

**CHAPTER 10:
NON-MARKET ECONOMIES**

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References:

 The Act

 Section 771(18) - definition of an NME; factors considered in determining NME status;
 and other items

 Section 773(c) - NME countries

 The Department’s Regulations

 19 CFR 351.107 - cash deposit rates

19 CFR 351.408 - calculation of NV for NME countries

I. INTRODUCTION

One of the most complicated areas under the Act is the treatment of NME countries. The presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. In addition, the fact that the currencies of these countries may not be convertible means that, even if an NV could be calculated in the country, it might not be expressed meaningfully in U.S. dollar terms.

Thus, under the U.S. antidumping law, countries that the Department has designated as NME countries are subject to an alternative methodology for the calculation of NV in antidumping proceedings. The Department uses prices in a surrogate market economy country to value respondents' factors of production. Section 771(18) of the Act defines NMEs, and Section 773(c) provides guidance on the Department's methodology in NME cases.

This chapter will explain how a country is designated as an NME country, how individual companies can obtain duty rates separate from that of the NME entity, the calculation of U.S. price and NV in an NME context, and the application of the NME-wide rate, as well as the calculation of a cash deposit rates for the NME entity. Finally, it will discuss the market-oriented industry provision of the statute.

II. NON-MARKET ECONOMY STATUS

In determining whether a country should be treated as an NME under section 771(18)(A) of the Act, section 771(18)(B) requires that the Department take into account six factors:

- the extent to which the currency of the foreign country is convertible into the currency of other countries;
- the extent to which wage rates in the foreign country are determined by free bargaining between labor and management;
- the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;
- the extent of government ownership or control of the means of production;
- the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and
- such other factors as the administering authority considers appropriate.

If the Department has designated a country as an NME, this determination remains in effect until revoked by the administering authority, pursuant to section 771(18)(c)(i) of the Act. For the Department to conduct a review of a country's NME status, the country's government must make a formal request for a review, or support a respondent's claim in an antidumping case, that the

country has a market economy.¹ After the Department receives a formal request, the Department begins an analysis of the six factors outlined above to determine whether to treat the country in question as an NME.

If a country has not been formally designated as an NME, it is presumed to be a market economy. If an interested party alleges that the country is an NME and documents its allegation with respect to each of the factors listed above, the Department will initiate a formal inquiry to determine whether the country should be treated as an NME. See [Import Administration Policy Bulletin 03.1](#), February 28, 2003.

If an analyst receives a filing in which a party requests that a country that is currently treated as an NME be designated a market economy or, conversely, that a country presumed to be a market economy be designated as an NME, the analyst should consult with his/her program manager.

III. SEPARATE RATES

A. Overview

Individual dumping margins are automatically assigned to exporters in market-economy country cases. In NME cases, however, exporters must pass a separate rate test to receive a rate that is separate from the NME-wide rate.² Those exporters that do not or cannot demonstrate that they are separate from the government-wide entity receive the NME-wide rate.

B. Practice

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are essentially operating units of a single, government-wide entity and, thus, should receive a single antidumping duty rate (*i.e.*, an NME-wide rate). In situations where the NME respondent is owned wholly by entities located in market-economy countries, a separate rate analysis is not necessary to determine whether its export activities are independent.³

¹ See [Notice of Initiation of Inquiry Into the Status of Lithuania as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Laws Under a Changed Circumstances Review of the Solid Urea Order Against Lithuania](#), 67 FR 57393 (September 10, 2002).

² Assigned rates in market-economy country cases apply to exporters or producers. However, separate rates in NME cases apply only to exporters.

³ See [Final Determinations of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China](#), 60 FR 22359, 22361 (May 5, 1995); [Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China](#), 61 FR 19026, 19027 (April 30, 1996); and [Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan](#), 66 FR 50397, 50399 (October 3, 2001), and the accompanying [Issues and Decision Memorandum](#).

In all other situations, to establish whether a company's export activities are sufficiently independent of the government to be eligible for separate rate status, 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 20588 (May 6, 1991) (Sparklers), and later expanded upon in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Under this analysis, exporters in NMEs are accorded separate, company-specific margins if they can provide sufficient proof of an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the central and/or local government decentralizing control of companies. See Sparklers, 56 FR at 20588.

In its *de jure* analysis, the Department examines the laws, regulations, and enactments that apply to the firm seeking a separate rate. In past cases involving the People's Republic of China ("PRC"), for example, the Department has found the following laws and regulations relevant to its analysis of the *de jure* absence of government control over export activities:

- Company Law of the PRC, effective January 1, 2006;
- Foreign Trade Law of the PRC, effective July 1, 2004;
- Administrative Regulations of the PRC Governing the Registration of Legal Corporations;
- PRC's Enterprise Legal Person Registration Administrative Regulations of June 13, 1998;
- Law of the PRC on Chinese-Foreign Cooperative Joint Ventures;
- Regulation Governing Rural Collectively-Owned Enterprises of the PRC of 1990;
- Law of the PRC on Industrial Enterprises Owned by the Whole People, adopted on April 13, 1988 (The Industrial Enterprises Law);
- Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises of 1992 (Business Operation Provisions); and
- The Organic Law on Village Communities in the PRC (Village Committee Law).

The Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or 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 the disposition of profits or financing of losses.⁴

The level of government control is relevant to the separate rate analysis. Government control of companies in NMEs includes central, provincial, township or village government control. If a

⁴ See Silicon Carbide.

company's export activities are subject to government control at any level, there is the possibility that export prices and export-related activities are subject to manipulation by the relevant NME government entity.⁵

C. Rate Assignment/Combination Rates

As noted above, the Department's practice is to assign separate rates only to exporters that have demonstrated their independence from *de jure* and *de facto* government control over their export activities. The Department recently modified its practice for assigning separate rates in NME antidumping investigations. While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department now assigns in NME investigations will be specific to those producers that supplied the exporter during the period of investigation ("POI").⁶ Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the POI. This practice applies to both mandatory respondents receiving a separate rate as well as the non-investigated exporters that receive a separate rate. This practice is referred to as the application of combination rates because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the POI. This practice is similar to the Department's established practice in new shipper reviews and in cases where firms are excluded from an antidumping duty order (i.e., due to zero or *de minimis* margins), both of which use exporter-producer combination rates.⁷

D. Application Process

The Department recently changed its practice by which exporters in NME investigations, particularly those not selected as mandatory respondents, apply for a separate rate.⁸ Under the Department's current policy, all exporters seeking a separate rate in an investigation/review must complete a separate rate application form. The separate rate application is posted for each investigation/review on the IA website upon initiation of the investigation/review and may be

⁵ See [Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Seventh Administrative Review and Preliminary Results of the Eleventh New Shipper Review](#), 70 FR 24382, 24388 (May 9, 2005), and [Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review](#), 70 FR 69937, 69939 (November 18, 2005) and the accompanying [Issues and Decision Memorandum](#).

⁶ See [Import Administration Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries](#), dated April 5, 2005 ([Policy Bulletin 05.1](#)).

⁷ See Sections 733(b)(3) and 735(a)(4) of the Act; 19 CFR 351.107(b)(1) and [Import Administration Policy Bulletin 03.2: Combination Rates in New Shipper Reviews](#), dated March 4, 2003.

⁸ See [Policy Bulletin 05.1](#).

tailored to some extent depending, for example, on the NME country involved in the investigation. Only those NME exporters selected as mandatory respondents are required to respond to the full antidumping questionnaire if they wish to obtain a separate rate. In antidumping investigations, Section A of the questionnaire includes the applicable separate rate application, which must be submitted as part of the questionnaire response.

E. Certification

The Department has further simplified the separate rates process in administrative reviews, where the Department receives a large number requests for review.⁹ The Department allows respondents who have already applied for and received a separate rate in a previous proceeding to submit a certification that their status has not changed and they continue to meet the *de jure* and *de facto* criteria to qualify for a separate rate. They are not required to submit another full separate rate application. However, Petitioners are free to challenge any company's certification and the Department would then be obligated to more fully examine the company's separate rate qualifications.

F. Separate Rates and Facts Available

The Department's separate rate determination and its margin of dumping determination are two distinct determinations. In certain circumstances, it is possible for a respondent to receive a separate rate even though its margin rate is based on the facts available. For example, in the case of freshwater crawfish tail meat from the PRC, the Department verified separate rates information with respect to two companies, but discovered at verification that the companies withheld other information.¹⁰ In this review the Department granted the companies separate rates, but those rates were based on adverse facts available.¹¹

G. Rate Assignment for Non-Selected Companies¹²

Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to

⁹ See [Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Reviews and Notice of Partial Rescission](#), 72 FR 6201 (February 9, 2007).

¹⁰ See [Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review](#), 70 FR 58672, 58674-76 (October 7, 2005).

¹¹ See also [Shandong Huarong General Group Corporation and Liaoning Machinery Import & Export Corporation v. United States](#), Slip Op 03-135 (October 22, 2003), at 37 - 44.

¹² This does not apply, during administrative review segments of the proceeding, to exporters for which the Department has not initiated an administrative review.

examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined.

The determination of the antidumping duty rate for those exporters who obtain a separate rate but who are not selected as respondents depends on the methodology used by the Department in its selection. Where respondent selection is based on the largest exporters, the Department normally assigns to exporters not selected as mandatory respondents a weighted average of the rates individually calculated for the mandatory respondents. In such circumstances, the Department excludes any rates that were zero, *de minimis*, or based entirely on facts available when calculating the weighted-average rate assigned to non-mandatory respondents, pursuant to section 735(c)(5) of the Act.¹³

When selecting respondents by sampling, the Department assigns the non-investigated / reviewed companies that were part of the pre-selection population a calculated antidumping rate (“sample rate”), based on the margins of the individually examined respondents. The sample rate is applied to all firms not selected for individual examination. In recent cases in which the Department used sampling to limit the number of firms examined, the Department included in the sample rate any zero or *de minimis* dumping margins and any dumping margins based on facts available (referred to as best information available prior to the Uruguay Round Agreements Act).¹⁴

IV. The NME-Wide Rate

A. Overview

As noted in the Separate Rates section above, the Department begins with a rebuttable presumption that all companies within the NME country are essentially operating units of a single, government-wide entity and should receive a single antidumping rate.

B. Application

In an antidumping investigation, all companies other than those that have been determined to be eligible for a separate rate are part of the NME entity and receive the NME-wide rate. That rate may be based on adverse facts available if, for example, some exporters that are

¹³ See [Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China](#), 70 FR 67412, 67415-19 (November 7, 2005) (where the Department explained its practice with respect to respondent selection)(“[Artist Canvas Preliminary Determination](#)”).

¹⁴ See, e.g., [Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review and Notice of Revocation of Order \(In Part\)](#), 59 FR 15159 (March 31, 1994).

part of the NME-wide entity do not respond to the antidumping questionnaire.¹⁵ In many cases, the Department concludes that some part of the NME-wide entity has not cooperated in the proceeding because those that have responded do not account for all imports of subject merchandise.

In an administrative review, the Department examines whether each exporter for which the Department has initiated a review is eligible for a separate rate. Companies which are non-responsive to the Department's questionnaire or its request for quantity and value information are not eligible to apply for a separate rate. In the Department's notices initiating administrative reviews, the Department includes the following footnote with respect to initiations of reviews for NME countries:

If one of the above-named companies does not qualify for a separate rate, all of the other exporters of {product name} from {NME country name} who have not qualified for a separate rate are deemed to be covered by this review as part of the single {NME country name} entity of which the named exporters are a part.

Occasionally, the NME-wide rate may be changed through an administrative review.¹⁶ This happens when 1) the Department is reviewing the NME entity because the Department is reviewing an exporter that is part of the NME entity, and 2) one of the calculated margins for a respondent is higher than the current NME-wide rate.¹⁷

V. Affiliation and Single Entity Determinations

A. Overview

For a general discussion of affiliation, see the Affiliated Parties section of Chapter 8, above. The following discussion outlines the principles, statutory authority and case precedent underlying the Department's practice with respect to affiliation and the treatment of companies as a single entity in NME cases.

In general, NME entities, just as market economy entities, are subject to the provisions of section 771(33) of the Act, which defines affiliated persons, and 19 CFR 351.102(b) and 19 CFR 351.401(f), which cover the agency's single entity test, insofar as such treatment does not conflict

¹⁵ See [Artist Canvas Preliminary Determination](#) at 67418.

¹⁶ In a new shipper review, there is no change to the NME-wide rate, as a new shipper review covers only an exporter that is eligible for a separate rate.

¹⁷ E.g., [Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review](#), 67 FR 19546, 19549 (April 22, 2002) and the accompanying [Issues and Decision Memorandum](#).

with the Department's application of separate rates and enforcement of the NME provisions.¹⁸ The question of whether affiliated parties constitute a single entity can arise among various combinations of producers, exporters, and suppliers of inputs, as discussed below.

B. Affiliated Producers of the Subject Merchandise

Because the Department assigns separate rates to, and calculates margins only for, exporters of the subject merchandise, the question of whether producers are affiliated with each other does not generally arise in NME cases. Producers may, however, be determined to be members of a group of affiliated companies containing an exporter as well. See Exporters of the Subject Merchandise and Affiliated Producers section, below.

C. Affiliated Exporters of the Subject Merchandise

The Court of International Trade ("CIT"), in Hontex Enterprises, Inc. v. United States, 248 F. Supp. 2d 1323 (CIT 2002) ("Hontex I"), affirmed the Department's practice of finding affiliation between or among NME exporters. The CIT concluded that it is a reasonable interpretation of the term persons to apply such term to NME exporters for purposes of interpreting the statutory provisions regarding affiliated persons. In Hontex Enterprises, Inc. v. United States, 342 F. Supp. 2d 1225, 1232 (CIT 2004) ("Hontex II"), the CIT, citing section 771(33) of the Act, stated that in order for Commerce to find that two or more exporters are affiliated, one must control the other(s), or all of the exporters must be under common control. Further, while the Department's regulation addresses affiliated producers, the Department has developed a practice in NME cases to assign antidumping duty rates to exporters rather than producers. The CIT held that once a finding of affiliation is made, affiliated exporters can be considered a single entity (or collapsed) where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise. See Hontex II at 1232-34. The CIT also instructed that the Department must take into consideration the temporal aspect of the exporters' relationship. See Hontex I at 1343.

D. Exporters of the Subject Merchandise and Affiliated Producers

In the case of mushrooms from the PRC, the Department stated that:

. . . to the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy (ANME) provision, section 773(c) of the Act, we will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.¹⁹

¹⁸ 19 CFR 351.102(b) describes the factors to be considered in determining affiliation, while 19 CFR 351.401(f) discusses the treatment of affiliated producers in antidumping proceedings.

¹⁹ See [Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative](#)

As the Department explained in the [Mushrooms Final](#), in determining whether to treat affiliated companies as a single entity, the Department considers the case-specific relationships between the companies under examination. In accordance with 19 CFR 351.401(f), the Department considers whether the companies in question: (1) are affiliated; (2) have similar production facilities such that retooling would not be required to shift production from one company to another; and (3) have a significant potential for manipulation of price or production. [See](#) 19 CFR 351.401(f). In determining whether a significant potential for manipulation exists, the Department may consider other factors such as: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined. [See id.](#) Moreover, the Department has also stated, in line with the CIT's analysis in [Hontex I](#), that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case.²⁰

E. A Single Rate for the Single Entity

If an exporter and its affiliated entities can be collapsed into a single entity, the single entity will obtain a single antidumping duty rate. [See, generally, Mushrooms Final](#) and accompanying [Issues and Decision Memorandum](#) at Comment 1. Further, the [Mushrooms Final](#) states that implicit in the Department's decision to collapse . . . is that the resulting rate would apply to all of the companies in the collapsed entity, provided that the entity as a whole is eligible for a separate rate, because to do otherwise would defeat the purpose of collapsing them in the first place." [See, Mushrooms Final](#) and the accompanying [Issues and Decision Memorandum](#) at 13. The [Mushrooms Final](#) states that a single entity determination is specific to the facts presented in each review and is based on several considerations, including the structure of the affiliated entities, the level of control between/among affiliates, and the level of participation by each affiliate in the proceeding.

Thus, depending upon the facts of each investigation or review, if there is evidence of significant potential for manipulation of price or production between or among affiliated producers which produce similar and/or identical merchandise, but may not all produce their product for sale to the United States, the Department may find such evidence of significant potential for manipulation of price or production as sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliated producers should be treated as one entity.²¹

[Review](#), 69 FR 10410, 10413 (March 5, 2004) ([Mushrooms Prelim](#)). [See also Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review](#), 69 FR 54635 (September 9, 2004) ([Mushrooms Final](#)) and accompanying [Issues and Decision Memorandum](#) at Comment 1.

²⁰ [See Hontex I](#), at 1340-42, 1344, and [Mushrooms Final](#) and accompanying [Issues and Decision Memorandum](#) at Comment 1.

²¹ [See also Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, Preliminary](#)

F. Producers of Upstream Inputs

In some cases, the producer may obtain inputs from an affiliated company, which may or may not also be a producer of subject merchandise. The Department values the upstream input using the factors of production of the upstream producer only when a producer and its affiliated supplier meet the criteria for collapsing under 19 CFR 351.401(f) and, thus, are treated as a single entity. For further information, see the “Intermediate Inputs” section, below.

VI. NME Calculation Methodology

A. Overview

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. That is, the Department will calculate a value based on the factors of production utilized in producing the merchandise, plus an amount for general expenses and profit, plus the cost of containers, coverings, and other expenses. Factors of production include materials, labor, energy and other utilities, and representative capital cost, including depreciation. The Department will base NV on the factors of production because the NME country does not operate on market principles of cost or pricing structures, so that sales or costs of merchandise in such a country do not reflect the fair value of the merchandise.

Because NV is based on the factors of production, the NME analysis does not involve such market-economy concepts as, for example, the cost-of-production test, or level of trade analysis.

Furthermore, because the selling expense component of NV is based on a surrogate value, the Department cannot accurately calculate differences in circumstances of sale and, thus, makes no adjustment for such differences. However, the Department will make deductions to CEP for all selling expenses associated with economic activity in the United States, because such deductions are required by the plain language of section 772(c) (2) (d) of the statute.²²

[Determination of Sales at Less Than Fair Value](#), 66 FR 22183 (May 3, 2001); [Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People’s Republic of China](#), 66 FR 49632 (September 28, 2001) ([Certain Hot-Rolled Carbon Steel Flat Products](#)); and [Anshan Iron & Steel Co. v. United States](#), Slip. Op. 03-83 at 32-33 (CIT 2003) (where it was determined that a single entity exited among a group of companies and not all of the companies among the group produced their product for sale to the United States) ([Anshan Iron & Steel Co.](#)).

²² [See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Final Results of Antidumping Duty Administrative Reviews](#), 61 FR 65527, 65535 (December 13, 1996); and [Brake Rotors from the People’s Republic of China: Preliminary Results and Partial Rescission of the Seventh Administrative Review and Preliminary Results of the Eleventh New Shipper Review](#), 70 FR 24382, 24390 (May 9, 2005).

As in market-economy cases, NV is converted into U.S. dollars using the rate of exchange on the date of sale of the subject merchandise, in accordance with 19 CFR 351.415(a).

B. Surrogate Country Selection

1. Overview

Section 773(c)(1)(B) of the Act states that . . . the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority. Section 773(c)(4) of the Act adds that the Department shall utilize to the extent possible . . . prices . . . in one or more market economy countries that are (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) a significant producer of comparable merchandise. The terms comparable level of economic development, comparable merchandise, and significant producer are not defined in the statute. The Department's regulations at 19 CFR 351.408, however, do provide some guidance. Furthermore, pursuant to 19 CFR 351.408(c)(2), the Department normally will value all factors of production in a single surrogate country if possible.

2. Economic Comparability

To determine which surrogate countries are at a level of economic development comparable to the NME country, the Department relies on per capita gross national income data as reported in the most current annual issue of World Development Report. See 19 CFR 351.408(b). The Department's normal practice is to select a primary surrogate country from a list of several potential surrogate countries. The surrogate countries on the list are not ranked and are considered equivalent in terms of economic comparability.

3. Producer of Comparable Merchandise

As noted above, comparable merchandise is not defined in the statute or the regulations, and is determined on a case-by-case basis. Nevertheless, there are some basic rules to follow. In all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise. In cases where none of the potential surrogate countries produces identical merchandise, the Department determines whether any of the potential surrogate countries produce comparable merchandise. The Department's practice is to consider whether products have similar production processes, end uses, and physical characteristics. When evaluating production processes, the Department has taken into account the complexity and duration of the processes and the types of equipment used in production.²³

²³ See [Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review](#), 66 FR 8383 (January 31, 2001), and accompanying Issues and Decision Memorandum at Comment 7; and [Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakhstan](#), 62 FR 2648, 2651 (January 17, 1997).

4. Significant Producer

The Department determines whether any of the countries which produce comparable merchandise are significant producers of that comparable merchandise. The extent to which a country is a *significant* producer should not be judged against the NME country's production level or the comparative production of the countries on surrogate country list. Instead, a determination should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data). Since these characteristics are specific to the merchandise in question, the standard for significant producer will vary from case to case. See [Policy Bulletin 04.1](#) (March 1, 2004).

Sometimes, none of the countries identified as being economically comparable are significant producers of comparable merchandise, or some countries meet both criteria, but sufficient data are not available to enable the Department to use any of those countries as the primary surrogate. In such cases, the Department will consider an expanded list of potential surrogate countries and will follow the country selection procedure described above.

5. Data Considerations

If more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country. A country that perfectly meets the requirements of economic comparability and significant production is of little use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable. In assessing data and data sources, it is the Department's practice to use period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data. In addition, the source of the data must be insulated from conflicts of interest.²⁴ Data collected or produced by an interested party, or on behalf of an interested party, should be avoided.

If an analyst is unable to find a significant producer of comparable merchandise in one of the countries deemed to be economically comparable to the NME country, the analyst should consult with the assigned program manager, and the Office of Policy, to consider other possible surrogate countries.

For further information, see Import Administration [Policy Bulletin 04.1](#), March 1, 2004.

²⁴ See [Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China](#), 69 FR 70997 (December 8, 2004) and accompanying [Issues and Decision Memorandum](#) at Comment 1.

C. Calculation of NV Based on FOP

1. Overview of Surrogate Valuation

19 CFR 351.408(c)(1) provides that the Department will normally use publicly available information to value the factors of production. The Department's regulations further instruct the Department to normally value all factors in a single surrogate country. See 19 CFR 351.408(c)(2). Thus, the Department relies, to the extent possible, on publicly available information from the first choice, or primary, surrogate country to value all factors of production (with the exception of labor). See the Surrogate Country Selection section, above.

If there is no reliable information from the primary surrogate country for a particular factor, the Department will attempt to use publicly available data from another surrogate country. See e.g., [Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review](#), 67 FR 48612 (July 25, 2002), and accompanying [Issues and Decision Memorandum](#), where the Department had to use a financial statement from a secondary surrogate country because it had no usable financial statement from the primary surrogate country.

There are two notable exceptions to the application of surrogate values to an NME producer's factors of production. First, where the NME producer purchases a particular input from a market economy producer during the POI or period of review ("POR"), and the purchase is paid for in a market economy currency, the Department normally will use the price paid by the NME producer to value that input. See 19 CFR 351.408(c)(1) and the Market-Economy Inputs section, below. Where a portion of the input is purchased from a market economy supplier and the remainder from an NME supplier, the Department normally will value the factor using the price paid to the market economy supplier. Id. Second, the Department values the NME producer's labor input by reference to a regression-based wage rate that effectively reflects data from a number of countries, rather than a single country. See 19 CFR 351.408(c)(3)

2. Practice

When selecting possible surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a publicly available value which is: (1) an average non-export value; (2) representative of a range of prices within the POI/POR or most contemporaneous with the POI/POR; (3) product-specific; and (4) duty and tax-exclusive.²⁵ Accordingly, the Department has articulated a preference for using official import prices rather than domestic prices to value the respondent's reported inputs because import prices, unlike domestic prices, do not include domestic taxes.²⁶ In general, import prices also have the advantage of representing a

²⁵ See [Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China](#), 69 FR 67304 (November 17, 2004), and accompanying [Issues and Decision Memorandum](#) at Comment 3.

²⁶ See [Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the](#)

large number of transactions, although some of them may not be of the exact same factor reported by the respondent. This potential drawback of import prices, whereby the surrogate import price encompasses a broader range of goods than the specific factor of the respondent is commonly known as the basket problem. As long as the use of the average price for the HTS category does not result in significant distortion to the calculation of NV, import prices are often more appropriate than individual company- or transaction-specific prices. Commerce explained in its final determination that it chose Indian import statistics because they were more reliable,' as they were based on the sum of all imports into India during the POI.'²⁷

In its calculation of the overall import price into a surrogate country, however, the Department excludes prices of imports from NME countries and from countries that provide general export subsidies, as well as prices which it deems to be aberrational. Moreover, the Department prefers, whenever possible, to use country-wide data and only to resort to company-specific information when country-wide data are not available.²⁸

Factors of production include, but are not limited to, hours of labor required, quantities of raw materials used, amounts of energy and other utilities consumed. See section 773(c)(3) of the Act. Material inputs are measured in the number of physical units used in the production of one unit of the subject merchandise, e.g., tons, pounds, gallons. Labor is measured in terms of hours. Energy is measured in terms of quantities used, e.g., BTUs (gas), kilowatt hours (electricity), and gallons (fuel oil).

The NME questionnaire requires information on the quantity of inputs actually used to produce the subject merchandise in the NME. If the NME exporter did not produce the subject merchandise (e.g. the exporter is a trading company), the Department will normally require factors information from each of the producers supplying that trading company with exports of the subject merchandise to the United States. For each of those models or product types of the subject merchandise that were exported to the United States, the producer must supply aggregate factor data, including information on any portion of the production that was destined for other markets. Where there is more than one producer of a model or product type, the Department will calculate NV for each producer, and then calculate a weighted-average exporter-specific NV to compare with U.S. price. Where there are a large number of producers involved in the production of the merchandise, the Department may limit the questionnaire to only the largest producers.

3. Valuation of Materials, Labor, and Energy

[People's Republic of China](#), 69 FR 67313 (November 17, 2004), ([Wooden Bedroom Furniture](#)) and accompanying [Issues and Decision Memorandum](#) at Comment 24.

²⁷ See [Polyethylene Retail Carrier Bag Committee, et al., Glopak, Inc., et al., Guangdong Esquel Textiles Co. v. United States](#), Slip Op.05-157 (December 13, 2005) at pp. 30 - 45.

²⁸ See [Final Results of the New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China](#), 68 FR 62053 (October 31, 2003), and the accompanying [Issues and Decision Memorandum](#) at Comment 2.

Interested parties have the opportunity to submit factor values in each segment of a proceeding. The Department may conduct its own research to find appropriate surrogate values. Where the Department has several surrogate values from which to choose, it makes its selection based on the quality and contemporaneity of the data.

A primary consideration is the extent to which the surrogate factor price corresponds to the NME factor of production. In many cases, an exact match is not possible, *e.g.*, the Department must match no. 2 fuel oil to the price of no. 4 fuel oil, or the Department must use the price of a basket of goods that includes, but is not limited to, the NME factor. Another consideration is that the Department generally values factors of production using prices contemporaneous with the POI/POR, regardless of when the subject merchandise was actually produced.²⁹ If the values are not contemporaneous with the POI/POR, the Department must adjust them using wholesale price indices from publicly available sources. Moreover, to the extent possible, the Department uses tax- and duty-exclusive factor prices.

The Department has a strong preference for using publicly available prices to value factors.³⁰ Further, factor values should be prices that are broadly available in the surrogate economy.³¹ For example, if the Department has information on what a particular producer pays for an input and also has information on what producers economy-wide pay for the same input, the Department would choose the latter (all other things being equal). The Department generally does not use price quotes because they are usually not publicly available and are often not contemporaneous with the POI/POR.³² As a result, the criteria or history that led to those quotes is unknown and easily subject to manipulation. Furthermore, the market price might fluctuate significantly over time.

Where the Department cannot develop publicly available data in the surrogate country, the Department uses data from other sources, including sources in other appropriate surrogate countries.

²⁹ Exceptions to this practice are sometimes made in cases involving agricultural products, to conform the calculation of NV to the growing season. *See, e.g., [Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review](#)*, 70 FR 54361 (September 14, 2005), and the accompanying Issues and Decision Memorandum at Comment 5.

³⁰ *See [Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review](#)*, 62 FR 65674, 65667 (December 15, 1997); *[Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review](#)*, 70 FR 67434, 67439 (November 7, 2005).

³¹ *See [Cut-to-Length Carbon Steel Plate from the People's Republic of China, Final Determination of Sales at Less than Fair Value](#)*, 62 FR 61972 (November 20, 1997).

³² *See, generally, [Issues and Decision Memorandum for Final Determination: Saccharin from the PRC](#)*, 68 FR 27530 (May 2003) and the accompanying *[Issues and Decision Memorandum](#)* at Comment 1; *[Certain Frozen Fish Fillets from Vietnam](#)*, 68 FR 37116 at 81 (June 2003) and the accompanying *[Issues and Decision Memorandum](#)*.

a. Materials

To obtain a material cost figure, the Department multiplies the surrogate value by the factor input quantity. If a by-product or a co-product is generated in the manufacturing process, the Department allows a credit for it in accordance with generally accepted accounting principles. See the “By-Product Offsets” section, below. When the by-product can be recycled into the production process of the subject merchandise as a factor of production, the respondent may have already reflected the recycling in the usage rate of that factor of production. The Department must ensure that the by-products credit is not counted twice.

Total materials cost is calculated on a delivered-to-producer basis. Thus, the Department’s questionnaire requests that producers report the distance and mode of transportation from the materials supplier to the producer. Moreover, when the surrogate value for the material is based on import prices, the Department uses the shorter of (a) this reported distance or (b) the distance from the nearest port to the producer to value the materials transportation in the surrogate country, and include this materials transportation value in the total materials value. Because of the litigation from which this practice arose, this materials transportation value is sometimes referred to as the Sigma freight.³³

b. Labor

The Department values labor hours using regression-based wage rates (see 19 CFR 351.408(c)(3)) that are posted on the IA web page and updated annually. The Department calculates direct labor costs by multiplying the labor hour input by the regression-based wage rate.

If indirect labor is included in the surrogate value for factory overhead (see below), it need not be valued separately. If, however, it is not included in the surrogate value for factory overhead, it should be valued as part of labor.

c. Energy and Utilities

Most production processes use a variety of energy sources. These may include electricity, natural gas, oil or water. The Department values these inputs by determining the amount of each energy source or utility used in the production process and applying the appropriate per-unit surrogate values.

If energy is not an important production factor it may not be necessary to quantify this input separately. In this situation, energy may be included in the surrogate value for factory overhead (see below). If it is included in overhead, the analyst should be aware so as not to double count energy and utilities.

³³ See Sigma Corp. v. United States, 117 F. 3d 1401, 1407-1408 (Fed. Cir. 1997).

For information on particular situations regarding intermediate inputs and inputs supplied free of charge by the U.S. customer, see the Intermediate Inputs and Free-of-Charge Inputs sections, below.

4. Factory Overhead; SG&A Expenses; and Profit

Factory overhead, SG&A expenses, and profit are included in the NV. The Department uses publicly available financial statements of producers of comparable merchandise from the primary surrogate country, when available.³⁴ See 19 CFR 351.408(c)(4). It is important to use, to the extent possible, information from surrogate producers of the identical (or similar) merchandise. For further details, see the Financial Ratios section, below.

a. Factory Overhead

The most important component of factory overhead is depreciation. It can also include supervisory and indirect labor,³⁵ maintenance, and energy that is not significant enough to be valued separately. Normally, factory overhead is expressed as a percentage of materials, labor, and energy of the surrogate producer, and is applied to the materials, labor, and energy costs of the exporter.

b. General Expenses

Included in general expenses are SG&A expenses. The Department uses actual SG&A expense amounts obtained from publicly available, published data sources (e.g., the financial statements of a company or companies located in the surrogate country). The SG&A expense ratio is applied to total of materials, labor, energy, and factory overhead.

c. Profit

The Department relies on actual profit amounts from published data in the surrogate country (e.g., the financial statements of a company or companies located in the surrogate country).

4. Packing

Packing for shipment to the United States is valued in the surrogate country based on factor amounts for materials (including materials transportation) and labor supplied by the respondent. Packing for shipment is distinct from packaging of the product, which is included in the valuations outlined above.

³⁴ See, e.g., [Wooden Bedroom Furniture](#).

³⁵ For the treatment of supervisory and indirect labor, consult with the assigned program manager.

D. Sample Calculation

<u>Surrogate Factor Valuation</u>				
<u>Factor</u>	<u>Amount Used in Production of One Ton of Subject Merchandise</u>	<u>Source</u>	<u>Value in Surrogate</u>	<u>ME Purchase Value</u>
steel	1.07 tons	NME	12,000 Rs./ton	N/A
plastic	2 lbs.	ME	N/A	\$2.00/lb.
labor	150 hours	NME	\$0.97/hr.	N/A
electricity	130 kwh.	NME	4.13 Rs./kwh.	N/A
factory overhead			20% of materials + labor + energy (MLE)	
SG&A			8% of MLE + factory overhead	
profit			5% of MLE + factory overhead + SG&A	
steel scrap by-product ³⁶	0.05 tons (per ton of subject merchandise produced)	NME	1,000 Rs./ton	N/A
packing materials	15 kg.	NME	100 Rs./kg.	N/A
packing labor	10 hrs.	NME	\$0.97/hr.	N/A

Materials Transportation Valuation³⁷

³⁶ This assumes there was no further processing or packaging done to the scrap, and that it was picked up at the production facility by the purchaser. Otherwise, the by-product deduction would need to be adjusted to account for the related expenses.

³⁷ Note that there is no freight expense calculation for the plastic factor purchased from a market-economy supplier, because this example assumes that the reported price was a delivered price. If the price was not delivered to

<u>Factor</u>	<u>DistanceB Supplier to Production Facility</u>	<u>DistanceB Nearest Port to Production Facility</u>	<u>Transportation Method</u>	<u>Surrogate Freight Value</u>
steel	40 km.	25 km.	truck	1.02 Rs./ton/km.
packing	5 km.	25 km.	truck	1.02 Rs./ton/km.

Normal Value Calculation

<u>Factor</u>	<u>Calculation of Value</u>	<u>Value</u>	<u>Exchange Rate</u>	<u>Value in US \$³⁸</u>
steel	1.07 tons x 12,000Rs./ton	12,840 Rs.	0.027	\$346.68
transportation for steel	1.07 tons x 25 km. x 1.02 Rs./ ton/km.	27.285 Rs.	0.027	\$ 0.74
plastic	2 lbs. x \$2.00/lb.	\$4.00	1.000	\$ 4.00
labor	150 hrs. x \$0.97/hr.	\$144.50	1.000	\$144.50
electricity	130 kwh. x 4.13 Rs./kwh.	536.9 Rs.	0.027	\$ 14.50
factory overhead	20% x (\$346.68 + 0.74 + 4.00 + 144.50 + 14.5) = 20% x \$510.42			\$102.08
SG&A	8% x (\$510.42 + 102.08) = 8% x \$612.5			\$ 49.00
profit	5% x (\$612.50 + 49.00) = 5% x \$661.50			\$ 33.07
steel scrap by-product ³⁹	0.05 tons x 1,000 Rs./ton	50 Rs.	0.027	\$ 1.35

the production facility, then the Department would need to calculate freight cost from the point at which the producer or exporter of the subject merchandise assumed responsibility for transportation.

³⁸ This example assumes that there was only one U.S. sale. Because the regulations direct the Department to use the exchange rate in effect on the date of the U.S. sale, the NME margin calculation program actually converts surrogate currency values to U.S. dollar values after the NV and sales data have been combined.

packing materials	15 kg. x 100 Rs./kg.	1,500 Rs.	0.027	\$ 40.50
transportation for packing materials	15 kg. x 5 km. x .00102 Rs./kg./km.	0.0765	0.027	\$ 0.003
packing labor	10 hrs. x \$0.97/hr.	\$9.70	1.00	\$ 9.70
Normal Value:	$\$346.68 + \$0.74 + \$4.00 + \$144.50 + 14.50 + \$102.08 + \$49.00 + \$33.07 - \$1.35 + \$40.50 + \$0.003 + \$9.70 = \743.423			

E. Market-Economy Inputs

1. Overview

19 CFR 351.408(c)(1) provides that where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Department normally will use the price paid to the market economy supplier. Furthermore, where a portion of the factor is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, the Department normally will value the factor using the price paid to the market economy supplier.⁴⁰ The Department has established a threshold for using market economy purchases to form the basis for valuation of a respondent's input.⁴¹ If a respondent purchases at least 33 percent of an input from market economy suppliers, the Department will use the weighted average purchase price to value the entire input used by the respondent

Alternatively, when the volume of an NME respondent's purchases from market economy suppliers as a percentage of its total volume of purchases during the POI/POR is below 33 percent, but where these purchases are otherwise valid and meet the Department's existing conditions, the Department will weight average the weighted-average market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases. The Department also established that the validity of any market economy purchases can be refuted by parties and if the Department determines that the prices are not valid, they will not be used to value the input.

³⁹ This example assumes that the surrogate financial statements indicate that revenue from by-products was treated as a credit to sales rather than a debit to COM. See the ABy-Products Offset section, below.

⁴⁰ The Department further notes that it does not accept market economy input purchase prices when the input in question was produced in an NME. See [Final Determination: Polyethylene Retail Carrier Bags from the PRC](#), 69 FR 34125 (June 18, 2004) and accompanying [Issues and Decision Memorandum](#), at Comment 20.

⁴¹ See [Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments](#), 71 FR 61716 (October 19, 2006).

2. Practice

Where a respondent purchases a factor from market-economy suppliers and pays for the factor in a market-economy currency, the Department normally will use the weighted-average price paid by the respondent to all such suppliers to value the factor. However, the Department does not rely on data that it considers aberrational or otherwise unreliable. The Department has established a three-pronged test to assess the reliability of market-economy input prices. The Department looks at: (1) the value and volume of the imports; (2) the type and quality of the imported product; and (3) consumption of the imported product by the NME producer.⁴²

Accordingly, the market-economy purchases must have been contemporaneous with the POI/POR. In cases where the factor was purchased outside the POI/POR, the Department has declined to value the factor using the market-economy purchases.⁴³ This is because the value of any particular factor might change greatly from one period to the next.

In addition, the factor purchased from a market-economy supplier must have been used in production during the POI/POR. For example, in the case of shrimp from the PRC, the Department noted that it will not use the price from the market-economy supplier in factor valuation where record evidence indicates that the factor purchased from a market-economy supplier could not have been used during the period in question.⁴⁴

Finally, the Department can disregard inputs it has reason to believe or suspect might be dumped or subsidized. It should be noted that the Department does not need specific evidence of dumping or subsidization from the country of origin of the input, but where the Department has reason to believe or suspect dumping or subsidization, it will exclude these prices from valuing the factor input.⁴⁵ This holds true even where the factor was purchased from a third-country supplier (e.g., a Hong Kong trading company). For example, in the case of helical spring lock washers from the PRC, the Department stated: It is the Department's longstanding practice to consider that goods

⁴² See [Timken Co. v. United States](#), 201 F. Supp. 2d 1316, 1337 (CIT 2002); [Olympia Indus. Inc. v. United States](#), 36 F. Supp. 2d. 414 (CIT 1999).

⁴³ See [Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review](#), 70 FR 34448 (June 14, 2005) and the corresponding [Issues and Decision Memorandum](#) at Comment 3; see also [Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China](#), 67 FR 6482 (February 12, 2002) and the accompanying [Issues and Decision Memorandum](#) at Comment 33.

⁴⁴ See [Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam](#), 69 FR 71005 (December 8, 2004) and the accompanying [Issues and Decision Memorandum](#) at Comment 8A.

⁴⁵ See [Folding Metal Tables and Chairs From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review](#), 69 FR 75913 (December 20, 2004) and the accompanying [Issues and Decision Memorandum](#) at Comment 1.

determined to be dumped or subsidized remain so whether or not they are sold through third-country trading companies.⁴⁶

F. Free-of-Charge Inputs

1. Overview

Respondents may report that they received from their U.S. customer(s) specific direct material or packaging inputs free of charge, and used these inputs to produce or pack the merchandise under investigation/review during the POI/POR.

2. Practice

Sections 773(c)(1)(B) and (3)(B) of the Act require the Department to value all inputs used to produce the merchandise under investigation/review. For purposes of constructing NV, the Department does not distinguish between purchased inputs and free-of-charge inputs. Accordingly, the Department will normally value the free-of-charge inputs by using a surrogate value for purposes of constructing NV. However, if the respondent sufficiently documents its claim that a free-of-charge input was received from its U.S. customer, in accordance with the criteria noted below, the Department will make an offsetting adjustment to the respondent's reported U.S. price to include the value of the free-of-charge input.⁴⁷

3. Criteria

To sufficiently support its claim, a respondent must provide documentation which demonstrates that: (1) its U.S. customer(s) contracted with a third party for the purchase of the inputs in question and that the third party delivered the inputs to the respondent or its producer in a certain quantity on a certain date; (2) payment in full for the input(s) in question was made by the U.S. customer(s); and (3) the free-of-charge inputs were used in the required quantities for the respondent's sales of subject merchandise to the applicable U.S. customers during the POI/POR (*i.e.*, there must be a link between the consumption of the free-of-charge input and the sale of subject merchandise). Furthermore, the respondent must affirmatively state that the price to the U.S. customer is exclusive of the free-of-charge inputs. If these requirements are met, then the Department will

⁴⁶ See [Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review](#), 70 FR 28274 (May 17, 2005) and the accompanying [Issues and Decision Memorandum](#) at Comment 1.

⁴⁷ See, e.g., [Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review](#), 70 FR 54361 (September 14, 2005) and accompanying [Issues and Decision Memorandum \(Mushrooms Final Results\)](#) at Comment 13; [Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Seventh Administrative Review and Preliminary Results of the Eleventh New Shipper Review](#), 70 FR 24382, 24390 (May 9, 2005); and [Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China](#), 70 FR 24502 (May 10, 2005) ([ISOs Final Determination](#)) and accompanying [Issues and Decision Memorandum](#) at Comment 10.

normally make an upward adjustment to the U.S. sales price of the applicable sales transactions to reflect the U.S. customers' expenditures for the free-of-charge inputs.

G. By-Product Offsets

1. Overview

In certain instances, a respondent will report by-products from producing the subject merchandise which it claims it either re-sold or re-used during the POI/POR. In those instances in which the respondent provides sufficient documentation to support its by-product claim, the Department allows a recovery/by-product credit in accordance with the Department's practice.⁴⁸ For this purpose, the Department grants an offset by deducting the surrogate costs for such by-products from the NV calculation.

2. Requirements for Claiming By-Product Offsets

The Department's general practice is to grant offsets to NV for by-products which result from the final stage as well as from intermediate stages of production.⁴⁹ Respondents are required to describe the disposition of the by-products, and, if they are sold or returned to production, provide evidence thereof. Furthermore, they must explain any further processing of the by-products, and list the factors and quantities thereof used in the further processing. The Department subtracts from any offset the surrogate value of the further processing.

3. Application

The Department's general practice is to treat by-products in a manner consistent with the treatment by the surrogate company for the calculation of financial ratios⁵⁰ in order to ensure that financial ratios and the costs to which they are applied are calculated in a consistent manner.⁵¹ For example, if the financial reports used to derive the surrogate financial ratios indicate that all of the selected companies accounted for revenue from by-products as a credit to sales rather than as a

⁴⁸ See [Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam](#), 68 FR 43713, 43713 (July 24, 2003).

⁴⁹ See, e.g., [Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review](#), 70 FR 10965, 10976 (March 7, 2005).

⁵⁰ The surrogate financial ratios are for factory overhead, SG&A expenses, and profit, and are derived from data contained in the surrogate producers' financial statements.

⁵¹ See [Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam](#), 69 FR 71005 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 4B; and [Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam](#), 68 FR 4986 (January 31, 2003) ([Vietnam Fish Fillets Preliminary Determination](#)).

debit to cost of manufacture, then the Department will deduct the by-product offset from NV after applying the surrogate financial ratios to cost of manufacture.⁵²

H. Intermediate Inputs

1. Overview

Generally, subject merchandise is valued using the actual amounts of the factors utilized by the producer of the subject merchandise. If a producer of subject merchandise produces an intermediate product which it then uses in the production of subject merchandise, the Department usually values the purchased inputs used to produce the intermediate product, not the intermediate input itself.⁵³

If a producer of subject merchandise obtains a factor of production from a supplier with which it is not considered a single entity, even if the two companies are affiliated, the Department normally values the individual factor at the stage in which it is consumed by the producer of subject merchandise.

Conversely, if the producer of subject merchandise obtains a factor from a supplier with which it is considered a single entity, the Department will generally value the inputs used by the supplier to make the producer's factor of production. In other words, the factor obtained from the affiliated supplier is treated as an intermediate product of the collapsed single entity.

2. Practice Under the Applicable Statutory and Regulatory Provisions

The Department's general policy, consistent with Section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce subject merchandise. If the NME respondent is an integrated producer, the Department takes into account the factors utilized in each stage of the production process.⁵⁴ This is also in accordance with the Act and the Department's regulations, which provide that in NME cases, the Department normally will calculate NV by valuing the Anonmarket economy producers' factors of production in a market economy country.⁵⁵ However, when it is proper to value the intermediate products of a producer, but no

⁵² See [Final Redetermination Pursuant to Court Remand: Guangdong Chemicals Import & Export Corporation v. United States](#), Court No. 05-00023 (January 25, 2008) at 7-8, and 12.

⁵³ Note that producers who also produce their own intermediate inputs are often called Aintegrated producers.

⁵⁴ See [Vietnam Fish Fillets Preliminary Determination](#), 68 FR at 4993; and [Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam](#), 68 FR 37116 (June 23, 2003), and the accompanying issues and decision memorandum at Comment 3 ("[Vietnam Fish Fillets Final Determination](#)").

⁵⁵ See Section 773(c) of the Act; 19 CFR 351.408(a) (emphasis added). Also see [Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China](#), 65 FR 39598 (May 25, 2000), and accompanying Issues and Decision Memorandum at Comment 11; [Sinopec Sichuan Vinylon Works v. United States; Final Results Pursuant to Remand](#) (September 26, 2005) ([Sinopec Remand](#)); [Anshan Iron &](#)

suitable surrogate values for the intermediate product exist on the record, the Department may look to other reliable valuation methods. One such method may be to value the upstream inputs used in the production of the intermediate product, where information for such valuation can be obtained from the producer's subcontractor, an affiliated supplier, an unaffiliated supplier, or other sources of information, as appropriate.⁵⁶

3. Practice With Respect to Valuing Intermediate Inputs

Generally, if the NME producer of subject merchandise is integrated, such that it self-produces a material input used in the manufacture of subject merchandise, the Department will take into account the factors utilized in each stage of the production process of that material input.⁵⁷ In other words, the Department generally values any inputs obtained by the producer (*i.e.*, purchased or otherwise obtained from an outside source) and used in producing intermediate inputs, which are then used in the manufacture of subject merchandise. For example, in the case of preserved mushrooms from the PRC produced by a fully integrated firm, the Department valued the factors that the producer used to grow the mushrooms, the factors it used to further process and preserve the mushrooms, and any additional factors the producer used to can the mushrooms, including any factors used to manufacture the cans (if produced in-house) because these factors reflected the subject merchandise producer's own experience in the production of canned mushrooms.⁵⁸

In certain instances the Department may not value the inputs to an intermediate factor produced by an integrated producer. These instances are determined on a case-by-case basis depending on the facts of the case. For example, in some cases, a respondent may report inputs used to produce an intermediate factor of production that accounts for a small share of total output. The Department recognizes that, in such cases, the increased accuracy in the Department's overall calculations that would result from separately valuing each of those inputs may be so small as to not justify the burden of doing so. Therefore, in such situations, the Department would value the intermediate factor of production directly.⁵⁹ In other cases, the Department may determine that valuing the inputs used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in the case of carbon and alloy steel wire rod from Ukraine, the

Steel Co.; [Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovandium from the People's Republic of China](#), 67 FR 45088, 45092 (Jul. 8, 2002); and [Vietnam Fish Fillets Final Determination](#) at Comment 3.

⁵⁶ See [Hangzhou Spring Washer Co., Ltd. v. United States](#), 387 F. Supp. 2d 1236 (CIT 2005).

⁵⁷ See [Sinopec Remand; Notice of Final Determination at Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China](#), 69 FR 34130 (Jun. 18, 2004).

⁵⁸ See [Final Results Valuation Memorandum for Final Results of the First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China](#), 66 FR 31204 (Jun. 11, 2001).

⁵⁹ See [Vietnam Fish Fillets Final Determination](#) at Comment 3.

Department addressed whether it should value the respondent's factors used in extracting iron ore, an input to its wire rod factory. In that case, the Department determined that, if it were to value the extracting factors, the Department would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead.⁶⁰

Finally, in the case of fresh garlic from the PRC, the Department determined that the books and records maintained by the respondents did not report or account for all of the relevant information and did not allow the respondents to identify all of the factors of production necessary to grow and harvest garlic. Accordingly, in order to eliminate distortions in the calculation of NV, the Department valued the intermediate product for all companies, rather than valuing all the inputs (e.g., garlic seed, pesticides, herbicides, fertilizer, plastic film, water and growing/harvesting labor hours) used to produce the intermediate product.⁶¹

4. Inputs Purchased from Affiliated Suppliers

When both producer and supplier are separate legal entities, a finding of affiliation between a producer and its supplier does not, in and of itself, justify a departure from the Department's standard practice of valuing the factors of production consumed by the producer of subject merchandise.⁶² Moreover, in the remand of a case involving foundry coke from the PRC, the Department discussed its practice of not looking beyond the producer of subject merchandise to value the upstream inputs that a supplier uses to produce one of the producer's factors.⁶³

⁶⁰ See [Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine](#), 67 FR 55785 (August 30, 2002), and accompanying [Issues and Decision Memorandum](#) at Comment 4. See also [Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review](#), 66 FR 31204 (June 11, 2001), and accompanying [Issues and Decision Memorandum](#) at Comment 2; [Vietnam Fish Fillets Preliminary Determination](#), 68 FR at 4993; [Vietnam Fish Fillets Final Determination](#) at Comment 3; [Notice of Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China](#), 66 FR 49632 (September 28, 2001) and the accompanying [Issues and Decision Memorandum](#); [Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China](#), 62 FR 61964 (Nov. 20, 1997); and [Notice of Final Determination at Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China](#), 60 FR 22544 (May 8, 1995).

⁶¹ See [Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews](#), 71 FR 26329 (May 4, 2006) ([A Garlic from China 2006](#)) and accompanying [Issues and Decisions Memorandum](#) at Comment 1. See also [Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Review and Preliminary Results of New Shipper Review](#), 70 FR 69942 (November 18, 2005); [Fresh Garlic from the People's Republic of China: Preliminary Results of 2004-2005 Semi-Annual New Shipper Reviews](#), 71 FR 26322 (May 4, 2006).

⁶² See [Sinopec Remand](#), at 40 - 41.

⁶³ See [CITIC Trading Company, Ltd. v. United States of America and ABC Coke, et al: Final Results](#)

However, in certain instances, based on the facts on the record of the proceeding, a producer of subject merchandise and its supplier entity may be considered by the Department to comprise a single entity.⁶⁴ For purposes of its NV calculation, when the producer and supplier are treated as a single entity, the Department may value the inputs purchased or otherwise obtained by the supplier from an outside source and used in producing intermediate inputs, which are then used in the manufacture of subject merchandise. This valuation methodology is analogous to the methodology described above, where the subject merchandise producer is, by itself, an integrated production entity.⁶⁵

I. Financial Ratios

1. Overview

After the Department calculates the cost of materials, labor and energy in the NV calculation, the Department then adds in the other costs of production through financial ratios calculated, to the extent possible, by using publicly available financial statements of producers of comparable merchandise. 19 CFR 351.408(c)(4) directs the Department to value the respondent's other costs incurred in the production of subject merchandise (i.e., factory overhead, SG&A, and profit) by deriving financial ratios⁶⁶ from non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. Among the surrogate producers of comparable products, the Department prefers to value financial ratios using data from those surrogate producers whose financial data will not be distorted or otherwise unreliable.⁶⁷ For example, financial data from a surrogate country producer whose production process is significantly different from that of the respondent may be considered inappropriate compared to other available financial statements. Similarly, costs that do not appropriately reflect the respondent's factory overhead costs and SG&A expenses may be rejected for financial data of

Pursuant to Remand, at <http://ia.ita.doc.gov/remands/03-23.pdf> (Jun. 17, 2003).

⁶⁴ For more information on the single entity analysis, please refer to the NME Affiliation/Single Entity portion of this manual.

⁶⁵ See [Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review](#), 69 FR 54635 (September 9, 2004) at Comment 3.

⁶⁶ The financial surrogate ratios are factory overhead, SG&A, and profit.

⁶⁷ See, e.g., [Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China](#), 67 FR 48612 (July 25, 2002) and the accompanying [Issues and Decision Memorandum](#) at Comment 5; [Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review](#), 66 FR 42628 (August 14, 2001) and accompanying [Issues and Decisions Memorandum](#) at Comment 5; and [Heavy Forged Hand Tools from the People's Republic of China: Final Results of Antidumping Duty Administrative Review](#), 66 FR 48026 (September 17, 2001) and accompanying [Issues and Decision Memorandum](#) at Comment 18.

another surrogate producer whose production process and costs do appropriately reflect the respondent's factory overhead costs and SG&A expenses.⁶⁸

2. Practice

The Department's criteria for choosing surrogate companies are the: (1) availability of contemporaneous financial statements; (2) comparability to the respondent's production process; and (3) public availability of information.⁶⁹

a. Contemporaneity

In general, the Department's preference is to use financial data from surrogate producers which is most contemporaneous with the period of investigation or review if other factors are satisfied (e.g., representativeness, specificity, quality).⁷⁰

b. Comparability

When selecting surrogate producer financial reports for purposes of deriving surrogate percentages, the Department's general preference is to use, where possible, the financial data of surrogate producers of identical merchandise.⁷¹

If there is no publicly available financial data for surrogate producers of identical merchandise, then the Department will use the financial data of surrogate producers of comparable merchandise. While the statute does not define comparable merchandise in selecting surrogate values for overhead, SG&A and profit, the Department has considered whether products have similar production processes, end uses, and physical characteristics. When evaluating production

⁶⁸ See [Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review](#), 68 FR 6712 (February 10, 2003), and accompanying [Issues and Decision Memorandum](#) at Comments 9, 10.

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

⁷⁰ See [Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review](#), 68 FR 25861 (May 14, 2003) and accompanying [Issues and Decision Memorandum](#) at Comment 3; and [Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Final Results of the Ninth New Shipper Review](#), 69 FR 42039 (July 13, 2004) and accompanying [Issues and Decision Memorandum](#) at Comment 2.

⁷¹ See [Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review](#), 69 FR 47887, 47890 (August 6, 2004); and [Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China](#), 66 FR 49345 (September 27, 2001) and accompanying [Issues and Decision Memorandum](#).

processes, the Department has taken into account the complexity and duration of the processes and the types of equipment used in production.⁷²

In situations where the Department is able to choose among surrogate producer financial reports, the Department has expressed a preference for selecting the surrogate producers whose operations are most similar to those of the NME respondents.⁷³ Moreover, the Department has an established practice of rejecting financial statements of surrogate producers whose production process is not comparable to (*i.e.*, significantly different from) the respondent's production process when more comparable information is available.⁷⁴

Moreover, the Department's preference is that the surrogate financial ratios represent the surrogate country's industry as broadly as possible to minimize the chance of distortion. Therefore, when possible, it is the Department's preference to use more than one surrogate producer's financial data to reflect a broader representation of the experience of the surrogate industry.⁷⁵

c. Publicly Available Information

The Department has expressed a preference to use publicly available financial data containing the level of detail necessary to make adjustments and/or capture all the necessary costs for purposes of calculating accurate financial ratios.⁷⁶ Financial statements that are not readily available on the company website or through a routine request might not be considered public.

d. Separately Listed Elements

⁷² See [Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review](#), 66 FR 8383 (January 31, 2001), and accompanying [Issues and Decision Memorandum](#) at Comment 7; and [Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakhstan](#), 62 FR 2648, 2651 (January 17, 1997).

⁷³ See [Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review](#), 68 FR 41304 (July 11, 2003) and accompanying [Issues and Decision Memorandum](#) at Comment 4.

⁷⁴ See, *e.g.*, [Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China](#), 66 FR 22183, 22193 (May 3, 2001); and [Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review](#), 70 FR 6836 (February 9, 2005) and the accompanying [Issues and Decision Memorandum](#) at Comment 1.

⁷⁵ See also [Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Final Results of the Ninth New Shipper Review](#), 69 FR 42039 (July 13, 2004) and accompanying [Issues and Decision Memorandum](#) at Comment 2.

⁷⁶ See [Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review](#), 69 FR 75303 (December 16, 2004), and accompanying [Issues and Decision Memorandum](#) at Comment 6.

The financial statements of some surrogates might list depreciation separately rather than including it in factory overhead, or might list interest separately rather than including it in SG&A expenses. In those cases, the Department calculates a depreciation/factory overhead ratio based on the total of the surrogate's depreciation and factory overhead expenses, and an SG&A ratio based on the total of the surrogate's interest and SG&A expenses.

VII. Market-Oriented Industry (“MOI”)

A. Overview

Section 773(c)(1) of the Act allows the Department, in certain circumstances, to use the market-economy methodology described in section 773(a) of the Act to determine NV in an NME case. To identify those situations where the Department would use its market economy methodology and calculate NV based on domestic prices or costs in the NME, the Department developed MOI test. The MOI test determines whether the market-economy methodology may be applied only to the specific industry subject to the investigation or review.

B. Criteria

Under the Department's current practice, an affirmative finding of an MOI requires that certain conditions be met using a three-prong test⁷⁷:

- For the merchandise under investigation or review, there must be virtually no government involvement in setting prices or amounts to be produced (“Prong 1”);
- The industry producing the merchandise under investigation or review should be characterized by private or collective ownership (“Prong 2”);
- Market-determined prices must be paid for all significant inputs whether material or non-material (e.g., labor and overhead) and for all but insignificant proportions of all the inputs accounting for the total value of the merchandise under investigation or review. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant (“Prong 3”).

If these conditions are not met, the analyst should treat producers of the merchandise under investigation or review as NME producers, and calculate NV using the NME methodology described in this chapter.

C. Practice

⁷⁷ See Amendment to Final Determination to Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts From the People's Republic of China, 57 FR 15052, 15054-55 (April 24, 1992).

The current MOI test is neither codified in the Act nor in the Department's regulations.⁷⁸ The MOI test was first articulated in 1992 in Lug Nuts From China, 57 FR at 15053-55, and since its inception through 2008, the Department has received occasional requests from industries for consideration of MOI status. However, no industry has yet to be granted MOI status in an investigation or review.

Before applying the three-prong MOI test, a respondent's MOI request must first meet the initial threshold of representing all or virtually all the producers in the industry in question.⁷⁹ The request must also be submitted early enough in the proceeding to afford the Department sufficient time to collect and analyze the necessary data.⁸⁰ Below are the three prongs of the MOI test:

Prong 1: Virtually no government involvement in setting prices or amounts to be produced. There is no definition of how much government involvement constitutes virtually no government involvement.

Prong 2: Private or collective ownership. While there may be state-owned enterprises in the industry, substantial state ownership would weigh heavily against finding an MOI.⁸¹

Prong 3: Market-determined prices must be paid for all significant input.

⁷⁸ See [Preamble to Antidumping Duties; Countervailing Duties Regulations](#), 62 FR 27296, 27365 (May 19, 1997).

⁷⁹ See [Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China](#), 69 FR 20594, and accompanying [Issues and Decision Memorandum](#) at Comment 1 (April 16, 2004) ([Color Television Receivers from China](#)) (respondents accounting for estimated 79.6% production insufficient to represent industry); [Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Ukraine](#), 66 FR 50401, 50404 (October 3, 2001) and accompanying [Issues and Decision Memorandum](#).

⁸⁰ See [Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China](#), 69 FR 67313, at Comment 1 (November 17, 2004) and accompanying [Issues and Decision Memorandum](#) (MOI request submitted 14 days before the preliminary determination provided insufficient time for analysis).

⁸¹ See [Color Television Receivers from China](#), at Comment 1 (April 16, 2004) (manufacturers with zero or minority government ownership occupy about 50.07% of total production output).

