior to the preliminary determination that the Department would consider their merchandise to be of Chinese origin. Qingdao Shinhan asserts that Petitioner has not provided any valid grounds for the Department to overturn its previous conclusion that has found Qingdao Shinhan's application was timely.

Qingdao Shinhan argues that although it knew that specific semi-finished sawblades that it was producing were destined--after further processing in Korea by Qingdao's parent company, Shinhan Diamond Industrial Co., Ltd. ("Shinhan" or "SDC")--for Shinhan's sales subsidiary in the United States, both Qingdao and Shinhan considered merchandise that was semi-finished by Qingdao in China and completed by Shinhan in Korea to have been ultimately produced by Shinhan in Korea, *i.e.*, to be of Korean origin. Qingdao Shinhan argues that this position was consistent with Korean Customs practice, which conforms to WTO rules of origin principles, under which these sawblades are treated as Korean in origin because the source of the vast majority of their components, and thus the major part of their value, is Korean.

Qingdao Shinhan argues that as a result of the Department's preliminary determination in the Korean investigation with regard to country of origin, Qingdao discovered that the merchandise that it had produced and exported through Shinhan to the United States during the period of investigation was now considered by the Department to be Chinese in origin, thus making Qingdao eligible to file a separate rate application in this investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Critical Circumstances Determination: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 70 FR 77135 (December 29, 2005) ("Korea Preliminary Determination").

Qingdao Shinhan argues that its separate rate application was filed at the earliest practicable time following the Department's country of origin determination and well within the Department's usual 60-day deadline for filing such applications. Qingdao Shinhan argues that the Petitioner does not offer any support for its contention that the Department's country of origin determination in the Korean investigation was as reductive as it claims. Qingdao Shinhan maintains that Petitioner does not offer any support for the legal proposition that a party may file a certification with the Department based on a "non-trivial chance" that the certification may be accurate.

Qingdao Shinhan argues that the Department has already determined in this investigation to accept Qingdao Shinhan's separate rate application as timely filed in light of the Department's country of origin determination made for the first time at the time of the preliminary determination in the concurrent Korean investigation. Qingdao Shinhan argues that Petitioner has not offered any valid grounds for the Department to overturn this settled conclusion. Qingdao Shinhan contends that it should be granted a separate rate in the final determination.

Department's Position: We agree with Qingdao Shinhan that its separate rate application was timely filed and that it is entitled to a separate rate. We agree with Qingdao Shinhan that it did not have notice before the *Preliminary Determination* in the concurrent Korean investigation that the Department would consider its merchandise to be of Chinese origin. Therefore, Qingdao

Shinhan was not on notice that it would have to file a separate rates application until the *Korea Preliminary Determination* was released. We determined on February 24, 2006, that Qingdao Shinhan's application was timely filed and we find unpersuasive Petitioner's argument that Qingdao Shinhan should have foreseen the Department's determination in the *Korea Preliminary Determination* that the merchandise was of Chinese origin. Qingdao Shinhan provided information on the record that supported its decision to consider the merchandise to be of Korean origin and even included these sales in the database it submitted for the concurrent Korean investigation. See Qingdao Shinhan's Separate Rate Application. Therefore, we find that Qingdao Shinhan's application is timely filed and our analysis of its separate rates status indicates that Qingdao Shinhan is entitled to a separate rate. See March 22, 2006, Memorandum to the File. We note that Petitioner has only challenged the Department's determination to accept Qingdao Shinhan's application and has not argued that if the application were timely that Qingdao Shinhan has not demonstrated that it is free of *de jure* and *de facto* government control. Therefore, because the application is timely and demonstrates that Qingdao Shinhan operates separate from the government, we are granting Qingdao Shinhan a separate rate for the final determination.

Company Specific Issues

BEIJING GANG YAN

Comment 16: Whether the Department should Deny a Separate Rate to BGY, HXF, and AT&M

Petitioner argues in its case brief dated April 18, 2006, that BGY, HXF, and AT&M (collectively as a single entity "AT&M") are owned and controlled by the PRC government and ineligible for a separate rate. Petitioner asserts that the Department's preliminary finding that these companies should be granted a separate rate was based on incomplete information, and that information collected by the Department at verification, as well as information placed on the record by Petitioner (see Petitioner's November 30, 2005, submission ("Petitioner Separate Rates Letter"), at Exhibit 1), demonstrates that the Department's preliminary finding was incorrect. Petitioner argues that the Department found that four members of AT&M's board of directors are PRC government officials (see Memorandum to the File: Verification of the Sales and Factors Response of Beijing Gang Yan Diamond Product Company in the Antidumping Duty Investigation on Diamond Sawblades and Parts Thereof from the People's Republic of China, dated March 27, 2006 ("BGY Verification Report"), at 9) and that these individuals are exercising their authority over the management of BGY's parent corporation on behalf of the PRC government as demonstrated by their membership in the Central Iron and Steel Research Institute ("CISRI"), which Petitioner argues is controlled by the State Owned Assets Supervision and Administration Commission ("SASAC"). Petitioner argues record evidence demonstrates that AT&M, BGY and HXF are ultimately owned and controlled by SASAC, and SASAC has full ownership rights with respect to the companies under its supervision, exercising *de jure* and *de facto* control over these companies. Petitioner cites *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon

Carbide”), noting that the Department has established *de jure* and *de facto* criteria with which to determine whether a company should be granted a separate rate.

Petitioner argues that the PRC State Council established SASAC in 2003 in order to exercise ownership, personnel, and administrative functions over 196 of the PRC’s state-owned enterprises (“SOEs”). *See* Petitioner Separate Rates Letter, at Exhibit 4. Petitioner further argues that Article 13 of the interim regulations issued by SASAC and the State Council delineating SASAC’s powers charges SASAC with conducting the responsibilities of an investor and to safeguard the rights and interests of its owner (*see* Petitioner Separate Rates Letter, at Exhibits 2 and 5), further asserting that Article 4 of the Company Law of the PRC (included in BGY’s Supplemental Section A response dated September 20, 2005, at Exhibit SA-4), and SASAC’s regulations, defines these rights as the right to collect income, participate in decisions, and select management. Petitioner also argues that SASAC has consolidated its power over SOEs, including presiding over mergers, making moves to control budgets and profits, pooling management budgets, and requiring officers of SOEs under its control to sign “Letters of Operation Responsibility,” pointing to information submitted in Petitioner Separate Rates Letter, at Exhibits 7 and 8 and Petitioner’s December 16, 2005, submission (“Petitioner 2nd Separate Rates Letter”), at Exhibit 7.

Petitioner further argues that SASAC’s control over BGY, HXF, and AT&M with respect to the ability to hire and fire management, order sales and acquisitions, or exercise ownership rights on behalf of the government, counteracts the claim to a separate rate, on both a *de jure* and *de facto* basis, by the AT&M single entity. Petitioner asserts that the Department’s traditional reliance on the Company Law and the Transformation of State-Owned Assets does not take into account new regulations issued by SASAC (*see* Petitioner 2nd Separate Rates Letter, at Exhibits 7 and 11-16), which bear on the separate rates analysis. Petitioner argues that these regulations should be recognized as centralizing SASAC’s control over SOEs. Petitioner asserts that the information on the record of this investigation demonstrates that the AT&M single entity is owned and controlled by SASAC, due to the fact that AT&M controls BGY (*see* BGY Verification Report at 11, (noting that BGY is required to provide financial statements to AT&M)) and owns a significant portion of HXF, CISRI controls AT&M, and SASAC in turn controls CISRI. Petitioner also asserts that HXF’s other significant owner is also owned and controlled by SASAC. *See* Petitioner Separate Rate Letter, at Exhibit 1 and HXF’s Separate Rate Application dated July 21, 2005, at 7. Petitioner alleges that although BGY has argued that AT&M is a publicly listed company on the Shenzhen Stock Exchange, the majority of its shares are owned by CISRI and are not publicly traded. *See* Petitioner’s September 2, 2005, submission, at Exhibits 3 and 7. Petitioner argues HXF and BGY are under the control of SASAC pursuant to an order by the State Council, and based on SASAC’s control over management and assets of these companies, the Department should reverse its preliminary finding that BGY and HXF should be granted a separate rate and instead apply the PRC-wide rate to these companies.

BGY argues in its rebuttal brief dated April 17, 2006, that there is no basis to find either BGY or HXF under the *de jure* or *de facto* control of the PRC government. BGY argues that in its case brief, Petitioner ignores the criteria set forth by the Department in determining whether control exists. BGY argues that the Department examined extensively the *de jure* criteria at verification through an examination of the business and export licenses of BGY, HXF, and AT&M, and

found no restrictive stipulations. *See* BGY Verification Report, at 8-10. Further, BGY asserts that the Department verified that BGY and AT&M were governed by provisions of the Company Law, Securities Law, and the Code of Corporate Governance, each of which demonstrate that these companies' management decisions are separate from its majority owners.

BGY alleges that Petitioner does not provide evidence that SASAC, an entity four levels removed from BGY, has knowledge or control of BGY's sales or business strategy. BGY also argues that Petitioner's allegation that CISRI is owned and controlled by SASAC is false by virtue of the fact that CISRI is owned by "all the people." BGY notes that the Department has found ownership by "all the people" is dispositive of a separation from the PRC government, and the Department has consistently found *de jure* and *de facto* separation for such companies. *See e.g., Silicon Carbide; and 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 (May 3, 2001) ("*HR Steel*"). BGY argues that the list of companies over which Petitioner alleges SASAC has control (*see* Petitioner's November 30, 2005, letter, at Exhibit 1), includes companies to which the Department has repeatedly granted a separate rate, as well as foreign- owned companies. Therefore, BGY argues, Petitioner's arguments with respect to the *de jure* criteria are baseless.

In addition, BGY argues that the BGY Verification Report provides details on how BGY sets its prices, selects management, converts foreign currency, and details the absence of coordination with other companies. *See* BGY Verification Report at 10-11. BGY argues that each of these items demonstrates a *de facto* independence from central government control.

Department's Position: We agree with BGY that the information on the record of this investigation demonstrates that the AT&M single entity, an entity which includes both BGY and HXF (*see Preliminary Determination* 70 FR at 77125), has demonstrated a *de jure* and *de facto* independence from government control with respect to their export activities.

A. Legal Framework

The Department assigns separate rates in NME cases only if the applicant demonstrates an absence of both *de jure* and *de facto* governmental control over its export activities in accordance with the separate-rates test criteria. *See Sigma* 117 F. 3d at 1405-06. To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in *Sparklers* 56 FR at 20589, as expanded in *Silicon Carbide* 59 FR at 22586-22587. Under this analysis, exporters in non-market economies are entitled to a separate rate only when they can demonstrate a *de jure* and *de facto* absence of government control with respect to exports. Evidence supporting, though not requiring, a finding of an absence of *de jure* government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; or 3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20588. In addition, our analysis of an absence of *de facto* government control over exports is based upon: 1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22586-87.

B. Background

As discussed in detail in the *Preliminary Determination*, Petitioner has placed on the record information which, Petitioner argues, demonstrates that BGY and HXF are subject to the *de jure* and *de facto* control over the PRC government. *See Preliminary Determination*, 70 FR at 77126-27. As detailed in the *Preliminary Determination*, the Department found that BGY's export prices are neither set by nor subject to the approval of a government agency, it independently negotiated contracts for purchases of raw materials, and both BGY and AT&M demonstrated autonomy over the selection of management and distribution of profit, as well as independence with respect to the setting of export prices. *See id.* The Department preliminarily found that BGY has both *de jure* and *de facto* control over its export activities, and granted BGY a separate rate.

Also in the *Preliminary Determination*, the Department found AT&M to be a single entity including BGY and HXF. *See, e.g., Preliminary Determination*, 70 FR at 77125; Memorandum to the File from Anya Naschak: Affiliation and Treatment as a Single Entity of Beijing Gang Yan Diamond Product Company, Advanced Technology & Materials Co., Ltd., and Yichang HXF Circular Saw Industrial Co., Ltd.; Affiliation of Gang Yan Diamond Products, Inc. and Beijing Gang Yan Diamond Product Company; and Affiliation of Gang Yan Diamond Products, Inc., SANC Materials, Inc., and Cliff (Tianjin) International, Ltd., dated December 20, 2005 ("AT&M Affiliation Memorandum"). However, although HXF submitted a separate rate application, the Department found HXF's application as submitted contained substantial deficiencies and did not consider HXF for a separate rate in the preliminary phase of this investigation. *See Memorandum to James C. Doyle: Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the People's Republic of China: Separate Rates Memorandum*, dated December 20, 2005 ("Separate Rates Memorandum"). As a result, the

Department was not able to make a determination with respect to HXF's export activities at the *Preliminary Determination*. Additionally, the Department had no information on the record with respect to AT&M's export activities at the *Preliminary Determination*. Therefore, the Department requested additional information with respect to the AT&M single entity's *de jure* and *de facto* independence from government control with respect to its export activities after the issuance of the *Preliminary Determination*.

The Department received comments from Petitioner on December 14, 2006, December 15, 2006, and December 16, 2006, and comments from BGY on December 19, 2006, on the separate rates status of BGY. The Department was unable to consider these arguments in the *Preliminary Determination*, due to the late date on which they were submitted, and has considered these arguments for this final determination. Based on a request from the Department, the Department also received Section C and D responses and supplemental responses from HXF (*see e.g.*, AT&M's Section C response dated January 6, 2006 ("AT&M Section C"); AT&M's Section D response dated January 9, 2006), which BGY certified was the only other company in AT&M that exported subject merchandise during the POI. In addition, the Department examined the separate rate status of the AT&M single entity in detail at verification, which was conducted at the facilities of BGY and AT&M. *See* BGY Verification Report, at 9-12.

C. Analysis

As discussed in the *Preliminary Determination* and the Separate Rates Memorandum, the Department analyzed BGY's Section A and supplemental responses, and found that BGY had demonstrated a *de jure* and *de facto* independence from PRC government control. In addition, because the Department determined in the *Preliminary Determination* that HXF should be considered part of AT&M, a single entity including BGY, HXF, the Department has considered the information submitted by HXF to date, including in its original separate rate application, dated June 21, 2005 ("HXF Application"), additional information to support its application submitted on June 22, 2005 ("HXF Application Supplement"), and August 22, 2005 ("HXF 2nd Supplement"), as well as additional and clarifying information submitted in its responses to the Department's post-*Preliminary Determination* supplemental questionnaire dated January 26, 2006 ("AT&M Supplemental"). The Department analyzed this information to determine if HXF has demonstrated a *de jure* and *de facto* absence of government control with respect to its export activities.

As noted above, the Department's practice is to examine the *de jure* and *de facto* criteria set forth in *Sparklers* and *Silicon Carbide* with respect to a respondent or separate rate applicant's export activities. It is the Department's practice to examine controls over the investment, pricing, and output decision-making process at the individual firm level (*see, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997)), and not the activities of its owner, or its owner's parent company. Therefore, for this analysis, we will limit our analysis to the activities of the AT&M single entity, rather than CISRI and SASAC.

With respect to the *de jure* criteria listed above, Petitioner has placed on the record interim regulations, which allegedly undermine the independence of BGY and HXF under the Company Law of the PRC. See Petitioner's December 15, 2005, submission at Exhibit 5. However, we note that the Department has consistently found an absence of *de jure* control when a company's operations were governed by the Company Law of the PRC, and when it supplied business licenses and export licenses, each of which have been found to demonstrate an absence of restrictive stipulations and decentralization of control of the company. See *Honey From the People's Republic of China: Preliminary Results, Partial Rescission, and Extension of Final Results of Second Antidumping Duty Administrative Review*, 69 FR 77184, 77186-87 (December 27, 2004), and unchanged in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005). The information submitted by Petitioner addresses a theoretical control by SASAC over CISRI, rather than any control of the PRC government at any level over the numerous individual export decisions of the AT&M single entity that took place during the POI. BGY placed numerous documents on the record that were examined for the *Preliminary Determination*. See *Preliminary Determination*, 70 FR at 77126. The questionnaire responses of HXF also demonstrate an absence of *de jure* government control by the absence of restrictive stipulations associated with its export license and business license and through the legislative enactments, which pertain to the company, that protect the operational and legal independence of companies incorporated in the PRC. See HXF Application at 3-6. In addition, the Department conducted a detailed verification of the operational management and control of the AT&M single entity, including an examination of the AT&M single entity's companies' respective business licenses, export licenses, the Securities Law of the PRC, the Company Law of the PRC, and the Code of Corporate Governance, and found no evidence of any legislative or other restrictions on any of the export activities of the AT&M single entity. Therefore, we find for this final determination that the AT&M single entity has demonstrated a *de jure* absence of government control with respect to its export activities.

In addition, as discussed in detail in the Separate Rates Memorandum, at 4-6, pursuant to the criteria set forth in *Silicon Carbide* to demonstrate a *de facto* absence of government control, BGY submitted information in its Section A questionnaire response dated August 25, 2005, ("BGY Section A") and Supplemental Section A response dated September 20, 2005, ("BGY Supplemental A"), that it negotiated prices, selected management, and distributed profit independently of the government of the PRC. In addition, the Department examined the following with respect to the *de facto* criteria at the verification of BGY: original price lists and the cost breakdowns used to create those price lists, original payment documents showing a transfer of USD to a BGY bank account and how it is converted to RMB, and board meeting minutes demonstrating that management is selected by the Board of Directors. See BGY Verification Report, at 12. The Department found no evidence at verification that the PRC government exercised any control over the daily operations of BGY, nor any indication in BGY's corporate documents that the PRC government has the authority to exert any such control.

HXF has also placed on the record information with respect to its *de facto* independence. HXF (1) certified that its export prices are neither set by or subject to the approval of a government agency (see HXF Application, at 9); (2) placed on the record a number of documents that

demonstrate an absence of government control over negotiation and signing of contracts including documents related to price negotiation on U.S. sales, and complete sales and export documentation (*see* HXF Application, at 9 and Exhibits 4-6 and 4-7; AT&M Section C, at Exhibit C-3); (3) placed on the record documentation that it has autonomy over the selection of its own management and board of directors (*see* HXF Application, at 10 and Exhibit 4-8); and (4) provided financial statements and board resolution minutes regarding the independent distribution of profit (*see* HXF Application, at 11-12, AT&M Supplemental, at Exhibits SQ-4-3 and SQ-4-4). Therefore, the Department finds that HXF has demonstrated *de facto* control over its export activities.

Further, we note that the AT&M single entity has certified that BGY and HXF were the only companies within the AT&M single entity that made exports of subject merchandise during the POI, and the Department found no information at verification indicating that AT&M exported, or sold for export, subject merchandise to the United States during the POI.⁸ *See* AT&M Supplemental at 3, and BGY Verification Report, at 20. With respect to Petitioner’s argument that the Department found at verification that four members of AT&M’s board of directors are PRC government officials, the Department notes that this is a misreading of the report which states merely that four members of AT&M’s board were representatives of CISRI. *See* BGY Verification Report, at 9. Further, we note that these four individuals are a minority on the board of directors, of which two other members are representatives of AT&M, and three additional members are independently appointed by the stock exchange committee. *See id.* Therefore, because the Department examines companies’ independence from government control with respect to their export decisions in a separate rates analysis (*see Silicon Carbide*, 59 FR at 22586-87 and *Sigma* 117 F. 3d at 1405-06), the Department has examined the *de facto* criteria with respect to the AT&M single entity based on the components of the single entity which exported subject merchandise to the United States during the POI. The Department confirmed at verification that the AT&M single entity made no exports of subject merchandise to the United States other than those of BGY and HXF. *See* BGY Verification Report, at 6-7. Because AT&M is a single entity including BGY and HXF, and BGY and HXF have demonstrated a *de facto* independence from government control, we find that the AT&M single entity has demonstrated a *de facto* independence from government control with respect to its export activities.

Because no new direct evidence has been placed on the record with respect to the separate rates status of the AT&M single entity, and because it has demonstrated that it operates its export activities free of *de jure* and *de facto* government control, the Department has determined, for this final determination, that the AT&M single entity should receive a separate rate.

Comment 17: Whether BGY was the Seller of Sawblades to the United States

BGY argues in its case brief dated April 3, 2006, that the Department has verified that Cliff (Tianjin) International Ltd. (“Cliff”) is not the seller of BGY’s merchandise to the United States. BGY asserts that there is no evidence that Cliff is anything other than the agent for Gang Yan Diamond Products, Inc. (“GYDP”).

⁸ Other than those sales made by BGY and HXF.

As discussed further in Comments 18 and 19, below, Petitioner alleges in its case brief dated April 18, 2006, and its rebuttal brief dated April 18, 2006, that if Cliff was an agent for BGY, Cliff should not receive a combination rate since BGY was the exporter. Petitioner also maintains that if title transferred from BGY to Cliff, then Cliff was the exporter, and that BGY has provided false or misleading information with respect to its reported quantity and value of exports, as BGY should not have listed itself as the exporter when Cliff was the exporter of record on a majority of BGY's shipments.

Department's Position: In its *Preliminary Determination*, the Department noted that, although it would continue to examine as CEP sales the sales that GYDP made to unaffiliated customers, the Department was concerned with whether BGY or Cliff was the seller of the merchandise under investigation to GYDP. Upon further review at verification, the Department agrees with BGY that BGY acted as the seller of the merchandise under investigation.

BGY claimed in its Section A and Supplemental Section A responses dated August 25, 2005, and September 20, 2005, respectively, that Cliff has no role in transactions between BGY and GYDP other than as an export facilitator for GYDP, and that Cliff does not make sales, negotiate terms, or have any material commercial role in the sales of subject merchandise affecting which entity should be considered the proper seller in the context of this antidumping duty proceeding. However, the Department noted that Cliff issued the commercial invoice to GYDP and BGY did not issue any purchase orders or make any payments directly to GYDP. *See* BGY's Supplemental Questionnaire dated December 5, 2005 ("BGY Second Supplemental"). The Department also examined these issues in detail at BGY, Cliff, and GYDP's facilities while on verification, and found that all negotiation of the essential terms of sale were conducted between BGY officials and GYDP officials, and that Cliff acted merely as a freight and export facilitator for GYDP. *See* BGY Verification Report, at 14 and Exhibits 5 and 17. Further, Cliff and GYDP officials explained that Cliff was established solely to alleviate difficulties experienced with export logistics and payment. *See* BGY Verification Report, at 7. Further, at the facility of GYDP, we noted no instances where GYDP discussed product specifications, sales terms, or other issues with any entity other than BGY, and noted that GYDP officials coordinated only freight and export issues with Cliff. *See* Memorandum to the File: Verification of the Sales and Factors Response of Gang Yan Diamond Products, Inc. in the Antidumping Duty Investigation on Diamond Sawblades and Parts Thereof from the People's Republic of China, dated March 27, 2006 ("GYDP Verification Report"), at 8-10.

Based on the documentation submitted by BGY, original documents and emails examined at BGY, Cliff, and GYDP's facilities, and interviews with BGY and GYDP's sales personnel, the Department has determined that all essential terms of sale were negotiated and executed between BGY and GYDP. Therefore, for this final determination, the Department finds that BGY sold merchandise to its affiliated company GYDP, and these sales are classifiable as CEP sales. Therefore, for all sales made by GYDP which were purchased from BGY, we calculated CEP in accordance with section 772(b) of the Act, because we find these sales were made on behalf of the PRC-based company by its U.S. affiliate to unaffiliated purchasers.

Comment 18: Whether the Department Should Revise the Combination Rates for BGY

BGY argues in its case brief dated April 3, 2006, the Department should create combination rates in the final determination in a manner consistent with BGY's operations during the POI, consistent with *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries*, (April 5, 2005) ("Policy Bulletin 05.1"), at 6, which states "all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation." BGY contends that BGY's exporter-producer combinations during the POI included: 1) BGY (producer) through Cliff (exporter) for CEP sales; 2) BGY (producer) through BGY (exporter) for EP sales; and 3) HXF (producer) through HXF (exporter) for all sales by HXF. BGY also notes that it is not requesting that the Department assign a producer-exporter combination rate for BGY and an unaffiliated agent exporter, as BGY no longer uses this entity for exports. See BGY case brief dated April 3, 2006, at 6. BGY asserts that the Department confirmed at verification that Cliff acted as the exporter of record on CEP sales, and argues that a failure to include the Cliff combination would disrupt BGY's distribution channels. BGY argues that a failure to revise the combination rates for BGY would be contrary to the purpose of the combination rates, be discriminatory, and unjustifiable under the GATT Antidumping Code, noting that there is no basis for circumvention if Cliff is listed as an exporter.

Petitioner argues in its rebuttal brief dated April 18, 2006, that the Department only investigates exporters in NME cases, and BGY's claim that the Department should issue a combination rate for Cliff is incompatible with its claim that Cliff is an agent for BGY. Petitioner further argues that the use of an agent can disrupt the appropriate collection of antidumping duty deposits. See e.g., *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 11580, 11585 (March 8, 2006) ("*Hand Tools*"). Petitioner also argues that BGY should not have been selected as a mandatory respondent because BGY inflated its U.S. quantity and value by including sales exported by Cliff. Petitioner contends that if Cliff was an agent for BGY, Cliff should not receive a combination rate since BGY was the exporter. Petitioner also maintains that if title transferred from BGY to Cliff, then Cliff was the exporter and would have been entitled to a combination rate if it had been selected as a mandatory respondent. Petitioner argues that BGY has falsely claimed that Cliff's exports were its own sales in order to be selected as a mandatory respondent, and therefore, Petitioner argues, the Department should apply total adverse facts available ("AFA") to BGY for claiming Cliff's exports as its own.

Department's Position: In its *Preliminary Determination*, the Department assigned a combination rate only to merchandise produced by BGY and also exported by BGY. For the final determination, we find that it is most appropriate, consistent with Comment 16, above, to assign a producer-exporter combination rate only to the AT&M single entity (which includes BGY and HXF).

In the *Initiation* notice, the Department notified parties that it would apply a new process by which exporters and producers may obtain separate-rate status in non-market economy ("NME") investigations. The new process requires exporters and producers to submit a separate-rate status application. See *Policy Bulletin 05.1* available at <http://www.trade.gov/ia/>. However, the

standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed. As discussed above in Comment 16, in proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the PRC are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The separate rate application for this investigation (*see* <http://www.trade.gov/ia/>) explains that all applications were due sixty calendar days after publication of the initiation notice, and the Department would not consider applications that remained incomplete by the deadline, which in this case was August 22, 2005.⁹ The Department's separate rates application also states, "applicants must individually complete and submit this form with all the required supporting documentation by sixty calendar days after the date of publication of the initiation notice of this investigation... and applies equally to NME-owned and wholly market-economy owned firms for completing the applicable provisions of the application and for submitting the required supporting documentation... {and} the Department will not consider applications that remain incomplete by the deadline." *See* Separate Rate Application for Diamond Sawblades and Parts Thereof from the People's Republic of China (<http://www.trade.gov/ia/>) ("Separate Rate Application"), at 3. The application further instructs, "the Department only accepts applications that are completed in full...and submitted with all the required supporting documentation filed timely and in proper form."¹⁰ *See* Separate Rate Application, at 4. In the instant case, Cliff has not applied for a separate rate. In fact, in its case brief, BGY acknowledges that Cliff would not be eligible for a separate rate as it made no sales to the United States, a statement which the Department has affirmed in this final determination, finding BGY the seller of all merchandise to the United States made through Cliff to GYDP. *See* Comment 17, above.

In the Department's September 6, 2005, Supplemental Section A Questionnaire to BGY ("DOC BGY Supp A"), the Department noted that "the Department has determined that it will assign specific exporter-producer "combination rates" to both mandatory respondents and non-investigated NME exporters that meet *the Department's criteria for separate rate status in investigations*" (emphasis added). *See Policy Bulletin 05.1* (<http://www.trade.gov/ia/>). In addition, the Department's separate rate application specifically states, "Each applicant must submit a separate individual application regardless of any common ownership or affiliation between firms and regardless of foreign ownership." *See* Separate Rate Application. As a result of the Department's practice in this regard, the cash-deposit rate assigned to an exporter (that has qualified for a separate rate) will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

In the instant case, BGY has demonstrated that it was a producer and seller of the merchandise under investigation that was imported by GYDP. *See also* Comment 17, above. BGY was

⁹ This was the first business day after August 20, 2005. *See* section 351.303(b) of the Department's regulations.

¹⁰ We note that the separate rate application requires wholly market-economy owned companies to provide information marked with an asterisk, pertaining to the firm's eligibility for separate rates consideration based on having sold subject merchandise during the POI and support the firm's claim that it is in fact wholly owned by a market-economy entity. The Department had determined that applications from wholly market-economy owned companies that are missing these required elements are incomplete and that the Department will not conduct a separate rates analysis on the basis of an incomplete application. *See* Separate Rates Application at 3.

notified of the Department's requirement that all exporters during the POI must complete a Separate Rate Application to be considered for a separate rate, and that the Department was issuing combination rates for only those exporters that satisfy the Department's criteria for separate rate status in investigations in the *Initiation Notice; Policy Bulletin 05.1* (<http://www.trade.gov/ia/>), and again in the DOC BGY Supp A. Because Cliff has not applied for a separate rate, and therefore has not demonstrated its eligibility for a separate rate, for this final determination the Department will continue to not issue a combination rate for exports made by Cliff and manufactured by BGY, as these sales were made by BGY.

Further, the Department continues to find that BGY should be treated as a single entity with AT&M and HXF, and the AT&M single entity has demonstrated its eligibility for a separate rate in this case, as discussed above in Comment 16. Therefore, the Department will apply a single combination rate for the AT&M single entity as the producer and exporter, and include special instructions to CBP that this rate will apply when merchandise was produced and exported by BGY or produced and exported by HXF.¹¹ In addition, where Cliff acted as an export facilitator for the AT&M single entity, those exports are also eligible for AT&M's antidumping duty cash deposit rate. *See* 19 C.F.R. § 351.107(b)(2).

Comment 19: Whether the Department Should Apply Total Adverse Facts Available to BGY

Petitioner alleges in its case brief dated April 18, 2006, that because BGY has failed to provide full and complete information regarding quantity and value of exports, U.S. sales, and FOP information, thereby impeding the Department's investigation, the Department should apply total AFA for the final determination. Petitioner asserts that BGY has provided false or misleading information, including its reported quantity and value of exports (where BGY listed itself as the exporter when Cliff was the exporter of record on a majority of these shipments), and including its U.S. sales and FOP information. Petitioner argues that the numerous errors discovered at verification cast doubt on the validity of BGY's responses and necessitate the application of total AFA, or at the very least partial AFA on the individual issues.

Petitioner contends that the verification of GYDP demonstrated that BGY had misrepresented and withheld information, and that an application of total AFA is warranted. Petitioner notes that GYDP reported incorrect invoice dates (in some instances by many days) for a large number of invoices. *See* GYDP Verification Report, at 14. Further, Petitioner notes, the sales examined at verification contained numerous discrepancies (*Id.*, at 15) calling into question the overall veracity of the data submitted. Petitioner also argues that GYDP misrepresented its airfreight shipments, including the providers of this freight and the number of invoices on which it is incurred, as well as significantly underreporting the per-kilogram inland freight and brokerage and handling expenses on all observations. *Id.*, at 2. Petitioner also argues that GYDP failed to properly report its rent expenses. *Id.*, at 3.

¹¹ While the Department notes that these two entities were specifically examined in this investigation, the AT&M single entity rate necessarily applies to all subsidiary companies of AT&M, and therefore the rate is not limited to these two entities.

Petitioner argues that this inaccurate reporting demonstrates BGY has withheld or provided inaccurate material information, and that section 776 of the Act allows the Department to use the “facts otherwise available” when an interested party significantly impedes a proceeding or provides information that is unverifiable. Petitioner contends that the discrepancies discovered at verification demonstrates that BGY has not cooperated to the best of its ability to comply with requests for information and an adverse inference is appropriate pursuant to section 776(b) of the Act, and therefore the Department should apply total AFA, or, at the least partial AFA for each of these issues. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine*, 66 FR 50401 (October 3, 2001).

Petitioner argues that the Department should apply AFA to BGY’s unreported sales, noting that Petitioner placed information on the record with respect to unreported sales of a certain product on BGY’s website in its February 13, 2006, submission. Petitioner argues that BGY did not present any information with respect to these sales as a minor correction at the PRC verification. Petitioner further argues that BGY knew that this product was within the scope of the investigation, did not request that this product be excluded, and could have corrected this error as late as February 13, 2006, or submitted it as a minor correction at the onset of verification. Petitioner argues that because the Department discovered this information at verification, and because BGY’s failure to submit the information is a “serious error” (*see Florex v. United States*, 705 F. Supp. 582, 588 (CIT 1988)), the Department should apply AFA for these transactions. Petitioner also argues that although BGY reported these transactions as a minor correction during the verification of GYDP, and the Department had requested these sales electronically, this information was not subject to verification, nor will Petitioner have an opportunity to comment on the data. Petitioner argues that the Department should use AFA because section 782(e)(2) of the Act permits the Department to disregard information that is unverifiable, section 782(e)(4) of the Act allows the Department to disregard information when a respondent has failed to act to the best of its ability (as Petitioner argues BGY has done in this case), and BGY has not submitted this information in its responses pursuant to section 782(e)(1) of the Act.

In its rebuttal brief dated April 18, 2006, Petitioner also argues that BGY submitted new factual information in April 3, 2006, data which were originally reported as a minor correction at the beginning of the PRC verification of BGY. Petitioner argues that the Department should not accept this information, and should instead apply AFA for these sales by deriving normal value by multiplying the net price for all observations of the CONNUMs associated with these sales by 164.09 percent, the AFA rate from the *Preliminary Determination*. Petitioner alleges that the data BGY placed on the record on April 3, 2006, is incorrect in that the gross unit weight has not been reported, without which the Department will be unable to calculate the weight-averaged freight used in the *Preliminary Determination* as facts available. *See* Memorandum to the File: Beijing Gang Yan Diamond Products Company Program Analysis for the Preliminary Determination, dated December 20, 2006 (“BGY Preliminary Analysis Memorandum”), at 9-10. Petitioner argues that, pursuant to sections 782(e)(1), (3), and (5) of the Act, the Department should reject this information, as the information is untimely, incomplete, and cannot be used without undue difficulty. Petitioner alleges that the FOP data submitted on April 3, 2006, was not submitted at the GYDP verification, and therefore is unverifiable. Further, Petitioner contends that because this information was filed on the same day as the case brief, Petitioner was unable to make arguments based on this information, as allowed by 19 CFR 351.301(c)(1).

Petitioner argues that barring an additional verification with time to comment by parties, this information should be disregarded and that it further supports the application of total AFA for BGY.

Petitioner goes on to argue that additional discrepancies found at verification further demonstrates that BGY has failed to cooperate with the Department's investigation. Petitioner contends that BGY incorrectly reported that its customers pay for freight to the port, and that the Department discovered at verification that BGY used its own trucks on certain transactions, thus incurring inland freight and brokerage and handling (*see* BGY Verification Report, at 2 and 21-22), and the Department should therefore add these expenses for all sales with the appropriate sales terms. Petitioner also argues that the Department should add freight charges for the distance between BGY's core workshop and BGY's main facility based on the Department's findings at verification. *Id.*, at 2 and 17-18. Petitioner argues that BGY failed to report packing for cores produced at BGY's core workshop (*Id.*), and that the usage rates for cardboard boxes, labels, plastic straps, and metal clamps are not on the record. Petitioner also notes that the appropriate surrogate value for metal clamps may not be on the record of this proceeding. *See* Petitioner case brief dated April 18, 2006, at 74. Petitioner asserts that because BGY failed to report these inputs, the Department should use an adverse inference pursuant to section 776(b) of the Act, and apply the usage rates for packing finished sawblades including labor. Petitioner also argues that BGY was unable to substantiate that it received reimbursement for airfreight and airfreight insurance (*see* BGY Verification Report, at 3 and 22) and therefore the Department should set these revenue fields to zero for the final determination.

BGY argues in its rebuttal brief dated April 17, 2006, that there is no basis for the use of total AFA for BGY in the final determination, as the errors cited by Petitioner are small or not actually errors. BGY further argues that, contrary to Petitioner's assertion that Cliff was the proper respondent because it held the export license on many CEP exports, the exporter for purposes of antidumping investigations should be the company which makes the sales. BGY asserts that Cliff does not make sales, and is only a logistics arm of GYDP, and that the Department would have rejected a separate rates application by Cliff on these grounds. BGY also asserts that the Department would have also rejected any application made by the unaffiliated exporter on the same grounds, as BGY is the entity making the sales through GYDP. BGY contends that the Department verified at Cliff and BGY that all negotiations were held between BGY and GYDP, and that Cliff was only a facilitator or agent for GYDP. Further, BGY argues that its argument that Cliff should receive a combination rate is purely for CBP purposes, and the holder of the export license in the PRC is not indicative of the exporter for purposes of the Department's margin calculation.

With respect to the errors found at verification, BGY argues that Petitioner's points are without merit, or not actually mistakes. With respect to crack chasers, BGY argues that BGY provided information with respect to these sales at verification, and notes that GYDP does not classify these items as "diamond sawblades." BGY contends that GYDP's failure to include these products was an oversight corrected at the beginning of verification, and that the quantity and value of these sales is inconsequential. BGY argues that its failure to report packing materials for self-produced cores was inadvertent and that the Department should therefore use a reasonable and non-adverse figure to correct this error based on the information the Department

collected at verification. BGY also asserts that Petitioner's claim that BGY failed to establish reimbursement for freight on certain observations is incorrect, and that the BGY Verification Report at Exhibit 11 demonstrates the freight was prepaid by the customer. *See* BGY's case brief, at 8. BGY argues that the invoice date errors were a result of errors by a clerk that failed to enter these invoices in a timely manner into GYDP's accounting system, and that BGY was unaware of the issue until verification. BGY further argues that these errors have no bearing on the dumping margin in this case and the Department verified these revised dates and found that "none of the invoices actually issued in the month before or after should have been reported." *See* GYDP Verification Report, at 14. BGY argues that its sales listing submitted on April 3, 2006, included these corrections and that the Department has verified this complete record. BGY also argues that the discrepancies alleged by Petitioner in its case brief, at 76, were minor or were not actually errors. In its rebuttal brief at 23, BGY addresses the issues alleged by Petitioner with respect to the five observations.

Regarding airfreight expenses, BGY argues that these expenses are incurred on a small number of total shipments and that GYDP inadvertently failed to identify certain such shipments. BGY argues that because these shipments are identified in the GYDP Verification Report, at Exhibit 15, the Department has the information on the record to make an accurate calculation of these expenses and should use this information for the final determination. BGY also contends that the misreporting of U.S. freight to the warehouse and brokerage and handling expenses was not massive and is easily corrected. BGY argues that references to purchase orders or non-subject merchandise in the GYDP Verification report is without consequence, as GYDP did not include these expenses. In addition, BGY argues that the amount paid to its freight forwarder is not inaccurate, and that the only difference is due to payments made after the POI that were included in the payment amounts. BGY asserts that the difference between the originally reported freight factor and the revised factor is small. In addition, with respect to rent for a Chicago facility, BGY argues that the Department has the information on the record to correct this error.

Department's Position: Petitioner has argued that the application of total AFA is appropriate with respect to BGY because BGY misrepresented the exporter of its sales, has submitted data that was unverifiable, and has a pattern of discrepancies that undermine the overall veracity of its responses. As an initial matter, we note that we have addressed Petitioner and BGY's arguments with respect to whether Cliff was the exporter, agent, or seller of merchandise above at Comment 17.

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 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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 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.

Petitioner has alleged that BGY had unreported sales during the POI, based on its submission of February 13, 2006. At the PRC verification, contrary to Petitioner’s claim, BGY submitted complete FOPs on all models of crack chasers it produced during the POI, and stated that all sales of these models were made by GYDP and would be presented at the verification of GYDP in Los Angeles. *See* BGY Verification Report, at 2 and Exhibit 3. As these data were reported as a minor correction on the first day of verification and as the information presented at verification demonstrate that these sales were extremely small in comparison to BGY’s other sales of subject merchandise, the Department was able to verify this information and accept it onto the record as an appropriate minor correction. The Department found no discrepancies in the values reported for these models, nor did the Department find any sales of crack chasers made by BGY to the United States. Therefore, Petitioner’s claim that these FOPs were unreported, unverifiable, or unavailable for comment, is without merit.¹² Similarly, complete sales information with respect to the crack chaser models, as well as a small number of sales that were misclassified in GYDP’s own accounting system, were reported by BGY’s affiliated reseller GYDP on the first day of verification. *See* GYDP Verification Report, at 3 and Exhibit 13. The Department examined the information submitted by GYDP and found no discrepancies. The Department requested that BGY submit this verified information on the record in electronic format on March 28, 2006. Although the Department agrees with Petitioner that certain of the sales data submitted on April 3, 2006, by BGY is missing a gross weight figure, the Department never identified this deficiency prior to its request of March 28, 2006, and the Department has determined to use other information on the record submitted by BGY to correct this omission. For a description of the methodology used by the Department to correct the gross weight field, (*see* AT&M Final Analysis Memorandum). Therefore, the Department finds the use of these data, as submitted as a minor correction during the PRC and U.S. verifications and in electronic form on April 3, 2006, is timely, not so incomplete as to be unusable, and can be used without undue difficulty. In addition, the Department finds that, because BGY submitted this information to the Department on the first day of the PRC and U.S. verifications, BGY cooperated to the best of its ability. Therefore, we do not find that the application of AFA with respect to these sales is appropriate, and will use these data in the calculation of a margin for BGY for the final determination.

The Department does not find that the discrepancies found at verification are so pervasive as to demonstrate that BGY did not cooperate to the best of its ability to comply with requests for information. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also* “Statement of Administrative Action” accompanying the URAA,

¹² The Department notes that Petitioner was served with a copy of these FOPs on February 22, 2006.

H.R. Rep. No. 103-316, 870 (1994) (“SAA”). With respect to BGY’s “failure” to report truck distances between its core workshop and its main facility, and packing inputs used on these cores, the Department did not request this information. BGY supplied all supplier distances that were requested and inputs into the manufacture of these cores, and therefore complied with our requests for information. Therefore, because the information is available and is complete and because the overall magnitude of this change is so minor, the Department will include the distance from the core workshop to its main facility on all self-produced cores during the POI. Regarding packing expenses unreported by BGY, the Department has no information on the record, other than the types of packing used, with which to determine the appropriate per-CONNUM usage rates on these inputs. As cores with and without segments do not differ significantly in size, the Department finds it reasonable that similar quantities of these inputs would be used to pack these cores as would be used in finished diamond sawblades. Therefore, the Department has determined, pursuant to section 782(e) of the Act, to multiply BGY’s usage rates of these packing inputs by a factor of two for the final determination. *See also* AT&M Final Analysis Memorandum.

In addition, with respect to the Department’s finding that BGY uses its own trucks to ship merchandise to the port on sales where BGY had stated the customer pays for all freight, the Department notes that this finding affects only a small number of observations in BGY’s database. Although BGY’s narrative response indicated that BGY did not incur freight on these sales, BGY’s U.S. sales database reported this distance to the port. Therefore, because the information is on the record and is complete, the Department will adjust BGY’s U.S. sales in this regard and include freight to the PRC port. With respect to airfreight expenses on EP sales, which BGY states it pays for and is later reimbursed by its U.S. customer, on page C-22 of its Section C Questionnaire response dated September 22, 2005, we address this issue in detail below at Comment 27, but do not find that this error in and of itself is sufficient to necessitate the application of total AFA.

With respect to errors to BGY’s CEP sales, the differences in invoice dates found by the Department do not change the overall universe of sales, as the Department found no instances “where invoices should have been reported but were not reported.” *See* GYDP Verification Report, at 2. In addition, we note that the invoice dates, as reported, were also derived from GYDP’s accounting system, and GYDP provided complete information upon the Department’s request with respect to these invoices. Therefore, because the data are timely, verifiable, not so incomplete as to be unusable, GYDP has demonstrated that it cooperated to the best of its ability with respect to these invoice dates, and the data can be used without undue difficulties, the Department will correct the invoice dates using the data provided to the Department on April 6, 2006, for the final determination pursuant to section 782(e) of the Act. The Department also found several minor errors in the individual sales traces examined at verification. *See* GYDP Verification Report at 15-16. However, the Department agrees with BGY that these changes were small adjustments to shipment dates, or were otherwise captured in GYDP’s minor corrections submitted on the first day of verification. Therefore, the Department does not find the application of an adverse inference to be appropriate, and will instead make the adjustments as noted. *See also* Comment 27, below and AT&M Final Analysis Memorandum.

With respect to BGY's reported inland freight from the port to the warehouse and U.S. brokerage and handling expenses, as Petitioner notes, the Department found that these expenses were underreported for all observations on which BGY incurred this expense. However, because the information satisfies the criteria set forth in section 782(e) of the Act, the Department will, for the final determination, revise BGY's inland freight from the port to the warehouse and U.S. brokerage and handling expenses using the recalculated number from the GYDP Verification Report, at 18. *See also* AT&M Final Analysis Memorandum. In addition, the Department agrees with Petitioner and BGY that rent for GYDP's Chicago offices should be included, and has included this amount in a recalculated indirect selling expense factor. *See* AT&M Final Analysis Memorandum.

With respect to airfreight expenses incurred on U.S. CEP sales, the Department agrees with Petitioner that BGY failed to properly report this expense both with respect to the number of observations to which it applies and the provider. BGY argues that it inadvertently failed to identify all observations to which airfreight applies. However, BGY also failed to properly identify its provider of this service, which was in its sole possession. BGY presented as minor corrections certain changes to its reported airfreight expenses on the first day of verification (*see* GYDP Verification Report, at 3-4, 17), but only corrected a limited number of the errors, including disclosing to the Department for the first time that GYDP had not been fully reimbursed by its customers for the cost of airfreight. We note that this was contrary to BGY's prior statements on the record. *See* BGY's Section C Questionnaire response dated September 22, 2005, at C-22. In addition, the Department found many additional invoices on which BGY incurred airfreight, and which BGY has itself acknowledged after the fact that it incurred airfreight, information that was not provided to the Department until the final day of verification. The Department has on the record information regarding the actual providers of the freight expense, as well as the total per-unit charges for those shipments. However, with respect to the invoices on which airfreight was not reported, the Department does not know the full rate that was charged, nor whether the amount was actually reimbursed by its customer. In fact, as noted in the GYDP Verification Report, BGY acknowledged that on at least one invoice where BGY reported airfreight had been fully reimbursed, no reimbursement was actually made. *See* GYDP Verification Report, at 17. The Department finds that for the final determination it will make the changes to the observations included in the minor corrections, as BGY disclosed this information to the Department. However, with respect to the observations on which BGY either failed to report airfreight, or on which BGY reported airfreight but the evidence on the record does not demonstrate that GYDP was reimbursed, the Department finds that the use of the facts otherwise available is appropriate.

In addition, section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may use an inference that is adverse to the interests of the respondent if it determines that a party has failed to cooperate to the best of its ability. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See SAA*, at 870. In determining whether a respondent has failed to cooperate to the best of its ability, the Department must articulate its reasons for so determining, and explain why the missing information is significant to the review. *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

The information with respect to these airfreight expenses was in the sole possession of BGY. The Department requested in its October 11, 2005, and November 22, 2006, questionnaires that BGY provide complete information with respect to airfreight transactions. These expenses are critical to the calculation of an accurate dumping margin because they relate directly to the sales expenses incurred on subject merchandise during the POI. However, BGY did not provide the information, even though BGY had this information in its sole possession. Therefore, the Department finds that BGY failed to cooperate by not acting to the best of its ability to comply with requests for information because it did not put forth its maximum efforts to investigate and obtain the information from its records. *See Nippon Steel Corp. v. United States*, 337 F. 3d 1373, at 1382-1393 (Fed. Cir. 2003). The Department has selected, as AFA, the highest per-kilogram rate of market economy freight on the record and applied that rate to all misreported invoices. Further, because the Department does not have complete, verified information on the record with respect to GYDP's level of reimbursement on these misreported invoices, the Department has determined that it is appropriate to grant no offset for reimbursement on these invoices. *See also AT&M Final Analysis Memorandum* for a complete description of the methodology.

Comment 20: Whether the Department should Calculate CEP Profit Based on BGY's U.S. and Third Country Sales

Petitioner argues in its case brief dated April 18, 2006, that section 772(f) of the Act, and Congress' directive, precludes the Department's use of a surrogate CEP profit rate (*see, e.g., Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-3 (1984) ("*Chevron*"); *IPSCO, Inc. v. United States*, 899 F.2d 1192, 1195 (Fed. Cir. 1990)), and that the Department should instead calculate the total actual profit and total actual expenses. Petitioner asserts that the URAA and section 772(f) of the Act stipulates that profit should be the total actual profit, *i.e.*, revenue minus expenses on the sales of the same merchandise used to calculate total expenses. *See* section 772(f)(2)(D) of the Act. Further, Petitioner argues that pursuant to section 772(f)(2)(C)(i)-(iii) of the Act, total expenses should only be calculated using either sales in the United States and exporting country of subject merchandise, sales in both markets of a broader class of merchandise, or sales in the United States and third countries.

Petitioner also argues that the Department's approach in the *Preliminary Determination* failed to account for any revenue or expenses of BGY's U.S. affiliates as required by section 772(f)(2) of the Act, arguing that the statute makes no provision for exceptions, and that the Department's Policy Bulletin 97.1 cites no authority for its exception to the methodology. Petitioner argues that the Department should calculate the profit rate on BGY's U.S. sales using total cost of manufacture, general and administrative expenses, and interest expenses using a methodology similar to that in market economy cases. *See* Petitioner's Case Brief dated April 18, 2006, at 80.

Petitioner further contends that the Department must include a component of home market or third country sales in its calculation of profit (*see* section 772(f)(2)(C) of the Act), but should not use Chinese prices, and therefore cannot use the limited category of subject merchandise, nor domestic sales. Petitioner contends that the Department must base CEP profit on sales to all countries, and the Department's use of an Indian surrogate, which includes numerous Indian companies (and may or may not include sawblade producers), is too broad of a category as it

does not capture BGY's U.S. affiliates' actual revenues and costs or BGY's actual profit experience. Petitioner argues that the Department should request third-country sales information from BGY (and Bosun) and associated FOPs, and use this information and U.S. sales and expense data to construct a CEP profit in accordance with section 772(f)(2)(C)(iii) of the Act, and require this information in subsequent reviews. Petitioner contends that the Department's current approach is contrary to law and should be revised for the final determination.

BGY argues in its rebuttal brief dated April 17, 2006, that to recalculate the CEP profit would be to ignore the Department's policy and practice on NME calculation methodologies and would result in a distortive profit. BGY further argues that Department precedent establishes that the Department will apply a surrogate profit ratio to the CEP profit in NME cases. *See, e.g.,* Policy Bulletin 97.1; *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005), and accompanying Issues and Decision Memorandum, at Comment 5 ("*Honey Final Decision Memorandum*"); *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19032 (April 30, 1996) ("*Bicycles*"). BGY notes that in each of the cases cited in its rebuttal brief at 18-19, the Department used a surrogate profit ratio. BGY asserts that this methodology is in accordance with law, and that section 772(f) of the Act does not apply in an NME situation because each of the choices envisioned by section 772(f) of the Act involve using data that is unreliable and cannot be used. BGY notes that Petitioner's case brief acknowledges that the first two options are unusable. *See* Petitioner case brief at 79. BGY contends that the first option is not applicable because section 773(c)(1) of the Act states that the Department should use surrogate values in NME proceedings, and as noted in *Bicycles*, home market sales are not used in the Department's calculation. In addition, BGY asserts that the second and third options opined by Policy Bulletin 97.1 are inapplicable as these options are based on BGY's own financial reporting information, which has been deemed unusable for determining expenses. Therefore, BGY argues, because Congress has not specified how CEP profit should be calculated in NME cases, the Department has discretion to establish and apply a reasonable methodology. *See Chevron*, 467 U.S. 837. BGY further argues that the Department has determined a reasonable alternate methodology and adhered to it consistently, and that Petitioner provides no reason to depart from it in this case.

Department's Position: We agree with BGY that it is the Department's practice to calculate CEP profit based on the surrogate producer's profit ratio, and we have continued to calculate CEP profit in this manner for the final results in accordance with the Department's standard practice. *See, e.g., Honey Final Decision Memorandum*, at Comment 5; *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 35312 (June 24, 2004) ("*Furniture Preliminary Determination*"), and accompanying Factor Valuation Memorandum, unchanged in *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). Petitioner argues that section 772(f) of the Act compels the Department to use the expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise in its calculation of "total expenses" as part of its calculation of CEP profit. It is not the Department's practice to use sales to third countries as the basis for CEP profit in NME cases. As noted in *Honey Final Decision Memorandum*, the Department finds it inappropriate to

use financial report data of an NME respondent in calculating CEP profit, and it is the Department's well-established practice to base its calculation of CEP profit on the income and expense information provided by the surrogate producer(s). Further, as explained in Policy Bulletin 97.1, "(s)ince it is inappropriate to use financial report data of an NME respondent in calculating CEP profit, the calculation must be based on income and expense information provided by one or more surrogate producer(s). The CEP profit deduction in such cases must be based on the U.S. selling expense data and a profit ratio derived by utilizing the financial data of the surrogate producer(s)." Use of an NME respondent's financial data is inappropriate because the Department, pursuant to section 773(c)(1) of the Act, determines the normal value of the merchandise (including general and administrative expenses, overhead, and profit) of NME respondents using surrogate data from a market economy country. Following the Petitioner's recommendation would result in the use of two different sources of data for the same expenses depending on whether they were being used for the calculation of CEP profit or for other parts of the dumping calculation. This would result in a less accurate dumping margin, which is contrary to the Department's duty to determine dumping margins as accurately as possible. *See, e.g., NTN Bearing Corp. v. United States*, 74 F. 3d. 1204, 1208 (Fed. Cir. 1995). Therefore, we determine for these final results that the CEP profit calculation should continue to reflect the surrogate profit ratio (as described above in Comment 1).

Comment 21: Whether the Department Should Adjust BGY's Reported Electricity and Labor FOPs

BGY argues in its case brief dated April 3, 2006, that the Department should not increase BGY's FOPs for electricity and labor for beginning work in progress ("WIP") as contemplated in the BGY Verification Report at 2, as to do so would be double-counting the inputs since 100 percent of those inputs have been accounted for. BGY argues that it reported the total amount of electricity and labor for the POI and allocated it among all of the finished products for the POI, and did not take into account the beginning or ending WIP, which is not distortive. BGY asserts that were the Department to add a factor for beginning WIP, it should also subtract ending WIP, which would decrease the FOP for electricity and labor. *See* BGY's Case Brief dated April 3, 2006, at 7. BGY also argues that the record does not support an increase in the usage of electricity and labor. BGY contends that it merely took a conservative approach and any proper adjustment to WIP would result in a decrease in these inputs for BGY.

Petitioner argues in its case brief dated April 18, 2006, that BGY failed at verification to account for usage of electricity and labor for WIP (*see* BGY Verification Report, at 3 and 29-30), and the Department should increase the usage rate using an adverse inference.

Department's Position: We agree with BGY that we should not adjust its reported electricity and labor FOP. However, we disagree in part with its arguments for not making an adjustment. We examined the record evidence related to this issue and noted that the FOP for both electricity and labor was reported to the Department by applying a variance to the standard unit of consumption for both FOPs for each product. The resulting actual unit of consumption was then weight averaged based on finished production quantities to calculate the FOP for each CONNUM.

The variance used to determine actual consumption for each FOP was calculated by dividing the actual POI consumption for both electricity and labor by the summation of the extended standard unit of consumption of each product. The extended standard unit of consumption was calculated by multiplying the standard unit of consumption by the finished production quantity in pieces. We note that the finished production quantity includes diamond sawblades started before the POI and finished during the POI (*i.e.*, beginning WIP inventory) but excludes DSBs started during the POI but not completed at the end of the POI (*i.e.*, ending WIP inventory). We also note that the actual POI consumption did not include the usage of electricity and labor needed to bring the products within beginning WIP inventory to their unfinished state in the production process. Consequently, the numerator used in the variance calculation (*i.e.*, actual POI consumption) excludes the labor and electricity consumed for products within beginning WIP inventory, while the denominator used in the variance calculation includes a standard unit of consumption for beginning WIP inventory. Conversely, we also point out that the denominator used by BGY in calculating their variance does not include ending WIP inventory, while the numerator includes a usage factor for both the electricity and labor consumed to bring the products included within ending WIP inventory to their unfinished state in the production process.

Given the fact that we have this overlapping issue with beginning and ending WIP inventory the reported FOPs could be distorted. In other words, given that BGY excluded from its reported FOPs the labor and electricity usage for products included within beginning WIP inventory, and conversely it included labor and electricity usage for products included within ending WIP inventory, the result could distort the reported FOP. Therefore, we examined the facts of the instant proceeding and found that the POI quantity of unfinished diamond sawblades included within ending WIP inventory exceeded the quantity of unfinished diamond sawblades included within beginning WIP inventory. As such, the facts for this proceeding support BGY's assertion that it took a conservative approach in reporting its FOPs for labor and electricity. Therefore, for the final determination, we have not adjusted BGY's reported labor and electricity FOPs.

Comment 22: Whether to Modify the Steel Surrogate Values for BGY

BGY argues in its case brief dated April 3, 2006, that, based on the information collected at verification, the Department should not use an average of Indian Harmonized Tariff Schedule ("HTS") numbers 7225.4020, 7225.4030, 7226.9110, and 7226.9120, to value BGY's self-produced steel cores using 30CrMo steel (Steel Plate 2). BGY argues verification records clearly demonstrate that Steel Plate 2 used during the POI was in widths over 600mm, and therefore the Department should only use the HTS numbers under heading 7225 as the surrogate value in the final determination.

Petitioner argues in its rebuttal brief dated April 18, 2006, that the change proposed by BGY to the surrogate value for steel is unsupported by the record. Petitioner contends that if the Department uses HTS numbers 7225.4020 and 7225.4030, based on invoices and inspection sheets from BGY's 30CrMo steel suppliers, it would do so on inconclusive evidence. Petitioner argues that the BGY Verification Report, at Exhibit 12, and the totality of the information does not contradict the Department's use of an average of both subheadings 7225 and 7226. Petitioner argues that though one invoice indicates a purchase of over 600mm, the raw material sub-ledger in Exhibit 12 indicates purchases were made throughout the POI, lessening the

probative value of the single invoice. Petitioner contends that the inspection sheet from another supplier was prior to the POI, and is therefore not indicative of POI purchases. Petitioner argues that the “inventory out” ledger included in Exhibit 12 of the BGY Verification Report includes withdrawals of 30CrMo in widths less than 600mm. Petitioner argues that the evidence in Exhibit 12 of the BGY Verification Report contradicts the Department’s preliminary surrogate values for 65Mn steel, as the inventory out records show widths less than 600mm. Petitioner argues that the Department cannot therefore conclude that BGY’s steel used during the POI is all greater than 600mm, and that 65Mn is actually all less than 600mm. Therefore, Petitioner contends that the Department should value BGY’s alloy steel (30CrMo) using an average of 7225.4020, 7225.4030, 7226.9110, and 7226.9120, and value BGY’s carbon steel (65Mn) using only 7211.29.50.

Department’s Position: The Department agrees with Petitioner, in part. In the BGY Verification Report, at Exhibit 12, the Department collected invoices and inventory records for BGY’s purchases and use of steel in its production of cores during the POI, which include coils (with only two dimensions) and cut sheets (with three dimensions) of 30CrMo, and also include coils (with only two dimensions) of 65Mn steel. In addition, while touring BGY’s core production workshop, the Department noted that BGY maintained an inventory of both coils and cut sheets. We noted that the inventory records supplied at verification clearly demonstrate that BGY used both coils and cut sheets in its production of steel cores during the POI.

In the *Preliminary Determination*, the Department used an average of HTS numbers 7225.40.20, 7225.40.30, 7226.91.10, and 7226.91.20, to value BGY’s 30CrMo steel. The Department continues to find an average of these values to be the most appropriate for valuing the AT&M entity’s Steel Plate 2 (30CrMo hot rolled steel) input, based on the information included in BGY Verification Report, at Exhibit 12. Specifically, we note that page one of this exhibit ties to an inventory record of 30CrMo steel in widths exceeding 600mm, with a range of thicknesses. In addition, BGY’s raw material sub-ledger at page 7 of Exhibit 12 clearly references 30CrMo steel, which ties to an inventory record listing coils in widths under 600mm, also with a range of thicknesses. Therefore, as HTS heading 7225 includes widths of 600mm or more and HTS heading 7226 includes widths of 600mm or less, the Department continues to find an average of these values to be the most appropriate to value the AT&M entity’s steel cores using 30CrMo steel (Steel Plate 2).

Also in the *Preliminary Determination*, the Department valued BGY’s 65Mn steel (cold rolled steel) using an average of HTS numbers 7209.16.20, 7209.16.30, and 7211.29.50. For the final determination, the Department finds that the evidence on the record countermands the use of HTS numbers 7209.16.20 and 7209.16.30, but supports the continued use of HTS number 7211.29.50. Specifically, the Department notes that the purchase of 65Mn steel indicated on the sub-ledger in BGY Verification Report, at Exhibit 12, page 1, ties to an inventory listing which shows coils in widths less than 600mm, with various thickness, supporting the continued use of HTS number 7211.29.50. However, there is no information on the record to support the use of the HTS numbers 7209.16.20 and 7209.16.30, as all items in inventory for 65Mn steel listed in BGY Verification Report at Exhibit 12, as well as the invoices provided in BGY’s 2nd supplemental questionnaire response dated December 5, 2005, are coils in widths less than 600mm. However, the record does support using steel sheets, not in coils in widths greater than

600mm, as HXF utilizes steel sheets with widths greater than 600mm, as stated on page 2 of BGY's December 6, 2006, response, and supported by HXF's Section C and D databases, submitted on January 6, 2006, and January 9, 2006, respectively. Therefore, for the final determination, the Department has revised its calculation of a surrogate value for 65Mn, cold-rolled steel (Steel Plate 1), to use an average of HTS numbers 7209.25.20, 7209.25.30, 7209.26.20, 7209.27.20, 7209.27.30, and 7211.29.50 in the valuation of the AT&M entity's steel cores using 65MN steel.

Comment 23: Whether to Continue to Apply an Inflator to Market Economy ("ME") Purchases of Diamond Powder Made Prior to the POI

BGY argues in its case brief dated April 3, 2006, that the Department incorrectly inflated the value paid for BGY's ME purchases of diamond powder in the *Preliminary Determination*, as it is distortive and does not reflect the actual costs of BGY. BGY also argues that using an inflator, though consistent with the use of surrogate values in NME cases, is inconsistent with the use of ME inputs. BGY cites 19 CFR 351.408(c)(1), which states that "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary will normally use the price paid to the market economy supplier," noting that in its *Preliminary Determination* the Department did not use the price paid and instead used the price plus an inflator. BGY argues that because the imported amount is not insignificant and the input is not dumped or subsidized, neither of the exceptions noted in *Shakeproof Assembly Components v. United States*, 268 F. 3d 1376 (Fed. Cir. 2002) apply in this case and the Department should therefore use the actual amounts paid for diamond powder in the final determination.

Petitioner argues in its rebuttal brief dated April 18, 2006, that the Department properly inflated the pre-POI purchases of diamond powder in the *Preliminary Determination*. Petitioner contends that in NME cases the Department calculates normal values and will necessarily have a different result than in a ME case. Petitioner asserts that in market economies accounting rules exist for including inflation in inventory per unit costs, and therefore the purchase price paid does not necessarily equate with the per unit cost when it is withdrawn from inventory. Petitioner argues that it is the Department's practice to adjust pre-POI costs to account for inflation and the Department was correct to do so as the purchase was made prior to the POI. Petitioner asserts that BGY incorrectly asserts that 19 CFR 351.408(c)(1) excludes making this adjustment, and argues that the use of "is purchased" in the regulations indicate that these inputs must be purchased during the POI. Petitioner notes that irrespective of its belief that the Department should not make this change, it has no effect on the weight-averaged margin, and the Department could therefore disregard the adjustment under section 777A(a)(2) of the Act.

Department's Position: Section 351.408(c)(1) of the Department's regulations states that "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market supplier" to value factors. Otherwise, section 351.408(c)(1) states that publicly available information will normally be used to value the factors. In the *Preliminary Determination*, for NME purchases of diamond grades made by BGY during the POI, the Department used a surrogate value to value those inputs, for ME purchases of diamond grades made by BGY during the POI, the Department used BGY's

ME price, and for ME purchases of diamond grades made by BGY prior to the POI, the Department used the ME price but inflated this value. The Department agrees with BGY that the inflation of these pre-POI ME purchases is inconsistent with section 351.408(c)(1) of the Department's regulations.

However, we note that the Department's original questionnaire, issued to BGY on July 28, 2005, at D-3 requests that BGY report ME inputs "purchased from a market economy supplier and paid for in a market economy currency during the POI." As noted in the Department's original questionnaire, the Department's stated preference is to consider only prices paid to ME suppliers during the POI. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum, at Comment 33 (stating that we would not use "market economy inputs if they are insignificant or purchased outside of the period of review"). *See also Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum, at Comment 3. Therefore, for the final determination, the Department has disregarded BGY's ME purchases of diamond where purchases of those grades were made prior to the POI, and instead used the contemporaneous surrogate value to value these grades.

Comment 24: Whether the Department Should Revise the Surrogate Value for Gasoline

Petitioner argues in its case brief dated April 18, 2006, that the Department used incorrect surrogate values for the FOP for Gasoline for BGY. With respect to the Department's selection of liquefied natural gas ("LNG"), classified under HTS number 2711.11, to value the additive used in metal powders for sintered sawblades by BGY, Petitioner argues this surrogate is incorrect. Petitioner notes that LNG is natural gas that has been inserted into a liquid medium and stored in specially designed containers. Petitioner also notes that LNG is used exclusively for energy and heat generation and that the liquid must be removed to access the gaseous material, arguing that LNG is not a substitute for gasoline in machinery. Petitioner further argues that BGY uses gasoline rather than LNG in its production process, and therefore the Department should value BGY's FOP for gasoline using the retail prices placed on the record by Petitioner in its December 2, 2005, submission, at Exhibit 5.

BGY did not comment on this issue.

Department's Position: The Department agrees with Petitioner that the surrogate value for gasoline should be revised. The Department noted at verification that diesel gasoline was used in the production process and noted no purchases of natural gas during the POI. *See* BGY Verification Report, at 17 and Exhibits 13 and 15. Therefore, the Department has determined, for this final determination, to use an average of the Rupees per liter prices listed for diesel in Petitioner's December 2, 2005, submission, at Exhibit 5. *See also* AT&M Final Analysis Memorandum.

Comment 25: Whether to Deduct BGY's Reported Interest Revenue from Gross Unit Price

Petitioner argues in its case brief dated April 18, 2006, that in the *Preliminary Determination* the Department incorrectly included interest revenue as a direct selling expense. Petitioner argues that this item is a revenue amount and therefore should not be included as selling expense pursuant to section 772(f)(2)(B) and (C) of the Act. Therefore, Petitioner contends, the Department should include interest revenue as an adjustment to gross unit price rather than a selling expense for the final determination.

BGY did not comment on this issue.

Department's Position: The Department agrees with Petitioner. Consistent with the Department's determination in *Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 2909, 2910 (January 18, 2006) and accompanying Issues and Decision Memorandum, at Comment 9, where the Department stated that interest revenue should more appropriately be treated as "...a post-sale adjustment to price" the Department will, for the final determination, include interest revenue as an adjustment to gross unit price rather than a selling expense.

Comment 26: Whether BGY's Reported Billing Adjustments Should Be Considered Direct Selling Expenses

Petitioner argues in its case brief dated April 18, 2006, that BGY has improperly reported warranty expenses traceable to invoices as billing adjustments. Petitioner notes that section 772(d)(1)(B) of the Act requires that warranty expenses be considered a direct expense, and BGY's reporting in such a manner could manipulate the calculation of CEP profit. Petitioner argues that the Department should include the expenses reported in field BILLADJU as a direct expense for the final determination.

BGY did not comment on this issue.

Department's Position: We disagree with Petitioner that BGY has reported warranty expenses traceable to invoices as billing adjustments. We note that the Department examined in detail one of the sales on which BGY reported a billing adjustment. The Department noted that the billing adjustment was a result of a credit memo issued for an incorrect price on one product on the invoice. See GYDP Verification Report, at 15. Therefore, the Department finds that no changes to BGY's reported billing adjustments are necessary.

Comment 27: Whether the Department Erred in Certain Statements in the BGY and GYDP Verification Reports

BGY argues in its case brief dated April 18, 2006, that the Department incorrectly stated that BGY should have reported sales commissions on one observation, and that while the invoice date is correct for that observation, the zip code is incorrect. BGY also argues that the airway bill for a certain observation clearly demonstrates that freight was paid by the receiver, and therefore no reimbursement was necessary, so BGY did not fail to demonstrate that it received reimbursement on airfreight. See BGY Verification Report, at Exhibit 11. BGY argues that the Department should correct these errors and state that these items are fully verified.

Petitioner argues in its rebuttal brief dated April 18, 2006, that BGY's assertions that there is an error in the verification report with respect to the reimbursement of airfreight are incorrect. Petitioner further contends that BGY had an opportunity to explain and support its reported reimbursement and failed to do so. Petitioner also argues that BGY makes a faulty assumption that "freight prepaid" is synonymous with the receiver rather than the shipper making payment, and that nothing on the record supports this conclusion. Petitioner argues that prior to its case brief, BGY had maintained that the freight on the shipment at issue was paid by BGY and partially reimbursed by the customer, and, Petitioner alleges, BGY is now alleging that it never paid the freight in the first place. Petitioner argues that because BGY has failed to report the full amount of international freight, the Department should apply an adverse inference in its correction of this adjustment for the final determination.

Department's Position: We agree with BGY that on one observation examined at the GYDP verification, the salesperson on the invoice should not be paid a commission, though we note that the original purchase contract lists a commission agent. We disagree with BGY with respect to the invoice date on this observation and note that the invoice date reported in the U.S. sales database on this sale is incorrect. The date cited by BGY as reported in the field for invoice date was only reported in the shipment date field. Therefore, the Department will adjust the reported invoice date and destination code for this observation.

With respect to airfreight reimbursement issues examined at the BGY verification, the Department notes that in BGY's Section C Questionnaire response dated September 22, 2005, at page C-22, it states that BGY pays for airfreight on certain EP sales and is later partially reimbursed by its U.S. customer. Based on the information on the record at the *Preliminary Determination*, on which BGY had stated it pays for freight and is then reimbursed by its customer, the Department included in its calculation of U.S. net price a deduction for the full cost of airfreight, net airfreight revenue BGY claimed it received from its customers. However, as noted on pages 2 and 23 of the BGY Verification Report, the Department attempted to verify whether BGY was reimbursed for these freight expenses. BGY provided an invoice for payment from its freight forwarder, including a detail noting that the observation at issue was included in this freight invoice. BGY then provided documentation that it paid this invoice from the freight company. However, as noted in the BGY Verification Report at 23, "the wire transfer received only includes the net invoice value," and BGY was unable to demonstrate that its customer reimbursed it for freight. BGY's statement in its case brief at 8 that "the customer pays the freight," is therefore contradicted by the information on the record. Therefore, the Department finds, for this final determination, that it would be inappropriate to grant an offset for claimed freight revenue when we could not verify that BGY received any such revenue. Therefore, on the observations where BGY has reported partial reimbursement by its customer for airfreight shipments, the Department will deduct airfreight expenses from gross unit price, but not add freight revenue.

BOSUN

Comment 28: Whether Returns Should Be Treated As A Selling Expense

Petitioner argues that the Department erred in its *Preliminary Determination* by failing to include the cost of returns as an indirect selling expense for purposes of calculating CEP profit. Petitioner asserts that because these returns cannot be allocated to a specific sale, they should be treated as indirect selling expenses. However, Petitioner states that regardless of whether the Department considers these expenses to be direct or indirect selling expenses, they should be included in the CEP profit calculation.

Bosun argues that it is the Department's normal practice to classify returns or billing adjustments as sales adjustments to gross unit price rather than indirect (or direct) selling expenses. Bosun cites *Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review, Notice of Partial Rescission of Administrative Review and Notice of Intent to Revoke in Part*, 69 FR 10666 (September 14, 2004), where the Department stated that it treated respondent's discounts as billing adjustments. Bosun asserts that the CEP profit calculation only includes U.S. commissions, credit expenses, further manufacturing in the United States, U.S. direct expenses, inventory carrying costs, and indirect selling expenses, not billing adjustments.

Department's Position: We agree with Petitioner in part and have treated Bosun's returns as a selling expense for the purpose of calculating CEP profit. As indicated by Bosun, the Department normally classifies returns or billing adjustments as sales adjustments to the gross unit price rather than selling expenses. However, because Bosun's returns include warranty expenses, we find that the cost of returns should be included in the calculation of CEP profit.

In its questionnaire responses, Bosun explained that it had two types of returns: 1) returns where the customer returned merchandise, which was placed back into inventory, and Bosun would simply refund the money; and 2) returns of defective merchandise where Bosun would issue free replacements and destroy the defective merchandise. *See* Bosun's October 31, 2005, Supplemental C Response, at 18-19, and 23. The cost of replacing the defective product is properly considered a warranty expense. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR at 54043, 54052-53 (October 17, 1997) (accepting respondent's classification of replacement costs as direct warranty expense).

Bosun explained that it was unable to tie its returns to individual sales (*see Id.*, at 23). Moreover, based on the data provided by Bosun, we are unable to segregate returns of defective merchandise from prime merchandise. However, the record does indicate that Bosun's returns included returns of defective merchandise that were replaced for free (*see* Bosun's supplemental questionnaire response at Exhibit SC-13). Accordingly, because at least a portion of Bosun's returns were of defective material that had to be destroyed, we find it appropriate to classify all of Bosun's returns as a selling expense for purposes of calculating CEP profit.

Comment 29: Whether Bosun's U.S. Indirect Selling Expenses Should Be Revised

Petitioner argues that Bosun's calculation of indirect selling expenses should be revised to include the indirect selling expenses of Boshen USA, one of Bosun's affiliated resellers in the

United States, and Company A for March 2005. (The identity of Company A is proprietary. *See* Bosun's Final Analysis Memorandum.) Petitioner notes that at verification the Department found that Boshen USA did not include expenses from March 2005, although the income statements were available and could be generated using Boshen USA's accounting system. Petitioner argues that, given the similarities between the income statements prepared by the accounting firm for January and February 2005 to those obtained by the accounting system, it can be reasonably inferred that the income statement for March 2005, which was obtained from Bosun USA's accounting system, can be used as a reliable surrogate.

With respect to indirect selling expenses incurred by Boshen in March 2005, Bosun agrees with Petitioner that these expenses should be included in calculating Boshen's indirect selling expenses. Bosun explains that it inadvertently failed to include indirect selling expenses from March 2005. However, Bosun asserts that Boshen's March 2005 income statements, which are provided at Exhibit 24 of Bosun's August 25, 2005, section A response, contain the necessary data for the Department to recalculate the company's indirect selling expense factor. Bosun argues that in recalculating the indirect selling expense factor for Boshen, the Department should not include "freight-in" expenses. Bosun contends that all of its "freight-in" expense was reported to the Department as a direct selling expense and that the Department verified that these expenses were properly reported at the CEP verification (citing Bosun CEP Verification Exhibit 6).

Petitioner argues that the Department should reject Bosun's request to exclude the "freight-in" expense from the calculation because Petitioner asserts that it is unclear that these freight expenses have been included as direct selling expenses by Bosun. Petitioner claims that the verification report only states that the methodology for reporting movement expenses was examined and does not state that the movement expenses are equal to the freight included on the income statement. Petitioner also notes that during the course of the investigation Bosun did not submit a revised calculation of indirect selling expenses to exclude freight or submit such information as a minor correction.

With respect to the indirect selling expenses incurred by Company A, Bosun argues that no adjustment is necessary. Petitioner states that Bosun's argument is contrary to what is in the verification report and that the Department should revise Company A's indirect selling expenses.

Petitioner also argues that Bosun improperly excluded certain expenses from its calculation of indirect selling expenses for Bosun Tools, another one of Bosun's affiliated resellers in the United States. Petitioner maintains that these expenses are a cost of doing business and, therefore, a cost that Bosun incurs when selling merchandise in the United States. Moreover, Petitioner asserts that it is the Department's standard practice to include such expenses in its calculation of indirect selling expenses. Petitioner claims that these expenses are included in the numerator of the indirect selling expense ratio calculated on page 3 of Bosun CEP Verification Exhibit 7.

Bosun argues that if the Department determines to include such expenses as part of Bosun Tools' indirect selling expenses, it should rely on Bosun Tools' yearly income statement rather than the

line item of Bosun's semi-annual income statement. Bosun explains that Bosun Tools' yearly income statement was submitted in its August 25, 2005, section A response in Exhibit 23. Because the POI is only six months long, Bosun proposes that as a conservative measure the Department should divide the expense by two to get a semi-annual cost. Bosun notes that the internal income statements of Boshen USA and Company A indicate that neither company incurred such expenses during the six-month POI.

Department's Position: We agree with Petitioner in part and with Bosun in part. Regarding the calculation of Boshen's indirect selling expenses, we agree with both parties that the indirect selling expenses from March 2005, should be included. In recalculating Boshen's indirect selling expenses we have relied on the Boshen March 2005 income statement submitted by Bosun in its section A response, at Exhibit 24. Additionally, we have determined to exclude "freight-in" expense from the calculation of Boshen's indirect selling expense factor. At verification, the Department confirmed that movement expenses were properly reported and included expenses incurred in all months of the POI, including March 2005. *See* Memorandum to the File: Verification of the U.S. CEP Sales Response of Bosun Tools Group Co., Ltd. in the Antidumping Investigation of Diamond Saw Blades and Parts Thereof from the People's Republic of China ("Bosun CEP Verification Report"), dated March 27, 2006, at pages 8-10. Moreover, the information collected at verification demonstrates that "freight-in" expenses were composed of the direct movement expenses reported in Bosun's database or were related to non-scope products. *See* Bosun CEP Verification Exhibit 6, at pages 17 and 26-28. Therefore, we find that the inclusion of "freight-in" expenses in the indirect selling expense calculation would result in double-counting, and we have excluded these expenses from the calculation of Boshen's indirect selling expense factor.

Regarding the calculation of Company A's indirect selling expenses, we agree with Bosun that no adjustment is required. We note that Exhibit 25 of Bosun's section A response includes the income statement for Company A for first quarter 2005 and that all relevant indirect selling expenses for the period are included in the calculation (*see* Bosun CEP Verification Exhibit 7, at page 13). We agree with Bosun that the CEP verification report is in error on this point.

Finally, we agree with Petitioner that certain expenses should be included in the calculation of Bosun Tools' indirect selling expenses as demonstrated by numerous previous cases. Because of the proprietary nature of these expenses, please refer to Bosun Analysis Memorandum for complete discussion of this adjustment to Bosun Tools' indirect selling expenses.

Comment 30: Whether Movement Expenses and Repacking Expenses Should Be Included in the Calculation of CEP Profit

Petitioner argues that the Department should treat U.S. movement expenses, U.S. repacking expenses, and U.S. warehousing expenses as selling expenses in its calculation of CEP profit. Petitioner notes that in the *Preliminary Determination*, the Department classified certain of Bosun's U.S. movement and repacking expenses as selling expenses, but that in response to Bosun's comments on the calculations, the Department stated that it would reclassify these expenses for the final determination. Petitioner argues that Congress clearly indicated that U.S. movement expenses should be included in the calculation of CEP profit. Citing to the Statement

of Administrative Action, Petitioner claims that distribution expenses must be included in the calculation of CEP profit pursuant to § 772(d)(3) of the Act. In support, the Petitioner cites *Industrial Nitrocellulose from the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 6148, 6152 (February 8, 2000) (“Section 772(d)(3) of the Act provides that CEP shall be reduced by the profit allocable to selling, distribution, and further manufacturing activities in the United States.”). Moreover, Petitioner asserts that the plain meaning of “distribution” makes it clear that movement expenses are “distribution expenses.” Therefore, Petitioner argues that the Department must include U.S. movement expenses and repacking expenses in its calculation of CEP profit. Petitioner argues that repacking expenses should be classified as U.S. selling expense for the sake of consistency, as directed by the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”). Petitioner argues that the Federal Circuit has found that packing expenses may be classified as U.S. selling expenses under § 772(d)(2)(B) because it may be considered an expense that “result{s} from, and bear{s} a direct relationship to, the sale to particular customers.” *NSK Ltd. v. United States*, 390 F.3d 1352, 1355 (Fed. Cir. 2004) (“*NSK*”) (quoting section 772(d)(1)(B) of the Act). Petitioner explains that in *NSK*, the court found that the Department impermissibly classified repacking expenses as U.S. selling expenses, because the Department had classified U.S. warehousing expenses and U.S. shipping expenses as movement expenses, thus creating an internal inconsistency. *See NSK*, 390 F. 3d. at 1355-1360. Petitioner asserts that Congress indicated that “distribution expenses,” which Petitioner claims include U.S. movement expenses, should be classified as U.S. selling expenses. Therefore, Petitioner argues that to conform to the Federal Circuit’s ruling in *NSK*, the Department should also treat U.S. repacking expenses as CEP selling expenses.

Bosun argues that the Department must continue to classify repacking expenses, U.S. warehousing expenses, and U.S. movement expenses as movement expenses. Bosun contends that Petitioner’s legal argument has already been rejected by both the Department and the courts. Bosun explains that in Policy Bulletin 97.1, the Department stated that:

“the term ‘total United States expenses’ means the total expenses described under 772(d)(1) and (2). Movement charges do not appear under either of these subsections. Instead they are described under section 772(c)(2)(A) and, thus, would not be included in the total U.S. expenses for purposes of computing CEP profit.” *See* Import Administration Policy Bulletin 97.1: Calculation of Profit for Constructed Export Price Transactions (September 4, 1997)

Additionally, Bosun argues that the Federal Circuit has stated that expenses for U.S. repacking, U.S. warehousing, and U.S. shipping should all be treated the same. *See NSK* 390 F 3d. at 1355. In response to the Court’s decision, Bosun explains that the Department reclassified repacking expenses as movement expenses and continued to classify U.S. warehousing and U.S. shipping expenses as movement expenses. *See AFBs from Japan*. Finally, citing the Department’s memorandum regarding the allegation of ministerial errors, Bosun notes that the Department itself has recognized that these expenses should not be included in the CEP profit calculation. *See Diamond Sawblades from the People’s Republic of China* (January 20, 2006) (Analysis of Allegation of Ministerial Errors) (“Ministerial Error Memo”). Bosun argues that Petitioner has not offered any legitimate justification for changing the Department’s position and that the

Department should incorporate Bosun’s proposed programming changes as submitted in its ministerial error allegation. _

Department’s Position: We disagree with Petitioner and we will reclassify Bosun’s repacking expenses as movement expenses and ensure that all movement expenses are excluded from the calculation of CEP profit. As we explained in the Ministerial Error Memo, the Department incorrectly calculated the preliminary antidumping margin for Bosun by inadvertently including certain U.S. movement expenses in the CEP profit calculation and by improperly classifying certain repacking expenses as U.S. direct selling expenses. The Department’s practice and policy has been to exclude movement expenses from CEP selling expenses. As noted by Bosun, the Department has stated that movement expenses should not be included in the calculation of total U.S. expenses for purposes of computing CEP profit. *See* Policy Bulletin 97.1. As we explained in our policy bulletin, we have determined that ‘total United States expenses’ means the total expenses described under 772(d)(1) and (2). Because movement charges do not appear under either of these subsections, they are appropriately excluded from the calculation of CEP profit.

Moreover, it has been the Department’s established practice to exclude movement expenses from the calculation of CEP profit. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 69 FR 2566 (January 16, 2004), and accompanying Issues and Decision Memorandum, at Comment 4 and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 50408 (October 3, 2001), and accompanying Issues and Decision Memorandum, at Comment 10. Accordingly, we continue to find that Bosun’s U.S. movement expenses should be excluded from the calculation of CEP profit. With respect to U.S. repacking expenses, we find that consistent with *AFBs from Japan*, repacking expenses should be classified as U.S. movement expenses and should also be excluded from the calculation of CEP profit. Regarding Petitioner’s argument that, to conform to the Federal Circuit’s ruling in *NSK*, the Department should also treat U.S. repacking expenses as CEP selling expenses, we note that the Court was not ruling how we should specifically classify the expense, but rather that we should treat movement expenses and repacking expenses the same. *See NSK*, 390 F. 3d. at 1355. Consequently, because we have determined to treat repacking expenses as movement expenses, we are in accordance with the Court’s holding in *NSK*.

Comment 31: Surrogate Value for Tape

- Bosun argues that the Department should use the average Indian import value for HTS number 3919.10.00 only to value Bosun’s consumed tape in the final determination. Bosun asserts that the description of this HTS category (“self-adhesive plates, sheets, film, foil, tape, strip, and other flat shapes of plastic in rolls not exceeding 20 centimeters in width”) best matches the tape consumed by Bosun to pack boxes of sawblades which is self-adhesive and not greater than 20 centimeters in width.

Petitioner did not comment on this issue.

Department's Position: We agree with Bosun and we are valuing its tape using HTS number 3919.10.00. We find that based on the description of the tape provided by Bosun in its February 7, 2006, submission, at page 7, this HTS number is closest to the type of tape Bosun uses.

Comment 32: Surrogate Value for Acrylic Lacquer and Pallet Lacquer

Bosun argues that the surrogate values used by the Department in the *Preliminary Determination* for acrylic lacquer and pallet lacquer are based on incorrect HTS numbers. Bosun asserts that the correct Indian HTS number for acrylic lacquer is 3208.20.20 (“paints and varnishes (including enamels and lacquers) based on acrylic or vinyl polymers: lacquers”). Additionally, for pallet lacquer, Bosun argues that because the pallet lacquer is nitric-based rather than acrylic-based, the correct HTS number is 3208.90.11 (“paints and varnishes (including enamels and lacquers) based on cellulose nitrate: nitrocellulose lacquers”).

Petitioner did not comment on this issue.

Department's Position: We agree with Bosun and we are valuing acrylic lacquer using HTS number 3208.20.20 and pallet lacquer using HTS number 3208.90.11. We find that based on the descriptions of the acrylic lacquer and pallet lacquer provided by Bosun in its February 7, 2006, submission, at pages 7-8, these HTS numbers are closest to the type of lacquer Bosun uses.

Comment 33: Whether The Department Should Correct Certain Ministerial Errors

Bosun argues that for purposes of the final determination, the Department must correct the ministerial errors that it made in the *Preliminary Determination*. Specifically, Bosun notes that the Department agreed: 1) that it failed to convert DINSLFPU and DBROKU into U.S. dollars per sawblade; 2) that it incorrectly double-counted certain of Bosun's U.S. commission expenses; and 3) that it incorrectly calculated Bosun's margin by inadvertently including certain U.S. movement expenses in the CEP profit calculation and by improperly classifying certain repacking expenses as U.S. direct selling expenses.

Petitioner argues that the statute requires that U.S. movement expenses be included in the CEP profit calculation; however, Petitioner states that if the Department determines to exclude U.S. movement expenses, it must revise its programming language to ensure that U.S. movement expenses are still deducted from the U.S. net price.

Department's Position: We agree with Bosun and have made these three corrections in the final margin calculation program for Bosun. As explained above in Comment 30, we find that movement expenses should be excluded from the calculation of CEP profit. We have ensured that U.S. movement expenses are still deducted from the gross U.S. price.

Comment 34: Whether the Surrogate Value for International Freight Should Be Revised

Petitioner argues that the Department should revise the international freight expenses for select observations. Petitioner claims that at verification the Department found that Bosun could determine the mode of transportation for each shipment. Petitioner suggests that the Department

make an adjustment to international freight for all sales that have “sea” as the mode of transportation.

Bosun did not comment on this issue.

Department’s Position: We agree with Petitioner in part and have adjusted the surrogate value for Bosun’s international freight for certain sales. For shipments sent to Bosun USA’s warehouse, Bosun could not determine whether the individual sale was sent via sea or air and Bosun reported the mode of transportation as sea. At verification, however we obtained a list of all Bosun’s shipments to Bosun Tools, an affiliated reseller of Bosun located in the United States, during the six-month POI. We found that the majority of all shipments from Bosun to its U.S. affiliates were shipped via sea and that the remainder were sent via air. *See* Bosun Verification Exhibit 12. For the final determination, we have recalculated the surrogate value for these shipments by applying a weight-average based on the percentage of shipments sent via each method. For details of these calculations, *see* Bosun Final Analysis Memorandum.

Comment 35: Whether the Department Should Make Additional Adjustments to Bosun’s U.S. Sales Data and Supplier Databases

Bosun argues that in the margin calculation for the final determination, the Department should make certain programming changes to accommodate the way in which Bosun has reported data in its factor of production, supplier, and U.S. sales database. First, Bosun requests that the Department correct the purchase quantity for certain variables used by Bosun’s copperizer for which Bosun does not know the purchase quantity. Bosun explains that this change will ensure that the Department correctly weight-averages the supplier distances for these inputs. Second, Bosun notes that it found that for certain invoices the payment dates were left blank in the most recently submitted U.S. sales database. Bosun requests that for these invoices, the Department rely on the payment dates and calculated credit expenses reported in the BOSUNUS03_INVDATE sales database. Finally, Bosun requests that the Department revise the per-unit commission amounts for select invoices based on findings by the Department at verification.

Petitioner did not comment on this issue.

Department’s Position: We agree with Bosun that these three changes should be made for the final determination. It is appropriate to make the two corrections to the U.S. sales database because the necessary information is already on the record and has been verified. Additionally, we find that it is necessary to make the third correction to the supplier database to ensure that the computer program works properly.

HEBEI JIKAI

Comment 36: Whether The Department Should Apply AFA to Usage Rates for Certain Materials

Petitioner argues that the Department should apply AFA to the usage rates for nitrogen gas, hybrid gas, graphite molds, and aluminum plated bags for Hebei Jikai. According to Petitioner, Hebei Jikai withheld information from the Department and provided information in a form that cannot be meaningfully analyzed. Petitioner contends that Hebei Jikai should have reported these materials in its original Section D questionnaire response, dated September 20, 2005. Furthermore, Petitioner argues that the Department, not Hebei Jikai, determines which factors are classified as “auxiliary materials.” Petitioner contends that Hebei Jikai had ample time to realize that its materials were being treated as factors by other respondents, and should have reported the materials no later than during the reporting of any minor corrections at the start of verification. Petitioner argues that Hebei Jikai’s own usage rates should not be used and that AFA is appropriate because doing otherwise would reward Hebei Jikai by placing them in a more favorable position than other respondents who reported their usage in questionnaire responses.

Regarding graphite mold usage, Petitioner argues that Hebei Jikai’s calculation has several flaws. Petitioner contends that Hebei Jikai should have used the number of graphite molds consumed, but because this information is not tracked, the company used the total number purchased during the POI. Petitioner contends that the quantity purchased is not a proxy for the quantity consumed and that the company should be able to calculate the consumption rate based on inventory records. Furthermore, Petitioner argues that Hebei Jikai may have purchased graphite molds in bulk prior to the POI and stored them in inventory. Next, Petitioner argues that the converted welded blade production quantity is inaccurate. Finally, Petitioner contends that the usage ratio is improperly calculated on a kilogram per piece basis. Petitioner claims that because graphite molds are used in the production of segments, not the production of completed diamond sawblades, graphite molds must be calculated on a per segment basis. Petitioner also states that it could not decipher Hebei Jikai’s methodology and that there is no explanation of the conversion rate on the record.

Petitioner argues that the Department may “use the facts otherwise available” in reaching a determination where an interested party significantly impedes a proceeding, or provides information that cannot be verified. *See* 776(a)(2) of the Act. Petitioner maintains that the information provided during verification was not presented in a usable form, and therefore Hebei Jikai did not cooperate to the best of its ability. Petitioner contends that the Department should use the highest usage rate on record, reported by either of the other two respondents to apply an AFA usage rate to nitrogen gas, hybrid gas, graphite molds, and aluminum plated bags.

Hebei Jikai did not comment on this issue.

Department’s Position: We agree with Petitioner in part and find that the application of AFA is appropriate for the valuation of mixed gas mixture, nitrogen, and graphite molds.¹³ As discussed above in Comment 2, the Department has determined that these inputs should be valued directly in the margin calculation as factors. With respect to the valuation of aluminum plated bags, which are used to store the self-made powders and excess diamond mixture

¹³ Although the Department’s verification report refers to “graphite molds,” the record evidence establishes that Hebei Jikai purchased and consumed “graphite.” *See* Hebei Jikai Verification Report at Exhibit 28. Accordingly, we find that the verification report was in error and should refer to “graphite” rather than “graphite molds.”

powders, (*see* Hebei Jikai Verification Report, at 2), we do not find that these should be valued as factors because they are used only periodically and are not required for the production of diamond sawblades. Accordingly, we are not including aluminum-plated bags in our analysis.

A. Application of Facts Available

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.

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, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is 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.

In accordance with sections 776(a)(2)(A) and (B) of the Act, we find that Hebei Jikai did not report its consumption of mixed gas, nitrogen, and graphite molds despite the Department’s request that Hebei Jikai report all of its factors of production in its original questionnaire. *See* July 28, 2005, letter to Hebei Jikai transmitting the antidumping questionnaire at part D of the questionnaire and Hebei Jikai’s September 20, 2005, response to sections C and D of the questionnaire. Moreover, in contrast to the other respondents, Hebei Jikai did not submit this information at a later date, in the form of its supplemental questionnaire responses or within the deadline for submitting new factual information. It was only at verification, during the factory tour, that the Department discovered the existence of these unreported factors. *See* Hebei Jikai Verification Report, at pages 2-3 and 15-16.

The inclusion of these inputs is essential to the reported factors of production database because the Department’s calculation of normal value is based on the valuation of all direct inputs. Because these inputs were not included in the factors of production database, normal value for Hebei Jikai is necessarily understated.

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 shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Because

Hebei Jikai did not inform the Department that its factors of production were not complete until the Department discovered the fact at verification, the Department did not have the opportunity to allow Hebei Jikai to correct its deficient data. Therefore, section 782(d) of the Act does not apply under these circumstances. *See Reiner Brach GmbH & CO. KG and Novosteel SA, Plaintiffs, v. U.S.* 206 F. Supp. 2d 1323 (CIT 2002).

Therefore, the Department has determined to use facts otherwise available to value these three inputs, as specified under section 776(a)(2)(A) and (B) of the Act, because respondent failed to submit this information despite having sufficient opportunities to do so.

B. Application of an Adverse Inference

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may use an inference that is adverse to the interests of the respondent if it determines that the respondent has failed to cooperate to the best of its ability. Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *See SAA* accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session (1994), at 870. In making its determination the Department must articulate its reasons for concluding that a party failed to cooperate to the best of its ability, and explain why the missing information is significant to the review. The Federal Circuit has explained that “acting to the best of its ability” means that a respondent must “do the maximum it is able to do.” *See Nippon Steel*, 337 F. 3d at 1382.

As stated above, Hebei Jikai had sufficient opportunity to inform the Department of these additional inputs – respondent Bosun reported factors of production for the process materials on February 13, 2006 – but failed to do so. In this case, Hebei Jikai did not indicate to the Department, pursuant to section 782(c) of the Act, that it had a problem with reporting complete factors information. On the contrary, respondent maintained that the factors data was complete. At verification, the Department discovered that the factors of production database was not complete and was missing several inputs. The Department also discovered that Hebei Jikai maintained the necessary information in its books and records, but did not “put forth its maximum efforts to investigate and obtain the information from its records.” *See Nippon Steel*, 337 F. 3d. at 1382-1393.

Therefore, for all of the reason stated above, the Department finds, pursuant to section 776(b) of the Act, that Hebei Jikai has failed to cooperate to the best of its ability with regard to its reported factors of production data for certain inputs. Because Hebei Jikai failed to fully cooperate with the Department in this matter, we find it appropriate to use an inference that is adverse to the interests of Hebei Jikai in selecting from among the facts otherwise available. By doing so, we ensure that Hebei Jikai will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review. *See SAA, at 870.* We find that the use of the information collected at verification would reward Hebei Jikai for its failure to cooperate. Therefore, in accordance with the Department’s practice, we have assigned for each of these factors the highest usage rate for the factor based on data submitted by Bosun (BGY did not consume these factors). Therefore, to value the factor hybrid gas we have relied on the highest reported usage rate for mixture gas, which is used like the hybrid gas – to generate the laser, reported in Bosun’s factor of production database. *See Bosun’s February 13, 2006, Submission*

Re: Additional Factual Information, at Exhibit 1 – Public Version. To value nitrogen, we have relied on the highest reported usage factor reported in Bosun’s database for the type of nitrogen used to prevent oxidation. *Id.* This is comparable to how Hebei Jikai described the usage of nitrogen (“nitrogen gas is used to protect the powder at the self-made powder stage”). *See* Hebei Jikai Verification Report, at 15. With respect to graphite molds, the information on the record indicates that Hebei Jikai buys graphite and then produces its own graphite molds. *See* Hebei Jikai Verification Exhibit 28. However, because the record is unclear as to whether the factors of production for producing the graphite molds are included, to be conservative we have determined to rely on the reported factor of production for graphite molds. Therefore, to value graphite molds, we have relied on the highest reported factor usage rate for graphite reported in Bosun’s factors of production database. *See Bosun’s* February 13, 2006 Submission Re: Additional Factual Information at Exhibit 1- Public Version. We have added the usage factors for hybrid gas and graphite molds only to those CONNUMs that are laser or silver-welded since these inputs are not used for sintered welded products. We have applied the usage factor for nitrogen to all CONNUMs. *See* Hebei Jikai Final Analysis Memorandum for more details.

Comment 37: Whether International Freight to Two U.S. Customers Should Be Deducted

Petitioner argues that the Department should deduct the appropriate amount for international freight paid by Hebei Jikai for sales shipped to two U.S. customers, which the Department found that Hebei Jikai did not report. Petitioner notes that the Department found that the freight was provided by a non-market economy carrier, and, for sales to one customer, the merchandise was shipped by air.

Hebei Jikai did not comment on this issue.

Department’s Position: We agree with Petitioner. As discussed in the verification report, we found that Hebei Jikai paid for the international freight to the customer. *See* Hebei Jikai Verification Report, March 23, 2006 at 2 and Exhibit 20. For purposes of the final determination, we have included an international freight charge (based on the reported mode of transportation) for sales to these customers. For further information, *see* Hebei Jikai Final Analysis Memorandum.

Comment 38: Whether Labor and Electricity Should Be Adjusted for Certain Product Codes

Petitioner argues that the Department should correct the reported electricity and labor for two product codes to reflect information found at verification. *See* Hebei Jikai Verification Report, at 2 and Exhibit 20 (March 23, 2006).

Hebei Jikai did not comment on this issue.

Department’s Position: We agree with Petitioner in part. At verification, the Department found that the methodology used by Hebei Jikai to report electricity and labor resulted in a distortion of the labor and electricity factor of production for one product code. Company officials explained that one product code (product code A) required more labor than another

similar product code (product code B) because of special processing (*i.e.*, enlargement of the arbor hole and notching). *See* Hebei Jikai Verification Report, at 21. Because the reported labor and electricity factors of production did not reflect this additional processing, for purposes of the final determination, we have recalculated the labor and electricity factor of production for product code A by applying the conversion ratio of product code B. The conversion ratio is used in Hebei Jikai's normal books and records for the purpose of cost allocation. For further information, *see* Hebei Jikai Final Analysis Memorandum.

Comment 39: Surrogate Value for Nickel

Petitioner argues that the Department should revise its value for nickel from unwrought nickel to a purer form. Petitioner contends that the unwrought nickel has not been processed and that the nickel used by Hebei Jikai to make nickel powder is in an extremely pure form. *See* Hebei Jikai's November 3, 2005, Supplemental Questionnaire Response, at S-15. Petitioner argues that to prevent significantly undervaluing the nickel plate used, the Department should value nickel plate using Indian HTS number 7506.10.00, which was provided in Exhibit 2 of Petitioner's December 14, 2005, surrogate comments.

Hebei Jikai did not comment on this issue.

Department's Position: We agree with Petitioner that the information on the record supports that HTS number 7506.10.00 is the most appropriate surrogate value to value nickel plate. *See* Hebei Jikai's November 3, 2005, supplemental questionnaire response, at 18 (indicating that the chemical composition of the nickel plate is greater than or equal to 99.2 percent nickel) and Exhibit SD-15.

Comment 40: Surrogate Value for Copper Plate

Petitioner argues that in the *Preliminary Determination* the Department improperly used the value of copper cathode, HTS number 7403.11.00, to value copper plate. Petitioner argues that these products are differentiated by the amount of finishing and refinement performed on the copper material. Based on Hebei Jikai's responses and findings at verification, Petitioner argues that copper plate, HTS number 7409.19.00, would be the most appropriate value.

Hebei Jikai did not comment on this issue.

Department's Position: We agree with Petitioner that the information on the record supports that HTS number 7409.19.00 is the most appropriate surrogate value for the copper plate used by Hebei Jikai. *See* Hebei Jikai Verification Report, at 4 (indicating that the copper used is "copper plate" not cathode); Hebei Jikai's September 20, 2005, questionnaire response, at Exhibit D-1-1 and D-1-2; and Hebei Jikai's November 3, 2005, supplemental questionnaire response, at page 18 (indicating that the chemical composition of the copper plate is greater than or equal to 99.95 percent copper).

Comment 41: Surrogate Value for Packaging Film

Petitioner argues that the Department should value all packaging material as plain, flexible polyethylene sheets classified under Indian HTS number 39.20.10.12. Petitioner notes that the Department used a second value for packing film which was based upon polyethylene in primary forms, which Petitioner states cannot be used as a packaging material.

Hebei Jikai did not comment on this issue.

Department's Position: We agree with Petitioner that Hebei Jikai's packaging material should be classified under Indian HTS number 39.20.10.12. The packing film used is not polyethylene in a primary form (*see* Hebei Jikai's November 3, 2005, supplemental questionnaire response, at Exhibit SD-23) and, consequently, the Department will use HTS number 39.20.10.12 for calculating the surrogate value for the final determination.

Comment 42: Valuation of Steel

Hebei Jikai argues that it provided the Department with a full list of steel products used in the manufacture of diamond sawblades at verification (*see* Hebei Jikai Verification Report, at Exhibit 18) and that the Department should apply the surrogate values that best reflect the actual inputs used by the company. Petitioner argues that the Department should modify its selection of surrogate values for steel grade 30CrMO due to not only the grade, but also the dimension of the steel strip and steel plate used by Hebei Jikai.

In its rebuttal brief, Petitioner argues that Hebei Jikai chose to withhold information from the Department until verification, therefore failing to cooperate to the best of its ability. As a result, Petitioner asserts that the application of adverse facts available is warranted. If the Department does not apply adverse facts available, Petitioner argues that all of Hebei Jikai's steel inputs should be reclassified as steel strip and valued accordingly.

Department's Position: We agree with Petitioner in part. At verification, the Department collected additional information regarding the sizes of steel used in the production of subject merchandise. *See* Hebei Jikai Verification Report at Exhibit 18. While we agree that the surrogate values for steel should be revised, we do not agree with Petitioner that the application of adverse facts available is appropriate. In this case, we find that Hebei Jikai cooperated with the Department's request for information concerning the steel inputs used.

In its first supplemental section C and D questionnaire, the Department requested information from Hebei Jikai on the dimensions and form of the steel it purchased during the POI. Hebei Jikai provided the requested information in its November 3, 2005, supplemental section C and D questionnaire response, at page 18 and Exhibit SD-16. However, it was only at verification where the Department requested that Hebei Jikai report all dimensions and grades of steel used to produce the merchandise under investigation. *See* Hebei Jikai Verification Report, at page 3. The reason for this request was that based on the Department's experience at the *Preliminary Determination*, the Department found that it required additional information to properly value Hebei Jikai's steel inputs because of the large range of HTS numbers in which steel is classified. As indicated in the verification report, Hebei Jikai provided such information to the Department

upon request. With respect to Petitioner's allegation that one of the steel purchase invoices provided did not match the steel sizes listed in the verification exhibit, we note that while Hebei Jikai did purchase steel in this dimension during the POI, this specific dimension was not used in the production of the merchandise under investigation. Moreover, in our review of Hebei Jikai's reported steel consumption, we tied reported consumption of various steel codes to purchase invoices. *See* Hebei Jikai Verification Report, at Exhibit 3. Accordingly, we find that the data provided by Hebei Jikai at verification with respect to its steel purchases are accurate.

Therefore, based on the information collected, we have revised the surrogate values for each of Hebei Jikai's reported steel inputs to best reflect the actual inputs used by the company. We are valuing A3 plate using an average of only HTS numbers 720853 and 721119. We are valuing 65 Mn (both steel strip and plate) using HTS number 7211.29.50 and we are valuing 30Cr (both strip and plate) using HTS number 7226.92.10. *See* Hebei Jikai Final Analysis Memorandum.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final determination of the investigation and the final weighted-average dumping margins in the *Federal Register*.

AGREE _____ DISAGREE _____

David Spooner
Assistant Secretary
for Import Administration

Date