DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski, Doreen Chen, Gregory Weber, N. Gerard Zapiain or Stephen Jacques, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1385, (202) 482–0413, (202) 482–1102, (202) 482–1395 or (202) 482–1391, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1996).

Final Determination

We determine that certain cut-to-length carbon steel plate from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

The petitioners in this investigation are Geneva Steel Company and Gulf States Steel Company.

The respondents which are PRC firms unless otherwise indicated:

(1) China Metallurgical Import & Export Liaoning Company (''Liaoning''), an exporter of subject merchandise; Wuyang Iron and Steel Company (''Wuyang''), which produced the merchandise sold by Liaoning;

(2) Anshan Iron and Steel Complex (''AISCO''), a producer of subject merchandise; Angang International Trade Corporation (''Anshan International''), a wholly-owned AISCO subsidiary in China which exported subject merchandise made by AISCO, and Sincerely Asia, Limited (''SAL'') a partially-owned Hong Kong affiliate of AISCO involved in sales of subject merchandise to the United States (collectively, ''Anshan'');

(3) Baoshan Iron & Steel Corporation (''Bao''), a producer of subject merchandise; Bao Steel International Trade Corporation (''Bao Steel ITC''), a wholly-owned subsidiary of Bao responsible for selling Bao material domestically and abroad; and Bao Steel Metals Trading Corporation (''B. M. International''), a partially-owned U.S. subsidiary involved in U.S. sales, (collectively ''Baoshan'');

(4) Wuhan Iron & Steel Company (''Wuhan'') a producer of subject merchandise; International Economic and Trading Corporation (''IETC''), a wholly-owned subsidiary responsible for exporting Wuhan merchandise; Cheerwu Trader Ltd. (''Cheerwu'') a partially-owned Hong Kong affiliate of Wuhan involved in sales of subject merchandise to the United States (collectively ''WISCO'');

(5) Shanghai Pudong Iron and Steel Company (''Shanghai Pudong'') a producer and exporter of subject merchandise. During the investigation, we also requested information from and conducted verification of Shanghai No.1, a non-exporting producer of subject merchandise which Shanghai Pudong had earlier indicated shared a common trustee, Shanghai Metallurgical Holding (Group) Co. (''Shanghai Metallurgical'').

We consider Liaoning, Anshan, Baoshan, WISCO and Shanghai Pudong to be sellers of the subject merchandise during the POI.

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR at 31972 (June 11, 1997)), the following events have occurred:

From June through July 1997, we verified the questionnaire responses of the respondents. Pursuant to section 782(d) of the Act, the Department rejected certain portions of submissions submitted by Anshan, Baoshan and WISCO one week prior to verification. On August 5, 1997 we issued our verification reports.

At the request of the Department, interested parties submitted additional information on surrogate values on August 5, 1997, for consideration in the final determination.

The petitioners and all of the respondents submitted case briefs on August 29, 1997, and rebuttal briefs on September 9, 1997. The Department held a public hearing for this investigation on September 16, 1997 at the requests of respondents and petitioners.

On October 24, 1997, the Department entered into an Agreement with the Government of the PRC suspending this investigation. Pursuant to Section 734(g) of the Act, petitioners, Liaoning and Wuyang have requested that this investigation be continued. If the ITC's final determination is negative, the Agreement shall have no force or effect and the investigation shall be terminated. *See* Section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an Antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (l) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* Section 734(f)(3)(B) of the Act.

Scope of the Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060,

7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1996, through September 30, 1996.

Separate Rates

All of the respondents have requested separate, company-specific rates. In their questionnaire responses, respondents state that they are independent legal entities. Of the five respondents, Anshan, Baoshan, Liaoning and WISCO have reported that they are collectively-owned enterprises, registered as being ''owned by all the people.'' Shanghai Pudong and Shanghai No. 1 are ''owned by all the people'; Shanghai Pudong has also stated that these two firms are owned by Shanghai Metallurgical, which is in turn is also owned by ''all the people.'' Shanghai Pudong stated that it does not have any corporate relationship with any level of the PRC Government.

As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR at 22585, 22586 (May 2, 1994) (''*Silicon Carbide*'') and in the *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR at 22544 (May 8, 1995) (''*Furfuryl Alcohol*''), ownership of a company by ''all the people'' does not require the application of a single rate. Accordingly, each of these respondents is eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR. at 20588 (May 6, 1991) (''*Sparklers*'') and amplified in *Silicon Carbide.* Under the separate rates criteria, the Department assigns separate rates in nonmarket-economy cases only if an exporter can affirmatively demonstrate the absence of both (1) *de jure* and (2) *de facto* governmental control over export activities. *See Silicon Carbide* and *Furfuryl Alcohol.*

1. Absence of *De Jure* Control

The respondents have placed on the administrative record a number of documents to demonstrate absence of *de jure* control. Respondents submitted the ''Law of the PRC on Industrial Enterprises Owned By the Whole People,'' adopted on April 13, 1988 (the Industrial Enterprises Law). The Department has previously determined that this Civil Law does not confer *de jure* independence on the branches of government-owned and controlled enterprises. *See Sigma Corp* v. *United States,* 890 F. Supp. 1077, 1080 (CIT 1995). However, the Industrial Enterprises Law has been analyzed by the Department in past cases and has been found to sufficiently establish an absence of *de jure* control of companies ''owned by the whole people,'' such as those participating in this case. (*See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR at 14725, 14727 (June 5, 1995) (''*Drawer Slides*''); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China,* 60 FR at 14725, 14727 (March 20, 1995); and *Furfuryl Alcohol.* The Industrial Enterprises Law provides that enterprises owned by ''the whole people'' shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (Legal Persons Regulations), issued on July 13, 1988 by the State Administration for Industry and Commerce of the PRC, provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their business. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China,* 60 FR at 56046 (November 6, 1995).

In sum, in prior cases, the Department has analyzed the Chinese laws and regulations on the record in this case, and found that they establish an absence of *de jure* control for the types of companies seeking separate rates in this investigation. We have no new information in these proceedings which would cause us to reconsider this determination.

2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See, e.g., Silicon Carbide* and *Furfuryl Alcohol.* These factors are not necessarily exhaustive and other relevant indicia of government control may be considered.

Respondents have asserted, and we verified, the following: (1) they establish their own export prices independently of the government and without the approval of a government authority; (2) they negotiate contracts, without guidance from any governmental entities or organizations; (3) they make their own personnel decisions including the selection of management; and (4) they retain the proceeds of their export sales, use profits according to their business needs, and have the authority to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. During the verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that there is a *de facto* absence of government control of the export functions of these companies. Consequently, we have determined that the five responding exporters have met the criteria for the application of separate rates. We determine, as facts available, that non-responsive exporters have not met the criteria for application of separate rates. *See also* Comments 1 and 55.

China-Wide Rate

The petition filed on November 5, 1996 identified 28 PRC steel producers with the capacity to produce cut-to-length carbon steel plate during the POI. We received adequate responses from the five respondents identified above. We received certification of non-

shipment with respect to seven companies from the China Chamber of Commerce for Metals and Chemicals (CCCMC) in a letter dated January 22, 1997. Additionally, we received a letter from one respondent factory indicating shipments through parties which have not responded to the questionnaire. *See* Non-Responsive Exporters section above. All other companies did not respond to our questionnaire. Further, U.S. import statistics indicate that the total quantity and value of U.S. imports of cut-to-length carbon steel plate from the PRC during the POI is greater that the total quantity and value of plate reported by all PRC companies that submitted questionnaire responses. Given these discrepancies, we conclude that not all exporters of PRC plate responded to our questionnaire. Accordingly, we are applying a single antidumping rate—the China-wide rate—to all exporters in the PRC other than those receiving an individual rate, based on our presumption that those respondents who failed to respond constitute a single enterprise under common control by the PRC government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR at 19026 (April 30, 1996) (*Bicycles*).

Facts Available

This China-wide antidumping rate is based on facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

As discussed above, all PRC exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. Accordingly, consistent with section 776(b)(1) of the Act, we have applied, as total adverse facts available, the highest margin calculated for a respondent in this proceeding. Based on our comparison of the calculated margins for the other respondents in this proceeding to the margins in the petition, we have concluded that the highest calculated margin is the most appropriate record information on which to form the basis for dumping calculations in this investigation since this rate is higher than the highest rate in the petition. Accordingly, the Department has based the China-wide rate on information from respondents. In this case, the highest calculated margin is 128.59 percent.

Fair Value Comparisons

To determine if the cut-to-length plate from the PRC sold to the United States by the PRC exporters receiving separate rates was sold at less than fair value, we compared the ''United States Price'' (USP) to NV, as specified in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

Export Price

We based USP on export price (EP) in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because constructed export price methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average export prices (EPs) to NV based on the factors of production. See Company Specific Calculation Memoranda, October 24, 1997.

For those exporters that responded to the Department's questionnaire, we calculated EP based on prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, and foreign brokerage. *See* ''Factor Valuations'' section of this notice.

Normal Value

A. Factors of Production

Because the Department has determined that China is a non-market economy (''NME'') country, we calculated NV based on factors of production reported by respondents in accordance with section 773(c) of the Act. Where an input was sourced from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the NV in accordance with our practice. *See Lasko Metal Products* v. *United States* (''*Lasko*''), 437 F. 3d 1442, 1443 (Fed. Cir. 1994). We valued the remaining factors using publicly available information from India where possible. Where appropriate Indian values were not available, we for the most part used publicly available information from Indonesia. In one case, when no appropriate value was available from a country at the same level of development, we used a U.S. value. *See* Comment 19 (slag).

B. Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. Where we were not able to rely on domestic prices, we used import prices to value factors. To the extent possible, we removed from the import data import prices from countries which the Department has previously determined to be NMEs. As appropriate, we converted import prices for inputs to delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices (WPI), or consumer price indices (CPI) published in the International Monetary Fund's *International Financial Statistics.* For a complete analysis of our selection of surrogate values, see each company's Factors Valuation Memorandum dated October 24, 1997. We have made the following changes to surrogate valuation since the preliminary determination:

To value coal, we used import prices for the months contemporaneous with the POI for which such data were available from the *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*). We also valued coal as two separate categories: coking coal and other coal. *See* Comment 16.

To value iron ore, for the final determination, we have, to the extent possible, treated different types of iron ore as separate factors of production (*i.e.,* we treated the different types of iron ore as separate inputs with separate surrogate values). When a producer has purchased any type of iron ore from one or more market economy suppliers, we have relied, to the fullest extent possible, on the market economy purchase prices which were verified by

the Department. When a given producer sourced a particular type of iron ore only locally, or imported only an insignificant percentage of that type or iron ore, we valued that type of iron ore for that producer based on Indian *Monthly Statistics*. *See* Comment 16.

To value steel scrap, we used import prices for the months contemporaneous with the POI for which such data were available from the *Monthly Statistics*. *See* Comment 17.

To value iron scrap, fluorite/fluospar, ferromanganese, magnesium ore, aluminum and coke, we used Indian import values for the months contemporaneous with the POI for which such data were available from the *Monthly Statistics*. *See* Comment 18.

To value scale, we used the United States market price for slag, which is a similar product. *See* Comment 19.

To value dolomite, we used import prices for ''agglomerated dolomite'' from the *Monthly Statistics*. *See* Comment 15.

To value stones, we used data from the ''Stone, Sand and Gravel'' SITC 273 category from the *United Nations Commodity Trade Statistics*. *See* Comment 20.

To value silicon manganese, we used import prices from the *Monthly Statistics*. *See* Comment 21.

To value barge rates, we used a simple average of the rates used in the preliminary determination and river rates from the Inland Waterways Authority of India (part of the Ministry of Surface Transportation of the Government of India) submitted by respondents. *See* Comment 25.

To value factory overhead, SG&A and profit for all respondents and firms, we calculated a simple average using the financial reports of the TATA Iron and Steel Company (''TATA'') and the Steel Authority of India Limited (''SAIL''). *See* Comment 3.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records and original source documents provided by the respondents.

Critical Circumstances

Section 735(a)(3) of the Act provides that, in a final determination, the Department will determine whether: (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 would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

1. Importer Knowledge of Dumping

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the plate at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See, e.g., Preliminary Critical Circumstances Determination: Honey from the People's Republic of China (PRC)*, 60 FR at 29824 (June 6, 1995) (''*Preliminary Honey*'') and *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Rotors from the People's Republic of China*, 62 FR 9160 (Feb. 28, 1997) (''*Brake Drums and Rotors*'') .

Since the company specific margins for EP sales in our final determination for carbon steel plate are equal to or greater than 25 percent for Anshan, Baoshan, Shanghai Pudong and WISCO, we have imputed knowledge of dumping to importers of subject merchandise from these exporters. We found that Liaoning had margins below 25 percent. Because we found these margins to be below 25 percent, we do not impute knowledge of dumping to importers of subject merchandise reported by Liaoning. Therefore for Liaoning, we find that critical circumstances do not exist with respect to the subject merchandise.

2. Importer Knowledge of Material Injury

Pursuant to the URAA, and in conformance with the WTO Antidumping Agreement, the statute now includes a provision requiring the Department, when relying upon section 735(a)(3)(A)(ii), to determine whether the importer knew or should have known that there would be material injury by reason of the less than fair value sales. In this respect, the preliminary finding of the International Trade Commission (ITC) is instructive, especially because the general public, including importers, is deemed to have notice of that finding as published in the **Federal Register**. 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 there would be material injury by reason of dumped imports during the critical circumstances period—the 90-day period beginning with the initiation of the investigation. *See* 19 CFR 351.16(g). If, as in this case, the ITC preliminarily finds threat of material injury (*see Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine*, U.S. International Trade Commission, December 1996), the Department will also consider the extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and the magnitude of the margins in determining whether a reasonable basis exists to impute knowledge that material injury was likely. As noted below, the extent of the import increase is nearly double that needed to find ''massive imports.'' Despite the fact that the ITC found only threat of injury, we find that the sheer volume of imports entering the U.S. from the PRC would have alerted importers to the fact that the U.S. industry would be injured by these dumped imports.

3. Massive Imports

When examining the volume and value of trade flow data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Pursuant to 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been ''massive.'' In order to determine whether there have been massive imports of cut-to-length plate, we compared imports in the three months following the initiation of the investigation with imports in the three months preceding initiation.

In this case, imports of Chinese plate increased 29 percent in the three months following the initiation of the investigation when compared to the three months preceding initiation, or nearly two times the level of increase needed to find ''massive imports'' during the same period.

4. China-Wide Entity Results

With respect to companies subject to the China-wide rate (*i.e.*, companies which did not respond to the Department's questionnaire), we are imputing importer knowledge of dumping based on the China-wide dumping rate which is greater than 25 percent. As noted above, we have also determined that importers knew or

should have known that there would be material injury to the U.S. industry due to dumping by the China-wide entity based on the ITC's preliminary determination and the fact that imports in the comparison period are nearly twice the level for finding ''massive imports.'' In the absence of shipment data for the China-wide entity, we have determined based on the facts available, and making the adverse inference permitted under section 776(b) of the Act because this entity did not provide an adequate response to our questionnaire, that there were massive imports of certain cut-to-length carbon steel plate by companies that did not respond to the Department's questionnaire. Therefore, we determine that critical circumstances exist with regard to these companies.

5. Cooperating Respondents Results

Based on the ITC's preliminary determination of threat of injury, the massive increases in imports noted above, and the margins greater than 25 percent for Anshan, Baoshan, Shanghai Pudong and WISCO, the Department determines that critical circumstances exist for Anshan, Baoshan, Shanghai Pudong and WISCO. Because we found margins to be below 25 percent, we do not impute importer knowledge of dumping for Liaoning. Therefore for Liaoning, we find that critical circumstances do not exist with respect to the subject merchandise.

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Interested Party Comments

Comment 1: Separate Rates

Petitioners contend that the Department's preliminary decision to assign separate rates to the five respondents who submitted questionnaire responses in this case—Anshan, Baoshan, Liaoning, WISCO and Shanghai Pudong—cannot be sustained in the final determination. Petitioners note that under the Department's policy, exporters in non-market economies are entitled to separate, company-specific margins only when they can demonstrate an absence of government control over export activities, both in law and in fact. *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20,588 (May 6, 1991) (''*Sparklers*''); *Silicon Carbide.* They assert that none of the PRC respondents has met this burden of proof, whether with respect to *de jure* or *de facto* control. Petitioners claim that the PRC government controls the steel industry.

Petitioners also claim that respondents did not fully cooperate with the Department. They note that Baoshan only submitted certain ''excerpts'' from its annual report to the Department at verification. In addition, they contend that Anshan did not provide certain reports and financial statements. Petitioners argue that this information would likely demonstrate that respondents are not entitled to a separate rate.

Respondents argue that petitioners' arguments regarding separate rates are factually and legally flawed and must be rejected.

Respondents note that in the preliminary determination, the Department determined, respondents were not subject to *de jure* or *de facto* government control. They assert that petitioners do not provide any valid arguments or evidence that would justify a reconsideration of this determination. Respondents also note the Department verified the accuracy of this information. Accordingly, they assert that the Department should affirm its finding of an absence of *de jure* and *de facto* control in the final determination and should continue to calculate a separate rate for each respondent in the final determination.

Department's Position: We agree with respondents. The Department's NME separate rates policy is based upon a rebuttable presumption that NME entities operate under government control and do not merit separate rates. This presumption can be overcome by a respondent's affirmative showing that it operates without *de jure* or *de facto* government control.

We found that the respondents have met their affirmative evidentiary burden with respect to the Department's criterion of *de jure* control, because they have provided copies of business licences and the applicable government

statute granting them the right to operate as independent companies.

We found that the respondents met the evidentiary burden with respect to *de facto* control as well. During verification, the Department examined the issue and found that information provided by respondents supported the contention that there is a *de facto* absence of government control of the export functions of the respondents. *See* Separate Rates Memorandum, October 24, 1997. Consequently, we have determined that the respondents have met the criteria for the application of separate rates.

We also disagree with petitioners' assertion that Baoshan failed to provide a complete annual report at verification. The Department examined the entire annual report at verification and included in the verification exhibits those segments applicable to the investigation. We also disagree with petitioners that Anshan did not cooperate regarding submission of certain documents; the Department never requested the documents petitioners claim Anshan refused to provide.

Comment 2: Reporting of Sales

Petitioners contend that the respondents do not appear to have reported all of their sales for export to the United States. They state that a review of the quantity and value of subject merchandise reported by the respondents during the six-month POI shows that sales of the subject merchandise were under-reported as compared to U.S. import statistics. Petitioners contend that should the Department find that any respondent that has failed to cooperate by not reporting sales of the subject merchandise for export in its questionnaire response should be deemed a non-responsive exporter and denied eligibility for consideration for a separate rate.

Respondents contend that as part of its investigation in this case, the Department has conducted a thorough examination of the sales made during the period of investigation by each of the respondents involved in this proceeding. Respondents assert that the Department's examination confirmed that the respondents have reported all of their sales properly.

Department's Position: We agree with respondents. The Department conducted verification of the sales quantity and value totals submitted by each of the respondents in the questionnaire responses and we found that all respondents properly reported sales during the POI.

Comment 3: Financial Data From Annual Reports of Indian Steel Companies

Petitioners argue that the Department should use financial data from annual reports of major steel producers in the principal surrogate country to calculate factor values for profit, SG&A and overhead. Petitioners claim that representative data that most accurately reflect the current earnings and expenditures of Indian cut-to-length plate (''CTLP'') producers can be found in recent annual reports of the two largest Indian steel plate producers: the TATA Iron and Steel Company (''TATA'') and the Steel Authority of India Limited (''SAIL''). Petitioners state that these reports closely correlate with the POI and the industry being investigated. Petitioners note that the Department used a very similar methodology in its selection of surrogate values in the concurrent investigation of imports of CTLP from the Ukraine. Petitioners state that, in its preliminary determination for both Azovstal and Ilyich, the Department calculated COM, SG&A, profit and overhead by averaging data from the annual reports of two companies in Brazil, the principal surrogate country in that case. See *Preliminary Determination of Sales at less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Ukraine, 62 FR at 31957, June 11, 1997.*

In contrast, petitioners claim the most recent data published in the *Reserve Bank of India Bulletin* (dated April 1995) are for 1992–1993. They argue there is no indication that any of this combined data is audited or follows Indian generally accepted accounting principles (GAAP). Finally, they state that the *Reserve Bank* data used in the preliminary determination are not specific to steel production and include an unknown number of other manufacturing and chemical companies.

Respondents agree that the use of information from Indian steel producers may be preferable to the rates obtained from the *Reserve Bank of India Bulletin.* However, respondents disagree with petitioners' suggestion that the Department should limit its analysis to SAIL and TATA when there is information on the record for six such companies: (1) TATA; (2) SAIL; (3) Pennar Steels, Inc. (''Pennar''); (4) Nippon Denro Ispat Ltd. (''Nippon Denro''); (5) Visvesvaraya Iron & Steel Ltd. (''Visvesvaraya''); and (6) Lloyds Metals and Engineers, Ltd. (''Lloyds''). Respondents agree that the Department's goal in selecting expense rates should be to use representative data that most accurately reflect the current earnings and expenditures of Indian cut-to-length plate producers. Respondents claim that ignoring two-thirds of the data that is on the record would be clearly inconsistent with the Department's goal of obtaining representative data—and would violate the Department's fundamental obligation to calculate dumping margins as fairly and accurately as possible. Respondents also dispute petitioners' claim that there is insufficient detail in SAIL's annual report to calculate an overhead rate.

Liaoning and Wuyang argue that the Department should calculate surrogate overhead costs, SG&A expenses, and profit using the actual data contained in the annual financial reports of the six Indian producers of flat-rolled steel products that are on the record in this investigation. They argue that the data contained in these six annual reports are more appropriate for calculating overhead, profit and SG&A ratios than the information from the *Reserve Bank of India Bulletin* used in the preliminary determination because the annual report financial information is specific to India's steel industry. They state that using factory-specific information also would be consistent with the approach taken by Commerce in a number of other investigations. *See Brake Drums and Rotors,* 62 FR 9160; *Melamine Institutional Dinnerware Products From the People's Republic of China,* 62 FR 1708 (January 13, 1997); *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Hungarian People's Republic,* 52 FR 17428 (May 8, 1987); *Bicycles,* 61 FR 19026.

Liaoning and Wuyang also argue that the financial experience of these companies represents a broad spectrum of India's flat-rolled steel industry, and an analysis that omits certain companies (or uses only the large or only the small companies) would result in overhead, profit and SG&A ratios that are not representative of either India's or China's steel industry. For example, not all of the PRC respondents are large-scale producers like the Indian producers SAIL and TATA. Wuyang, in particular, is a small steel mill, whose annual sales are only ten percent of those of TATA, and whose size (in number of employees) is far more similar to Visvesvaraya or Nippon Denro. Moreover, they argue that Wuyang does not have a blast furnace or basic oxygen furnace. Wuyang's steelmaking relies entirely on electric arc furnaces, and Wuyang's overhead, profit and SG&A ratios are much more likely to be similar to those of Lloyds or Pennar than those of SAIL or TATA. They state that only an analysis that

includes all the Indian steel producers will result in surrogate overhead, profit and SG&A ratios that are equally representative of the surrogate experience.

Liaoning and Wuyang argue that, in calculating the ratios, Commerce should not calculate weighted-average ratios for the Indian steel producers. Rather, Commerce should calculate overall ratios using a straight average of the data contained in the six companies' financial statements. *See Bicycles from China,* 61 FR at 19039 (when using the Indian producers' annual reports to derive overhead, profit and SG&A, Commerce calculated ''a simple average of the financial statements consistent with [its] normal practice'').

Petitioners argue the Department should not rely on the data from Pennar, Nippon Denro, Visvesvaraya or Lloyds Metals at all, but instead use data from SAIL and TATA only. Petitioners state that the Department's preference is to derive its calculation of NME financial ratios from firms that are significant producers of merchandise that is identical or most similar to that produced by the respondents under investigation. *See Melamine Institutional Dinnerware Products from the People's Republic of China,* 62 FR 1708, 1712 (January 13, 1997); *Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9160, 9167 (Feb. 28, 1997) (Final Determination) (financial data of two companies not used because there was no information indicating their production of subject merchandise during the POI); *Polyvinyl Alcohol from the People's Republic of China,* 61 FR 14057 at 14061 (March 29, 1996) (Final Determination) (''the Department seeks to base surrogate values on the industry experience closest to the product under investigation'') . Petitioners claim that TATA and SAIL are companies that produce cut-to-length carbon steel plate. By contrast, petitioners claim Pennar Steels, Nippon Denro, Visvesvaraya, and Lloyds Metals do not produce subject merchandise. Therefore, petitioners argue that, because reliable financial data is available from Indian carbon steel plate producers, consistent with its standard practice, the Department should not rely on the data of other companies that do not produce subject merchandise.

Department's Position: We agree with petitioners. It is the Department's preference to base SG&A and profit ratios on data from actual producers of subject merchandise in the surrogate country. *See Brake Drums and Rotors,* 62 FR at 9168. Of the six companies whose annual reports were submitted on the record, only SAIL and TATA actually produce cut-to-length carbon steel plate. In addition, SAIL and TATA are the only two companies whose annual reports reflect the costs of producing steel and hot-rolled coils. This is relevant as all five Chinese respondents produce coils and steel that are manufactured into plate. The Department is not using the annual report of Visvesvaraya because it is a subsidiary of SAIL and, therefore, all its financial information is already incorporated into SAIL's annual report. In addition, Visvesvaraya produced alloy and specialty steel, not cut-to-length plate. The Department is not using Pennar's annual report because Pennar buys hot-rolled coils and processes the coils into cold-rolled strips. Thus, Pennar produces neither steel nor cut-to-length plate. The Department is not using the annual report of Lloyd's Metals or Nippon because both produce sponge iron and send the iron to an affiliate where it is processed into hot-rolled coils (the affiliates' costs are not incorporated into the annual reports). The coils are then sent back to Lloyd's and Nippon, where they are processed into cold-rolled products. Thus, like Pennar, neither Lloyd's Metal nor Nippon produces steel or cut-to-length plate.

In contrast, the annual reports of both SAIL and TATA list plate as products. In addition, *Iron and Steel Works of the World,* 12th edition lists both companies as producers of plate. There does appear to be a slight discrepancy in regard to TATA. Page 49 of TATA's annual report indicates that TATA has not produced any ''plate'' since 1993. However, the physical characteristics of the ''plate'' category for the production statistics are unclear. It is possible that products that the Department considers plate could be included in the category ''sheets''. Furthermore, TATA's annual report shows significant production of both steel and hot-rolled coils.

Consequently, for the final determination, we have calculated overhead, SG&A, and profit surrogate values by using a simple average of relevant data from the annual reports of TATA and SAIL.

Comment 4: Interest Expenses Offset for Short-Term Income

Liaoning and Wuyang argue that Commerce should, when possible, offset the interest and financial expenses of Indian steel producers with their corresponding operating income. That is, when calculating SG&A, Commerce should offset interest expenses by the amount of short-term interest income. *See Brake Drums and Rotors,* 62 FR at 9168 (Department reduced interest expenses by amounts for interest income and also allocated a portion of ''other income'' as short-term interest income for those companies that did not specify a breakdown of their non-operating income); *see also Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review,* 55 FR 26721, Comment 8 (June 29, 1990). Liaoning and Wuyang state that merely adding financial expenses to SG&A without reducing those amounts by any corresponding operating income would overstate actual net financial expenses. They claim that offsetting financial expenses against financial gains reflects more accurately the Indian producers' actual financial cost of doing business.

Petitioners argue that Liaoning is incorrect in arguing that the Department should, when possible, offset interest and financial expenses of Indian steel producers with their corresponding operating income. Petitioners argue that neither *Brake Drums and Rotors* nor *Frozen Concentrated Orange Juice from Brazil* supports offsetting financial expenses by operating income other than short-term interest earned. Petitioners state that in *Brake Drums and Rotors,* where the respondents made the same claim based on the *Orange Juice* determination, the Department offset interest expenses by the amount of short-term interest income. Petitioners cite *Brake Drums and Rotors,* in which the Department ''disagree{d} that operating income * * * should be in the offset.'' 62 FR at 9168. Petitioners claim that although the Department did offset the interest expense of certain producers by a portion of their ''other income'' or ''miscellaneous receipts,'' this was done merely as a means of allocating short-term interest costs for those producers whose financial statements did not specify a breakdown of non-operating income. Petitioners argue that interest and financial expenses may be reduced by amounts for interest income only if the surrogate producers' financial reports note that the income was short-term in nature.

Department's Position: We agree with petitioners. The Department will offset interest expense by short-term interest income only where it is clear from the financial statements that the interest income was indeed short-term in nature. *See Brake Drums at Rotors,* 62 FR at 9168. For the annual report of SAIL, the Department considered the following items of the line item ''Interest Earned'' (page 31 of SAIL's annual report) as short-term interest income: (1) loans and advances to other companies, (2) loans

and advances to customers, (3) loans and advances to employees, and (4) term deposits. Therefore, we offset SAIL's interest expense by these amounts for the final determination. For the annual report of TATA, we found that the interest expense reported (page 24 of TATA's annual report) was already net of all short-term interest income. Therefore, for the final determination, we did not further offset the interest expense.

Comment 5: Exclusion of Packing and Other Expenses From SG&A Expenses

Liaoning and Wuyang also argue that, when calculating SG&A, Commerce should exclude all expenses incurred by Indian steel producers that relate to packing, as well as all other direct selling expenses. They state that since packing and direct selling expenses are separately accounted for in the Department's dumping calculation, these expenses must be excluded to avoid double-counting. They argue that Commerce should ensure that packing and other direct selling expenses are not double-counted by excluding the categories ''other expenses'' and ''miscellaneous expenses'' in the Indian financials from the surrogate SG&A values. They cite the *Preliminary Determination of Sales at Less Than Fair Value; Brake Drums and Rotors from China,* 61 FR 53190. In that case, there was no indication from an Indian producer's financial statement used to calculate SG&A as to which line item expenses included a specific amount for packing expenses. Commerce considered packing expenses to be included in the line item labeled ''miscellaneous expenses'' since ''there appears to be no other entry under which such an expense could be included.'' Commerce therefore removed the amount for ''miscellaneous expenses'' from the SG&A calculation. *See Factor Valuation Memorandum*, Attachment 9, Shivaji Analysis, at 2. Similarly, because there was no indication from the financial statement of another producer as to which line item expenses included a specific amount for packing expenses, Commerce considered this expense to be included in the line item labeled ''other expenses,'' and removed the amount for ''other expenses'' from the SG&A calculation. *Id.*, Rico Analysis, at 2. Liaoning and Wuyang argue that in this investigation, where the Indian steel producers' financial statements do not indicate what amounts are related to packing, Commerce similarly should remove ''other expenses'' or ''miscellaneous expenses'' from the calculation of SG&A in order to avoid including an expense that is already deducted from U.S. price.

Liaoning and Wuyang also argue that Commerce should exclude from the calculation of SG&A all direct selling expenses incurred by the Indian steel producers that normally are deducted from export price and constructed export price transactions when calculating net U.S. price. They state that direct selling expenses, such as commissions, discounts, bank charges, royalties, etc., should not be included in normal value as part of the surrogate SG&A ratio because they are deducted from U.S. price. They claim that Commerce cannot make a fair comparison of normal value to export price and constructed export price if it includes direct selling expenses in SG&A in the normal value calculation, but deducts such expenses from EP and CEP. *See Torrington Co.* v. *United States,* 66 F.3d 1347, 1352 (Fed. Cir. 1995) (the antidumping statute requires an ''apples to apples'' comparison). They argue that to ensure a fair comparison, Commerce therefore should calculate an amount for SG&A that is net of all direct selling expenses.

Petitioners argue there is no basis for Liaoning's claim that costs related to packing would be included in either a ''miscellaneous expense'' of ''other expense'' category. To the contrary, petitioners argue that most steel companies pack their merchandise at the production site; thus, the labor and materials associated with packing, if there are any, will be included in cost of manufacturing, not in SG&A. Petitioners argue that for those companies that pack merchandise at a separate facility and assign the costs to SG&A, packing is usually specified as a discrete item.

Petitioners argue that even if some companies were to include packing in a miscellaneous or catch-all expense category, it is clear the packing would be just one of numerous expenses. Petitioners claim it would therefore be inappropriate—indeed distortive—to deduct the entire amount of the reported miscellaneous or other expense, as respondents suggests.

Petitioners suggest that respondents' reliance on the preliminary determination in *Brake Drums and Rotors* is misplaced. Petitioners claim for its preliminary determination, the Department removed the amount for ''other expenses'' for the Indian producer RICO to account for packing expenses. *Brake Drums and Rotors,* 61 FR 53190 at 53197 (October 10, 1996). Petitioners state that in the final determination, however, the Department reversed itself. Petitioners state that the Department expressly included RICO's ''other expenses'' in its SG&A calculations.

Petitioners argue that the Department should reject respondents' argument that all direct selling expenses should be excluded from its surrogate SG&A calculation. Petitioners argue that the purpose of the calculation of the SG&A of the Indian producer is to determine the ratio of selling, general and administrative expense to the cost of manufacture. Petitioners argue that all expenses incident to selling, general and administrative functions of the company should be part of the SG&A calculation.

Even if the Department should decide to exclude direct selling expenses, petitioners argue, respondents' classification of such expense is overly broad. Petitioners argue that there is no evidence that the suggested exclusions were directly related to specific sales. Petitioners argue that because the Department has no information on the specific amount of direct selling expenses incurred by surrogate country producers, the Department should decline to make an item-by-item evaluation of the Indian companies' SG&A components. *See Oscillating Fans and Ceiling Fans from the People's Republic of China* (''*Oscillating Fans*''), 56 FR 55271 at 55276 (Oct. 25, 1991) (Final Determination); *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Socialist Republic of Romania,* 52 FR 17433, 17436 (May 8, 1987) (Final Determination). Petitioners argue that since there is no indication whether (or how much of) such purported expenses are directly related to specific sales, the Department should reject respondents' claim that ''direct selling'' expenses should be excluded from the surrogate SG&A ratios.

Department's Position: We agree with respondents that packing expenses should be excluded from the SG&A surrogate value to the extent possible. However, we disagree that all ''other expenses'' and ''miscellaneous expense'' categories should be excluded to prevent double-counting from occurring. If there is a line in an Indian producer's financial statement for packing expenses, then the Department should not include it in SG&A. However, for both SAIL and TATA there is no specific line item limited to packing expenses. As petitioners state, it would be unreasonable and distortive for the Department to exclude all ''other'' or ''miscellaneous'' expenses just because they might contain packing expenses. These categories are undoubtedly made up of many expenses and may not include packing expenses

at all. It is possible, as petitioners suggest, that these companies included packing expenses in their raw material costs.

We note that the fact pattern in this investigation differs from *Brake Drums and Rotors.* We found that the ''other'' and ''miscellaneous'' categories listed in SAIL's and TATA's annual reports are too large to throw out simply because they might contain packing. Our examination of TATA's other expenses (page 26 of TATA's annual report) shows that it includes items such as provision for proportionate premium on redemption of non-convertible debentures, expenses of issue of rights shares, loss on discarded assets, provision for diminution in value of investments and exchange differences. We find that there is no indication that the other expenses category includes packing. Our examination of SAIL's annual report indicates that there is no explanation of the miscellaneous category other than that it includes a donation (page 36 of SAIL's annual report).

In regard to direct selling expenses, we agree in part with respondents. We note that in this investigation, all U.S. sales were EP sales. Therefore, we have not included, in our calculation of SG&A and overhead, items for which we made adjustments to U.S. price (*i.e.,* movement expenses). However, we do not agree with respondents that items such as commissions, export sales expenses, insurance, and royalties should be excluded from our calculation of SG&A and overhead. All of these factors contribute to the SG&A and overhead ratios of Indian steel producers; therefore these items (*i.e.,* commissions, export sales expenses, insurance, and royalties) have been included in our SG&A calculations for the final determination. However, we have not included, in our calculations of SG&A and overhead values, items for which we made adjustments to U.S. price. To the extent possible, we only deducted from U.S. price such items such as movement expenses. For all five respondents, we deducted brokerage and handling from U.S. price. In addition, we deducted from U.S. price, insurance related to export sales for two respondents.

Respondents claim we should exclude commissions, export sales expense, insurance, and royalty and ''cess'' as direct selling expenses for SAIL. Likewise, they claim we should exclude royalty, insurance charges, and commission/discounts as direct selling expenses for TATA. We disagree with respondents' arguments. Because we did not exclude such expenses from U.S. price, we are including them in SG&A.

Comment 6: Exclusion of Taxes From Overhead and SG&A

Liaoning and Wuyang also argue that the Department should not include in its calculation of the overhead and SG&A ratios the expenses incurred by Indian producers of steel that relate to taxes paid to governmental authorities. They state that, in past cases, the Department's practice has been to construct a value for the subject merchandise as if it were manufactured by a producer in the surrogate country for export. *Pencils from the People's Republic of China,* 59 FR at 55625 (Nov. 8, 1994). Hence, they argue, in constructing values based on Indian domestic prices, the Department must eliminate excise duties, levies, and sales taxes from those prices, as these items are rebated upon export from India. *See Brake Drums and Rotors,* 62 FR at 9163. In addition, they state that the Department has expressed a clear preference for PAI that is tax exclusive. *See Disposable Lighters from the PRC,* 59 FR at 64191, 64914 (Dec. 13, 1994); *Sebacic Acid from the PRC,* 59 FR at 28053 (May 31, 1994). Therefore, they argue Commerce should remove from the surrogate overhead and SG&A calculation any excise duty listed in the financial reports. *Brake Drums and Rotors,* 62 FR at 9164.

Department's Position: We agree in part with respondents. We have deducted all excise duties from our calculation of SG&A. However, we have not excluded the line ''rates and taxes'' from our calculations. These taxes represent the taxes and licenses, property taxes and other miscellaneous taxes that Indian steel producers incur in the normal course of business and, thus, should be a part of our SG&A surrogate value.

Comment 7: Adjustment of Surrogate Overhead Rate

Respondents state that in the preliminary determination, the Department adjusted the surrogate overhead rate for all Chinese respondents who reported any workers as performing overhead or SG&A functions that were not specifically tied to the production of subject merchandise. Respondents argue that this adjustment was unnecessary because (1) the surrogate overhead rate used by the Department in the preliminary determination included overhead and SG&A labor and (2) the Chinese respondents in this investigation properly allocated labor between direct labor, indirect labor, factory overhead labor, and SG&A labor.

Respondents argue that the labor adjustment made in the preliminary determination arbitrarily and unfairly reclassified all workers working in plants involved in the production of subject merchandise as direct production workers, regardless of the tasks performed. Respondents claim this unfairly penalized Chinese respondents for following normal Departmental practice and excluding hours worked by overhead and SG&A workers from the hours reported for production of subject merchandise. Respondents argue that as a matter of principle and established practice, the Department recognizes (1) that some functions performed by workers are properly classifiable as factory overhead or SG&A functions and (2) that the Department's normal value calculations in non-market economy cases should include only workers involved in the production of subject merchandise—workers performing overhead and SG&A tasks are not to be included. See *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR at 21058, 21064 (May 18, 1992) (direct labor hours for factory level administrators and workshop level supervisors found to be factory overhead and SG&A, respectively); *Furfuryl Alcohol,* 60 FR at 22544, 22548 (''Since our surrogate value for factory overhead includes indirect labor and it is the Department's practice to only include the production labor related to the subject merchandise, we have revised our final calculations on labor to avoid double counting labor.''). Respondents argue that the reason overhead workers and SG&A workers should not be included in the Department's calculations is that the costs of such workers are already reflected in the surrogate overhead and SG&A rates applied by the Department to the direct production costs incurred by the non-market economy producers.

Respondents claim that they undertook an analysis of the workers employed in the facilities involved in the production of subject merchandise and attempted to classify workers in a manner consistent with the Department's request for information and the Department's practice. Respondents state that in the questionnaires issued by the Department in this investigation, the Department required Chinese respondents to report labor hours for ''direct, skilled workers,'' ''direct, unskilled workers,'' and ''indirect workers''—yet never provided specific (or even illustrative) instructions regarding how such workers should be

identified. They also claim the Department never provided any guidance regarding how ''indirect'' workers were to be distinguished from ''factory overhead'' workers or SG&A workers. Respondents state that they disclosed in their responses the rules applied by each respondent for classifying workers, as well as a substantial amount of information regarding the tasks performed by workers in the production facilities. Respondents argue that, under these classification methodologies, the dominant characteristic of workers classified as ''factory overhead'' workers is that these workers were responsible for the maintenance of the facilities. They also argue the dominant characteristic of SG&A workers is that they performed relatively high-level, supervisory or administrative functions within the facilities and were not physically involved in the production process.

Respondents claim that neither the Department nor the petitioners have objected to the classification methodologies used by the Chinese respondents to distinguish between direct, indirect, factory overhead, and SG&A workers. They also claim that neither the Department nor the petitioners have proposed any modifications or alternatives to the methodologies used by the respondents to classify labor. Respondents claim that, in light of these circumstances, it is fair to conclude that the rules used by the respondents to classify labor are reasonable. Respondents claim, in other words, that they were correct in classifying maintenance workers as factory overhead workers and in classifying supervisors and administrators as SG&A workers and in excluding such workers from their reported labor hours, (*i.e.*, labor outside SG&A and overhead Therefore, respondents argue that any re-classification of workers is unnecessary.

In addition, respondents argue that the Indian surrogate values for factory overhead and SG&A rate reflect the labor cost of maintenance and administration. Accordingly, they claim there is no reasonable justification for ''adjusting'' (*i.e.*, inflating) such rates to account for maintenance workers and administrative personnel—since such an adjustment would double-count labor expenses.

Liaoning and Wuyang reiterate that the Department should not, in the final determination, make an adjustment to increase the surrogate overhead value for Wuyang to account for labor resources dedicated to overhead. They state that in its reported production expense factors, Wuyang excluded from its ''labor'' calculation certain workers because of the Department's policy for calculating overhead and SG&A in non-market economy investigations. They argue that these workers can be divided into three categories according to the relationship of their activities to the subject merchandise: (1) activities entirely unrelated to steel plate, in particular the activities of the automation research and development division, which performs research and development related to the company's consulting services in the field of industrial automation; (2) activities generally related to all products and services (for example, the personnel department); and (3) activities generally related to steelmaking, in particular the activities of the steel research and development division. They argue with respect to category (3), to Liaoning and Wuyang's knowledge the Department has never included R&D in the factors of production because doing so would almost certainly double-count R&D included in the surrogate values for factory overhead and SG&A. *See, e.g., Oscillating Fans,* 56 FR at 55271 (Commerce Department agreed with Respondent that product development and manufacturing liaison costs are not direct manufacturing costs to be included in the factors of production and that these costs are properly valued using surrogate country data for factory overhead). They state that because surrogate overhead and SG&A values already include R&D expenses, the overhead value would double-count R&D if the Department were to include Wuyang's R&D labor in the factors of production. They also argue that the Department has established an explicit policy in NME cases of not adjusting the surrogate values for R&D expenses under any circumstances. In *Chrome-Plated Lug Nuts from China*, for example, a respondent requested the Department to exclude R&D expenses from the surrogate value for factory overhead on the ground that the respondent did not actually incur R&D expenses. They claim that the Department refused to exclude the R&D, citing the Department's policy not to make an ''item-by-item evaluation of overhead components.'' 61 FR at 58514, 58517 (November 15, 1996), *citing Pure Magnesium and Alloy Magnesium from the Russian Federation,* 60 FR 16440 (March 30, 1995) and *Tapered Roller Bearings from Hungary*, 52 FR at 17428 (May 8, 1987). They state that the Department reiterated this policy in *Heavy Forged Hand Tools from China*, 61 FR 46443 (September 3, 1996), when the Department refused to deduct R&D expenses from surrogate overhead values based on data published in the April 1995 *Bulletin of the Reserve Bank of India,* the same source upon which petitioners relied in their petition to calculate factory overhead.

Liaoning and Wuyang conclude that given the nature of the overhead and SG&A activities described above and the Department's established policy in NME cases, Commerce should not reallocate any of Wuyang's overhead labor to the labor valued directly based on factors of production. In the alternative, they argue that if Commerce does adjust the surrogate overhead value to account for ''additional labor,'' however, then Commerce also should (1) make all necessary corresponding adjustments to Wuyang's energy consumption factors, because Wuyang allocated its energy consumption based on its reported labor hours; and (2) exclude ''other manufacturing expenses,'' ''other expenses,'' and ''miscellaneous expenses'' from the surrogate overhead and SG&A values to avoid double counting labor expenses.

Petitioners state that this issue is not relevant to the final determination unless the Department again chooses to rely on a source for the surrogate value for overhead that does not include labor, such as the *Bulletin of the Reserve Bank of India* data. However if this is the case, petitioners argue the Department should make an adjustment along the same lines as the one made in the preliminary determination because the Department's methodology is sound.

Petitioners claim that respondents' criticism of the Department's approach rests on several false premises: (a) that the values from the *Reserve Bank of India Bulletin* already included labor; (b) that overhead and SG&A workers are not to be included in the Department's calculations; (c) that the Department's labor adjustment to overhead arbitrarily and unfairly reclassified all workers working in plants involved in the production of subject merchandise as direct production workers, regardless of the tasks performed; and (d) that the Department would have acted differently had it understood that not all respondents had allocated a majority of their workers to overhead and SG&A.

Petitioners also argue that normal value in NME cases always includes a component for overhead and SG&A. Petitioners state that respondents do not seem to disagree in principle with the notion that the labor associated with overhead belongs in the surrogate value for overhead. Petitioners argue that it then becomes a factual question of

whether such labor is, or is not, included in the surrogate data. Petitioners argue that labor is not included in the surrogate overhead value calculated from the *Reserve Bank of India Bulletin*.

Finally, petitioners argue, respondents are wrong in focusing on the Department's statement in the preliminary determination that respondents allocated a majority of the labor employed in their facilities to overhead and selling and general administrative tasks. Petitioners argue it is plain from the preliminary calculation memoranda that the Department's decision to adjust overhead for labor was not dependent on a respondent allocating a ''majority'' of its workers to overhead and SG&A.

Petitioners argue that respondents have presented no cognizable basis for challenging the Department's practice of adjusting the surrogate overhead value for labor where such value does not already include overhead labor. Petitioners state that if, in the final determination, the Department uses a surrogate overhead value other than the value derived from the *Reserve Bank of India Bulletin*, and if that alternative value likewise does not include all overhead labor, a similar adjustment should be made.

Department's Position: Because the Department is now using a simple average of the annual reports of SAIL and TATA, rather than the *Reserve Bank of India Bulletin*, to calculate our surrogate overhead and SG&A values the question of whether or not the data in that publication included overhead labor is now moot. We agree with petitioners that to the extent that our new surrogates do not include overhead or SG&A labor, adjustments to these values are appropriate.

SAIL's annual report explicitly states that ''employee remuneration and benefits'' are not included in the overhead category ''repairs and maintenance.'' Nor is there any indication that ''employee remuneration and benefits'' would be included in the following overhead categories: ''stores and spares,'' ''joint plant committee,'' ''insurance,'' ''rent,'' ''royalty and cess,'' ''cash discount,'' ''conversion charges,'' or ''water charges.'' However, ''handling expenses,'' which is broken down into handling of raw materials, finished goods, and scrap recovery, would appear to consist entirely of overhead labor. In addition, there are SG&A categories that appear to account for SG&A labor, such as, ''directors fee,'' ''remuneration to auditors,'' ''cost audit fee,'' and ''miscellaneous.'' It is also likely that the following SG&A categories contain some labor: ''export sales expense,'' ''security expenses,'' ''traveling expenses,'' ''training expenses.'' Therefore it appears that the surrogate overhead and SG&A values calculated from SAIL's annual report contain overhead and SG&A labor.

TATA's annual report also explicitly states that overhead items ''stores consumed,'' ''repairs to buildings,'' ''repairs to machinery,'' and ''relining expenses'' exclude amounts charged to wages and salaries. There is no indication that the other overhead categories, ''rents,'' ''royalty,'' ''insurance charges,'' ''joint plant committee funds,'' ''conversion charges,'' and ''depreciation'' include overhead labor. TATA's material handling charges appear to be included with freight charges in the category ''freight and handling charges'' which we allocated to COM as they are part of TATA's cost. We have no way of determining how much of this figure should be allocated to handling charges, and thus, to overhead. Therefore, we are including the entire amount in COM. With regards to SG&A labor, the annual report indicates that managerial remuneration is included in the SG&A category ''other expenses.'' Therefore, it appears that the surrogate overhead and SG&A values calculated from TATA's annual report contain SG&A labor, however, it is inconclusive whether or not it contains overhead labor.

As stated above, the Department's surrogate SG&A and overhead values are based on a simple average of the values calculated from the annual reports of TATA and SAIL. Therefore, since both the annual reports clearly contain SG&A labor, it is not necessary for the Department to make an adjustment to our SG&A surrogate value to account for SG&A labor.

As mentioned above, the overhead surrogate value calculated from SAIL's annual report does contain overhead labor, however it is inconclusive whether the overhead surrogate value calculated from TATA's annual report contains overhead labor. Therefore, our simple average of the two contains some overhead labor but it is not clear whether it contains sufficient overhead labor. To ensure that no double counting occurs, the Department is faced with the options of (1) excluding from its calculation of overhead all SAIL and TATA income statement line items that might include overhead labor and making a similar overhead adjustment as in the preliminary determination (in the preliminary determination, the Department adjusted the overhead surrogate value using ratios developed from respondents reported overhead and direct workers), or (2) leaving the overhead surrogate as calculated and not making the overhead labor adjustment. The Department considers it more reasonable to leave the overhead surrogate as calculated. The Department fears that excluding all categories that might include overhead labor would unfairly exclude many costs that should be included in our overhead surrogate. Therefore, given the Department's new surrogate values for SG&A and overhead, we did not make any adjustments for overhead or SG&A labor in the final determination.

Comment 8: Overhead Energy Adjustment

Respondents argue that the Department's overhead energy adjustment was unnecessary and improper in the context of this investigation, because (1) virtually all energy used by the Chinese respondents is already included in the Department's normal value calculation, and (2) the calculation used by the Department bears no relationship to any reasonable ''overhead energy'' costs incurred in the production of subject merchandise. Respondents state that the only energy inputs treated as overhead by the Department were water, compressed or forced air, and steam. Respondents claim that each of the overhead energy items is relatively inexpensive so the overall cost of ''overhead energy'' is negligible. They argue no adjustment is necessary in the final determination.

Respondents argue that the adjustment used by the Department in the preliminary determination was arbitrary and improper. They claim the costs calculated using this methodology bear no relationship to any reasonable cost of overhead energy. They contend that the purpose of the overhead energy adjustment made in the preliminary determination was to include a portion of overhead that was apparently missing from our selected surrogate. The *Reserve Bank of India Bulletin* overhead data does not contain any items that would lead the Department to believe that overhead energy was accounted for. They claim there is no reasonable basis to believe the adjustment used by the Department would provide a reasonable estimate of the costs of providing water, steam, and compressed air to the steel production facilities of the Chinese respondents and therefore should not be used in the final determination.

Petitioners argue that, had the Department not made some kind of adjustment for the omission of power and fuel from the overhead calculation, it would have improperly ignored respondents' overhead energy costs.

Petitioners argue there is no support on the record for respondents' belated claim that these costs are ''negligible'', because they have not been reported. Petitioners state that the point of the adjustment is to develop a reasonable estimate of the overhead energy costs of producers of plate in the surrogate country. Petitioners do agree that the methodology used by the Department is arbitrary, but the solution proposed by respondents (*i.e.*, ignoring the issue altogether) is not adequate. Instead, petitioners claim if the Department continues to use data from the *Reserve Bank of India Bulletin* for overhead, the energy adjustment should be accomplished by other means. Because the record data from Indian sources does not allow the Department to precisely distinguish overhead energy from direct energy inputs used in the steel industry, petitioners argue the Department should develop a ratio from the cost accounting data provided by Geneva Steel in the petition. Consistent with the usual cost accounting practices of the steel industry, petitioners argue the petition separately sets forth direct energy inputs and overhead energy consumption. From this information, petitioners suggest the Department can determine the ratio of Geneva's overhead energy costs to direct energy costs. Petitioners argue that the surrogate value for overhead should be increased by an amount equal to the above ratio times the individual respondent's total surrogate costs for direct inputs of fuels, utilities, and gases.

Petitioners point out that, like the adjustment to overhead for additional labor, the overhead energy adjustment is largely a function of the Department's choice of the source for the overhead surrogate value. Petitioners argue that regardless of the Department's choice of overhead surrogate value in the final determination, it should carefully examine whether overhead energy is included; if it is not, the Department should make an overhead energy adjustment similar to the one just described.

Department's Position: We agree with petitioners that this issue is tied to the Department's choice of the source for the overhead surrogate value. As discussed above, we have chosen a simple average of the annual reports of SAIL and TATA as the source for the overhead surrogate value. We then examined whether overhead energy was included in the overhead values reported in those reports. Using a methodology similar to that used in the preliminary determination, we excluded the categories ''power and fuel,'' ''fuel oil consumed,'' and ''purchase of power'' from our value for overhead since we are valuing these items as direct inputs. For SAIL, we included in our overhead calculation the item ''water charges'' since the Department normally treats water as an overhead expense. In addition, we consider it likely that additional overhead energy is included in the overhead item ''stores and spares.'' We allocated the item ''stores and spares'' to overhead. For TATA, there is no item that is entirely comprised of overhead energy. However, we consider it likely that some overhead energy is included in the overhead item ''stores and spares.''

As with our calculation of overhead labor described in Comment 7, the simple average of SAIL's and TATA's calculated overhead values contains some overhead energy but it is not clear whether it contains sufficient overhead energy. To ensure that no double counting occurs, the Department is faced with the options of (1) excluding from its calculation of overhead all SAIL and TATA income statement line items that might contain overhead energy and making an appropriate overhead energy adjustment, or (2) leaving the surrogate overhead value as calculated and not making an adjustment for overhead energy. The Department considers it more reasonable to leave the overhead surrogate as calculated. As with labor, the Department fears that excluding all categories that might include overhead energy would unfairly exclude many costs that should be included in our overhead surrogate. Therefore, given the Department's new surrogate value for overhead, we did not make any adjustment for overhead energy in the final determination.

Comment 9: Credit for By-Products

Respondents argue the Department must credit respondents' cost of manufacture for by-products before applying the factory overhead rate in the final determination. They argue that in the preliminary determination, the Department treated costs and credits asymmetrically by deducting by-products from the cost of manufacture after applying the factory overhead rate and without including factory overhead in its calculations of by-product credits.

Department's Position: We agree with respondents. In calculating the cost of manufacture, the Department uses a net material amount that we derive by deducting the by-products from gross materials. Therefore, we credit by-products before we calculate the cost of manufacture and overhead.

Comment 10: Treatment of Gases

Respondents argue that the Department should treat industrial gases as overhead for the final results. Respondents argue that, in deciding whether to treat industrial gases as overhead or direct material inputs, the fundamental issue is how such materials are treated by Indian steel producers. Respondents state that if the standard practice for Indian firms is to treat industrial gases as overhead, then those values must already be included in the surrogate value for factory overhead that the Department is using. Respondents claim that, if this is the case, including industrial gases as a direct input as well as in overhead would result in double-counting.

Respondents argue that a review of the financial information of Indian steel producers on the record reveals that the standard practice for Indian steel companies is to include industrial gases as part of factory overhead. Respondents claim that none of the annual reports of Indian steel companies provided in this investigation treated industrial gases as either a material input or an energy source. Thus, respondents argue, including the cost of those gases as a direct input in the final calculations would double-count those costs.

Petitioners argue that industrial gases used in iron and steel making should be treated as direct energy inputs, and not as overhead. Petitioners state that unless a gas is used specifically for overhead energy (*e.g.*, to heat a facility) it should not be characterized as overhead. Petitioners argue that gases such as oxygen are important inputs in the steel making process, serving both as refining agents and as an energy source. Petitioners argue that valuing these gases as direct inputs would not result in double-counting as respondents claim. Petitioners state that worksheets provided by the Department in its Factor Valuation Memorandum show that these energy inputs are not included in factory overhead (Commerce specifically excluded ''power and fuel'' expenses before it calculated the overhead rate for the preliminary determination). Accordingly, petitioners argue there is no double counting.

Petitioners argue that the respondents' contention that the standard practice for Indian steel companies is to include these energy inputs as part of factory overhead is incorrect. Petitioners claim that respondents' statement that ''none of the annual reports * * * treated industrial gases as either a material input or an energy source'' is incorrect. Petitioners argue that the listing for

''Others'' in the power and fuel cost of SAIL most likely includes industrial gases. Petitioners argue that neither SAIL's annual report nor TATA's provides any information which supports respondents' contention that industrial gas inputs should be included in factory overhead.

Petitioners state that Indian accounting practices actually require that energy inputs be treated as direct inputs. They argue that in *Brake Drums and Rotors,* the Department found that, under Indian GAAP, inputs may be treated as factory overhead only if they are not consumed in the production process. *See* 62 FR at 9160, 9169 (citing the *Compendium of Statements and Standards* published by the Institute of Chartered Accountants of India). Petitioners argue that in this case there can be no dispute that these energy inputs are consumed in the production process. Accordingly, petitioners argue that respondents' arguments regarding the inclusion of energy inputs in factory overhead should be rejected.

Department's Position: We agree with petitioners. There is no indication in the annual reports of SAIL and TATA that they treat industrial gases as overhead energy costs. We have therefore valued these gases as direct inputs and excluded the line items ''power and fuel,'' ''fuel oil consumed,'' and ''purchase of power'' from our overhead calculations to ensure that no double counting of these costs occurs.

Comment 11: Valuation of Self-Produced Inputs

Respondents argue the Department's primary goal and responsibility in selecting surrogate values in investigations involving producers in a non-market economy (NME) is to determine—as accurately, fairly, and predictably as possible—the costs that would have been incurred in producing the subject merchandise if the costs of such production had been determined by market forces. *See Oscillating Fans,* 56 FR at 55271, 55275, cited with approval in *Lasko,* 43 F.3d at 1442. To do so, the Department requires respondents to report the actual inputs they use in the production of the subject merchandise, and then values those inputs at the price for those inputs in a comparable market economy. In this case, the Department is calculating a normal value for steel plate based on the actual inputs used by the Chinese producers to manufacture steel plate and the values for those inputs primarily in India.

Respondents claim that the same rationale that leads the Department to calculate normal value for steel plate based on the actual factors of production also requires that it use a similar methodology for self-produced inputs (such as oxygen, nitrogen, argon and similar gases) '' at least when the necessary information is available on the record. In this case, respondents argue the Department does have verified information on the actual inputs used to produce the oxygen, nitrogen, argon and similar gases that are used in steel plate production by Anshan, Baoshan, Shanghai Pudong and WISCO. Respondents argue the Department should therefore calculate the value for those gases based on the actual inputs.

Respondents state that in the preliminary determination, the Department ignored the actual inputs used to make these gases, and instead valued these gases based on price quotations for such gases in India. Respondents claim such an approach would be appropriate only if the Department were to assume that it is more accurate to use the prices in India for those gases than to build up the values for those gases from the actual inputs used to produce them. Respondents claim that assumption is flatly inconsistent with the entire methodology used in non-market-economy cases, and cannot be correct. Respondents argue that, if previous assumption were correct, then it would follow that Commerce should value steel plate based on price quotations from Indian suppliers rather than to build up a normal value based on the actual factors of production used in manufacturing steel plate.

Petitioners argue that the values assigned to industrial gases used by respondents should be based on Indian surrogate values and not respondents' factors of production for these gases. Petitioners claim that the respondents' factors of production cannot be used by the Department because they are inherently unreliable. Petitioners argue that it is only where the Department can determine that a non-market economy producer's input prices are reliable that accuracy, fairness and predictability are enhanced by using those input prices. *See Oscillating Fans,* 56 FR at 55271 and 55274–75.

Petitioners claim that respondents used the Department's August 18, 1997 request for spreadsheets used in calculating the factors of production as a chance to cure existing deficits in the record regarding respondents' industrial gas production by submitting complete factor of production data for ''certain'' gases. Petitioners claim it would be unfair for the Department to use this mostly unverified data to calculate factors of production for industrial gases because petitioners have not been afforded the opportunity to comment on these data and the Department did not have ample opportunity to consider whether to verify the data pertaining to industrial gases.

Petitioners argue that respondents did not, as they contend, submit complete factor information for the industrial gases used in the steelmaking processes in their questionnaires or supplemental questionnaires. Petitioners claim that the cites to questionnaire and supplemental questionnaire responses did not adequately identify the data necessary to sustain respondents' contention that they produce all of the industrial gases they use. Petitioners also argue that the Department's findings at verification regarding gas usage and production by respondents further calls into question the reliability of respondents' industrial gas production factor information. In addition, petitioners argue that respondents have not put any information on the record regarding the ownership of their gas plants. For these reasons, petitioners argue that the respondents' factors of production for these gases are unreliable and should not be used for the final determination.

Department's Position: We agree that, for some respondents, the value of the subject merchandise in this case is more accurately measured if the self-produced gases are valued based on the actual inputs used to make these gases.

In NME cases, the Department selects the surrogate values that reflect best the costs that would have been incurred in producing the subject merchandise if the costs of such production had been determined by market forces. It is the Department's practice to collect data on all direct inputs actually used to produce the subject merchandise, including any indirect inputs used in the in-house production of any direct input.

To accurately value all direct and indirect inputs, the Department requires sufficient time to analyze usage rates and select appropriate surrogate values. It is also important that interested parties have the opportunity to comment on the reported usage rate and surrogate value proposed by the Department. For these reasons, it is important that the Department receives the respondents in a timely manner. In the instant case, although WISCO claimed that the inputs for the production of this gas were reported in its April 14, 1997 submission, the actual information was not submitted until seven days before the verification. The later submission was untimely because the Department had specifically

requested that information and provided a deadline which was more than two months earlier. The fact that this information was verified does not commit the Department to consider it timely in its final determination.

Similarly, Baoshan's April 14, 1997 supplemental response claimed to have reported the inputs used in self-producing a certain gas, but the actual data were absent from the specified appendix. Baoshan claims that data on this gas and its material inputs can be found in a different appendix and this information was verified. However, that appendix responds to the Department's question on energy consumption and contained a Baoshan Energy Department report for only the month of July. Furthermore, no labor factors involved in the self-production of oxygen are included on the worksheet. The Energy Department report was later verified for the integrity of the reported energy consumption rather than for production of this gas. Not until Baoshan's August 21, 1997 submission, which reached the Department after verification, did Baoshan provide, in a usable format, the complete factors for the gas it self-produces.

The Department is rejecting WISCO and Baoshan's production data for their self-produced gases due to untimeliness and lack of consistency. For WISCO and Baoshan, therefore, we are continuing to use the Indian surrogate values that were used for the preliminary determination for their self-produced gases.

Anshan reported gases which were self-produced and their production inputs. Shanghai Pudong reported three factors as being as self-produced and provided their inputs. For these two respondents, the Department used their reported production inputs for valuing the factors for producing the subject merchandise.

We disagree with the petitioner's claim that the verification of the self-produced gases showed them to be unreliable for Anshan and Shanghai Pudong. These data were submitted on the record in a timely fashion and were verified. The verification report contains no mention of discrepancies in these data.

Comment 12: Domestic Inland Freight Expenses

Liaoning and Wuyang maintain that if the Department uses Indian *Monthly Statistics* to derive surrogate values for raw material inputs, it should not add to these costs an extra amount for domestic inland freight expenses. Respondent argues that in *Sigma Corporation* v. the *United States*, 117 F.3d 1401 (Fed. Cir. July 7, 1997) (''*Sigma*''), the U.S. Court of Appeals for the Federal Circuit (''CAFC'') ruled that to do so would overstate the value of the freight component of normal value. In making its decision, they argue, the Court determined that the Department's methodology of adding a constructive freight charge on top of the import prices double counted a substantial component of the total freight expense. These respondents conclude that the Court's holding in *Sigma* is applicable to this case, and if the Department uses Indian *Monthly Statistics* to derive surrogate values for raw material inputs, it should not add a constructive freight charge on top of these prices for the shipment of such raw materials from Chinese suppliers to the respondents in this investigation.

Petitioners argue that, in *Sigma*, the CAFC did not preclude the Department from making an adjustment to account for domestic freight. Petitioners argue that, to the contrary, the Court expressly determined that the Department must devise an appropriate methodology to account for the freight component without double counting. Petitioners add that it is obvious that, depending on distances and modes of transportation, the domestic freight expense to transport an input from a supplier in China to the producer of the subject merchandise can be considerably greater than the freight included in the Indian *Monthly Statistics*. Petitioners maintains that, as the *Sigma* Court recognized, the Department had a statutory duty to select a methodology that produces ''reasonably accurately estimates of the true value of the factors of production.'' Petitioners conclude that this includes a proper accounting of the domestic inland freight and that, accordingly, the Department should devise an appropriate methodology to account for the freight charges from the Chinese suppliers of the input to Wuyang's factory without double counting.

Department's Position: We agree with petitioners and, in part, with respondents. The CAFC's decision in *Sigma* requires that we revise our calculation of source-to-factory surrogate freight for those material inputs that are valued on CIF import values in the surrogate country. The *Sigma* decision states that the Department should not use a methodology that assumes import prices do not have freight included and thus values the freight cost based on the full distance from domestic supplier to producer in all cases. Accordingly, as in the *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China*, 62 FR at 51410 (October 1, 1997) (''*Nails*''), we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of export to the factory, or from the domestic supplier to the factory. Where the same input is sourced by the same producer from more than one source, we used the shorter of the reported distances for each supplier.

Comment 13: Regression Based Analysis

Some respondents argue that the Department should use its regression-based analysis to value labor. Respondents argue that the Department's current policy, as stated in its revised regulations, is to use a regression-based wage rate, in order to achieve a fairer, more accurate, and more predictable result. Respondents state that as the Department explained in the commentary accompanying its revised regulations: ''[B]y combining data from more than one country, the regression-based approach will yield a more accurate result. It also is fairer, because the valuation of labor will not vary depending on which country the Department selects as the economically comparable surrogate economy. Finally, the results of the regression analysis are available to all parties, thus making the labor value in all NME cases entirely predictable.'' *See Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27367 (May 19, 1997) (final rule).

Respondents argue that the Department has stated that these revised regulations ''serve as a restatement of the Department's interpretation of the requirements of the [Tariff] Act as amended by the URAA,'' even in cases which are not directly governed by the new regulations. *See* 19 CFR § 351.701. Thus, respondents argue the new wage rate methodology set forth in the revised regulations (and in the Department's June 2, 1997, Policy Memorandum) should be applied in this case.

Petitioners argue the Department should reject the suggestion that labor inputs should be valued using the new regression-based methodology described in the *Final Rule*. Petitioners claim that: (1) unless the regression model is limited to data from surrogate countries that are at a level of economic development similar to China's, the new labor valuation methodology set forth in 19 CFR § 351.701(c)(3) is contrary to section 773(c)(4) of the Act, 19 U.S.C. 1677b(c)(4), (2) it fails to account adequately for labor costs other than wages, (3) by its own terms, the new regulation does not apply to this investigation, (4) it has not been the

Department's practice to use the regression methodology in NME cases initiated prior to the effective date of the new regulations; and (5) the new regression model has not yet been published in accordance with the requirements of the Administrative Procedure Act.

Petitioners also urge the Department not to use the labor cost methodology used in the preliminary determination. Petitioners state that, in the preliminary determination, the Department applied a single labor rate for the three levels of labor (skilled, unskilled and indirect) that all respondents used in calculating their labor factors. They state that in this case, the Department used data from the *Ministry of Labour, Government of India Annual Report 1994–95* which contains 1990–91 data for the average labor cost in rupees per man-day worked for the ''Basic Metals and Alloys Industries.'' Petitioners argue that the labor data found in the *Report* and used by the Department in its preliminary determination are aberrational. First, they note that these data are approximately six years old. Second, they point out that the *Report* does not provide any information as to which industry sectors or companies are included in the category ''Basic Metal and Alloys Industries.'' Third, they argue that the methodology used by companies or industry associations to obtain the data submitted to the Ministry of Labour and compiled for its *Report* is unknown. As a result of the above, petitioners argue that it is not clear whether the labor rate provided in the *Report* closely reflects the average labor rate paid by a large integrated steel producer in India.

Instead of the regression-based model described in its new regulations or the approach used in the preliminary determination, petitioners argue that the Department should instead use a labor surrogate value methodology based on data provided in TATA and SAIL's 1995–1996 Annual Reports to calculate a surrogate labor value. Petitioners claim that a labor factor value based on the actual wages paid to the employees of a large integrated steel producer in the surrogate country is a more accurate means of calculating the labor value than either of the two approaches previously described. Furthermore, petitioners argue that use of a labor value calculated from SAIL and TATA financial information would be consistent with the use of COM, SG&A and profit values derived from annual reports of these companies.

Liaoning and Wuyang argue that, as a surrogate value for labor, Commerce should use the average labor cost per man-day worked for the Basic Metal and Alloys Industries as reported in the *Ministry of Labour Government of India Annual Report 1994–95*, which Commerce used in the preliminary determination. They claim Commerce should not calculate the surrogate labor value using data contained in the financial statements of Indian producers of steel as recommended by petitioners because such a methodology is both unreasonable and unreliable.

First, they argue that the salary and wage data listed in the Indian financial statements include high remuneration for company management personnel and other salaried workers, rather than being specific to line production workers, which is the group for which a surrogate labor valuation is sought. They claim the calculation of any surrogate labor rate based on such figures therefore would grossly inflate the Indian labor rate for production workers in the steel industry.

Second, they argue that any relationship between the annual expenditure of a company for wages, salaries, etc. and the absolute number of employees of any given day during the year is entirely speculative. They state that the Indian steel producer financial statements on the record provide information regarding yearly employee remuneration and benefit amounts, but none of the financial statements provides specific information regarding (1) the number of labor hours worked at each company during the year, (2) the number of different employees paid during the year, (3) whether such employees worked overtime, and (4) whether such employees were paid an additional amount for overtime worked.

Finally, they argue that the record evidence provides no support whatsoever for petitioners' assertion that the employee remuneration paid by SAIL in 1995–96 corresponds only to the 187,504 persons reported as employees on March 31, 1996. They state that the data provided by petitioners vis-à-vis TATA are even more tenuous, since there is no support for their assumption that the total number of employees reported in the 1997 *Iron and Steel Works of the World* publication is accurate or even related to TATA's 1995–96 fiscal year. These questions, they argue, render unusable petitioners' suppositions as to the number of workers employed by each company, and the possible number of hours worked each day by company employees.

In comparison, Liaoning and Wuyang argue that the *Report* used by Commerce in the preliminary determination includes figures that are representative of the entire Indian steel industry, including both large companies and small, and provides labor cost data specific to production line workers. In addition, they state that, as noted in the Commerce Department's factor valuation memoranda, the labor rate provided in the *Report* is inclusive of wages and salaries, all types of bonuses, money value of benefits in kind, old age benefits, maternity benefits, social security charges, family pension, retirement benefits, and other group benefits. They argue that unlike the unsubstantiated figures calculated by petitioners, the Ministry of Labour values are not distorted by conjecture regarding such factors as the number of employees, man days worked, the inclusion of overtime hours. Therefore, they claim Commerce should continue to value labor in the final determination using the average labor cost per man-day worked for the Basic Metal and Alloys Industries from the *Report*, which Commerce did in the preliminary determination.

Department's Position: We agree with Liaoning and Wuyang. Because the regulations applicable to this investigation do not dictate a particular approach to selecting surrogate value for labor, the Department has the discretion in choosing a method of valuing labor. However, it has not been our practice to use the regression-based labor rate developed in the new regulations initiated prior to issuing these new regulations. Because we have not elected to use the regression analysis approach, we need not address all of the arguments concerning this methodology. We also disagree with petitioners' proposal to use the financial statements of SAIL and TATA. These statements include high wages for company management personnel and other salaried workers, and thus are not specific to direct and other production labor. Also, the financial statements only report aggregate labor costs and do not provide information regarding the number of labor hours and thus we could not determine a labor rate for these companies.

Comment 14: Labor Factors

Anshan, Baoshan, Shanghai Pudong and WISCO state that, throughout this investigation, petitioners have contended that the data on labor usage submitted by the Chinese respondents must be compared to information in PaineWebber's *World Steel Dynamics*. Respondents state that petitioners claim that any differences between information reported by the respondents and the information contained in *World Steel Dynamics* is to be treated as

evidence that the Chinese respondents are reporting their information inaccurately is without merit. Anshan, Baoshan, Shanghai Pudong and WISCO state that the labor hours reported are the result of a detailed analysis of the companies' labor forces, based on the Department's reporting requirements. Anshan, Baoshan, Shanghai Pudong and WISCO argue the source documents and methodology used to derive these figures were examined in detail by the Department during verification, and no significant discrepancies were found. Therefore, they argue, these data have been shown to be reliable.

By contrast, respondents argue, the source of the information in *World Steel Dynamics* is unknown, the methodology used by *World Steel Dynamics* to derive that information is not explained, and the figures reported in *World Steel Dynamics* have not been verified. Respondents claim that, in these circumstances, the labor usage figures reported in *World Steel Dynamics* have no probative value at all. Respondents argue that data from this service certainly do not provide a reasonable basis for disregarding the verified information reported by respondents.

Department's Position: We agree with respondents. We verified all of the respondents' reported labor factors and we noted no major discrepancies. In light of these facts, we have no reason to believe that the labor factors they provided in their questionnaire have been misreported.

Comment 15: Valuation of Limestone, Dolomite and Quicklime

Anshan, Baoshan, Shanghai Pudong and WISCO argue that, in the final determination, the Department should value limestone and dolomite based on domestic Indian prices, rather than on Indian *Monthly Statistics*. Respondents argue that domestic Indian prices for limestone and dolomite are preferable because (1) it is Department policy to use domestic, tax-exclusive prices where possible; (2) due to the low market value of limestone, limestone is ordinarily obtained domestically; and (3) import values used for limestone and dolomite are aberrational when compared to the domestic prices submitted for these values. Respondents claim that the Department incorrectly used, as the surrogate value for dolomite, price information for ''calcined'' dolomite, although the dolomite inputs used by respondents are ''uncalcined.'' Furthermore, the value for quicklime, respondents contend, should be the same as the value for limestone because the two products are comparable. They contend that petitioners' argument (see below) is internally inconsistent and should therefore be disregarded.

Liaoning and Wuyang argue that the Department should base the surrogate values for these raw material inputs on data contained in the financial statements of Indian producers. *See Brake Drums and Rotors*, 62 FR at 91631 (Feb. 28, 1997). They state that, following its normal practice, Commerce should derive tax-exclusive surrogate values by deducting from the raw material costs all excise taxes, central sales taxes, and state sales taxes. *See Public Version of the Factor Valuation Memorandum* from *Brake Drums and Rotors*, at 2 (Feb. 21, 1997) (Commerce ''adjusted the domestic average value to exclude the excise and sales tax'' and ''accepted the four-percent sales tax as a conservative estimate of Indian state sales tax and have deducted amounts for sales taxes'' at that rate). They argue a simple average tax-exclusive surrogate value should be calculated for materials for which data exists from more than one company.

In their case brief, petitioners maintain that the import values used in the preliminary determination are accurate surrogate values for limestone and dolomite sourced domestically by some of the respondents, because certain other Chinese steel producers imported limestone and dolomite for use in the production process. Petitioners agree with respondents that it is the responsibility of the Department to find surrogate values which reasonably reflect the economic conditions faced by Chinese producers of cut-to-length carbon steel plate. *See Oscillating Fans*, 56 FR at 55271, 55275. Therefore, petitioners contend that it is reasonable for the Department to use surrogate import raw material input sources when Chinese producers also import the same.

However, in their rebuttal brief, petitioners urge the Department to use adverse facts available in valuing limestone, claiming that respondents failed to provide complete and truthful answers to the Department's questionnaires with regard to the source of supply for these inputs. Should the Department agree to apply adverse facts available, petitioners suggest that it rely on the data of an Indian producer of subject merchandise, SAIL, because this data constitutes both the highest value on the record, as well as the most reliable and appropriate surrogate value under the Department's precedent.

Petitioners urge the Department to value dolomite with the same value that it assigned to limestone. Petitioners argue that respondents' claim that the proper surrogate value for dolomite is for ''uncalcined'' dolomite is without merit, because there is no evidence provided by the respondents or otherwise that their dolomite inputs are uncalcined. In addition, petitioners refute respondents' claim that dolomite and limestone should be valued as ''crushed stones'' (Respondents PAI Memorandum, August 5, 1997). According to petitioners, evidence on the record shows that crushed stones are not pure enough for use in metallurgy.

For quicklime, petitioners argue that the Department should separately value limestone and quicklime, as was done in the preliminary investigation . However, they maintain that should the Department decide to value the two products with the same surrogate value, the Department should use SAIL's value for limestone and quicklime.

Department's Position: We agree with the petitioners in part. The surrogate value for limestone in the preliminary determination was based on the Indian import price. We find that this value is the most representative of the prices for limestone during the POI because the domestic prices submitted by respondents appear to be significantly lower than both the *Monthly Statistics* and data from Indian steel producers that was submitted by petitioners. In addition, because we are unfamiliar with *India 1995: A Reference Annual*, we hesitate to give it greater weight as a source for limestone value than we give to the *Monthly Statistics*, which we have frequently used for valuation purposes and have no reason to believe is not reliable with respect to this input. We also agree with petitioners that some companies import limestone and that this provides support for the use of appropriate import data to value limestone. For the final determination, we are relying on the same surrogate value used in the preliminary determination. We reject petitioners' argument that we should apply adverse facts available for limestone based on what petitioners believe to be uncooperative behavior on the part of one company, because there is no evidence on the record to support their assertion that one company did not act to the best of its ability to provide certain information concerning limestone to the Department.

We agree with respondents that limestone and quicklime are comparable products, based on our review of the *Monthly Statistics*. However, we have decided that the difference between them is too significant to value quicklime based on the surrogate for limestone. We therefore agree with

petitioners that we should value the two products based on their individual values as reported in *Monthly Statistics.*

With respect to dolomite, we agree that limestone and dolomite, though separate products, are of comparable value. We have determined that the *Monthly Statistics* upon which we relied in the preliminary determination are obviously aberrational because the value from the source which we used in the preliminary determination (a value for ''calcinated'' dolomite) is approximately ten times the value of limestone. In contrast, based on our examination of Indian steel producers' data, we find that the value of the dolomite they use (which is not identified as either ''calcinated'' or nor ''calcinated'') is generally significantly lower than that of the limestone they use. Therefore, for the final determination, we determined that the value for ''agglomerated'' dolomite in the Indian *Monthly Statistics* is comparable to that for limestone in the same source. Therefore, we are using the *Monthly Statistics* value for ''agglomerated'' dolomite to value dolomite in the final determination.

Comment 16: Basket Categories—Coal and Iron Ore

Anshan, Baoshan, Shanghai Pudong and WISCO contend that the Department's decision to use a single surrogate value for all coal and iron ore inputs in the preliminary determination was faulty and suggest that the Department instead assign different values for each kind of coal and iron ore input used in the production process.

For coal, they argue that the Department's practice has traditionally been to base its surrogate values on the prices in the surrogate country for materials which most closely reflect the specific grade and chemical composition of the type of input used by the NME producer. See *Certain Helical Spring Lock Washers from the People's Republic of China,* 61 FR 41994, 41996–97 (August 13, 1996) (''*Helical Spring Lock Washers*''), and *Heavy Forged Hand Tools from the People's Republic of China,* 62 FR 11813, 11815 (March 13, 1997). Therefore, they contend that the Department should separately value the different kinds of coal used in the production process. Respondents also contend that coal should be valued and based on Indian, not Indonesian, values.

For iron ore, Anshan, Baoshan, Shanghai Pudong and WISCO assert that the Department should value different forms of this input based on the market prices paid for such ores. These market economy purchase prices and quantities, they maintain, were verified by the Department. Similarly, they urge the Department to calculate freight rates for the delivery of iron ore purchased from market economy suppliers using the actual rates paid by the Chinese respondents for such shipments during the POI. For domestically purchased iron ore, Anshan, Baoshan, Shanghai Pudong and WISCO suggest that the Department value all iron ore using one Indian domestic price from *India 1995: A Reference Manual.* They also maintain that, in valuing freight for domestic iron ore purchases, the Department should average the distances from each company's iron ore suppliers and apply surrogate freight rates to this average distance.

Petitioners maintain that it was appropriate to assign a single surrogate value for all coal used, because respondents reported various kinds of coal in a confusing manner. In addition, they assert that the value used in the preliminary determination is accurate and reasonable. Petitioners contend, however, that should the Department decide to value different kinds of coal separately, it should rely on surrogate values obtained from annual reports of certain Indian producers of subject merchandise.

With respect to iron ore, petitioners assert that domestically purchased iron ore could not be significantly cheaper than other forms purchased from market economy suppliers due to the fact that the imported iron ore is in the form of concentrate, which requires further processing before it can be used. As a result, they urge the Department to maintain the methodology it used in the preliminary determination.

Department's Position: COAL: We agree with respondents that the Department should value coal based on the surrogate country values for types of coal which most closely reflect the specific grades and chemical composition of coal types used by the Chinese producers. We have valued coking coal and other coal separately, relying on Indian *Monthly Statistics* to formulate appropriate surrogate values. We did not value thermal coal separately because the information submitted by respondents comes from countries not normally used as surrogates and we were unable to independently find values for this type of coal. For all coal other than coking coal, we based our surrogate value on the classifications ''other,'' ''anthracite'' and ''steam coal,'' which we averaged. We used Indian *Monthly Statistics* because we determined that the data were more appropriate and more specific than the data from the Indian steel producers.

Iron Ore: With respect to iron ore, we note that it has been the Department's position in the past that when a significant portion of an input used by a given producer is purchased from market economy suppliers, the Department relies entirely on the market economy purchase prices in valuing that input for that producer. Our methodology in the preliminary determination was to aggregate all iron ore whether sourced domestically or from market economy suppliers into a single basket which we valued at international prices from market economy suppliers. However, for the final determination, we have, to the extent possible, treated different types of iron ore as separate factors of production (*i.e.,* we have valued different types of iron ore as separate inputs). When a producer has purchased any type of iron ore from one or more market economy suppliers, we have relied to the fullest extent possible on the market economy purchase prices which were verified by the Department. When a given producer sourced a particular type of iron ore only locally, or imported only an insignificant percentage of that type of iron ore, we valued that type of iron ore for that producer based on Indian *Monthly Statistics.*

Freight For Coal and Iron Ore: Where we relied on the market economy purchase prices to value the input, we also relied, for freight cost from the market economy suppliers to the Chinese port, on the market economy freight rates which the Department verified. For Chinese inland freight on market economy purchased imports and for domestically sourced inputs, we relied on the Chinese domestic freight factors, valued using Indian surrogate data. We have not based domestic freight costs on an average of the distance between all suppliers and the relevant producers because a supplier-by-supplier calculation provides a more accurate estimate of the costs of a producer that sources different amounts of an input from multiple suppliers in different locations. *See* Comment 12 regarding the Department's current freight methodology.

Comment 17: Valuation of Steel Scrap and Pig Iron

Anshan, Baoshan, Shanghai Pudong, and WISCO argue that the Department should value steel scrap and pig iron based on domestic price information from India from the *Economic Times* because the prices reported in the *Economic Times* represents prevailing prices in the Indian market which are preferable to import prices in the

Department's hierarchy of surrogate value sources, and the prices reported in the *Economic Times* are contemporaneous with the POI.

Liaoning and Wuyang argue that the Department should base the surrogate values for steel scrap and pig iron inputs on data contained in the financial statements of Indian producers, citing *Brake Drums and Rotors,* 62 FR at 9163. They state that, following its normal practice, Commerce should derive tax-exclusive surrogate values by deducting from the raw material costs all excise taxes, central sales taxes, and state sales taxes. *See Factor Valuation Memorandum from Brake Drums and Rotors,* at 2 (Feb. 21, 1997), which Liaoning and Wuyang have placed on the record of this investigation (Commerce ''adjusted the domestic average value to exclude the excise and sales tax'' and ''accepted the four-percent sales tax as a conservative estimate of Indian state sales tax and have deducted amounts for sales taxes'' at that rate). Liaoning and Wuyang argue that a simple average tax-exclusive surrogate value should be calculated for materials for which data exists from more than one company. *See Factor Valuation Memorandum from Brake Drums and Rotors,* at 4.

Petitioners contend that the Department should value steel scrap and pig iron based on *U.N. Trade Commodity Statistics,* or else continue to use the value used in the preliminary determination, which is based on Indonesian import data. They maintain that values that the four respondents submitted from the *Economic Times* represent a snapshot of prices that do not represent prevailing prices throughout the entire period of investigation.

Department's Position: For steel scrap, we are using contemporaneous import data from Indian *Monthly Statistics.* For pig iron, we were unable to use the Indian *Monthly Statistics* as we determined that the import price was aberrational because the Indian data was based on a very small quantity and was almost two times the price of the Indonesian pig iron. Consequently, we are continuing to use prices from Indonesian import statistics that we used in the preliminary determination. We did not use the data submitted by either petitioners or respondents for either pig iron and steel scrap because we found that these values were aberrational compared to the Indonesian import statistics. We did not use the values from the *Economic Times* because we determine that the information in the *Economic Times* submitted by respondents and in the *U.N. Trade Commodity Statistics* submitted by petitioners was aberrational. More detail on this issue may be found in the business proprietary version of the *Concurrence Memorandum.*

Comment 18: Valuation of Iron Scrap, Fluorite/Fluorspar, Coke, Aluminum, Magnesium Ore, Ferrosilicon, Ferromanganese and Magnesium Ore

Anshan, Baoshan, Shanghai Pudong and WISCO argue that the Department should value iron scrap, fluorite/fluorspar, coke, aluminum, magnesium ore, ferrosilicon, ferromanganese, and magnesium ore based on Indian *Monthly Statistics* that correspond to the investigation period. In the preliminary determination, the Department valued some of these inputs based on import statistics which pre-dated the period of investigation. These respondents argue that petitioners' suggestion that the Department value some of these inputs based on data from *1994 U.N. Trade Commodity Trade Statistics* should be ignored, respondents argue because it is not contemporaneous and less specific to the inputs in question.

Liaoning and Wuyang argue that the Department should base the surrogate values for these inputs on data contained in the financial statements of Indian steel producers. *See Brake Drums and Rotors,* 62 FR at 9163. They state that, following its normal practice, Commerce should derive tax-exclusive surrogate values by deducting from the raw material costs all excise taxes, central sales taxes, and state sales taxes, citing to *Factor Valuation Memorandum from Brake Drums and Rotors,* at 2 (Feb. 21, 1997) which they have added to the record of this case. They argue a simple average tax-exclusive surrogate value should be calculated for materials for which data exists from more than one company. *See Factor Valuation Memorandum from Brake Drums and Rotors,* at 4.

Petitioners urge the Department to either value these inputs based on the *1994 U.N. Commodity Trade Statistics,* and argue that these statistics, although less contemporaneous, are more reliable.

Department's Position: We agree with the four respondents. To the extent possible, we have relied on contemporaneous data, as the Department normally prefers to use prices that are representative of prices in effect during the POI. For iron scrap, we used the same Indian *Monthly Statistics* value as we did in the preliminary determination because this is the most contemporaneous value on the record. For ferrosilicon, flourite/fluorspar, ferromanganese, magnesium ore, aluminum, and coke, we have adopted the values from the Indian *Monthly Statistics* for April through July of 1996, as submitted by the respondents as these values are more contemporaneous with the POI than the similar values used in the preliminary determination. We have rejected Liaoning and Wuyang's argument that we should value these factors based on Indian domestic data because we have found appropriate surrogate values that represent a larger sample of prices from Indian *Monthly Statistics.*

Comment 19: Scale and Slag

Anshan, Baoshan, Shanghai Pudong and WISCO argue that the Department appropriately valued slag at the low U.S. market price of $6.91 per metric ton and that the Department should continue to value slag in the same manner for the final determination. Anshan, Baoshan, Shanghai Pudong and WISCO additionally contend, however, that the Indian import price of $483.91 per metric ton for scale is aberrational high and that the Department should apply the same surrogate value for scale as it applies to slag. Furthermore, these respondents argue that, because both slag and scale are self-generated by-products of the steelmaking process, the Department should not apply any freight expense to the surrogate prices for slag and scale in the final determination.

Petitioners agree that slag is essentially a mineral waste and has a relative low value. Scale, on the other hand, they argue, is processed steel, consisting of cuttings from actual steel slabs. Scale, reason petitioners, thus has a far greater value as an input in steelmaking than does slag. Petitioners continue that there is nothing on the record to substantiate respondents' claim that the Indian price for scale is ''aberrational.'' Petitioners conclude that the Indian price the Department adopted in the preliminary determination is reliable and should be used for the final determination.

Department's Position: We agree with respondents in part. Scale is of little value in the steelmaking process. Because slag and scale are very similar, the Department used the same value for scale and slag ($6.91 per metric ton) in its final determination. Furthermore, we agree with respondent that a freight expense should not be added to the surrogate prices for slag and scale when no freight is incurred in China on these inputs, because they are self-generated.

Comment 20: Stones

Anshan, Baoshan, Shanghai Pudong and WISCO argue that, to the extent that surrogate values for some types of ''stones'' have already been submitted on the record (*e.g.*, manganese, quicklime, limestone and dolomite), the Department should use that information for surrogate values for these inputs. To value types of stones for which no specific surrogate value has been provided to the Department (*e.g.*, serpentine, calcium carbon trioxide ($CaCO_3$), silicon sand/silicon dioxide), the Department should use the surrogate value for ''stone, sand and gravel'' proposed by the petitioners in their August 5, 1997 submission at Exhibit A—that is, $25.21 per metric ton.

Petitioners state that, with respect to silicon, the Department has already found an appropriate surrogate value. Petitioners contend that respondents have conceded that the category ''stones'' contains unreported ''silicon sand'' and silicon dioxide in unknown quantities. Therefore, petitioners state that the Department should use the value for silicon as facts available in valuing ''stones'' for which no specific surrogate value has been provided. In addition, regarding calcium carbonate (CaC_2) rocks, petitioners argue that the Department should recalculate consumption for each company.

Department's Position: We agree with respondents that the Department should use appropriate and specific surrogate values for all types of ''stones.'' For the final determination, for Baoshan, Liaoning, Shanghai Pudong and WISCO, we have obtained appropriate separate values for all types of stones which were separately reported. For Anshan, we have obtained a value from the *U.N. Trade Commodity Statistics* for ''stones, sand and gravel'' and are valuing stones for which we do not have a surrogate value using this data. We disagree with petitioners' assertion that we should use silicon as facts available for silicon sand. Based on our understanding of the steel industry, silicon sand is more comparable to generic sand than it is to silicon, which is a comparatively expensive commodity.

Comment 21: Silicon Manganese

Respondents note that, in the preliminary determination, the Department valued silicon manganese at $578.68 per metric ton, based on information contained in the 1995–96 annual report of SAIL. Respondents argue that, if the Department continues to use this source in the final determination, the value should be adjusted not only for inflation, but also to remove Indian taxes reflected in the reported number.

Petitioners counter that nothing in the record supports respondents' claim that taxes are included in the surrogate value used by the Department for silicon manganese (based on SAIL data). Even if taxes were included, furthermore, there is no record information that would allow for a determination of the amount of taxes paid. Accordingly, petitioners contend that the SAIL data must be used as reported.

Department's Position: Although we consider the value for silicon manganese we used in the preliminary determination appropriate for use in our final determination calculations, we have located a more contemporaneous Indian *Monthly Statistic* for the period April 1996 through July 1996 which we believe to be more accurate and representative of a larger sample of the commodity. For the final determination, we are relying on this import price to value silicon manganese.

Comment 22: Electricity

Anshan, Baoshan, Shanghai Pudong and WISCO contend that, in the preliminary determination, the Department valued electricity at $0.06 per kilowatt hour, based on data reported in the July 1995 publication *Current Energy Scene in India,* published by the Center for Monitoring Indian Economy. These respondents contend that the Department should continue to use this value in the final determination.

Petitioners state that respondents' suggested rate for electricity reflects the simple average of the Indian state electricity rates for the ''large industry'' category as of January 1, 1995, adjusted to the POI. *See* Shanghai Pudong Factor Valuation Memorandum, June 3, 1997, at 4–5. Petitioners maintain that, in its final determination, the Department should use the electricity rates reported by Indian flat-rolled steel producers in their annual reports for the fiscal year ending March 1996. These reported rates are preferable, argue petitioners, because they are more contemporaneous with the POI and are specific to large steel manufacturers. *See Polyvinyl Alcohol from the People's Republic of China,* 61 FR 14057 at 14061 (March 29, 1996) (Final Determination). Petitioners calculate the weighted average electricity rate for Pennar Steels Ltd., Nippon Denro Ispat Ltd., Visvesveraya Iron & Steel Ltd., SAIL, and Tata Steel Ltd., at $0.0648 per kilowatt hour.

Department's Position: We agree with respondents. We consider the rate for electricity we used in the preliminary determination appropriate for use in our final determination calculations as it is publicly available and nothing on the record suggests that this value is aberrational.

Comment 23: Scope Issue

Petitioners argue that the scope should be clarified to state that it covers plate 4.75 mm in thickness or more, in nominal or actual thickness. They state that, due to thickness tolerances in the various common plate specifications, foreign producers may sell plate as 3⁄16 inch (4.75 mm) plate at thickness less than 3⁄16 inch and remain within the specification.

Petitioners allege that there is a significant U.S. market for 3⁄16-inch (4.75 mm) plate. They also argue that they always intended that the scope of the investigation would cover product of 4.75 mm in actual or nominal thickness because any plate within the tolerance for 4.75 mm nominal thickness plate will compete directly with any other plate within the tolerance. The customer knows that all plates within the tolerance meet the performance standards of the specification.

Petitioners argue that actual and nominal thickness products are produced on the same equipment, marketed in the same way to the same customers and generally priced identically. They allege that failure to include plate with a nominal thickness of at least 4.75 mm but an actual thickness of less than 4.75 mm would seriously undermine the scope of the investigation by allowing products that are considered identical in the market to be treated differently under the scope.

Anshan, Baoshan, Shanghai Pudong and WISCO point out that petitioners' request to change the scope was submitted more than five months after the filing of the petition. They argue that petitioners' proposal to change the scope so late in the proceeding is contrary to the requirements of the law. Respondents note that the statute does not permit the Department to amend the scope of the petition so late in this investigation.

Department's Position: We disagree with petitioners and have decided not to change the scope of products under investigation. For a more complete discussion of this issue, *See* Memorandum on Scope of Investigations on Carbon Steel Plate from Joseph Spetrini to Robert S. LaRussa.

Comment 24: Alloy/Non-Alloy Steel Issue

Petitioners allege that foreign producers are beginning to slightly vary

the alloy content of their carbon plate in order to technically remove the product from the non-alloy steel tariff subcategories in the Harmonized Tariff Schedule of the United States (''HTSUS'') and place the products within the ''other alloy steel'' HTSUS subcategories without changing the specification, grade, physical characteristics or applications of the CTLP. Petitioners contend that such low-alloy plates should be covered by the scope.

Petitioners argue that products classified as alloy steel under the HTS, but ordered and produced to ''carbon'' steel specifications, should be included within the scope of the investigation. They argue that the alloys being added to these products are not changing the performance characteristics of plate, and the alloy-added carbon products and other carbon products are the functional equivalents of one another. Petitioners further contend that the products are produced by the same manufacturers on the same equipment, are sold to the same customers for the same uses, and have nearly identical costs.

Petitioners assert that where the added alloy does not change the performance characteristics of the plate or affect the product's classification within the industry specification, the product should remain within the scope of the investigation. They argue that the addition of alloys that do not change the performance characteristics or specifications of the product will not change the purchasers' perception of the value, function or use of the product. Petitioners conclude by stating that the failure to include such completely substitutable products within the scope would undermine the efficacy of any order.

Anshan, Baoshan, Shanghai Pudong and WISCO again argue that petitioners' request to change the scope was untimely submitted and should be rejected by the Department, as it is contrary to the requirements of the law. Moreover, respondents contend that Department and classification practice demonstrate that carbon steel does not include products with alloying agents such as boron. Finally, respondents assert that the statute does not permit the Department to amend the scope of the petition proposed in the manner proposed by petitioners so late in this investigation.

Department's Position: We disagree with petitioners and have decided not to change the scope of products under investigation. For a more complete discussion of this issue, *See* Memorandum on Scope of Investigations on Carbon Steel Plate from Joseph Spetrini to Robert S. LaRussa.

Comment 25: River Freight

Anshan, Baoshan, Shanghai Pudong and WISCO argue that, in the final determination, the Department should not value river freight costs for purchases of materials (and for the shipments of finished products by the Chinese producers) using the surrogate value relied upon for the preliminary determination, which was based on a 1993 embassy cable regarding river barge rates in India originally submitted for *Helical Spring Lock Washers,* 61 FR at 41994. In particular, Anshan, Baoshan, Shanghai Pudong and WISCO argue that this source should not be used in the final determination because (1) the rates do not in any way reflect the costs of shipping raw materials and merchandise on the Yangtze River on which their steel mill and export facilities are located, and (2) the rates do not even accurately reflect the costs of river shipping in India.

Respondents argue that the Department must, to the extent possible, select surrogate values for river rates which accurately and fairly reflect the costs of the shipping raw materials and steel products on the Yangtze River. Respondents maintain that the use of Indian river barge rates to establish surrogate values for Chinese shipments of raw materials and final steel products on the Yangtze River is inappropriate because there are no rivers in India that are comparable to the Yangtze River and river shipping rates are heavily dependent on the types of rivers used for shipping and the types of products being shipped.

As an alternative to the Indian barge rates in the 1993 cable, respondents urge that the Department use published Mississippi River shipping rates as surrogate values for the cost of shipping on the Yangtze River because, they claim, the Mississippi River is a ''working river'' that is comparable in size to the Yangtze River.

If the Department continues to use Indian shipping rates to value shipping on the Yangtze river, respondents recommend that the Department use current, actual shipping rates rather than the 1993 quotation used in the preliminary determination. Respondents argue that the 1996–97 rates collected and reported by the Ministry of Surface Transport of the Government of India, which they have submitted, are preferable because they are less aberrational, more contemporaneous, and based on a broader range or merchandise than the rates used in the preliminary determination, which do not identify the product for which these rates were quoted.

Petitioners argue that the data on river freight supplied by the respondents are unreliable; therefore, they urge, the Department should continue to use the same values as in the preliminary determination. Petitioners argue that respondents' claim that Indian rivers are generally not accessible to large vessels is baseless, stating that CIA reports indicate that a large percentage of inland waterways in India are navigable.

Petitioners object to the use of U.S. freight rates as surrogate values, arguing that the Department must calculate normal value based on, ''to the extent possible, the prices or costs of factors of production in one or more market economy countries that are * * * at a level of economic development comparable to that of the nonmarket economy country * * *.'' 19 U.S.C. 1677b(c)(4). Petitioners contend that United States is not an appropriate surrogate country because it is at a different level of economic development than the People's Republic of China and not one of the five countries identified by the Department as potentially suitable surrogates. *See* Memorandum to E. Yang from D. Mueller, January 29, 1997 (''DOC Surrogate Selection Memo'').

Further, petitioners assert that the information on Indian river freight rates supplied by respondents is questionable with respect to its meaning, origin and reliability. Petitioners argue that respondents have not provided any credible evidence that the rates used by the Department in the preliminary determination are ''aberrational.''

Department's Position: We agree with both respondents and petitioners in part. For the final determination, we have decided to base the river rates freight on a simple average of the rates used in the preliminary determination and information submitted by respondents. We note that the river rates we used in the preliminary determination were significantly higher than rates for other forms of transportation. For example, to ship merchandise 1100 km. by river using the rates used in the preliminary determination would cost $68 per ton, whereas to ship the same distance by train would only cost approximately $15 per ton. We note that a respondent would usually use, in the normal course of business, the most cost effective and efficient mode of transportation. However, respondents did not ship by train. It is our own practice to value the factors of production actually used by respondents. Consequently, we have concluded that to only use the surrogate

value we used in the preliminary results would be inappropriate.

Respondents also submitted river rates from the Inland Waterways Authority of India, which is part of the Ministry of Surface Transportation of the Government of India. We disagree with petitioners' argument that the Department should reject this information because respondents used a consultant in obtaining this information. While it is true that a consultant was involved in obtaining this information, the fact remains that the source of the data is the Indian Government. In addition, we can find no evidence to support the conclusion that the river rates presented in that document are unreliable or distortive. The rates represent a wide variety of rivers, products and distances in India, including river rates to and from Calcutta, which is a major port. At the same time, we hesitate to use only the river rate information obtained by respondents for the final determination. As no evidence on the record indicates what instructions were given to the consultant or what questions the consultant asked the Indian Waterways Authority to obtain the data.

We also disagree with respondents' contention that we should use rates from the Mississippi River for the final determination. First, the United States is not one of the selected surrogate countries that the Department normally uses. The Department also searched for alternative sources of information from other surrogate countries. In particular, we attempted to obtain river rate information from Egypt (the Nile river) and Pakistan (the Indus river). However, we were unable to obtain publicly available information for river rates from these countries. Second, all rivers are to some degree unique, and the Department's ability to address the quantity and the types of differences noted by respondents is limited. Thus, it is not our practice to find a surrogate value for freight over a particular route, but rather to ascertain a reasonable value for river freight.

Comment 26: Ocean Freight Rates

Respondents argue that the Department should apply product- and port-specific ocean freight rates. Respondents maintain that, in the preliminary determination, the Department improperly applied the ocean freight rates for shipping steel plate to other types of products, which would necessarily have different shipping rates. Respondents urge that the Department should value raw materials purchased from market-economy suppliers using sale-specific shipping cost information from market economy ocean freight providers. Respondents recommend that product- and port-specific ocean-shipping rates published in Shipping Intelligence Weekly be used to value ocean freight shipments in the final determination.

Petitioners argue that the Department should continue using the ocean freight rates from U.S. import statistic reports (IM–145 reports) used in the preliminary determination. Petitioners assert that the Department should not value raw materials purchased from market-economy suppliers using sale-specific shipping cost information from market economy shippers unless there is sufficient evidence that the specific respondent purchased the input from a market economy supplier in market economy currency. Further, petitioners argue that the surrogate values based on shipping rates reported from Shipping Intelligence Weekly submitted by respondents are inadequate for several reasons. First, petitioners note that rates reported from the Shipping Intelligence Weekly are not actual freight rates paid by customers, but instead are described as ''average earnings.'' Second, petitioners contend that respondents chose rates for the most efficient type of vessel for their surrogate value. Third, petitioners note that information from Shipping Intelligence Weekly was not accompanied by the certification of accuracy as required by 19 CFR § 353.31(i). Petitioners urge the Department to continue using import data in the preliminary determination, since the import data is representative of a large sample of shipments and relate specifically to the chosen surrogate country.

Department's Position: We agree with petitioners that rates reported from Shipping Intelligence Weekly are not actual freight rates paid by customers, but instead are described as ''average earnings.'' Second, we agree that respondents appear to have provided rate data for the most efficient type of vessel, rather than the actual freight rates paid by customers. Consequently, we find that the value reported in the Shipping Intelligence Weekly are not appropriate for use as surrogate values for ocean freight. For the final determination, therefore, we have continued to use the IM–145 ocean rates used in the preliminary determination.

Comment 27: Brokerage and Handling

Anshan, Baoshan, Shanghai Pudong and WISCO argue that the surrogate value for brokerage and handling charges used in the preliminary determination is aberrational. This value was based on ranged, public information from 1991–92 that was originally submitted in the Department's investigation of *Sulphur Vat Dyes from India,* 38 FR at 11835, 11841. These respondents recommend that the Department use, instead, as a surrogate value for brokerage and handling, prices they have submitted which are reported by Amrok Shipping Private Ltd. , a shipper from India.

Liaoning and Wuyang argue that the Department should use a brokerage and handling value contained in the public version of the response of Isibars Limited in the antidumping review of *Stainless Steel Wire Rod from India,* which they have added to the record of this case to value foreign brokerage. They maintain that the value for brokerage and handling used in the preliminary determination is inappropriate because that value is for a product unrelated to the subject merchandise of this investigation. Liaoning and Wuyang contend that the brokerage and handling value from 1995–96 *Stainless Steel Wire Rod from India* is preferable because it is specific to steel, more contemporaneous, and more reliable, since it has been verified by the Department.

Petitioners argue that the Department should continue to use the surrogate value for brokerage and handling used in the preliminary determination. Petitioners find it significant that this surrogate value for foreign brokerage and handling was used by the Department in two other final investigations. Petitioners argue that information provided by the four respondents is an anecdotal and selective commentary by a private shipping company that may have been paid to act as a consultant by the respondents. Petitioners urge that the Department reject the information provided by the four respondents on the basis that it is likely to be biased and unreliable.

Department's Position: We agree with Liaoning and Wuyang. In the preliminary determination, we used brokerage and handling rates as reported in ranged, public information from 1991–92 that was originally submitted in the Department's investigation of *Sulphur Vat Dyes.* We are unfamiliar with the Amrok Shipping brokerage and handling information submitted by Anshan, Baoshan, Shanghai Pudong and WISCO and do not know what questions the four respondents asked to obtain the brokerage and handling rates. The brokerage and handling rates submitted constitute an individual's estimate and were not specific concerning certain charges. In addition, we have no background information on the period

of time applicable to the brokerage and handling values submitted by these respondents. Since the brokerage and handling rates in used in the *Stainless Steel Wire Rod* are more contemporaneous than the information used in the preliminary determination, specific to steel and verified by the Department, we have used those rates for the final determination.

Comment 28: Rejection of Untimely Factual Information

The four respondents argue that the Department should not reject factual information submitted within the deadlines established by its regulations. Thus, respondents urge the Department to reconsider and reverse its earlier decision to reject submissions from Anshan, Baoshan and WISCO. Respondents maintain that the information at issue was submitted within the deadlines pursuant to the Department's regulations, which allow for the submission of factual information in an antidumping investigation up to one week prior to the start of verification, in accordance with 19 CFR § 353.31(a). Respondents maintain that the Department, in rejecting certain portions of the respondents' submission, misapplied the provision of 19 CFR § 353.31(b)(2), which states that, '' in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination.'' Citing to the preamble of the relevant regulations, respondents argue that this provision applies only to questionnaire responses received from voluntary respondents and not to those from mandatory respondents. *See* Antidumping Duties, 54 FR at 12742, 12759–60 (Mar. 28, 1989) (final rule).

Further, respondents maintain that, in accordance with the provisions of its regulations, the Department has in the past allowed respondents to supplement their previous questionnaire responses prior to verification. *See Certain Iron Construction Casting from the People's Republic of China,* 50 FR at 43594 (Oct. 28, 1985); *Polyvinyl Alcohol from the People's Republic of China,* 60 FR at 32757 (June 17, 1997); *Collated Roofing Nails from the People's Republic of China,* 62 FR at 25895 (May 12, 1997) (preliminary determination). Moreover, respondents argue that the Department had sufficient time to analyze and verify the additional information submitted, and that the rejection of this information would unfairly penalize respondents for providing information that they claim the Department had not requested be provided in a questionnaire with an earlier due date.

For Anshan, the rejected information consisted of freight information for certain inputs. Anshan argues that this freight information should be accepted because Commerce had not requested this information in its supplemental questionnaires and thus this information was not untimely provided.

For Baoshan Steel, the Department had requested information on distances from suppliers for all inputs in its supplemental questionnaire, and Baoshan Steel neglected to include information on the distance for one category of inputs. Baoshan Steel submitted the omitted information one week prior to the start of verification.

For WISCO, the information rejected by the Department consisted of the factors of production for producing oxygen and similar gases. Respondents argue that the Department, in the supplemental questionnaire, gave WISCO the option of either providing these factors of production or explaining why these factors of production should not be used. Respondents allege that, due to an inadvertent error, the factor information they intended to provide was omitted from the supplemental questionnaire. Respondents submitted this information one week prior to verification.

Petitioners argue that respondents' challenge to the Department's decision to reject their untimely submission of information requested in the Department's questionnaires is both misleading and without merit. Petitioners refer to 19 CFR § 353.32(b), which provides that, in the Secretary's written request to an interested party for a response to a questionnaire, the Secretary will specify the time limit for response. 'The Secretary will return to the submitter, with written reasons for return of the document, any untimely or unsolicited questionnaire responses rejected by the Department.'' 19 CFR § 353.31(b)(2). Petitioners maintain that the respondents' submissions were properly rejected by the Department in accordance with section 353.31(b)(2) because (1) the information that respondents claim was improperly rejected by the Department consists of information provided in response to supplemental questionnaires and (2) the information was submitted after the deadline for questionnaire responses. Petitioners add that, although the Department has allowed respondents to supplement their previous questionnaire responses even later than seven days prior to verification in past cases, regulations should still be enforced under the present circumstances. Petitioners also maintain that respondents have not adequately demonstrated that they were not given ample notice and opportunity to file said information in a timely fashion. With respect to Anshan, petitioners argue that Anshan's freight information was not submitted within the deadlines established by the Department's regulations. With respect to Baoshan, petitioners argue that the rejected information was requested both in the Department's December 19, 1996 and again in the Department's March 13, 1997 questionnaire. Petitioners argue that Baoshan had ample notice and opportunity to comply with the Department's requests and that, as noted in the Department's letter of June 16, 1997, there is no reason to believe that this information was 'inadvertently omitted.'' *See* letter from Edward C. Yang to Shearman & Sterling, June 16, 1997. With respect to WISCO, petitioners argue that the Department correctly rejected WISCO's submission of factors of production for oxygen and similar gases, because respondents failed to provide this information, which was requested by the Department in its questionnaire of March 12, 1997, in its April 14, 1997 supplemental questionnaire response. Petitioners argue that, in response to the Department's supplemental questionnaire, WISCO neither provided factors of production for oxygen and similar gases nor explained why it was inappropriate to revise its calculations to account for the production of oxygen and similar gases.

Department's Position: We agree with Anshan, but not with Baoshan and WISCO. For Anshan, we have reconsidered our prior decision to reject information on freight distances for certain inputs. Because, in its March 12, 1997 supplemental questionnaire, the Department did not specifically request that Anshan provide information concerning the means of transportation or distances for certain material inputs obtained from domestic sources, this information did not constitute an out-of-time reply to a questionnaire, and because the information was otherwise timely provided, we should reject this information. Therefore, for the final determination, we have accepted Anshan's information on distances between its plant and the sources of certain inputs, and have used this information in calculating freight expenses for those inputs.

With regard to Baoshan, the Department has determined, that it correctly rejected the information submitted by Baoshan on June 10, 1997 with respect to the shipping distances

for one category of input. Baoshan stated in that submission, which was received one week prior to verification, that they omitted such information in the supplemental questionnaire responses due to an alleged oversight. Because the Department specifically requested this information in its March 12, 1997 supplemental questionnaire to Baoshan, which required a complete response by April 14, 1997, Baoshan had ample notice and opportunity to comply with the Department's requests for this information. Therefore, we did not use the rejected information for the final determination.

For WISCO, the Department has determined that it correctly rejected information on factors of production for oxygen and similar gases. The Department requested this information in a supplemental questionnaire on March 12, 1997. WISCO has stated that it inadvertently omitted the information from its April 14, 1997 response due to a mis-communication and finally submitted the data in its June 10, 1997 submission. Since WISCO had ample notice and opportunity to comply with the Department's requests, we have not used the untimely submitted information on factors of production for oxygen and similar gases for the final determination.

Although the legislative history of the regulation cited by the four respondents indicates that, in ''unusual circumstances,'' the Department may retain and consider ''unsolicited questionnaire responses'' (*i.e.,* initial responses from voluntary respondents), this provision does not revoke the rules of timeliness even for such respondents. Further, respondents' reliance on this passage is inapposite, because they are mandatory, not voluntary, respondents and the data at issue were ''untimely'' provided (based on the time limit specified by Commerce for response to the questionnaire), not ''unsolicited.'' *See* 54 FR at 12759–60, 12781.

Comment 29: General Issues Regarding Selection of Surrogate Values

Anshan, Baoshan, Liaoning and WISCO argue that the Department should revise the methodology used to select surrogate values for material inputs. Respondents argue that, in the preliminary determination, the Department departed from its established ''rules'' for selecting surrogate values, which were developed to ensure ''accuracy, fairness and predictability.'' *Oscillating Fans,* 56 FR at 55271, 55275, cited with approval in *Lasko,* 43 F.3d 1442.

These respondents claim that the Department made certain ''methodological errors'' in selecting the surrogate values used in the preliminary determination, and urge the following principles should guide the Department's selection of surrogate values. First, these respondents maintain that the Department should use surrogate values that conform to the specific materials used in production. Respondents argue that by assigning values from 'basket' categories to certain inputs which they reported at a more specific level, the Department departed from its established practice to base its surrogate values on the prices in the surrogate country for materials which most closely reflect the specific grade and chemical composition of the type of input used by the NME producer, whenever possible. *See Lock Washers,* 61 FR at 41994, 41996–97. Anshan, Baoshan, Shanghai Pudong and WISCO argue that the Department's reasoning for using ''basket'' categories for surrogate values is incorrect. For example, they contend that publicly available published information on domestic prices in India for each of the types of coal used by the Chinese respondents was available and provided in their March 4 and August 5, 1997 submissions, despite the Department's statement in the preliminary determination that the use of these ''basket'' categories was necessary because the Department did not have publicly available published information on the specific prices for specific inputs within the basket categories. *Preliminary Determination,* 62 FR at 31976. In addition, respondents note that each of them provided information on actual prices paid for each type of iron ore purchased from market economy suppliers in both the questionnaire and supplemental questionnaire responses.

Second, the four respondents maintain that the Department departed from its established practice of selecting, where possible, sources which provide domestic, tax-exclusive prices. *See Brake Drums and Rotors,* 62 FR at 9160, 9163. Instead, respondents maintain that the Department used import data to value a number of inputs for which publicly available published information on domestic prices was already on the record. Respondents argue that the Department should use domestic, tax-exclusive prices in preference to import values.

Third, they maintain, when the Department does use import data, it should, in accordance with its established practice, use the available import data that is most contemporaneous with the investigation period. Respondents argue that, in the final determination, when the Department uses import data, it should use Indian import data for the investigation period which have become available since the publication of the preliminary determination and have been submitted for the record of this investigation.

Fourth, they insist that the Department should not use surrogate values that are aberrational. *See Sulfanilic Acid from the Republic of Hungary,* 57 FR at 48203, 48206 (Oct. 22, 1992). These respondents contend that a number of surrogate values used in the preliminary determination were aberrational, resulting in the distortion of the results of the Department's preliminary calculations. They urge the Department to carefully review the surrogate values used in the final determination to avoid similar distortions. In addition, respondents advise that where the values obtained from the primary surrogate are aberrational or otherwise unreasonable, the Department should use sources other than the designated ''primary'' surrogate for surrogate values. *Heavy Forged Hand Tools from the People's Republic of China,* 60 FR at 49251, 49253 (Sept. 22, 1995).

Fifth, respondents argue that the Department should properly inflate any surrogate values that are not contemporaneous with the investigation period. In order to do so, respondents maintain that the Department should correct certain clerical errors involving both the selection of the appropriate data from the *International Financial Statistics* publication and the decision as to whether to use wholesale price index (WPI) or Consumer Price Index (CPI) inflators for certain surrogate values.

Petitioners argue that the Department properly selected surrogate values for material inputs in its preliminary investigation in accordance with previous practices and regulations. Petitioners refer to Section 773(c)(1) of the Act, which states that for the purposes of determining normal value in a non-market economy, ''the valuation of the factors of production shall be based on the best available information regarding the values of such factors.'' 19 U.S. C. 1677b(c)(1). Petitioners assert that the statute does not require Commerce to follow any single approach in evaluating data. *Olympia Industrial, Inc.* v. *United States,* Slip Op. 97–44 (Ct. Int'l Trade 1997).

Petitioners state the following with regard to the ''established rules'' governing the Department's approach in selecting surrogate values: the

Department has stated that its objective in selecting surrogate values in a non-market economy investigation is to value the inputs at prices that most closely reflect the type of product used by producers in the country under investigation. *See Helical Spring Lock Washers,* 61 FR at 11813, 11815 (March 13, 1997); the Department's clear preference is to use published information that is most closely concurrent to the specific period of investigation (POI) or period of review (POR). *See Drawer Slides,* 60 FR at 54472, 54476 (October 24, 1995); the Department has a longstanding practice of relying, to the extent possible on publicly available information. *See Sebacic Acid From the People's Republic of China,* 62 FR at 10530, 10534 (March 7, 1997); it is the Department's practice, in selecting the ''best available data,'' to use data from a variety of sources and to use different sources to value different factors. *Sulfanilic Acid from the People's Republic of China,* 61 FR at 53703, 53704 (October 15, 1996).

Petitioners argue that in the preliminary determination, the Department clearly states that it maintained a preference for using publicly available tax-exclusive domestic prices and indicated that the Department evaluated a number of possible sources before choosing the most appropriate and reliable prices.

Petitioners rebut respondents' claim that the Department departed from its practice of using, whenever possible, surrogate values that conform to the specific materials used in production. Petitioners argue that it was appropriate for the Department to create a ''basket'' category and assign a single surrogate value for coal for all respondents, given that labels provided by respondents for forms of coal inputs and their respective uses were confusing and unclear.

Petitioners argue that the Department did not depart from its practice of using domestic, tax-exclusive prices in preference to import values. Petitioners maintain that the Department's stated preference for domestic, tax-exclusive prices is conditioned upon the finding of reliable publicly available information. In the present case, petitioners assert that the Department were unable to locate reliable domestic value at the time of the preliminary determination. Petitioners argue that the Department should use the same sources and values for inputs as it did in the preliminary investigation except where amended by material input suggestions made by petitioners in their August 5, 1997 PAI submission and their briefs.

Petitioners argue that the Department should use available import data most contemporaneous with the investigation period if they are otherwise reliable. *See Helical Spring Lock Washers,* 61 FR at 41994, 41996–7.

Petitioners argue that respondents' claims that certain surrogate values are aberrational are unwarranted.

Petitioners agree with respondents that the Department should properly inflate any surrogate values that are not contemporaneous with the period of investigation. Petitioners recommend that the Department use the wholesale price index (WPI) to derive inflators regardless of whether the associated values were reported in Rupees or U.S. dollars. However, petitioners object to the use of United States producer price index (PPI) for inflating dollar-denominated prices, which was used in the preliminary determination. Petitioners argue that since the inflation adjustments are intended to reflect price trends in the surrogate country and not monetary trends in United States, the Department should use inflation indices for the surrogate country, rather than those for the United States. *See e.g. Circular Welded Non-Alloy Steel Pipe from Romania,* 61 FR at 24274.

Department's Position: Both respondents and petitioners are correct in stating that certain general principles have guided the Department's practice in selecting surrogate values. We agree that surrogate values should be products which are as similar as possible to the input for which a surrogate value is needed. Likewise, we normally prefer a fully reliable domestic, tax-exclusive price to an equally reliable import price. We also prefer data (import and domestic) that are more contemporaneous to the POI/ POR to data that are less contemporaneous, and will normally update a value if more data covering additional months within the POI/POR become available to us between the preliminary and the final determination.

When we must use data that are not contemporaneous to the POI or POR, we agree that it should be indexed forward using an appropriate index. We also agree that the Department should not use values which it has found to be ''aberrational,'' and that when the values obtained for the primary surrogate are aberrational, the Department should seek appropriate values in other economies, preferably in those at a similar level of economic development. We also have a long-standing practice of preferring publicly available information to other types of information.

It is important to emphasize, however, that our overarching mandate is to select the ''best'' available data (see 19 U.S.C. 1677b(c)(1)), which involves weighing all of the relevant characteristics of the data, rather than relying solely on one or two absolute ''rules.'' Thus, for example, the most specific data may not be the most contemporaneous, the most reliable, or from the selected surrogate country. There is no set hierarchy for applying the above-stated principles, nor will parties always agree as to the reliability of certain data or the relevance of certain facts or assertions. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the ''best'' surrogate value is for each input. This we have done, to the best of our ability, in this case.

Concerning petitioners' comments regarding the proper inflation of any surrogate values that are not contemporaneous with the POI, we note that the Department agrees with their assertion that we should use WPI for those Indian values denominated in Rupees. However, we disagree with their objection to the use of PPI for inflating dollar-denominated prices, which was the methodology the Department used in the preliminary determination. We have determined that it is a reasonable methodology to use a U.S. index for those values denominated in U.S. dollars, because price indices in the United States would directly impact those prices denominated in the U.S. dollars.

Comment 30: Ministerial Error—Freight for Purchases of Certain Inputs

Petitioners argue that the Department should change the freight charges for purchases of certain inputs which travel by two modes of transportation for Baoshan, Shanghai Pudong and WISCO. Petitioners allege that, in the preliminary determination, the Department incorrectly weight-averaged the costs associated with the modes of transportation.

Respondents did not comment on this issue.

Department's Position: We agree with petitioners with respect to Baoshan and WISCO. For these companies, we have corrected the error for the final determination. However, we disagree with petitioners concerning Shanghai Pudong as we determine that this error is not applicable to Shanghai Pudong. Because this issue involves business proprietary information, please see Concurrence Memorandum for more information.

Company-Specific Comments

1. Anshan

Comment 31: Valuation of Certain Inputs

Anshan argues that the Department should revise the surrogate values for certain inputs (the identity of which constitutes business proprietary information) to reflect the translation corrections provided to the Department in its June 19, 1997 submission. Anshan asserts that the translation corrections accurately describe the value of the grades of the inputs at issue and that the Department confirmed their accuracy during verification.

Petitioners argue that the Department should not revise surrogate valuations to reflect the translation corrections contained in respondent's June 19, 1997 submission because the translation corrections constitute untimely and unsolicited information, and therefore should be rejected. If the Department accepts Anshan's representations, petitioners recommend that the Department continue to use the same value for the inputs as was used in the preliminary determination and make adjustments as necessary, according to their chemical descriptions. Petitioners refute respondents' claims that the results of verification sufficiently confirmed the accuracy of the translations. In addition, petitioners argue that the record information relating to the inputs (the identity of which constitutes business proprietary information) suggests that chemical content for certain inputs claimed by respondent are not accurate.

Department's Position: We agree with Anshan. We agree that the corrections concerning this input that Anshan submitted to the Department on June 19, 1997 (prior to the beginning of verification) were timely. Therefore, we disagree with petitioners' contention that the information was untimely and should be rejected. As we indicated in our verification report for Anshan, we found at verification that there were translation problems concerning both the exact name of the input and its chemical identity. However, we examined supporting documentation which indicated and confirmed the chemical composition of the input.

Comment 32: Valuation of Ocean Freight for Input(s) Imported From Market Economy Suppliers

Anshan argues that the Department should calculate ocean freight charges for its purchases of a certain input based on the actual shipping costs incurred.

Petitioners disagree, claiming that the documentation provided by Anshan did not demonstrate the payment was made in market economy currency. Accordingly, petitioners urge the Department to reject the freight rates proposed by Anshan.

Department's Position: We agree with Anshan that we should value ocean freight charges incurred in shipping market economy inputs based on the actual shipping costs incurred. This is consistent with the Department's practice of using the actual prices paid for inputs which were purchased from market economy suppliers and paid for in market economy currency. *See* 19 CFR 351.408(1). We also disagree with petitioners' contention that the documentation provided by Anshan did not demonstrate the payment for the input was in market economy currency. We note that Anshan included copies of invoices and bank statements denominated in U.S. dollars in their June 19, 1997 submission.

Comment 33: Factors for Sintering Plant

Petitioners argue that the Department should use facts available for material, energy, and labor factors for the material preparation workshop in Anshan's sintering plant. Petitioners argue that the verification reports state that Anshan failed to report these factors for the material preparation workshop in the general sintering plant. With respect to the labor component, petitioners recommend that the Department should use labor figures from the firing shop and the mineral concentration shop. For the omitted energy component of this workshop, petitioners urge that the Department should use the highest reported energy consumption (in terms of electricity, natural gas, and each other reported energy factor, per metric ton of plate) for any other shop.

Anshan objects to petitioners' claim that it failed to report factors of production for the general sintering plant. Anshan argues that omission of these factors from its response stems from a misunderstanding during verification about the functions of the materials preparation workshop. Anshan explained that market economy input is processed prior to importation, and does not require further processing by the material preparation workshop. Therefore, the inclusion of the factors for the materials preparation department in Anshan's factors of production would result in double-counting.

Department's Position: We agree with Anshan. As the market economy input is processed prior to importation, and does not require further processing by the material preparation workshop, we would be double-counting if we included in our calculation of normal value the factors of production for the material workshop.

Comment 34: Anshan's Reporting Methodology

Petitioners argue that Anshan's margin must be based entirely on facts available because its reporting methodology does not provide an adequate factual basis for a final determination. Petitioners contend that Anshan's questionnaire responses do not contain information with sufficient product-specificity because, they claim, Anshan's reporting methodology both lacks a meaningful product code system and fails to account for cost variations between products of different widths. Petitioners also identify as another anomaly in factor reporting the lack of CONNUM-specific electricity factors. If the Department chooses to accept Anshan's reporting methodology, petitioners request that any final calculations based thereon must take into account the errors, omissions and inconsistencies discovered at verification.

Anshan, citing *Steel Plate from Korea,* 58 FR at 37176, 37190 (July 9, 1993), argues that petitioners' challenge to Anshan's reporting methodology is unsubstantiated and should be disregarded. Anshan argues its records do not allow for the calculation of width-specific factors of production. Anshan contends its reporting methodology does sufficiently identify the source of production for plates of differing widths.

Further, Anshan charges that petitioners have provided no basis for rejecting the verified methodology used by Anshan to identify the source of the slabs for each type of plate. Anshan argues that it provided a detailed description of the methodology, along with supporting documentation which can trace the source of production of slabs and ingots. Anshan argues, further, that which items the Department examines at verification is something to be decided not by petitioners but by the Department. The Department, they note, does not have to examine every single issue at verification, as long as it is satisfied, that, on the whole, the verification indicates that the response was accurate. *See Silicon Metal from Argentina,* 58 FR at 65336, 65340 (Dec. 14, 1993).

Department's Position: We agree with Anshan. During verification, we noted that Anshan's reporting methodology was not based on width-specific data. Since Anshan did not use a width-specific methodology in the normal

course of business, it would be inappropriate to use facts available because they reported data based on their usual system rather than a width-specific system, unless the system normally used is found to be distortive to the margin calculation. The Department has determined that Anshan reported its factor data using a non-distortive methodology that provided information of sufficient product specificity to support a final determination.

Comment 35: Freight Amounts on SAL Invoices

Petitioners argue that freight charges reported for U.S. sales should be the freight costs paid by the customer, rather than the freight costs incurred by Anshan's affiliate, Sincerely Asia Limited (SAL).

Anshan argues that sections 772(a) and (c) of the Tariff Act requires that freight costs incurred by the Anshan's affiliate, rather than the customer, should be deducted from export price.

Department's Position: We disagree with petitioners. Section 772(c)(2)(A) calls for the export price to be reduced by 'the amount, if any, *included in such price* (emphasis added), attributable to * * * expenses * * * incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' Because freight costs paid by the unrelated customer should not be 'included in'' the export price, there is no reason to deduct these from export price.

Comment 36: Labor for Plate Mill, Roughing Mill; Other Sintering Labor and Iron Making

Plate Mill: Petitioners argue that respondent should revise labor factors for plate mill labor to reflect the results of verification.

Anshan agrees that plate mill labor figures should be revised, based on their August 21, 1997 submission, which reflects the number of workers verified by the Department.

Roughing Mill: Petitioners argue that Anshan's labor database for the roughing mill should be rejected because labor figures for that facility could not be verified. Petitioners argue that certain labor for this facility identified by respondents as ''unrelated'' labor should be attributed to subject merchandise. For labor factors for the roughing mill, petitioners urge the Department to use as facts available the highest per-ton labor rate of any other Anshan shop involved in the production of subject merchandise.

Anshan states that roughing mill labor figures should be revised, based on their August 21, 1997 submission, which reflects the number of workers verified by the Department.

Other Sintering Labor: Petitioners argue that the Department should revise other sintering plant labor according to discoveries made at verification, and that the Department should assign sintering plant maintenance to the production of subject merchandise rather than overhead.

Anshan argues that it is not necessary to reclassify any of Anshan's workers. Respondent maintains that Anshan properly identified all of its labor expenses at each relevant production facility, and classified its workers according to the Department's questionnaire instructions; Anshan states, moreover, that the Department verified its reporting methodology.

Iron-Making: Petitioners argue that certain workers that Anshan identified as ''unrelated workers'' in the iron-making plant must be included in labor costs of producing subject merchandise.

Anshan argues that the Department examined its classification of workers at verification and noted the Department found no discrepancy in this regard.

Department's Position: We agree with both respondents and petitioners in part. Anshan provided a detailed description of the functions and job positions for all workers both directly and indirectly involved in the production of subject merchandise. In addition, we verified labor categories at verification.

For the plate mill, we agree with petitioners and Anshan, and have used revised plate mill figures that were based on the results of verification.

For the roughing mill, we found at verification that we were unable to verify the labor calculations submitted in the June 19, 1997 submission, as we could not tie these calculations to supporting summary worksheets examined at verification. Consequently, for the final determination, we have used the highest per-ton labor rate for a mill contained in Anshan's August 21, 1997 submission concerning labor calculations as facts available.

For other sintering labor, we have revised our calculations for the final determination to reflect the results of verification in this category. We disagree with petitioners that we should reclassify sintering plant maintenance to the production of subject merchandise rather than overhead. We examined the labor classifications at verification and found no evidence that Anshan improperly classified sintering plant maintenance workers.

Likewise, for iron-making, we examined Anshan's classification of workers at verification and found no evidence that these workers were improperly classified.

Comment 37: Material Inputs at No. 2 Steelmaking Plant

Petitioners argue that the Department should use facts available for certain ''auxiliary materials'' used at the No. 2 Steelmaking plant that were not reported to the Department, but discovered at verification. Petitioners urge that the Department use the highest consumption rate reported for the material (or similar material) by Anshan or any other respondent at any stage of production.

Anshan disagrees, arguing that the auxiliary materials not included in the reported factors for the No. 2 Steelmaking plant were either refractory materials used in the repair and maintenance of equipment or were used only for the production of non-subject merchandise. Anshan argues that the refractory materials should be considered overhead materials whose costs need not be reported individually because overhead materials are included in the surrogate value for overhead and thus do not require separate factor valuation.

As for other unreported material inputs, Anshan maintains that they were excluded because they were not used in the production of subject merchandise sold by Anshan in the United States during the investigation period.

Department's Position: We agree, in part, with both Anshan and petitioners. We agree with Anshan that some of their ''auxiliary materials'' are properly classified as refractory materials, and thus are part of overhead.

However, for certain other inputs, we agree with petitioners. There is no evidence on the record to confirm the accuracy of Anshan's contention that the five unreported inputs other than refractory materials were used only for the production of non-subject merchandise. We were unable to find supporting documentation either in the verification report, verification exhibits or questionnaire responses to confirm that these inputs were only used for the production of non-subject merchandise. Consequently, since Anshan did not report these factors, we have applied facts available for these certain inputs used in the Number 2 Steelmaking plant for the final determination.

We have information on consumption levels from Anshan concerning only one of the five unreported inputs. Consequently, as facts available, for three unreported inputs for which we have no information concerning

consumption levels for either the exact input or an input was substantially the same, we applied the consumption rate of the non-reported input for which we have information. We determined that a fourth unreported input was substantially the same as a reported input, and used the consumption value for the reported input. To value each of the five inputs, we used the surrogate value from the *Monthly Statistics* either for the input in question or if no such value was available, for a similar input. Because some of the information associated with this issue is business proprietary, please see the Concurrence Memorandum of October 24, 1997.

Comment 38: By-Product Credits

Petitioners maintain that energy used for additional processing in by-product production should be deducted from the by-product credit. Petitioners maintain that if the respondent is receiving a credit for a processed by-product, the energy used for additional processing must be reported so that its value can be deducted from the credit.

Anshan argues that if energy is deducted from the by-product credit, respondent should still receive a credit for its by-product production.

Department's Position: We agree with both petitioners and respondents. Because additional energy costs are incurred in processing the by-product, energy costs should be deducted from the by-product credits. Therefore, we will deduct energy used for additional processing from the by-product credit. *See* Comment 44.

Comment 39: Credit for a By-Product Produced in Coke Plant

Petitioners argue that Anshan should receive no credit for a by-product which was discovered at verification to have been misreported. If the Department grants a credit for the by-product at issue, petitioners urge that the surrogate value for the by-product be based on the correction made at verification. If the by-product undergoes additional processing, petitioners argue that the by-product credit must be reduced by the value of such additional processing.

Anshan objects to petitioners' claim that the Department should deny it a credit for the by-product at issue. Anshan argues that the Department verified the amount of this by-product generated at the coke plant; thus, Anshan is entitled to a credit for its production of this by-product.

Department's Position: We agree with Anshan. We have revised the by-product credit for the input which was correctly reported at verification.

Comment 40: Raw Materials for Sintering Shop

Petitioners argue that the Department should use facts available for certain raw material inputs in the sintering shop because Anshan failed to provide the Department with understandable, usable data with regard to these raw materials. Petitioners note that Anshan misidentified one gas input used by the sintering plant; therefore, petitioners urge that facts available should be used with regard to this gas input.

Anshan argues that although there was some confusion at verification regarding the correct translation of the input names, there is no justification for using facts available. Anshan notes that both petitioners and respondent appear to agree concerning the type of materials in question. Consequently, Anshan argues that these materials are already included in overhead and to include them again as raw materials would result in double counting.

Department's Position: We disagree with petitioners that the Department should use facts available for these raw materials. While it was true that we encountered difficulties at verification concerning the proper translation of these items, we were able to examine supporting documentation concerning the input. Consequently, we disagree with petitioners' assertion that Anshan did not provide understandable, usable data with regard to these raw materials. Because the details of this issue are business proprietary, please see the Concurrence Memorandum for a more complete discussion of this issue.

Comment 41: Moisture Content of a Certain Factor

Petitioners allege that it was inappropriate for Anshan to strip out moisture content of a certain input. Petitioners urge the Department to inflate the value to obtain a weight based equivalent to the weight basis used for the matching surrogate value.

Anshan argues that it would be improper and highly distortive for the Department to inflate the reported factor in the manner proposed by petitioners.

Department's Position: We agree with respondent. As the details underlying this comment are business proprietary, please see the Concurrence Memorandum.

Comment 42: Ministerial Errors

Petitioners argue that the Department should correct certain ministerial errors in its preliminary determination as to Anshan pertaining to ocean freight, transportation surrogate values, and foreign inland freight.

First, with respect to ocean freight, petitioners note that a ministerial error in the SAS program inadvertently truncated a data field used in the calculations of the actual ocean freight rate paid on an invoice-specific basis for a market economy carrier. Petitioners also note that the SAS program failed to deduct freight charges for certain invoices.

Second, with respect to transportation surrogate values for foreign inland freight, petitioners note that the inflator the Department used to develop the transportation surrogate value is incorrect. According to petitioners, the truck transportation rate for Anshan should be changed from $0.02km/MT to the $0.03/km/MT, which is the value cited in the cable that is the source of the surrogate value, and which is the value used for the other respondents.

Third, with respect to foreign inland freight, petitioners claim that the Department inadvertently applied the surrogate freight rate for truck to certain foreign inland freight factors for which the proper transportation freight rate should be that for train.

Fourth, with respect to the freight expense incurred for fuel oil, petitioners argue that the freight charge for fuel oil which is brought to Anshan by truck should be revised from $0.20/MT to $0.03/km/MT, to conform with the value cited in the cable which is the source of the surrogate value used.

Anshan had no comment with respect to the alleged ministerial errors identified by petitioners.

Department's Position: We agree with petitioners as to all of the above ministerial errors and have made appropriate corrections for the final determination.

2. BAOSHAN

Comment 43: Product Specificity

Petitioners argue that Baoshan's margin must be based on facts available because its reporting methodology, even if faithfully followed, does not provide an adequate factual basis for a final determination. Petitioners claim that the information reported by Baoshan, even if verified, does not provide an adequate basis for calculation of a dumping margin, largely because of a lack of product specificity. They argue that verification of an inadequate database does not transform it into an adequate database.

Petitioners argue that Baoshan's factor information cannot be used because it is not product-specific. Petitioners claim that Baoshan's cost models and reporting of U.S. sales do not make distinctions on a proper basis.

Petitioners claim that verification did not resolve these problems; instead, it only confirmed that Baoshan applied a flawed methodology. Petitioners argue that Baoshan's margin in the final determination should be based on neutral facts available. For a more detailed discussion of this issue, please see Baoshan's Factor Value Memorandum.

Baoshan argues that the information it reported was as product specific as possible. Moreover, Baoshan argues that this information was fully disclosed in Baoshan's February 14 and April 14, 1997 submissions as well as during verification. Baoshan states that the Department never asked it to revise its calculations to make them more product-specific than its records allowed. Accordingly, Baoshan argues, there is no basis for rejecting the information it has submitted.

Department's Position: We agree with Baoshan. The Department verified that Baoshan reported its factors of production in a manner as product-specific as possible. The Department has determined that using a database that conforms to Baoshan's records kept in the normal course of business is a more reasonable reporting methodology and produces less distortive results than would follow from the use of a constructed reporting methodology that deviates from Baoshan's records.

Comment 44: Further Processing of By-Products

Petitioners state that, in the verification report for Baoshan, the Department notes that one of the reported by-products was further refined to produce two other by-products. Petitioners argue that, as with all other by-products resulting from all other processes (regardless of the respondent involved), the Department must ensure that any surrogate value given as a credit for any by-product actually matches the by-product of the plate production process, rather than some further refined product. Petitioners claim that if the Department cannot match the actual by-product of the plate production process, but can only find a surrogate value for the further-processed material, then that surrogate value must be offset by the value of further processing. Petitioners argue that where the respondent has not provided sufficient information to calculate the offset in such circumstances, the by-product credit should be denied.

Baoshan did not comment on this issue.

Department's Position: We agree with petitioners. As the Department noted in its verification report for Baoshan, one of its by-products was further refined to produce two other by-products. The Department also noted that Baoshan did not report the factors involved in the further refinement. It is the Department's policy to only grant by-product credits for by-products actually produced directly as a result of the production process. A respondent must report the factors associated with the further refining of a by-product if it wishes to receive a credit for the further refined product. Because Baoshan failed to report these factors, therefore, we are only granting a credit for the one by-product directly produced in the production process.

Comment 45: Inconsistencies Discovered at Verification

Petitioners argue that the Department should correct all inconsistencies discovered at verification. Petitioners state that proper surrogate values should be matched to each input, in the proportions indicated in the verification report. Petitioners argue that, where the record does not contain a suitable surrogate value, the Department should use, as facts available, the most costly material for each respective process on the record.

Baoshan agrees that all data discovered at verification to be incorrect should be corrected for the final results. However, Baoshan disagrees with petitioners' suggestion that the Department must assign adverse facts available to value the factors affected by these changes. Baoshan claims that the Department has a statutory obligation to calculate margins as accurately and fairly as possible. Accordingly, Baoshan states, regardless of when the factors information was reported, the Department should assign representative surrogate values.

Department's Position: We agree with Baoshan. It is the Department's policy to assign surrogate values that most closely match the reported factor. We have surrogate values for all the inputs referenced by this comment. Consequently, there is no need for the Department to use facts available for these factors for the final determination. Because this comment involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 46: Freight Reporting

Petitioners argue that the Department found numerous discrepancies in the freight information supplied by Baoshan; therefore, Baoshan's reporting of freight factors is unreliable. Petitioners argue that, as facts available, the Department should use the distance to the most distant supplier for all freight factors. However, petitioners state if the Department does not use facts available for all freight, then it must correct certain ministerial errors relating to freight charges in the preliminary determination. Petitioners allege ministerial errors concerning two factors and the highest calculated freight rate.

Baoshan argues that petitioners misconstrued the Department's verification report. Baoshan argues that the report discusses the proper methodology for calculating freight distances for Baoshan's suppliers of one input. Baoshan claims that, at verification, the Department confirmed that its suppliers each supplied varying quantities of an input during the investigation period—not identical quantities as the Department had presumed in making the freight calculation in the preliminary determination. Baoshan claims that the Department's narrative in its verification report merely reiterates the information that was previously submitted. Baoshan argues that this is not a reason for calculating the freight costs for this input based on facts available.

Baoshan argues that, contrary to petitioners' allegation, Baoshan did provide distances and transportation mode for the input at issue. Baoshan claims the accuracy of this information was confirmed by the Department during verification. Accordingly, Baoshan argues, the Department should use this information for the final determination.

Finally, Baoshan claims that petitioners' explanation of the Department's ministerial errors with respect to freight does not provide the correct calculation of these values. Baoshan argues that the calculation which they submitted in their rebuttal brief should be used.

Department's Position: We agree in part with Baoshan. While there were errors discovered in Baoshan's reported freight factors, the errors were not significant enough to render the information unreliable. We have corrected all of the discovered inconsistencies for this final determination. We disagree, however, that the Department verified that Baoshan received different quantities of one input from different suppliers. Because proprietary information is involved, please see Analysis Memorandum for Baoshan for further discussion of this issue. Because we were unable to rely on Baoshan's freight factor data for one input (for reasons discussed in the Analysis

Memorandum), we have used facts available for freight distances in connection with that factor. As facts available, we will continue to use the same methodology used in the preliminary determination and take a simple average of all of Baoshan's suppliers of this input.

Comment 47: Valuation of a Certain Input

Baoshan argues that a certain input, the identity of which is business proprietary information, should be valued based on the input-specific surrogate value information that has already been submitted on the record.

Department's Position: We agree with Baoshan. Because of the proprietary nature of this issue, see the Concurrence Memorandum.

Comment 48: Packing

Baoshan argues that the Department's preliminary calculation of the cost of packing for Bao Steel's exports contain three errors. (1) The preliminary determination, Baoshan claims, incorrectly calculated packing costs based on reported information for loading materials. (2) The Department's preliminary packing cost calculations used an invented ''estimate'' of the weight of each piece of packing material used by Bao Steel. (3) In the preliminary determination, the Department added an amount for freight costs to the surrogate value for the packing materials used by Baoshan.

Department's Position: We agree in part with Baoshan. At verification, the Department was able to ascertain the actual weight of Baoshan's packing materials. Thus, in the final determination, we have used this value instead of the estimated weight used in the preliminary determination. In addition, we will not add freight to the surrogate value for the materials used for packing because the materials are self-produced. We disagree however, with Baoshan's claim that the Department used information reported for loading materials instead of that reported for packing materials. We used packing labor information from Exhibit D–6 of Baoshan's February 19, 1997 response. Thus, we used the same packing labor information for the final determination.

3. Liaoning/(Wuyang)

Comment 49: Verification of Labor Allocations

Petitioners assert that the document examined at verification ''Corporate Announcement of Organizational Structure'' was not collected as a verification exhibit and does not in itself attest to the accuracy of Wuyang's labor allocations. Petitioners allege that no attempt was made to verify Wuyang's labor allocations by examining company attendance records, payroll ledgers or other employment records. Thus, according to petitioners, those allocations have not been verified and cannot be considered reliable.

Department's Position: We disagree with petitioners. Wuyang's verification report states that, in order to tie together the A–36 allocation calculation for labor, the Department examined the original Ingot-Casting Cost Statement, the Finished Goods Inventory Ledger of the Steelmaking Plant, and the Production Accumulation Report of the Production Office. For steelmaking, the Department tied original payroll records to the total number of employees reported to the Department. The Department tied the total payroll expenses for these same employees to the August and June 1996 payroll ledgers. The Department noted no discrepancies. Thus, petitioners are in error when they state that the Department did not examine employment records and that therefore Wuyang's labor allocations were not verified. Furthermore, the Department is not required to collect particular documents as exhibits to attest that items have been verified to its satisfaction.

Comment 50: Standard Raw Material Factor Consumption Rates

Petitioners argue that Wuyang's raw material consumption rates ignore differences in chemical composition for different products. In addition, petitioners maintain that there is no supporting documentation to substantiate Wuyang's assertion that the material input factors reported are the quantities required to produce a ton of finished product sold on a theoretical weight basis. Petitioners claim that Wuyang's reported factor values are unreliable and unverified and that it failed to act to the best of its ability. Petitioners conclude that the Department should decline to consider Wuyang's raw material factor information and apply facts available.

Liaoning and Wuyang counter petitioners' claim by stating that they fail to recognize that Wuyang's carbon steel plate is produced using scrap steel and that although Wuyang's steel scrap factor inputs are, in fact, identical for each grade of subject merchandise that the company produces, the types of scrap steel used in production differ in chemistry for different grades of merchandise. Liaoning and Wuyang argue that Wuyang's reported material inputs thus account for the differences in inputs required to produce different products and reflect the actual material inputs for each product sold. Liaoning and Wuyang conclude that Wuyang has provided the Department with complete and accurate information, which has been verified without discrepancy. With respect to production on a theoretical weight basis, Wuyang explains that it has allocated actual consumption to theoretical production in a manner similar to the manner the way in which a company uses a standard cost system to allocate actual costs.

Department's Position: We agree with Liaoning and Wuyang. The verification report does not note any discrepancies between what it encountered at verification and what Wuyang reported. With respect to the petitioners' criticism as to Wuyang's use of theoretical weights, we note that Wuyang reported the actual amounts of material inputs required to produce one theoretical ton of finished product. Consequently, for the final determination, there was no need for the Department to make any adjustment to factor or sales amounts due to Wuyang's use of theoretical weight.

Comment 51: Reliability of Labor Allocations

Petitioners state that Wuyang's reported labor input rates are understated and must be rejected. Petitioners conclude that the Department must base the final results for Liaoning and Wuyang on the adverse best information available pursuant to 19 U.S.C. § 1677e(b) and (c). Failing that, the Department must revise Wuyang's data. In addition, petitioners argue that respondent made a clerical error in its labor hour calculations.

Department's Position: We agree with petitioners that Wuyang's reported labor input rates are understated, and we have therefore recalculated those rates. We also agree that there was a clerical error in the labor hours calculation, and have corrected that error for the final determination. Because this issue involves business proprietary information, please see the Concurrence Memorandum for a further discussion of this issue.

Comment 52: Treatment of Heavy Oil, Oxygen and Coal Gas

Petitioners, citing *Sebacic Acid from the People's Republic of China*, 62 FR at 10530 (March 7, 1997), state that, consistent with past practice, heavy oil, oxygen, and coal gas should be treated as direct energy inputs rather than as overhead expenses. Petitioners add that

Wuyang has never provided evidence that heavy oil was not a fuel and that at no time has Wuyang explained how heavy oil was used in the production process.

Liaoning and Wuyang have expressed opposition to the Department's inclusion of heavy oil in energy costs. *See* Wuyang's submission of June 16, 1997. Liaoning and Wuyang state that in the event that the Department disagrees with Wuyang and includes heavy oil in energy costs, the Department should use the revised factor the Department verified. Liaoning and Wuyang add that the Department used facts available to determine Chinese inland freight for heavy oil. If the Department were to value heavy oil as a factor of production rather than including it in overhead, and thus were to require data for calculating freight, the Department should use the freight distance reported in its June 16, 1997 submission according to Liaoning and Wuyang.

Department's Position: We agree in part with both petitioners and respondents. At the preliminary determination we included electricity and coal gas as direct materials as well as heavy oil with freight added (*see* calculation memorandum from case analysts to the file, June 3, 1997). At verification, the Department learned that Wuyang had mistranslated the measure for heavy oil as kilograms when it should have been represented in *jin*, a Chinese unit of measure equivalent to half a kilogram. *See* Memorandum to Edward Yang, Director, Office of AD/CVD Enforcement Office 9, from Elizabeth Patience and Doreen Chen, Analysts, August 5, 1997. However, neither at verification nor at any other time did Wuyang provide evidence that heavy oil was not a fuel or explain how it was used in the production process. We therefore: (1) Used the revised usage factor for heavy oil described in the verification report, (2) included electricity, coal gas and heavy oil as direct energy inputs and (3) used the freight distance Wuyang reported in its June 16, 1997 submission.

Comment 53: Transportation From Factory to Port

Petitioners maintain that Wuyang knew that the subject merchandise it sold to Liaoning was destined for resale in the United States, and Liaoning never took physical possession of the subject merchandise. Accordingly, the surrogate value of the cost of transporting the subject merchandise from the factory to the port of exportation should be deducted from the U.S. price, conclude petitioners, in accordance with the practice described in *Brake Drums and Rotors*, 62 FR at 9160, 9170.

Liaoning and Wuyang state that foreign inland freight should not be deducted from Liaoning's export prices because this expense was not incurred by Liaoning, but rather was incurred by its unaffiliated supplier. They further argue that, at verification, the Department ascertained that Wuyang's factory price included delivery of the merchandise to the seaport where it was shipped to the United States by Liaoning. Respondent argues that in *Titanium Sponge From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 61 FR at 58525 (November 15, 1996) (''*Titanium Sponge*''), the Department determined that ''when a reseller, not the producer, is considered the exporter, the ''original place of shipment'' is the point from which the reseller shipped the merchandise.'' Respondent concludes that Liaoning's acquisition price thus included all inland freight expenses, and the cost of transporting the subject merchandise from the factory to the PRC seaport should hence be treated as a component of Wuyang's total costs instead of a deduction from the price to the U.S. customer.

Department's Position: We agree with petitioners. In *Brake Drums and Rotors* we explained that it is the Department's ''normal methodology to strip all movement charges, including all foreign inland freight, from the U.S. price being compared to the NME normal value based on factors of production.'' While it is true that in *Titanium Sponge* the Department did not deduct factory-to-port movement charges from the U.S. starting price, and instead included ''in normal value an amount for the inland freight,'' the circumstances in that case were different from those in the current investigation. Specifically, in *Titanium Sponge*, (1) the subject merchandise produced in an NME country was sold to an exporter located in a market economy without knowledge on the part of the producer that the United States was the ultimate destination for the merchandise, and (2) the exporter took physical possession of the subject merchandise. Liaoning is not located in a market economy; therefore the actual price it paid to Wuyang, which also is not a market economy firm, is not relevant. (Furthermore, Liaoning's supplemental section B questionnaire response states that ''Liaoning does not hold any inventory of the subject merchandise prior to export''). The expense incurred to transport the steel to the port is part of the cost of the U.S. sale and the factory was the original place of shipment for the sale. Thus the Department has continued to deduct the surrogate value of the cost of transporting the subject merchandise from the factory to the port of exportation from the U.S. price in its final determination calculations.

4. Shanghai Pudong

Comment 54: Facts Available

Petitioners allege that the verification team's investigation of Shanghai Pudong revealed that the company had been repeatedly misstating and concealing information concerning many critical aspects of this investigation. *See, e.g.*, Verification Report at 1–2 (listing seven of the items that had been misreported by this respondent). Petitioners contend that the consistency and repetition of Shanghai Pudong's omissions and misrepresentations suggest that these were not innocent mistakes, but calculated to obtain results more favorable to Shanghai Pudong, demonstrating its repeated lack of cooperation in providing the requested information. Petitioners argue that Shanghai Pudong's actions in this regard have prejudiced the petitioners and warrant application of adverse facts available.

Shanghai Pudong argues that petitioners' accusation and request for adverse facts available is completely without merit. Shanghai Pudong asserts that the only evidence offered by petitioners of the alleged omissions were errors corrected by Shanghai Pudong at the start of verification. Shanghai Pudong asserts that it went to great lengths to ensure that the information provided to the Department was as accurate and complete as possible and that the Department verified the responses finding only minor errors.

Department's Position: We disagree with petitioners. The errors cited by petitioners were corrected by respondents prior to the start of the Department's verification. In addition, the Department examined the errors in question and determined that they were not large enough or sufficiently different from the previous responses to constitute a new questionnaire response. Consequently, the Department determines that there is no basis rejecting Shanghai Pudong's entire response for the use of total adverse facts available in this situation.

Comment 55: Shanghai Pudong and Shanghai No. 1

Petitioners contend that Shanghai Pudong and Shanghai No. 1, which did not respond to the Department's

questionnaire, should be collapsed by the Department and treated as a single entity because, they allege, both plants are controlled by Shanghai Metallurgical. Petitioners contend that Shanghai Metallurgical is involved in the business operations of Shanghai Pudong and Shanghai No.1. They note that the Department discovered at verification that Shanghai Metallurgical appoints the Chairman of the Board of both Shanghai Pudong and Shanghai No.1. Additionally, petitioners note that all large investments by Shanghai Pudong and Shanghai No. 1 must be approved directly by Shanghai Metallurgical. Petitioners claim that respondents characterization of Shanghai Pudong and Shanghai No. 1 as ''competitors'' is simply preposterous. Petitioners note that there is an annual meeting between Shanghai Metallurgical, Shanghai Pudong and Shanghai No. 1 which includes discussion of business targets, investment and productivity. Petitioners state that no such meetings or discussions pursuant to such meetings could possibly take place between true competitors.

Petitioners also contend that the production facilities of Shanghai Pudong and Shanghai No.1 are not substantially different, thus presenting the possibility of manipulation of price or production. Therefore, that the two companies should be treated as one entity for purposes of calculating an antidumping margin.

Shanghai Pudong asserts that under the provisions of Section 771(33) of the Tariff Act, Shanghai Pudong and Shanghai No. 1 are not affiliated. It states that the two companies are not siblings, spouses, or ancestors/lineal descendants. The two firms, Shanghai Pudong contends, are not officers, directors, partners or employers nor do they control each other or own stock in one another. Shanghai Pudong argues that Shanghai Metallurgical does not exercise control over either it or Shanghai No. 1. Accordingly, they argue, this is not a case of ''[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person'' under the terms of Section 1677(33)(f) of the statute. Consequently, Shanghai Pudong claims there is no basis for finding that Shanghai Pudong and Shanghai No. 1 are affiliated under the statute.

Shanghai Pudong states that it would also be improper to collapse the two companies because of significant differences in their production facilities and capabilities.

Shanghai Pudong further claims that there is no possibility of manipulation of price or production by Shanghai Pudong and Shanghai No.1. It asserts that the two companies are independent entities that do not share any managerial employees or board members. It notes that there are no joint ventures between the companies, and claims that they do not share marketing information—each company makes independent marketing and pricing decisions. They also do not share information regarding production or scheduling. Consequently, Shanghai Pudong asserts, there is absolutely no evidence of any potential for the manipulation of prices or production in the event that Shanghai Pudong and Shanghai No. 1 are not collapsed.

Shanghai Pudong also notes that collapsing it with Shanghai No. 1 for the purposes of calculating costs would directly contradict the Department's past decisions. It claims in the German *Large Newspaper Printing Press* case, the Department acknowledged that the related producers of identical subject merchandise satisfied the normal criteria for collapsing, but nevertheless refused to collapse the companies for the purpose of its cost calculations. *See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses from Germany (''LNPPs from Germany'')*, 61 FR 38166, 18188 (July 23, 1996). The Department held that the criteria ''relate to collapsing companies for sales purposes rather than cost.'' Shanghai Pudong claims there is clearly no basis for collapsing it with Shanghai No. 1—competitors who do not have any business dealings with one another—for the purposes of calculating costs.

Department's Position: Petitioners claim that the relationship which Shanghai Pudong and Shanghai #1 share with Shanghai Metallurgical requires that the Department ''collapse'' the two producers based on an analysis under the criteria set forth in *Nihon Cement. See Nihon Cement Co.* v. *United States*, 17 CIT 400 (1993).

We have construed petitioners' claim as a request to examine whether it is appropriate for Shanghai Pudong to be treated a separate entity for purposes of assigning a dumping margin.

The sole reason advanced by petitioners for arguing that Shanghai Pudong should not be given a separate rate is that this result is precluded by Shanghai Metallurgical's alleged control over Shanghai Pudong and Shanghai No. 1.

In NME cases we only assign separate rates to exporters and Shanghai No. 1 did not export to the United States.

As discussed above in Comment 1, we have determined that Shanghai Pudong has met the criteria for separate rates by demonstrating both a *de facto* and a *de jure* absence of government control over its export operations. Shanghai No. 1 has made no such demonstration and therefore is not entitled to a separate rate.

Furthermore, we note that, even if we had conducted a ''collapsing'' analysis, with respect to Shanghai Pudong and Shanghai No.1, the results would have been identical because substantial retooling would be required in order for Shanghai Pudong and Shanghai No. 1 to restructure manufacturing priorities. Finally, we determine that although there is some potential for manipulation of price or production, this potential is not ''significant.'' Because business proprietary information is associated with these conclusions, please see the Concurrence Memorandum for details.

We also note that Shanghai Pudong incorrectly cites Comment 13 of *LNPPs from Germany* for the proposition that the Department will not ''collapse'' producing companies whose sales data it is not using. Because the comment cited involved a narrow issue of averaging the cost of manufacturing the subject merchandise with respect to the respondent company and its affiliate, the question of ''collapsing'' (*i.e.*, treating two firms as a single respondent) was not raised in that case. Therefore, what the Department meant by the last sentence of Comment 13 in *LNPPs from Germany* was that the five collapsing criteria cited by the *LNPPs* respondent referred to ''collapsing companies,'' rather than to decisions solely involved cost averaging.

Comment 56: Unreported Consumption of an Input

Petitioners contend that Shanghai Pudong's consumption and conversion factors for a certain input are incorrect. Petitioners state that information obtained at verification was undocumented and inconsistent with information previously submitted by respondent. Petitioners note that two of Shanghai Pudong's facilities showed a different usage rate per ton of the input. Accordingly, they urge that the Department should base valuation of the input on adverse information available.

Shanghai Pudong argues that petitioners' arguments are flawed and should be disregarded. It notes that the usage per ton of the input varies by facility. In addition, it contends that it did not track the usage of the input in the normal course of business. Consequently, at the request of the Department, Shanghai Pudong

calculated a conversion calculation that yielded the values reported to the Department.

Department's Position: We agree with Shanghai Pudong. We reviewed this issue at verification and found that the usage rate for the input does vary by facility. Consequently, we asked Shanghai Pudong to calculate the conversion factor and amount of the material necessary to produce the input which we examined at verification. Since Shanghai Pudong's methodology was reasonable, we have accepted these values for the final determination. Because this issue involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 57: Transportation Charges for Certain Inputs

Petitioners contend that the Department should use adverse facts available to value transportation charges for a certain input. They argue that, at verification, the Department found that Shanghai Pudong's reported information for the largest suppliers of this input were incorrect. Petitioners argue that, as adverse facts available, the Department should calculate freight charges for this input based on the longest distance and highest volume reported.

Petitioners also urge the Department to use adverse facts available for the transportation distances for four other inputs. Petitioners note that the Department discovered errors at verification with respect to these inputs.

Shanghai Pudong asserts that it attempted to provide support for the input at verification but was not allowed to by the Department. Shanghai Pudong argues that despite the errors uncovered at verification, the information reported was basically accurate and can be used for the final determination.

Concerning the transportation distances for the four other inputs, Shanghai Pudong notes that the Department verified the information and found only minor errors. Shanghai Pudong claims that the Department should follow its established practice and use the verified information in the final determination, citing *Ferrosilicon from Brazil,* 59 FR at 732, 736 (January 6, 1994) and *Sulfur Dyes,* 58 FR at 7537, 7543.

Department's Position: We agree with petitioners in part. We found at verification that Shanghai Pudong incorrectly reported its top ten suppliers for a certain input. The Department examined Shanghai Pudong's documentation and methodology with the assistance of its staff and found it to be incorrect. Consequently, for the final determination, we calculated the freight distances for this input using the longest distance reported for the input.

However, we disagree with petitioners regarding the transportation information supplied for the other four inputs. The Department verified this information and found only minor errors. Consequently, we have determined that it is not necessary to use facts available for the distances for these inputs. Due to the proprietary nature of details concerning this issue, see the Concurrence Memorandum.

Comment 58: Unreported Inputs From Unaffiliated Company

Petitioners contend that, at verification, the Department asked for, but was unable to obtain from Shanghai Pudong, certain information concerning inputs from an unaffiliated company. They claim that certain information was not part of the record and, therefore, the Department should base its calculations on adverse facts available.

Shanghai Pudong argues that the petitioners misrepresent the facts regarding the operations of the unaffiliated company. Shanghai Pudong contends that there is information on the record concerning certain inputs that it was able to obtain from the company. Shanghai Pudong states that for one input, it was unable to obtain the information from the unaffiliated entity. However, it notes that it attempted to fully cooperate with the Department. Further, it claims that petitioners' suggestion for using facts available for this situation is inappropriate because this is not a situation in which an interested party failed to cooperate.

Department's Position: We agree with respondents. Because of the proprietary nature of the details of this issue, see the Concurrence Memorandum.

Comment 59: Gas Inputs

Petitioners contend that Shanghai Pudong misled the Department by not correctly reporting gas inputs that were used in a certain production facility. Petitioners urge the Department to use adverse facts available for these gas inputs.

Shanghai Pudong argues that petitioners misunderstand the production process and have erroneously stated where the inputs are generated. Shanghai Pudong claims that the production facility accounted for the inputs in question in the ''miscellaneous expenses'' category. Shanghai Pudong also notes that, in the normal course of business, the facility only consumed trivial amounts of these inputs. Consequently, Shanghai Pudong did not track these inputs in its normal record keeping system. Therefore, respondents state, there is no need to use facts available in this situation.

Department's Position: We agree with respondent. We found at verification that Shanghai Pudong did use small amounts of certain inputs in a particular facility and that respondent included these inputs in the ''miscellaneous expenses'' of its monthly production report.

Comment 60: Adjustment of Labor Inputs

Petitioners argue that the Department should adjust Shanghai Pudong's reported labor inputs upward to account for the cost factors associated with transporting slabs between Shanghai Pudong's facilities. They contend that, because respondent did not report these factors, the Department should use adverse facts available to calculate labor costs incurred in the transportation process.

Shanghai Pudong asserts that the labor used to move materials between facilities is properly treated as an overhead expense. They further state that they notified the Department that they treated this expense as part of overhead in the supplemental questionnaire response. Shanghai Pudong further notes that the Department never notified Shanghai Pudong that this methodology was incorrect in any way. Shanghai Pudong argues that petitioners' arguments for the use of facts available are incorrect and should be rejected.

Department's Position: We agree with Shanghai Pudong that the labor used to move materials between facilities is properly treated as overhead. We verified and accepted Shanghai Pudong's methodology for reporting the workers involved and the unit with which they are associated.

Comment 61: Assignment of Appropriate Surrogate Values for a Certain Input

Respondents argue that the Department should assign appropriate surrogate values to the two different grades of a certain input used by Shanghai Pudong. They maintain that because the Department discussed usage of different grades at verification and because these two grades vary substantially in market value, the Department should assign appropriate surrogate values to each of the grades actually used in the production process.

Petitioners contend that there is no evidence on the record to support respondents' proposed methodology of

valuing the input by grade. According to petitioners, the Department never verified the quantity and value of the different grades produced or consumed. The new information submitted by respondents should be disregarded as it contains unverified information and unexplained calculations based on the unverified information. Petitioners suggest valuing this input as they suggested in their comment for the relevant surrogate values.

Department's Position: We agree with petitioners that this information was new at verification and represents a major change to the data which had been previously submitted. It has been the Department's practice that if this information constitutes a significant change, the Department may not use this information in the final determination. Failing to report inputs in a timely manner clearly constitutes a major impediment to the investigation. See 19 U.S.C. 1677e((a)(2)(c)). Moreover, by not reporting certain inputs until after the due date for such information, Shanghai Pudong has failed to act to the best of its ability to comply with the Department's requests for timely submissions of information.

However, the Department, in keeping with our position in comment 29 above, agrees that it is our responsibility to value each of the grades of the input separately, to the best of our ability. Therefore, we have valued the two grades reported before verification separately. We are valuing one grade of the input at the market economy price paid by the respondent and we are valuing the other grade of the same input with Indian *Monthly Statistics.* See Shanghai Pudong's factor valuation memorandum for more information on this issue.

Comment 62: Ministerial Errors

Petitioners allege that the Department made certain ministerial errors in the preliminary determination with respect to Shanghai Pudong.

Factor Costs for Certain Inputs: Petitioners argue that the Department should value two inputs based on the production factors submitted by Shanghai Pudong rather than Indian surrogate values. Respondents agree with petitioners that the Department should use its reported factors rather than the values from Indian *Monthly Statistics.*

Transportation Surrogate Values: Petitioners allege that the Department used an incorrect transportation surrogate value for truck freight in the preliminary determination.

Respondents had no comment on this issue.

Freight Error: Petitioners contend the Department incorrectly calculated the freight charges in the preliminary determination. Respondents did not comment on this issue.

Respondents had no comment on this issue.

Freight for a Certain Input: Petitioners argue that the Department should revise its calculation of the freight charges associated with a certain input. Respondents did not comment on this issue.

Department's Position: (a) Factor costs for certain inputs: We have used surrogate values from Indian *Monthly Statistics* for these inputs. (b) Transportation surrogate value: We agree with petitioners and have corrected the error for the final determination. (c) Freight error: We agree with petitioners and have corrected the error for the final determination. (d) Freight for a Certain Input: We agree with petitioners that we incorrectly calculated freight for a certain input in the preliminary determination. However, the ministerial error allegation is irrelevant to the final determination as Shanghai Pudong submitted revised transportation distances which correct for this error. Because of the proprietary nature of the details of these issues, see the Concurrence Memorandum for a more complete discussion.

5. WISCO

Comment 63: Facts Available: Certain Factors

Petitioners argue that, because certain factor inputs were misreported or withheld and only discovered at verification, the Department should apply adverse facts available for these inputs. In particular, they contend that WISCO did not report the inputs of certain factors at particular stages of production. Second, they argue that WISCO misreported the amount of by-product electricity generated at a certain stage of production. Additionally, they contend that WISCO misreported certain by-products. Finally, they argue that WISCO failed to report distances for certain material inputs. They contend that this misreporting constitutes a significant impediment to this investigation and as such, the Department should apply adverse facts available in making its final determination. See 19 U.S.C. 1677e ((a)(2)(c)), 19 U.S.C. 1677e (b), and 19 U.S.C. 1677m(e) (1996).

WISCO asserts that the errors discovered at verification were minor in nature and did not impede the investigation. It contends that the Department typically uses information to which minor correction have been made in its final determination.

Department's Position: We agree with WISCO in part. We found that five of the six errors that the Department discovered at verification were minor in nature and do not justify the use of adverse facts available. Our review of these five errors indicates that they were caused by oversight or clerical error on the part of WISCO. Consequently, we disagree with petitioners' assertion that these errors clearly constituted a significant impediment to this investigation or that they proved that WISCO failed to act to the best of its ability to comply with a request for information. We note that it has been the Department's position in the past to accept such changes for the final determination of an antidumping investigation. *See, e.g., Ferrosilicon from Brazil*, 59 FR at 736; *Sulfur Dyes*, 58 FR at 7543.

However, we agree with petitioners that one of the six errors indicated that WISCO did not report the inputs of certain factors at particular stages of production. Therefore, for these inputs we have applied facts available for the final determination. Because this involves proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 64: By-Product Credits

Petitioners contend that the Department should reject WISCO's claimed credits for by-products at a the coke-making facility. They allege that, at verification, the Department discovered that many of the agents used to further process a certain by-product into other by-products are listed on WISCO's production reports but were not reported to the Department. Additionally, they argue that the Department should not allow the offset because the claimed by-products require further processing. For this reason, they argue that the Department should apply facts available and deny any credit for these by-products, relying on 19 U.S.C. 1677e(a) and (b).

Respondents argue that petitioners' arguments appear to be based on a basic misunderstanding of WISCO's reporting of factors used and products produced at WISCO's coke-making facility. WISCO maintains that almost all of the factors used to process the by-products of the coke-making facility were included in the reported factors of production and that the minor reporting errors discovered during verification regarding factors used in the coke-

making facility consisted of the omission of certain inputs used to process a by-product. It contends that it told the Department during verification that only a few inputs are consumed during processing. Therefore, WISCO argues that the only relevant omissions of factors in the particular facility were the quantities of certain inputs used in the processing of the by-product. Furthermore, they assert that the verification report indicates that these quantities were reported in the production records provided to the Department during verification and are included in the record in Verification Exhibit W–24. WISCO urges the Department to use this verified information to determine the quantity of inputs at the facility.

Department's Position: We agree with petitioners in part. The Department noted in its verification report that ''WISCO did not report the factors used to further process [the inputs]. In fact, many of the agents used to refine [the inputs] are listed on the production reports, but were not reported by respondent.'' The Department only discovered these factors in examining the production reports at the beginning of verification, because WISCO did not submit this information prior to verification. It is the Department's general policy to only grant by-product credits for by-products actually produced directly as a result of the production process. A respondent must report the factors associated with the further refining of a by-product if they wish to receive a credit for the further refined product. Even though these factors were in the production reports, WISCO failed to report these factors to the Department. Therefore, we have denied any credit for these by-products for the final determination. Because this issue involves business proprietary information, please see the Concurrence Memorandum for more information.

Comment 65: Facts Available

Petitioners contend that market economy purchases of certain inputs should be assigned adverse facts available because the company was unable, at verification, to provide invoices for the purchases. *See Persico Pizzamiglio S.A.* v. *United States,* 18 CIT 299, 305 (1994), 19 U.S.C. 1677m(i), and 19 U.S.C. 1677e (1988). In addition, they argue that the domestically purchased input should be assigned facts available for this company due to the company's failure to report consumption of these inputs until after the questionnaire deadline. As facts available, they argue that the Department should assign the highest surrogate value on the record to each purchase.

Respondents maintain that, even though they were unable to provide invoices to substantiate their market economy purchases of certain inputs, they did provide the Department with copies of the relevant contracts, which contained the price and the terms of sale, and Chinese Government Customs (CCIB) forms showing the quantities imported. They contend that all relevant information regarding WISCO's market economy purchases of these inputs were verified by the Department and should be used in the final determination.

Department's Position: We agree with petitioners that we should assign adverse facts available to market economy purchases of inputs at issue. We found at verification that WISCO was unable to provide invoices for the purchases of these inputs. We did examine the terms of sale based on the contracts and the CCIB forms. The CCIB forms do not include prices, and while the contract show the original arrangements, they may not reflect the prices ultimately paid. This is why the Department relies on invoices reflecting the amount actually billed and the currency in which payment was required. These invoices should be available to WISCO, and WISCO's failure to produce them casts doubt on its assertion that the contract terms were final. For the final determination, we are using, as facts available, a single surrogate value from Indian *Monthly Statistics* for these inputs. Because this issue and our calculation of adverse facts available involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation of the issue and our methodology.

Comment 66: Financial Records

Petitioners, citing *Ansaldo Componenti, S.p.A.* v. *United States, 628* F. Supp. 198, 204 (CIT 1986) argue that the Department should apply adverse facts available because WISCO failed to provide certain financial records requested by the Department in the supplemental questionnaire. *See also* 19 U.S.C. 1677e(a).

WISCO claims that, although it did decline to submit copies of these documents due to legitimate business concerns, this decision did not impede the course of the investigation. In addition, WISCO states that the Department did not inform it that its response was deficient in any way. WISCO maintains that, in non-market economy cases, issues regarding the actual profits earned by non-market economy producers and regarding its actual non-operating income and expenses are not relevant to the investigation. Instead, this information is subsumed in the SG&A expense rate and the profit rate that are obtained from a surrogate country for use in the Department's normal value calculations. Therefore, WISCO argues that adverse facts available is not warranted in this case.

Department's Position: We agree with respondents that, although WISCO did not provide the requested financial reports, it did provide a sufficient explanation of why this information is considered sensitive. We also determined that the information contained in the financial reports was not necessary to the investigation and, therefore, WISCO's failure to provide it did not impede the course of the investigation. Consequently, we disagree with petitioners claim that we should use adverse facts available for WISCO based on this issue. Because this issue involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 67: Product Specificity

Petitioners contend that the Department should reject WISCO's claim that it is unable to report certain input factors based on width and other characteristics. They argue that, in fact, other information WISCO submitted on the record suggests that WISCO could have reported these characteristics. Accordingly, petitioners urge the Department to apply adverse facts available.

WISCO maintains that it properly answered the Department's March 12, 1997 supplemental questionnaire on this issue and explained therein why width cannot be a distinguishing factor for WISCO in the assignment of control numbers. The Department, they argue, did not notify WISCO that its response was deficient in any way and at verification, the Department examined WISCO's production records and verified that its descriptions were correct.

Department's Position: We agree with WISCO that its response to the supplemental questionnaire was sufficient to explain why WISCO was unable to report input factors based on certain characteristics. At verification, we examined WISCO's records and found them to be consistent with the response. Therefore, we disagree with petitioners' claim that the Department should use facts available for this issue.

Comment 68: Adjustment of Labor Inputs

Petitioners argue that the Department should adjust WISCO's reported labor inputs upward to account for the significant materials handling costs associated with transporting materials and equipment between WISCO's facilities. They contend that, because labor may play a more significant role in the transportation process than is indicated by WISCO's current allocation methodology, the Department, using adverse facts available, should calculate labor and other costs incurred in the transportation process and use this information to adjust upward the labor factor usage rates. See 19 U.S.C. 1677b(c)(3).

WISCO asserts that the labor used to move materials between facilities is properly treated as an overhead expense. It further states that the Department verified that the bulk of the materials are transported between facilities using conveyor belts and pipelines and, therefore, petitioners' assertion that the labor costs associated with the transportation of material is significant is factually incorrect. Furthermore, WISCO maintains that it has a separate transport unit that is responsible for movement of materials and equipment and it is not possible to link specific inputs used in the transport unit to the production of only subject merchandise. WISCO argues that, even if the Department decided to adjust WISCO's labor factors to account for labor employed in the internal transport unit, the adjustment suggested by petitioners is inappropriate because petitioners suggest that the Department base its labor adjustment on the surrogate value for train transportation. WISCO argues that there is no explanation for why the Department should link a surrogate value for rail freight and labor costs associated with internal shipment of materials within WISCO's facilities. WISCO argues that petitioners' arguments should be rejected.

Department's Position: We agree with WISCO that the labor used to move materials between facilities is properly treated as overhead, based on our observations at verification. In addition, we verified and accepted WISCO's methodology for reporting workers involved in moving material between facilities and the unit with which they are associated.

Comment 69: Ministerial Error—River Freight

Petitioners contend that the Department made a ministerial error in valuing river freight in the preliminary determination and should correct it in the final determination. WISCO did not comment on this issue.

Department's Position: We agree with petitioners that there was a ministerial error in the portion of the SAS program used for valuing river freight in the preliminary determination. We have corrected this error for the final determination. *See* Comment 25 above.

Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with the Government of the PRC suspending this investigation. Therefore, we are instructing Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from the PRC. Any cash deposits of cut-to-length carbon steel plate from the PRC shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from petitioners requesting that we continue the investigation. We received a separate request for continuation from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act on October 15, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Weighted-average manufacturer/exporter	Margin (percent)
Anshan (AISCO/Anshan International/Sincerely Asia Ltd.)	30.68
Baoshan (Bao/Baoshan International Trade Corp./Bao Steel Metals Trading Corp.)	34.44
Liaoning	17.33
Shanghai Pudong	38.16
WISCO (Wuhan/International Economic and Trading Corp./Cheerwu Trader Ltd.)	128.59
China-wide Rate	128.59

China-Wide Rate

The China-wide rate applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States.

On October 24, 1997, the Department entered into an Agreement with the Government of the PRC suspending this investigation. Pursuant to Section 734(g) of the Act, petitioners, Liaoning and Wuyang have requested that this investigation be continued. If the ITC's final determination is negative, the Agreement shall have no force or effect and the investigation shall be terminated. *See* Section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an Antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (l) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* Section 734(f)(3)(B) of the Act.

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.