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November 20, 2002

MEMORANDUM TO: Bernard T. Carreau
Acting Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for Import Administration

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

Summary

We have analyzed the comments and rebuttal comments of interested parties in the antidumping duty investigation of ferrovanadium from the People's Republic of China (PRC). As a result of our analysis of these comments, we have made changes in the margin calculations, including corrections of certain inadvertent errors from the preliminary determination. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum for this final determination.

Below is the complete list of issues in this investigation for which we received comments and rebuttal comments from parties:

- Comment 1: Whether Pangang Group International Economic & Trading Corporation (Pangang) Should Have Reported Factors of Production for All of its Production Facilities
- Comment 2: Unreported Factors of Production
- Comment 3: Whether Pangang Incorrectly Reported the Consumption Quantity of a Major Input
- Comment 4: Whether the Department Should Continue to Use South Africa as the Surrogate Market Economy Country
- Comment 5: Whether the Department Should Calculate the Surrogate Value for Vanadium Slag Using World Trade Atlas (WTA) Data or United Nations Commodity Trade Statistics (UNCTS) Data

- Comment 6: Whether the Department Should Value Vanadium Slag Using Actual or Theoretical Consumption Quantities
- Comment 7: Whether the Department Should Continue to Add Soda Consumption Quantities to the Reported Factors of Production
- Comment 8: Whether the Department Should Value Soda as Sodium Hydroxide or Sodium Carbonate
- Comment 9: Whether the Department Should Make a Concentration Adjustment to its Surrogate Value for Ammonium Sulphate
- Comment 10: Whether the Department Should Allow an Offset for Aluminum Oxide Slag
- Comment 11: Whether the Department Should Use Petitioners' Suggested Methodology to Value Pangang's Vanadium Slag Offset
- Comment 12: Whether the Department Should Value the Consumption of Iron Drums Using WTA Data
- Comment 13: Whether the Department Should Revise the Surrogate Value for Wooden Pallets and Wooden Boxes
- Comment 14: Whether the Department Should Continue to Value Natural Gas Using International Energy Agency (IEA) Data
- Comment 15: Whether the Department Made a Ministerial Error in Calculating the Surrogate Value for Water
- Comment 16: Whether the Department Should Use the Wholesale Price Index (WPI) or Producer Price Index (PPI) to Inflate Factor Values
- Comment 17: Whether the Department Should Revise its Profit Ratio Calculation
- Comment 18: Whether the Department Should Revise its Labor Rate Calculation
- Comment 19: Whether the Surrogate Value for Sulfuric Acid is Based On Aberrational Data
- Comment 20: Whether the Department Should Include in Normal Value the Value of the Factors of Production for Grinding Raw Vanadium Slag
- Comment 21: Whether to Correct Certain Information Relating to Inland Freight
- Comment 22: Whether to Deduct Marine Insurance in Calculating the Net Price for One U.S. Sale

Background

On July 8, 2002, the Department of Commerce (the Department) published the preliminary determination of sales at less-than-fair-value in the antidumping duty investigation of ferrovanadium from the PRC. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the People's Republic of China, 67 FR 45088 (July 8, 2002) (Preliminary Determination). The period of investigation (POI) is April 1, 2001, through September 30, 2001. Since the preliminary determination, the following events have occurred.

On July 15, 2002, Pangang filed a request for a public hearing in this investigation. However, no hearing was held because Pangang withdrew its request on September 30, 2002.

On July 17, 2002, the respondent, Pangang, reported for the first time that one of its affiliates for which it had not reported factors of production information had produced ferrovanadium during the POI. Pangang stated that none of the ferrovanadium produced by this company was sold or exported to the United States during the POI. In response to Pangang's July 17 submission, on July 19, 2002, the Department issued a memorandum to the file noting that we require Pangang to report factors of production only from the factory or factories which produced ferrovanadium that was sold to customers in the United States during the POI.

During July 2002, the Department conducted a verification of Pangang's sales and factors of production information. See Memorandum from Timothy P. Finn and Karine Gziryan to the File, "Verification of Sales and Factors of Production Information Reported By Pangang Group International Economic & Trading Corporation," dated September 24, 2002 (Verification Report).

Both the petitioners¹ and Pangang filed surrogate value information and data on August 26, 2002. On September 5, 2002, Pangang filed information purportedly rebutting petitioners' August 26 factor value submission. On September 24, 2002, the Department rejected Pangang's September 5 rebuttal submission as untimely filed factual information.

Parties filed case and rebuttal briefs on October 1 and October 7, 2002, respectively. Pursuant to the Department's instructions, the petitioners removed certain untimely filed factual information from their rebuttal brief and resubmitted it on November 12, 2002.

Discussion of the Issues

Comment 1: Whether Pangang Should Have Reported Factors of Production for All of its Production Facilities

The petitioners argue that the Department should base the dumping margin for Pangang on adverse facts available (FA) because Pangang failed to report factors of production for all of its ferrovanadium producing facilities and concealed from the Department until after the preliminary determination the fact that ferrovanadium was produced at more than one company within the Panzhihua Group of companies, the corporate family to which Pangang belongs.

The petitioners contend that Pangang withheld this information despite the plain language of the non-market economy (NME) antidumping (AD) questionnaire, which was issued on January 18, 2002. On July 17, 2002, three weeks after the preliminary determination, Pangang reported that

¹ The petitioners in this case are the Ferroalloys Association Vanadium Committee (TFA Vanadium Committee) and its members: Bear Metallurgical Company, Shieldalloy Metallurgical Corporation, Gulf Chemical & Metallurgical Corporation, U.S. Vanadium Corporation, and CS Metals of Louisiana LLC.

another company, Factory X,² also produced ferrovanadium during the POI but that this merchandise was not sold or exported to the United States during the POI. The petitioners note that Pangang also stated in its July 17, 2002, submission that because no subject merchandise was produced by Factory X during the POI, it believes the factors of production are irrelevant for this investigation. The petitioners note that in Pangang's responses to Section A of the Department's NME AD questionnaire and supplemental Section A questionnaires, Pangang reported that only one of its affiliates, Panhong Company Limited (Panhong), which is part of the Panzhihua Group of companies, was involved in manufacturing subject merchandise. Further, the petitioners contend that in Pangang's responses to Section D of the NME AD questionnaire and supplemental Section D questionnaires, Pangang misrepresented where subject merchandise was produced during the POI by repeatedly affirming that Panhong was the sole production factory among Pangang's related companies.

The petitioners illustrate their argument by referring to the NME AD questionnaire and to the relevant sections of the Tariff Act of 1930, as amended (the Act). First, the petitioners cite the general explanation of Section D where the Department states that unless otherwise instructed by the Department, a respondent "should report factors information for all {control numbers (CONNUMs)} of subject merchandise in the U.S. market sales listing submitted by you (or the exporter) in response to Section C of {the NME AD} questionnaire." See NME AD questionnaire at page D-1. In interpreting this sentence, the petitioners state that "{t}he specific reference to CONNUMs makes clear that the Department's instruction is to report factors data for all models of the subject merchandise sold in the United States during the POI, without stipulating the market in which these models are sold." See the petitioners' case brief dated October 1, 2002, at page 7 (Petitioners' Case Brief). Second, the petitioners cite additional instructions in the NME AD questionnaire, at page D-2, under the heading "Calculating Weighed-Average Factors of Production":

if you produce the subject merchandise {i.e., all of the models (the various specifications of ferrovanadium covered by the scope of the investigation) sold in the United States during the POI} at more than one factory, you must report the factor use at each location. You must also report the output of the subject merchandise at the various facilities during the POI.

The petitioners note that the above-referenced directions refer to "subject merchandise," and that Appendix I of the NME AD questionnaire defines "subject merchandise" as "the merchandise under investigation, i.e., the merchandise described in Appendix III to the questionnaire, and sold in, or to, the United States. (Section 771(25) of the Act)." The petitioners argue that this specific reference to Appendix III (the description of the products under investigation) "guides" respondents to report factors information for only the models or CONNUMs sold in, or to, the

² Due to the proprietary nature of the name of the factory in question, we have designated this factory "Factory X" for the purpose of the discussion.

United States during the POI. According to the petitioners, the direction provided in Appendix III frees respondents from reporting the factors of production for models covered by the scope of the proceeding, but not sold to the United States. However, the petitioners argue that the Department clarified its definition of subject merchandise, in that it refers to “models or types of merchandise that are sold in the United States, not specific tonnage of U.S. sales,” by referring to section 771(25) of the Act, which states:

Subject merchandise. The term “subject merchandise” means the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this title or section 303, or a finding under the Antidumping Act, 1921.

See Petitioners’ Case Brief at page 8 (emphasis added by the petitioners).

Subsequent to Pangang’s July 17, 2002 submission, the Department issued a memorandum stating the following:

{c}onsistent with the Department’s practice, and with the directions for weight-averaging factors of production contained in the non-market economy antidumping questionnaire, we will require Pangang Group International Economic & Trading Corporation to report factors of production from the factory or factories which produced ferrovanadium that was sold to customers in the United States during the Period of Investigation (POI). However, we will verify that no merchandise produced at any unreported facilities was sold to customers in the United States during the POI.

See Memorandum to The File from Karine Gziryan, “Ferrovanadium from the People’s Republic of China,” dated July 19, 2002.

The petitioners state that this memorandum “does not accurately characterize the Department’s practice and policy on these matters.” See Petitioners’ Case Brief at page 5 (emphasis added by the petitioners). The petitioners argue that the Department’s practice regarding which factors to report was explained in Notice of Preliminary Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 22183 (May 3, 2001) (Hot-Rolled Steel from the PRC) (no change in the final determination). In Hot-Rolled Steel from the PRC, the Department required that the respondent, Shanghai Baosteel Group Corporation (SBGC), Baoshan Iron and Steel Co., Ltd. (BISCL), and Baosteel Group International Trade Corporation (collectively referred to as the Baosteel Group), “submit full Section D information for all wholly-owned facilities of the Baosteel Group, which during some or all of the POI produced merchandise meeting the physical description of the merchandise

described in Appendix III. . .” See Hot-Rolled Steel from the PRC, 66 FR at 22187. Baosteel Group reported that in addition to SBGC and BISCL, three other wholly-owned subsidiaries, Firms A, B, and C, produced merchandise within the scope of the investigation but did not export these products to the U.S. during the POI.³ The petitioners contend that the Department used the factors of production reported by both the exporting and non-exporting Baosteel Group producers to calculate normal value.

The petitioners argue that because Pangang was a respondent in Hot-Rolled Steel from the PRC it was aware of the Department’s practice and policy for reporting factors information and should have reported factors information for Factory X. The petitioners assert that the factual situation in Hot-Rolled Steel from PRC is analogous to this investigation. Pangang reported in the Supplemental Section D questionnaire response, dated April 18, 2002, that it was submitting factors information on behalf of the affiliated producer New Steel. Accordingly, the petitioners maintain that Pangang should have reported factors for all of New Steel’s wholly-owned production facilities in order to calculate one normal value for each of the models or product types reported in the Section C sales listing. In light of Pangang’s failure to report, until after the preliminary determination, that Factory X produced the same models of ferrovanadium that were produced by Panhong and sold by Pangang to the United States, the petitioners assert that Pangang prevented the Department from following its normal practice.

The petitioners maintain that information gathered at verification supports their argument that factors information from Factory X is relevant to this investigation. First, the petitioners discuss how shipping lists from the production facilities reviewed at verification demonstrate that Pangang shipped ferrovanadium from both production facilities under the same contract number. The petitioners conclude that “these lists do provide significant information regarding shipments from the {Factory X} plant and demonstrate that ferrovanadium produced at {Factory X} may be sold in the United States.” See Petitioners’ Case Brief at page 14. Specifically, the petitioners refer to the Department’s finding that merchandise sold by Pangang to an affiliate was eventually resold by unaffiliated trading companies to U.S. customers. See Verification Report at pages 11-12. Second, the petitioners discuss the Department’s finding regarding the nature of the operations of the New Steel production facilities. Based on facts of these relationships, the majority of which is proprietary in nature, the petitioners state that it demonstrates that the factors of production for the facilities are “intrinsically connected” and, thus, are only reported for a portion of the merchandise produced.

The petitioners recommend that the Department apply FA pursuant to section 776(a) of the Act. Section 776(a) of the Act provides that if (1) necessary information is not available on the record, or (2) an interested party or any other person: (A) withholds information that has been requested by the administering authority or the Commission under this title; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner

³ It was later clarified that Firm C did not produce merchandise meeting the description in Appendix III.

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 and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.” The petitioners maintain that Pangang has (1) withheld information regarding its production of ferrovanadium; (2) failed to provide factors information for all production facilities; and (3) significantly impeded the investigation by preventing the Department from following its normal practice of weight-averaging factors information from multiple production facilities. In addition, the petitioners argue that Pangang failed to act to the best of its ability by providing “incomplete and evasive” replies to the Department’s requests for information and concealed information until after the preliminary determination. See Petitioners’ Case Brief at page 18. Accordingly, the petitioners also request that the Department use adverse inferences in applying FA by using the rate published by the Department in its initiation notice, 91.64 percent ad valorem, pursuant to section 776(b)(1) of the Act. See Notice of Initiation of Antidumping Duty Investigations; Ferrovanadium From the People’s Republic of China and the Republic of South Africa, 66 FR 66398 (December 26, 2001) (Initiation Notice).

Lastly, the petitioners urge the Department to, at the very least, “ensure that its final determination margin applies to all subject merchandise exported by Pangang, regardless of whether it is produced by {either factory}.” The petitioners state that “the final determination must be broad enough to encompass ferrovanadium produced at any of Pangang’s plants and exported by Pangang to prevent circumvention in the future.” See Petitioners’ Case Brief at page 19.

Pangang disagrees with the petitioners that adverse FA is warranted in this case arguing that Pangang has reported and verified all of the factors information for the merchandise sold to the United States.

Pangang rebuts the petitioners’ argument that it failed to report the factors of production information for all relevant factories by asserting that the Department’s NME AD questionnaire is clear in limiting the information requested to only the factors of production from the facilities that produced the merchandise actually sold to the United States. Pangang contends that the definition in Appendix I instructs a respondent to report sales and production information for “the merchandise under investigation, *i.e.*, the merchandise described in Appendix III of the questionnaire, **and sold in, or to, the United States.**” See Respondent’s Rebuttal at page 2 (emphasis added by respondent). Pangang asserts that Appendix I limits the requested information to merchandise sold in, or to, the United States. Furthermore, Pangang notes two other examples of where the questionnaire requests production information for only the subject merchandise actually sold to the United States: (1) in the general instructions of the NME AD questionnaire, at page G-1, where it states that “{s}ection D requests information about the factors of production of *the merchandise sold in or to the United States*{;}” and (2) in Section A, at page A-1, where it notes that:

Throughout this questionnaire, whenever we refer to the “products under investigation,” “merchandise under investigation,” or “subject merchandise” we are referring to all products within the scope of the investigation *that your company has sold during the period of investigation to the United States.*

(Emphasis added by respondent).

Pangang concludes that these examples demonstrate that the plain language of the questionnaire explicitly limited the request for information to the merchandise sold to the United States.

Pangang disagrees with the petitioners’ assertion that Pangang cannot claim any misunderstanding that “{b}y any interpretation, ‘merchandise under investigation’ is unrelated to the question of whether material is exported to the United States. . .” See Petitioners’ Case Brief at page 12. Pangang maintains it “reasonably interpreted” instructions in the NME AD questionnaire to “mean that its responses should pertain only to the merchandise actually sold to the United States,” and that Appendix I equates “merchandise under investigation” with the “subject merchandise.” See Respondent’s Rebuttal at page 2. In addition, Pangang argues that at no time did Pangang ever conceal the existence of Factory X or the fact that Pangang is affiliated with Factory X by common ownership. Therefore, Pangang states its questionnaire responses were consistent with the Department’s NME AD questionnaire.

Pangang also argues that its actions throughout the investigation demonstrate cooperation and do not support a conclusion that it deliberately concealed the production of ferrovanadium by Factory X. Pangang states that its questionnaire responses were in accordance with the instructions therein and that it informed and sought guidance from Department officials concerning the production at Factory X and whether to submit factors information. Pangang adds that it notified the Department that Factory X produced ferrovanadium within the regulatory period for submitting any factual information, i.e., seven days prior to the start of verification. See 19 C.F.R. 351.301(b)(1). Further, even after receiving the July 19, 2002, Memorandum from the Department, Pangang states that it was prepared to present and verify all of Factory X’s factors information; however, the Department declined to do so at verification.

With respect to Hot-Rolled Steel from the PRC, Pangang contends that, contrary to the petitioners’ assertions, the Department’s established practice is to not require respondents to report factors information which do not pertain to the merchandise exported to the United States. Pangang cites Notice of Final Determination of Sales at Less Than Fair Value; Bulk Aspirin From the People’s Republic of China, 65 FR 33805 (May 25, 2000) (Bulk Aspirin from the PRC), and accompanying Issues and Decision Memorandum at Comment 11, where the Department excluded factors of production that were consumed exclusively for merchandise sold in the domestic market, which was outside the scope of the investigation. In addition, the Department found “that the most accurate calculation of normal value {was} based on the value of each material input actually consumed in the production of the subject merchandise.” In

addition, Pangang argues that Hot-Rolled Steel from the PRC was an exception in the Department's practice justified by the facts of the case, which are distinguishable from this investigation. In Hot-Rolled Steel from the PRC, the Department assigned a separate rate to the Baosteel Group and considered all of the subsidiaries within this group to be one respondent. See Hot-Rolled Steel from the PRC 61 FR at 22187. Whereas, in this investigation, the Department has assigned a separate rate to only Pangang and not to Pangang's parent company or to the entire Panzhihua Group Corporation companies.

Lastly, Pangang disagrees with the petitioners' assertion that Pangang's participation as a respondent in Hot-Rolled Steel from the PRC made it aware of the Department's practice and policy for reporting factors information and should have reported factors information for Factory X. According to Pangang, the mere fact that it participated as a respondent in that investigation is not sufficient to conclude that it should have known the Department's practice and policy with respect to an issue that involved another respondent.

Pangang argues that the petitioners' assertions that it used a single contract to ship to different locations ferrovanadium produced by both Panhong and Factory X, and that the V_2O_5 processed by Factory X was produced by Panhong, are baseless. The Department verified that merchandise produced by Factory X was not exported to the United States. Further, Pangang states that it is uncertain as to what the petitioners were advocating when, in their brief, they state that "the final determination must be broad enough to encompass ferrovanadium produced at any of Pangang's plants and exported by Pangang to prevent circumvention in the future." See Petitioners' Case Brief at page 19. According to Pangang, the Department's standard practice already accounts for the possibility of circumvention. Pangang maintains that unless it receives a zero or *de minimis* margin on all of Pangang's exports, regardless of supplier, will be subject to the AD order. Otherwise, Pangang concludes, in the event of a zero or *de minimis* final determination, the Department will prevent potential circumvention by assigning an exporter/producer combination rate pursuant to 19 C.F.R. 351.107(b).

Department's Position:

We disagree with the petitioners' assertion that the Department should base the dumping margin for Pangang on adverse FA. Pangang correctly reported the factors of production information requested by the NME AD questionnaire it received in this investigation, and so the application of adverse FA is not warranted in this situation.

The NME AD questionnaire sent to Pangang instructs respondents to use the definitions provided in Appendix I when responding to requests for information. Appendix I of the questionnaire defines subject merchandise as "the merchandise under investigation, *i.e.*, the merchandise described in Appendix III of the questionnaire, and sold in, or to, the United States. (Section 771(25) of the Act.)" Although the statutory definition of subject merchandise does not limit the term "subject merchandise" to the merchandise sold in, or to, any particular market, Appendix I of questionnaire does limit the requested sales and production information to only the subject

merchandise sold in, or to, the United States. Furthermore, as noted by Pangang, there are additional instances in the questionnaire sent to Pangang that limit the request for information to only the subject merchandise sold in, or to, the United States. Specifically, page G-1 instructed Pangang to report “information about the factors of production of the merchandise sold in or to the United States.” Page A-1 of the questionnaire indicates that references to subject merchandise refers to “all products within the scope of the investigation that your company has sold during the period of investigation to the United States.” Lastly, the instructions on page D-1 for calculating weight-averaged factors of production state “if you produce the subject merchandise at more than one factory, you must report the factor use at each location. You must also report the output of the subject merchandise at the various facilities during the POI.” These instructions use the term subject merchandise, which is limited by Appendix I to refer only to the subject merchandise sold in, or to, the United States. These examples indicate that the questionnaire sent to Pangang limited the request for information to the merchandise sold to the United States.

Furthermore, we note that the facts in the instant case are different from the facts in Hot-Rolled Steel from the PRC, where the Department considered the respondent, the entire Baosteel Group, to be a single entity and applied a separate rate to this corporate group. Moreover, the factories within the Baosteel Group that produced subject merchandise but did not export such merchandise to the United States during the POI were wholly-owned by the respondent producer Baosteel Group.

In the current investigation, our separate rate analysis is for Pangang, a trading company, rather than Pangang’s corporate parent or the entire Panzhihua Group of companies. Although the two factories that produce the ferrovanadium sold by Pangang are part of the Panzhihua Group, the factories are not wholly-owned by Pangang. Instead, both factories are the subsidiaries of one of Pangang’s sister companies. Thus, the ownership relationship between Pangang and the two ferrovanadium factories is distinguishable from the relationship in Hot-Rolled Steel from the PRC. Therefore, the analysis in Hot-Rolled Steel from the PRC does not apply.

Regarding the petitioners’ concern that the final determination must be broad enough to encompass ferrovanadium produced at any of Pangang’s suppliers and exported by Pangang, we note that all of Pangang’s exports, regardless of the supplier, will be subject to the antidumping duty order, if one is issued, and future administrative reviews. If Pangang sells merchandise produced by a different factory after the POI, we will capture the appropriate normal value in future administrative reviews by including that factory’s factors of production in our analysis.

Because Pangang complied with the directions contained in the questionnaire it received from the Department, we disagree with the petitioners’ recommendation to apply adverse FA with respect to Pangang. Although Pangang did include Factory X in its Section A external organization chart, and identified it as a related company, we would have preferred that Pangang had reported that Factory X produced ferrovanadium in its Section A response. However, we verified that Factory X did not produce any subject merchandise that was exported to the United States.

Comment 2: Unreported Factors of Production

The petitioners argue that Pangang's failure to report certain material inputs that were identified at verification demonstrates that Pangang failed to cooperate by not acting to the best of its ability to comply with a request for information and warrants the use of total adverse FA. The petitioners note that at verification, the Department obtained information showing that Pangang failed to report certain raw materials, packing materials, and energy inputs that were consumed during the production of the intermediate products vanadium trioxide (V_2O_3) and vanadium pentoxide (V_2O_5), in addition to the final products ferrovanadium 50 (FeV_{50}) and ferrovanadium 80 (FeV_{80}). While Pangang's ferrovanadium supplier may not have classified these inputs as direct materials in its books and records, the petitioners assert the supplier's classification of these materials is irrelevant and their use cannot be considered infinitesimal or insignificant relative to the reported factors of production. Citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan, 66 FR 50397 (October 3, 2001) and accompanying Issues and Decision Memorandum at Comment 13 (HRS from Kazakhstan), the petitioners assert that it is the Department's practice to include in factors of production all inputs consumed in the production of subject merchandise. The petitioners note that in HRS from Kazakhstan the Department found during verification that the respondent treated water used in its blast furnace with certain chemicals. Although the respondent argued that it used "infinitesimal" amounts of these chemicals, the Department stated that since these chemicals were used in the production of subject merchandise, the respondent should have reported them.

According to the petitioners, the evidence on the record of the current case indicates that the inputs identified during verification were consumed in the production of subject merchandise and, as such, should have been reported. Because Pangang inappropriately limited the factors of production that it reported to the Department, the petitioners maintain that the factors of production data provided by Pangang are unreliable. Moreover, the petitioners argue that the Department should not try to piece together a new factors of production response for Pangang using data obtained at verification because there is no surrogate value information on the record for certain unreported inputs and the petitioners have not had the opportunity to comment on such information. Nevertheless, if the Department does not resort to total adverse FA and use the 91.64 percent rate published in the initiation notice of this case, the petitioners urge the Department to use adverse FA to calculate any surrogate values applied to the factors not reported by Pangang.

Pangang asserts that the unreported materials identified by the petitioners are minor auxiliary materials that are not physically incorporated into the subject merchandise and, thus, are properly accounted for as factory overhead rather than direct material inputs. Pangang argues that it is the Department's normal practice to classify such minor indirect materials as part of overhead expense, rather than valuing them separately as direct materials. To support its argument, Pangang cites the Final Determination of Sales at less Than Fair Value: Steel Concrete

Reinforcing Bars from the People's Republic of China, 66 FR 33522 (June 22, 2001) (Rebar from the PRC) and the accompanying Issues and Decision Memorandum at Comment 5.D. where the Department stated that the inputs at issue “were primarily refractory/lining materials that are used for the machinery used to produce rebar or indirect materials that are properly classified as factory overhead.” Similarly, Pangang cites the Final Determination of Sales at Less Than Fair Value of Synthetic Indigo from the People's Republic of China, 65 FR 52706 (May 3, 2000) (Synthetic Indigo), where the Department treated minor indirect materials as part of overhead.

With respect to three of the material inputs in question, Pangang states that the Department verified that these inputs were used in pneumatic tools, to treat water before it is released into the river, and to line the electric arc furnaces. With respect to the other materials at issue, Pangang notes that the manner in which these materials are classified in its records indicates they serve an indirect function. Regarding the petitioners' allegation that Pangang failed to report a certain type of packing material, Pangang states that it reported all packing materials used to pack the merchandise exported to the United States. Pangang notes that the Department successfully verified the reported type and weight of the packing material used for each U.S. sale.

Department's Position:

We disagree with both parties, in part. Both the petitioners and Pangang proposed using Highveld Steel and Vanadium Corporation (Highveld) as the South African source for calculating surrogate values for factory overhead and there is no information on the record for any other South African companies that could be used to calculate factory overhead. In the Preliminary Determination, we calculated a factory overhead ratio by dividing Highveld's depreciation expense by its labor costs and other costs of sales. However, detailed information regarding the types of expenses incurred by Highveld is not on the record. Therefore, we were unable to include any of Highveld's expenses, other than depreciation, in our calculation of the factory overhead ratio. Given that the information on the record supports classifying the types of inputs at issue here as process and auxiliary materials, rather than depreciable assets, we have concluded that these types of inputs are not reflected in the factory overhead ratio and will not be included in normal value unless they are separately valued. See Exhibits F 6A, F-16, F-17 and F-22 of the Department's Verification Report. Consequently, for the final determination, with the exception of the packing material which we verified as being correctly reported, we have separately valued the inputs in question.⁴

As the Department noted in Notice of Final Determination of Sales At Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate From Ukraine, 66 FR 38632 (July 25, 2001) (Solid Agricultural Grade Ammonium Nitrate from Ukraine), the question of whether material inputs should be valued separately or considered to be part of overhead depends on the surrogate data.

⁴ The Department verified that the packing material in question was not used to pack the subject merchandise. See Verification Report at pages 13-14.

In Solid Agricultural Grade Ammonium Nitrate from Ukraine, the Department decided to separately value certain auxiliary materials because the factory overhead ratio was based solely on the depreciation expense recorded in the surrogate company's financial statement. In making this decision, the Department noted that while there was no information as to whether the surrogate company treated the inputs in question as depreciable items, the manner in which the respondent treated these inputs suggested that they are auxiliary materials, not depreciable items. See Solid Agricultural Grade Ammonium Nitrate From Ukraine and accompanying Issues and Decision Memorandum at Comment 6. In our case, the items in question are materials that are consumed in production, rather than depreciable assets. Because these types of inputs are not reflected in our factory overhead ratio we have valued them separately.

With respect to the use of FA, we note that the record does not support a finding that Pangang withheld requested information or failed to provide such information in a timely manner. In its response to the Department's questionnaire and supplemental questionnaires, Pangang identified certain of the materials in question as items consumed in producing ferrovandium. See, e.g., Pangang's Section D response at Exhibit D-3, and its May 28, 2002 supplemental response at Exhibits FVS2-6, and FVS2-8. Moreover, Pangang did not withhold information from the Department regarding the consumption of the materials in question. Additionally, we note that Pangang's ferrovandium supplier normally treats the materials in question as indirect materials and the Department's NME AD questionnaire indicates that a surrogate value for overhead (which typically includes indirect materials) will be added to reported input amounts. See Section D of the NME Questionnaire issued to Pangang, dated January 18, 2002, under item A in the section entitled "General Explanation of Section D." While it would have been preferable for Pangang to have contacted the Department to clarify the reporting requirements with respect to the materials in question, given the above, we do not believe the record shows that Pangang's failure to report these items as raw materials indicates that it withheld requested information. Therefore, we have not resorted to the use of FA with respect to the materials in question. Rather, in order to calculate the final margin for Pangang as accurately as possible, we have obtained and placed on the record surrogate values for the materials at issue.

Comment 3: Whether Pangang Incorrectly Reported the Consumption Quantity of a Major Input

The petitioners argue that Pangang incorrectly rounded the consumption quantity reported for V_2O_3 , thereby reporting a reduced figure. The petitioners contend that this error significantly distorts the calculation of normal value because V_2O_3 is the major input in the production of ferrovandium 50. Therefore, the petitioners maintain the Department must correct this error in the final determination.

Pangang provided no comments on this issue.

Department's Position:

Although Pangang reported the correct consumption quantity for V₂O₃, due to a formatting problem in the database, the quantity used in the preliminary determination was only expressed to the first decimal place. We have corrected this problem for the final determination and have used a consumption quantity expressed to the fourth decimal place.

Comment 4: Whether the Department Should Continue to Use South Africa as the Surrogate Market Economy Country

The petitioners urge the Department to continue to use South Africa as the surrogate market economy country because the Department found it to be comparable to the PRC in terms of economic development and a significant producer of ferrovanadium.

With respect to Pangang's position that India is the appropriate surrogate market economy country, the petitioners point out that Pangang has not provided any support for its contention that ferroalloys comparable to ferrovanadium are produced in India. The petitioners note that in its March 22, 2002, letter to the Secretary, Pangang admitted that ferroalloys produced in India may not be comparable to the subject merchandise. Moreover, the petitioners point out that even though Pangang argued in favor of using India as the surrogate country, Pangang never rebutted the petitioners' central argument - that South Africa is a producer of the subject merchandise, while India produces neither the subject merchandise nor comparable merchandise. Furthermore, the petitioners contend that Pangang has in effect acknowledged the strength of the petitioners' argument by citing a determination where India was selected as the surrogate country because it produced merchandise comparable to the subject merchandise⁵.

Pangang provided no comments on this issue.

Department's Position:

We agree with the petitioners. The Department will use, to the extent possible, prices or costs of factors of production from countries which are (1) at a comparable level of economic development to the NME country and (2) significant producers of merchandise comparable to the subject merchandise. See section 773(c)(4) of the Act. For purposes of the final determination, we have continued to use South Africa as our primary surrogate country because it is the country most comparable to the PRC in economic development that is a significant producer of comparable merchandise.

Comment 5: Whether the Department Should Calculate the Surrogate Value for Vanadium Slag Using WTA Data or UNCTS Data

⁵ See Pangang's June 14, 2002, submission at page 2, citing the Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104, 71106 (December 20, 1999).

The petitioners argue that the Department should use either the import or export data from the WTA to calculate the surrogate value for vanadium slag. The petitioners claim that the South African import and export data they obtained from the WTA are superior to the year 2000 UNCTS import and export data for South Africa used by the Department in the Preliminary Determination because the WTA import and export data 1) are as product-specific as the UNCTS data, and from a reliable source, 2) are for both exports and imports, and 3) represent a range of prices within the POI, unlike the UNCTS statistics used in the Preliminary Determination, which were from a period before the POI. For these reasons, the petitioners conclude that the Department should value vanadium slag using South African import or export data obtained from the WTA.

Pangang argues that the Department should reject the WTA import and export data provided by the petitioners to value vanadium slag because: 1) the import data are aberrational when compared with other benchmark prices on the record, 2) the quantity of imports is only 0.45 metric tons (MT), which indicates the import data cannot represent commercial transactions involving vanadium slag, 3) the export data lacks the level of detail regarding chemical specifications that the Department placed on the record with respect to UNCTS data, and 4) evidence on the record indicates the export data are less reliable than other surrogate data on the record.

Specifically, with respect to WTA import data Pangang claims that the average WTA import value for vanadium slag of 1,043.08 USD/MT is aberrational when compared to the South African vanadium slag export value of 269.50 USD/MT which was used in the Preliminary Determination and the 280.34 USD/MT average value of U.S. imports of vanadium slag from South Africa. Moreover, Pangang notes that the Department may properly value factors of production using export data, rather than import data where the import data are aberrational.

However, Pangang argues that the WTA export data should not be used to value vanadium slag because there is no evidence on the record identifying the chemical concentration of the slag exports reflected in this data. Pangang states that it is critical to know the chemical concentration of the vanadium slag exported by South Africa because the concentration frequently varies and the export value must be adjusted so that the concentration of the surrogate slag matches that of the slag consumed by Pangang. Pangang notes that the Department identified the chemical concentration for vanadium slag exports reflected in the year 2000 UNCTS data for South Africa and thus the UNCTS data used in the Preliminary Determination represents better information than the WTA data.

Finally, Pangang argues that the WTA export data appears to be unreliable because it differs significantly from U.S. Customs import data for the same time period which represents the same underlying transactions as the WTA data. According to Pangang, the Department has confirmed the reliability of the U.S. Customs data by examining actual U.S. Customs entry forms. In sum, Pangang urges the Department to continue to value vanadium slag using the UNCTS export data which was used in the preliminary determination. If the Department does not use UNCTS data,

Pangang believes the Department should use 2001 U.S. import data to value vanadium slag.

Department's Position:

We agree with the petitioners, in part, and valued vanadium slag in the final determination using South African export data, as reported by the WTA. Section 773(c)(1) of the Act directs the Department to use the best available information on the record to value factors of production. When the Department has several surrogate values from which to choose, it is our practice to evaluate each surrogate value based upon its quality and contemporaneity in an attempt to find the best available information. See Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000) and accompanying Issues and Decision Memorandum, Factor Valuation at Comment 1. In evaluating the surrogate values for vanadium slag, we have determined that the average per-unit value for vanadium slag derived from WTA import data for South Africa is unreliable. We note that the average vanadium slag value derived from WTA import data is substantially greater than the other average vanadium slag values on the record, and it is based on a small quantity of vanadium slag (0.45 MT) imported during the POI. In other proceedings, the Department has rejected, as unreliable, surrogate values that differ significantly from other values on the record for the same input where those surrogate values are based on a relatively low quantity of imports. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus, 66 FR 33528 (June 22, 2001) and accompanying Issues and Decision Memorandum at Comment 1. Comparing WTA and UNCTS export data for vanadium slag, we note that the WTA data are contemporaneous with the POI, whereas the UNCTS data relied upon in the preliminary determination cover the period January to July 2000, which is outside the POI. Therefore, we have used WTA export data to value vanadium slag in the final determination.

We disagree with Pangang's argument that WTA export data is inferior to UNCTS export data because there is no information identifying the chemical concentration of the vanadium slag exports reflected in the WTA data and the data differs significantly from U.S. Customs data. For the preliminary determination, we based the V_2O_5 concentration of vanadium slag exported from South Africa during the year 2000 on the V_2O_5 concentrations reported in U.S. Customs entry documents for U.S. imports of vanadium slag from South Africa. Because we obtained entry documents for the year 2001, in addition to the year 2000, for the final determination, we will be able to use the methodology followed in the preliminary determination to estimate the V_2O_5 concentration of vanadium slag exports reflected in the 2001 WTA export data for South Africa. In addition, while there is a slight difference between the total quantity of South African vanadium slag exported to the United States, as reflected in the year 2001 WTA data, and the total quantity of U.S. imports of vanadium slag from South Africa, as reflected in U.S. Customs data (approximately a six percent difference), there is a larger difference between the total quantity of South African vanadium slag exported to the United States, as reported in the year 2000 UNCTS data, and the total quantity of U.S. imports of vanadium slag from South Africa, as reflected in U.S. Customs data (approximately a 28 percent difference). Thus, the discrepancy

between WTA and U.S. Customs data does not indicate that the data are inferior to the UNCTS data which Pangang advocates using. Furthermore, Pangang has not placed on the record any evidence explaining why these differences occur and how they undermine the overall quality of the WTA data. Moreover, we note that the Department did not use U.S. Customs data to verify WTA and UNCTS data; rather the Department used U.S. Customs data to determine the chemical concentration of South African vanadium slag, given that such information was not on the record. Accordingly, in the final determination, the Department relied upon WTA export data, adjusted to match the V_2O_5 concentration of the slag consumed by Pangang's ferrovanadium supplier.

Comment 6: Whether the Department Should Value Vanadium Slag Using Actual or Theoretical Consumption Quantities

The petitioners argue that the Department should base the cost of vanadium slag included in normal value on the actual quantity of vanadium slag consumed in production rather than the theoretical quantities reported by Pangang. The petitioners note that for internal accounting purposes, Pangang's ferrovanadium supplier converts the actual quantity of slag consumed in production to a theoretical quantity based on a fixed V_2O_5 content percentage that differs from the actual V_2O_5 content percentage in the consumed slag. However, because the record contains actual consumption quantities for vanadium slag for each month of the POI, the petitioners maintain that, in the final determination, the Department should base the quantity of raw and ground vanadium slag on the actual quantities for raw vanadium slag consumed.

Moreover, the petitioners maintain that the Department must use the actual V_2O_5 consumption quantities of vanadium slag to calculate the percentage of V_2O_5 in the slag consumed by Pangang's ferrovanadium supplier. Specifically, the petitioners state that the Department must multiply the V_2O_5 content percentage of the slag received by the supplier, by the actual quantity of slag received and divide this amount by the quantity of the slag consumed by the supplier (*i.e.*, the quantity of slag received less the quantity of slag returned or rejected) in order to calculate the V_2O_5 content percentage of the slag consumed. The petitioners claim that the V_2O_5 content percentage of the slag consumed will differ from that of the slag received because the returned or rejected slag was deemed unacceptable due to its inferior quality. Finally, the petitioners maintain that the Department should follow the methodology it used in the Preliminary Determination to adjust the surrogate value for vanadium slag to account for differences between the V_2O_5 content percentage in the slag consumed by the supplier and that in the vanadium slag sales reflected in the surrogate data. However, the petitioners state that the Department should use the V_2O_5 content percentage, calculated using the methodology noted above, in its calculation to adjust the surrogate value. The petitioners urge the Department not to adjust the surrogate value for vanadium slag using the fixed V_2O_5 content percentage reported by Pangang because unexplained steps and methodologies in the calculations used by the supplier to convert actual consumption quantities to theoretical consumption quantities call into question the V_2O_5 content percentage in the theoretical quantities.

Pangang contends that the Department should base the vanadium slag cost included in normal value on the consumption quantities it reported for vanadium slag because these are not “theoretical” quantities but are the quantities recorded in its books and records and they reflect actual quantities restated for the purposes of recording the accurate quantity of vanadium consumed in production.

Furthermore, Pangang claims that the Department should adjust the surrogate value for vanadium slag to account for differences between the V_2O_5 content percentage in the slag consumed by the supplier and that in the vanadium slag sales reflected in the surrogate data using the fixed V_2O_5 content percentage on which it based the consumption quantities reported for vanadium slag. Pangang maintains that it is appropriate to adjust the surrogate value for vanadium slag using the fixed V_2O_5 content percentage because this percentage is used in its records and the Department has successfully verified this information.

Department’s Position:

We agree with the petitioners, in part. The Department’s NME AD Questionnaire instructs respondents, at page D-1, Section I.B., to calculate the per-unit factor amounts based on the actual inputs used by the respondent as recorded in the respondent’s normal accounting system. Section 773(f)(1)(A) of the Act states that, in general:

Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

Pursuant to section 773(f)(1)(A) of the Act, the Department has the authority to adjust, as appropriate, the information recorded in a respondent’s normal accounting system if the Department finds that such records do not reasonably reflect the costs associated with the production and sale of subject merchandise. In the instant investigation, Pangang submitted information regarding the V_2O_5 concentration of the vanadium slag used by its supplier of ferrovanadium. However, seven days prior to verification, Pangang notified the Department that it reported per-unit consumption quantities for vanadium slag based on the use of vanadium slag with a fixed V_2O_5 content percentage, rather than the actual V_2O_5 content percentage of the slag used in production (i.e., Pangang did not report actual consumption quantities). At verification,

the Department was able to substantiate the veracity of Pangang's admission and verify the underlying methodology used to calculate the reported figures. See Verification Report at pages 20-21. It is clear from the record that the per-unit consumption quantities for vanadium slag reported by Pangang are based on a standard, fixed V_2O_5 content percentage and are not the actual quantities of vanadium slag consumed in production. Because the Department attempts to construct normal value as accurately as possible, and the supplier's normal method of accounting for vanadium slag does not reflect actual consumption quantities, we recalculated the per-unit amount of vanadium slag consumed in producing ferrovanadium based upon the actual quantity of vanadium slag consumed by Pangang's ferrovanadium supplier. This is consistent with the approach taken by the Department in Polyvinyl Alcohol From the People's Republic of China, where it stated that it "revised calcium carbide consumption factors to reflect actual consumption, based on information discovered at verification. Actual consumption in a production process is more accurate than a standard figure." See Notice of Final Determination of Sales at Less than Fair Value; Polyvinyl Alcohol From the People's Republic of China, 61 FR 14057, 14061 (March 29, 1996).

With respect to Pangang's argument that the quantities in question are not "theoretical" quantities but "converted" quantities, we find that this argument is merely semantics given the facts in this investigation. Proprietary materials reviewed at verification demonstrate that the fixed content percentage for V_2O_5 is a company standard, i.e., not actual. Therefore, consumption quantities derived using this standard percentage for V_2O_5 , rather than the actual content percentage of V_2O_5 , will differ from the actual quantities of vanadium slag consumed, regardless of whether these calculated consumption quantities are referred to as theoretical or converted quantities.

Lastly, we disagree with the petitioners' proposed methodology for calculating the V_2O_5 content percentage in vanadium slag consumed by Pangang's supplier. The petitioners' proposed methodology is based upon their conclusion that the results of verification indicate the rejected quantity of vanadium slag has a lower concentration of V_2O_5 . However, the Department verified that the rejected vanadium slag was rejected "because the material {was} unusable in the grinding and crushing process" and "that this rejection {was} based on a visual inspection of the material and there {was} no laboratory analysis performed at this stage." See Verification Report at pages 20-21. The Department did not find that this material was rejected because it contained a low concentration of V_2O_5 . Therefore, in the final determination, we have not followed the petitioners' proposed methodology for calculating the V_2O_5 content percentage in vanadium slag consumed by Pangang's supplier

Comment 7: Whether the Department Should Continue to Add Soda Consumption Quantities to the Reported Factors of Production

Pangang argues that the Department should not have added consumption quantities for soda to the reported factors of production because Pangang included soda consumption in its reported factors of production but incorrectly identified the consumption as that of limestone, rather than

soda.⁶ Pangang notes that the Department verified that it used sodium carbonate to produce ferrovanadium, not limestone. Therefore, Pangang states that the Department should value the reported consumption of soda but delete the soda consumption quantities that the Department added to the factors of production in the preliminary determination.

The petitioners acknowledge that Pangang's claim regarding misreporting soda as limestone appears to be supported by the results of verification. However, the petitioners maintain that Pangang has provided no facts or arguments to cause the Department to depart from its preliminary determination calculations where it added consumption quantities for soda to the factors of production. Therefore, the petitioners contend that the Department should not change its margin calculation methodology for the final determination.

Department's Position:

We agree with Pangang and have valued the factors originally reported as "limestone" using a surrogate value for soda. Furthermore, we have removed the "soda" factor that we added to the factors used in the preliminary determination from the factors of production for FeV₅₀ and FeV₈₀ because continuing to include soda among the factors of production for FeV₅₀ and FeV₈₀ would double-count the consumption of soda that actually occurred in the V₂O₃ and V₂O₅ stages. See Verification Exhibits 6A and 6B.

Comment 8: Whether the Department Should Value Soda as Sodium Hydroxide or Sodium Carbonate

The petitioners argue that the Department should use the surrogate sodium hydroxide to value soda if Pangang failed to provide evidence at verification to overcome its prior representations that the soda used in producing ferrovanadium is sodium hydroxide. Specifically, the petitioners note that although Pangang reported the concentration level for sodium carbonate (the type of soda identified at verification) in its pre-verification comments, it provided surrogate values for sodium hydroxide both before and after verification and urged the Department to value soda in the preliminary determination using Indian import statistics for sodium hydroxide. Moreover, the petitioners maintain that the Department must specify how it determined at verification that Pangang used sodium carbonate because the verification exhibits cited by the verification report provide no information regarding the chemical specification of the soda used by Pangang. If the Department has determined that Pangang used sodium carbonate to produce ferrovanadium, the petitioners urge the Department to value this factor with a surrogate value for sodium carbonate derived from South African import statistics obtained from the WTA.

Pangang argues that as clarified in its July 19, 2002, submission, and verified by the Department,

⁶ The Department added soda consumption quantities to the reported factors of production based on the soda consumption quantities reported in production tables submitted by Pangang. See Pangang's June 11, 2002, submission at Exhibit FVS3-4.

the soda it consumed in the production of the subject merchandise is sodium carbonate. According to Pangang, it erroneously submitted surrogate values for sodium hydroxide rather than sodium carbonate because of translation and communication errors between itself and its counsel. Consequently, Pangang contends that the Department should properly value soda as sodium carbonate.

Department's Position:

We agree with Pangang's claim that the type of soda it used in production is sodium carbonate. As stated in our verification report, "{w}e tested the material specifications and chemical concentrations reported for the ammonia sulphuric acid, aluminum, sulphuric acid, and soda used to produce ferrovanadium by reviewing ..." company records. We found that "the soda used to produce subject merchandise is in fact sodium carbonate (Na_2CO_3), which is consistent with Pangang's correction submitted on July 19, 2002." See Verification Report at pages 23-24. Although the verifiers did not take as exhibits the documents they examined to verify the chemical composition of soda, these documents verified that the soda used by Pangang is sodium carbonate. For the final determination, we valued soda using the surrogate value derived from WTA data for South African imports of sodium carbonate.

Comment 9: Whether the Department Should Make a Concentration Adjustment to its Surrogate Value for Ammonium Sulphate

The petitioners argue that they placed information on the record demonstrating that full strength ammonium sulphate sold on the commercial market has a certain concentration of nitrogen that is less than 100 percent. Furthermore, the petitioners argue that Pangang used full-strength ammonium sulphate to manufacture ferrovanadium and that this information has been confirmed by the results of the Department's verification. Consequently, the petitioners conclude that the Department should not make a concentration adjustment to the surrogate value for ammonium sulphate.

Pangang maintains that the Department must adjust the surrogate value for ammonium sulphate to account for the fact that it produced ferrovanadium using ammonium sulphate containing a certain percentage of nitrogen. Pangang contends that because nitrogen is the most important component of ammonium sulphate it reflects the relevant concentration level of the material purchased. Consequently, Pangang recommends that the Department adjust the surrogate value for ammonium sulphate downward to reflect the concentration of nitrogen in the input consumed.

Department's Position:

We agree with the petitioners. The petitioners provided evidence that full strength ammonium sulphate is sold on the commercial market with a certain percentage of nitrogen and the Department verified that Pangang consumes full strength ammonium sulphate. Pangang provided no evidence regarding the nitrogen concentration in full strength ammonium sulphate

sold on the commercial market to counter the evidence provided by the petitioners. Accordingly, we have continued to use a surrogate value without a concentration adjustment, as we did in the Preliminary Determination.

Comment 10: Whether the Department Should Allow an Offset for Aluminum Oxide Slag

The petitioners note that in the Preliminary Determination, the Department did not reduce costs by the value of the aluminum oxide slag generated during production because the record did not contain adequate information about the chemical composition of the slag. While the Department obtained information at verification regarding the vanadium content of the slag, the petitioners maintain that the record still does not specify the content of aluminum or other components in the slag and thus the Department should not allow an offset for the slag in the final determination.

Pangang contends that the Department should reduce its costs by the value of the aluminum oxide slag it sold because the Department verified the vanadium content of the slag and, given that the slag is generated from the vanadium production process, vanadium, rather than aluminum, is the most important component of the slag. Pangang recommends that the Department value the aluminum oxide slag using the surrogate value for vanadium slag, adjusted to reflect the applicable vanadium content.

Department's Position:

We agree with Pangang and have included an offset for the aluminum oxide slag in our calculation of normal value. As noted by Pangang, we verified that Pangang sold this slag during the POI. We also verified that Pangang does not record the aluminum content of the slag in its books and records, but instead records the vanadium content. For this reason, we valued the aluminum oxide slag with the surrogate value for vanadium slag, adjusted to account for the vanadium content of the aluminum oxide slag.

Comment 11: Whether the Department Should Use Petitioners' Suggested Methodology to Value Pangang's Vanadium Slag Offset

If the Department grants Pangang an offset for its sales of V_2O_3 slag and V_2O_5 slag, the petitioners urge the Department to 1) value the slag using South African trade statistics obtained from the WTA, and 2) adjust the surrogate value to account for differences in vanadium concentration using the methodology they advocated in their final surrogate value comments.

Pangang asserts that, unlike the situation in the Preliminary Determination, where the Department disallowed the offset for V_2O_3 slag and V_2O_5 slag because the record did not contain sufficient evidence that Pangang sold these types of slag during the POI, the record now has sufficient evidence demonstrating sales of these slags and thus the Department should grant the offset in the final determination. Since there are no surrogate values on the record for V_2O_3 and V_2O_5 slag, Pangang recommends that the Department value these slags using the surrogate value

for the vanadium slag input used in the Preliminary Determination.

Department's Position:

We agree with Pangang and have included an offset for the V_2O_3 slag and V_2O_5 slag it sold during the POI in our calculation of normal value. As recommended by both the petitioners and Pangang, we have valued V_2O_3 slag and V_2O_5 slag using the surrogate used to value the vanadium slag input. This surrogate value is based on South African export data obtained from the WTA. We followed the overall methodology recommended by the petitioners to adjust the surrogate value to account for the difference between the vanadium content of the slag reflected in the export statistics and the slag generated in the production process. However, we based our adjustment on the total vanadium content percentage reported by Pangang, and verified by the Department, rather than the soluble vanadium content percentage as advocated by the petitioners. The petitioners did not provide an explanation as to why the Department should use the soluble vanadium content percentage rather than the total vanadium content percentage, in adjusting the surrogate value for vanadium slag. Since we do not have any indication on the record that vanadium slag is sold based on soluble vanadium content, we based our adjustment on the total vanadium content percentage.

Comment 12: Whether the Department Should Value the Consumption of Iron Drums Using WTA Data

The petitioners note that they provided WTA import statistics with which to value iron drums and that the Department should use this data because the data are the most contemporaneous data on the record.

Pangang provided no comments on this issue.

Department's Position:

We agree with the petitioners. The WTA import statistics are contemporaneous with the POI and therefore we have valued iron drums using South African import statistics obtained from the WTA.

Comment 13: Whether the Department Should Revise the Surrogate Value for Wooden Pallets and Wooden Boxes

The petitioners note that in the Preliminary Determination, the Department calculated a per-kilogram value for wooden pallets by dividing the average per-piece import value for South African imports under HTS subheading 4415.20.10 by the weight of a wooden box rather than a wooden pallet. According to the petitioners, the Department should use the weight of one pallet, rather than the weight of one wooden box, to convert the surrogate value for wooden pallets from a per-piece to a per-kilogram value. Additionally, the petitioners maintain that because HTS

subheading 4415.20.10 covers a variety of wooden packing material, including pallets, box-pallets, other load boards, and pallet collars, it is an appropriate value for both wooden pallets and wooden boxes.

However, the petitioners note that because this HTS subheading is a broad category and it is impossible to determine the exact mix of wooden materials reflected in the import data used to calculate the surrogate value, the Department cannot conclude that the South African surrogate value is aberrational by comparing it to import data for other countries. The petitioners point out that the materials imported into other countries under HTS subheading 4415.20.10 could be entirely different from that reflected in the South African import data used to calculate the surrogate value.

Pangang asserts that the \$60.89 per-piece surrogate used to value wooden pallets and wooden boxes in the Preliminary Determination is aberrational because it is many times greater than the \$6.60 and \$3.26 per-piece import values on the record for India and the United States, respectively. Thus, Pangang recommends that the Department value wooden pallets and boxes using either Indian or U.S. import data.

Moreover, Pangang argues that the Department should continue to use the methodology used in the Preliminary Determination to calculate a per-kilogram value using per-piece import data. Specifically, Pangang contends the Department should calculate a per-kilogram price by dividing the average per-piece price by the weight of a wooden box. According to Pangang, following the petitioners' suggestion of calculating the surrogate value for pallets and boxes by dividing the per-piece average surrogate value by the weight of a pallet and a box, respectively, would lead to the absurd result of assigning a value to a wooden pallet that is more than seven times greater than the value of a wooden box. Pangang maintains that the Department verified that the wooden pallet it used is significantly smaller than the wooden box and thus would cost significantly less than the wooden box. Therefore, Pangang urges the Department to reject the petitioners' proposed calculation methodology.

Department's Position:

We agree with Pangang, in part. In the Preliminary Determination we used a single HTS number to calculate the surrogate value that was applied to both wooden boxes and pallets. Upon reviewing the WTA data, we find that there exists separate HTS categories for pallets and boxes. For this reason, we have changed our methodology from the Preliminary Determination and have used the WTA data to calculate separate surrogate values by using HTS category 4415.10.00 (cases, boxes, crates, drums and similar packings) for boxes and HTS category 4415.20.10 (pallets, box-pallets and other load boards) for pallets.

With respect to boxes, and following the Department's practice, we examined the South African import statistics obtained from the WTA to determine whether there were low-volume imports from certain countries with per-piece values substantially different from the per-piece values of

the higher quantity imports of that product from other countries. We removed such unreliable import data from our calculation of the weighted-average import value for boxes. See Shakeproof Assembly Components Division of Illinois Tool Works, Inc., v. United States, 203 F. Supp. 2d 486, 492 (CIT 2000) (the Department’s practice is “to disregard small-quantity import data when the per-piece value is substantially different from the per-piece values of the larger quantity imports of that product from other countries.”); see Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 66 FR 48026 (September 17, 2001) (Hand Tools from the PRC), and accompanying Issues and Decision Memorandum at Comment 11, where the Department noted that in calculating surrogate values it has excluded data based on small quantities and aberrational import statistics when such data are shown to be distortive. Further, consistent with the Department’s practice, in addition to disregarding import values from NME countries, we excluded from our calculation of the box surrogate value imports from countries which the Department has determined maintain broadly available, non-industry specific export subsidies which may benefit all exporters to all export markets (i.e., imports from South Korea, Thailand, and Indonesia). See Windshields from China. See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China, 67 FR 6482, 6485 (February 12, 2002).

Regarding pallets, we have examined the WTA data used to value pallets in the Preliminary Determination and determined that the average per-piece value calculated using imports from one country under HTS category 4415.20.10 is unreliable. This value is significantly different from the per-piece values calculated using imports from other countries under this HTS category. Moreover, if imports from this one country are not disregarded, the overall weighted-average per-piece price derived from all imports under HTS category 4415.20.10 is many times greater than the other per-piece values for pallets that are on the record. Therefore, we have excluded this unreliable value from our calculation. See Notice of Final Determinations of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Final Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia, 66 FR 12759 (February 28, 2001) and accompanying Issues and Decision memorandum at Comment 1 (where the Department stated that “{w}e agree with Nantong that the unit values of Malaysian imports in the Indian Import Statistics for the period in question are aberrational, as they are many times higher than the import values from other countries, and are not in line with numerous other prices for wire rod on the record. Therefore, we have excluded the Malaysian values from our analysis, and relied on the average of the remaining values.”).

Lastly, regarding the methodology we used to convert the surrogate values from a per-piece to a per-kilogram basis, we divided the HTS weighted-average per-piece value for pallets by the kilogram weight of one pallet, and divided the HTS weighted-average per-piece value for boxes by the kilogram weight of one box.

Comment 14: Whether the Department Should Continue to Value Natural Gas Using IEA Data

The petitioners note that, in the Preliminary Determination, the Department valued natural gas using 1997 gas prices from the IEA. The petitioners recommend that, for the final determination, the Department use the surrogate value for natural gas that is based on data published by the South African Department of Minerals and Energy (DME) because these data provide a range of tax-free natural gas prices that were in effect during the months of the POI. Furthermore, the petitioners contend that the gas price information they provided from the South African DME is as product-specific as the IEA data. Lastly, the petitioners disagree with Pangang that the prices contained in the DME report are aberrationally high. The petitioners note that the 1997 tariff A in the DME report is \$1.93/gigajoule (GJ), while the 1997 IEA price is \$1.84/GJ. Therefore, the petitioners conclude that the prices from the DME report are consistent with IEA prices.

Pangang urges the Department to continue to value natural gas using the surrogate value derived from IEA data, as was done in the Preliminary Determination. According to Pangang, the Department should reject the petitioners' recommended price for several reasons. First, the petitioners advocate using a value based on documents they submitted that consist of only four pages out of a presumed 70 page report that details gas prices from one private company. Because no other sections of the report have been submitted, Pangang claims it cannot be determined whether this table is the only gas tariff included in the report or merely represents the highest tariffs reported. Second, Pangang argues that because the table from this report is ambiguously titled "Gas Price Report", it is unclear whether this report refers to natural gas, another gas, or a mixed gas. Third, Pangang claims that the prices in the submitted portion of the report are aberrationally high when compared with the values reported by the IEA and used by the Department in the Preliminary Determination. Specifically, Pangang argues that the average of the two 1997 prices from the report is twice as high as the 1997 gas price reported by the IEA. Fourth, Pangang contends that the methodology used by the petitioners to calculate the average gas price from the tariffs in the report is faulty. Pangang states that the petitioners averaged the two tariffs listed in the report in order to calculate their proposed surrogate value. However, according to Pangang, the report explains that gas prices are not based on the highest and lowest tariffs, but are based on a formula involving load factors. In light of the problems identified above, Pangang concludes that the gas tariffs listed in the report are unreliable and urges the Department to continue to use the natural gas price from the IEA. However, Pangang asserts that in the event the Department does rely upon the report submitted by the petitioners, it should reject the value calculated by the petitioners using this information.

Department's Position:

We disagree with the petitioners. We were able to obtain a more current edition of the IEA publication that contains natural gas prices for industry that are contemporaneous with the POI. The DME report, provided by the petitioners, does not identify to which category of consumer the two tariffs therein apply. Therefore, it is not clear whether both of these tariffs should be used to calculate the surrogate value for natural gas. Accordingly, in the final determination, we relied upon the contemporaneous data reported by the IEA to value natural gas.

Comment 15: Whether the Department Made a Ministerial Error in Calculating the Surrogate Value for Water

The petitioners request that the Department change the surrogate value for water from Rand 6.10/MT to Rand 6.54/MT in order to accurately reflect the value found in the supporting documentation.⁷

Pangang provided no comments on this issue.

Department's Position:

We agree with the petitioners and have corrected this error for the final determination.

Comment 16: Whether the Department Should Use the WPI or PPI to Inflate Factor Values

The petitioners contend that the Department should inflate pre-POI surrogate values using the South African PPI rather than the WPI used in the Preliminary Determination because the WPI for the POI has not yet been published in the International Monetary Fund's International Financial Statistics (IFS). In contrast, the petitioners note that PPI data on the record include monthly data for the six months of the POI. Moreover, the petitioners point out that in the instant case, calculating an average WPI for the POI (April through September 2001) from wholesale price indices available for the period closest in time to the POI, (which for the preliminary determination was the period January through September 2000), does not permit the Department to calculate an inflator for surrogate values dated in 2000. Therefore, the petitioners urge the Department to use the PPI, where applicable, to inflate factor values.

However, the petitioners maintain that if the Department elects to use the WPI to inflate surrogate values, the Department should use the WPI for the period that is closest in time to the POI as the index for the POI. The petitioners add that the South African WPI for November 2000 is now available in the IFS. They insist that the November 2000 WPI should be used by the Department because among the available data, these data are for the period closest in time to the POI and therefore, it will approximate the Department's normal practice more closely than calculating the average POI index from the WPI for January through September.

Pangang provided no comments on this issue.

Department's Position:

We agree with the petitioners and have calculated inflation rates based upon South African PPI

⁷ See the Memorandum from Karine Gziryan to the File, "Factors of Production Valuation Memorandum," dated June 25, 2002, at Attachment 6.

data for the POI. When WPI data from the IMF are not available, the Department has used PPI data in prior cases. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From Belarus, 67 FR 62015, 62017 (October 3, 2002). Moreover, it is appropriate to use PPI data to inflate South African import and export prices as the PPI is based upon selling prices collected from South African manufacturers, importers and exporters and serves as an indicator of changes in production prices for locally sold and exported commodities as well as imported commodities. See the Memorandum from the Team to the File, "Final Factors of Production Valuation Memorandum," dated November 20, 2002. Furthermore, as noted by the petitioners, using WPI data currently available for the period closest in time to the POI prevents the Department from inflating surrogate values in effect during the year 2000. Consequently, where applicable, the Department has used PPI data obtained from Statistics South Africa (www.statssa.gov.sa) to inflate factor values.

Comment 17: Whether the Department Should Revise its Profit Ratio Calculation

The petitioners contend that the Department should not have calculated the profit rate for Highveld using unconsolidated operating profits that have been reduced by unconsolidated interest expenses. Specifically, the petitioners argue that it was inappropriate for the Department to account for any interest expenses in calculating the profit rate for Highveld because the company's consolidated interest expenses encompasses, and is almost identical to, its unconsolidated interest expense and the consolidated interest expense was used to calculate the interest expense ratio. According to the petitioners, including interest expenses in the calculation of both ratios artificially reduces the profit rate.

Pangang maintains that the Department should continue to calculate Highveld's profit rate using unconsolidated financial data, rather than consolidated financial data (as advocated by the petitioners), because it is the Department's practice to calculate the profit rate at the operating company level. Moreover, Pangang notes that unconsolidated financial data relate more closely to the subject merchandise than consolidated financial data. The petitioners on the other hand state that they never made such an argument and, in fact, agree with Pangang that profit should be calculated using Highveld's unconsolidated financial statement.

Department's Position:

We disagree with the petitioners. In the instant investigation, we calculated the profit rate by taking into account unconsolidated operating income and expenses as well as interest income and expenses. The Department has not artificially reduced the profit rate by subtracting net unconsolidated interest expenses from unconsolidated operating profits because the interest expenses used in this calculation were actually incurred by Highveld. Moreover, because the Department constructed normal value by adding net interest expenses (based on the ratio of consolidated interest expenses to consolidated cost of goods sold) to the cost of factors of production and selling, general and administrative expenses, it was appropriate to reduce profits by net interest expenses.

The fact that Highveld's consolidated interest expense encompasses, and is almost identical to, its unconsolidated interest expense seems to indicate that the majority of the consolidated interest expense is comprised of interest expenses incurred by Highveld at the unconsolidated level and does not involve interest payments to entities consolidated with Highveld. However, the fact that the consolidated and unconsolidated interest expense figures are nearly identical does not support the petitioner's claim that the calculation methodology used by the Department artificially reduced the profit rate. Therefore, we have continued to calculate profit as it was calculated in the preliminary determination.

Comment 18: Whether the Department Should Revise its Labor Rate Calculation

The petitioners recommend that the Department value labor using the updated PRC labor wage rates posted on the Department's website on September 13, 2002. In the Preliminary Determination, the Department valued labor using the wage rate for the year 1999 while the revised wage rate is for the year 2000.

Pangang provided no comments on this issue.

Department's Position:

We agree with the petitioners. In the final determination, we have valued labor using the updated wage rate for the PRC.

Comment 19: Whether the Surrogate Value for Sulfuric Acid is Based On Aberrational Data

Pangang argues that the surrogate value for sulfuric acid which was used by the Department in the preliminary determination is based upon aberrational South African import data and thus should not be used in the final determination. Pangang contends that it is the Department's practice to disregard surrogate values that are aberrational when compared to benchmark prices for the same input. According to Pangang, the benchmark prices used by the Department for this purpose include world market values and prices obtained from countries other than the surrogate country, including the United States. Pangang cites Rebar from the PRC, where the Department rejected a price based on the import statistics from the primary surrogate country, because the value "not only represents a small quantity of {the} product, imported from only one country, but is also exceptionally higher than the average value of imports into Indonesia and the United States from various countries during a similar time period."

Pangang notes that the surrogate used by the Department to value sulfuric acid in the Preliminary Determination is \$2,689.55/MT while there are per-unit values on the record for sulfuric acid imported during the POI into various countries that differ significantly from the South African import value. Specifically, Pangang notes that the per-unit import values on the record are \$24.99/MT for the United States, \$20.70/MT for India, \$43.02/MT for Ireland, and \$343.60/MT

for Singapore. According to Pangang, these prices are consistent with sulfuric acid prices in the United States which range from \$24.24/MT to \$94.77/MT. Further, Pangang argues that the monthly South African import data shows that individual imports into South Africa were of small quantities (ranging from 0.001 MT to 7.3 MT), which indicates that the imports were not intended for industrial use, and thus not industrial grade sulfuric acid. In comparison, Pangang states that the import quantities on the record for the other countries are substantial, thus indicating that these were imports of industrial grade sulfuric acid. Based on the foregoing, Pangang concludes that the South African surrogate value used in the preliminary determination is aberrational and should be disregarded in favor of Indian import data. Pangang maintains that the Indian data represents the most appropriate surrogate value on the record for sulfuric acid because India is most comparable to the PRC in terms of economic development and the Indian import statistics are 1) contemporaneous with the POI, 2) obtained from a public source, and 3) not aberrational.

The petitioners contend that the Department should continue to value sulfuric acid using the value used in the Preliminary Determination because Pangang has failed to demonstrate that this value is aberrational or unreliable. The petitioners claim that the South African data used in the Preliminary Determination reflect imports from six countries, which contrasts with the facts in Rebar from the PRC, where the Department rejected, as aberrational, certain surrogate data from the primary surrogate country because the data represented imports from only one country. Furthermore, the petitioners contend that the record of this investigation contains no evidence regarding the grade or material specifications of the sulfuric acid imported into South Africa or any other country. The petitioners argue that making any conclusions regarding the grade of the sulfuric acid based on import quantities would be speculation.

Lastly, the petitioners assert that the Department must reject Pangang's suggestion to use import statistics from India rather than South African import statistics because, in the Preliminary Determination, the Department found that India is not an appropriate surrogate country in this case.

Department's Position:

We agree with Pangang that the surrogate data used in the Preliminary Determination to value sulfuric acid is not a representative or reliable value to use in our normal value calculations. This value, \$2,689.55/MT, while based on WTA data for South African imports from six countries, is derived from imports of only 14 MTs of sulfuric acid. In contrast, the other sulfuric acid values on the record include \$59.79/MT, based upon South African exports of over 33,000 MT and import values ranging from \$20.70/MT to \$343.60/MT based upon imports into the United States, India, Ireland, Denmark and Singapore that range from 5,690 MT to 653,997 MT. We do not believe that a value that differs significantly from other values on the record for the same input, and is based on import data in relatively low quantities, is a representative or reliable value to use as a surrogate value. As noted in Hand Tools from the PRC, and cited in our position to Comment 13, in calculating surrogate values the Department normally excludes data based on

small quantities and aberrational trade statistics when such data are shown to be distortive. Therefore, the Department examined the other potential surrogate values on the record to determine the appropriate value for sulfuric acid.

In selecting a surrogate value, the Department prefers to use, to the extent possible, a single country from which to obtain data for use in valuing the factors of production. The Department uses several guidelines in selecting surrogate values. In 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, 61987 (November 20, 1997) (CTL Plate from the PRC) the Department stated:

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.

It is important to emphasize, however, that our overarching mandate is to select the “best” available data (see section 773(c)(1) of the Act), which involves weighing all of the relevant characteristics of the data, rather than relying solely on one or two absolute “rules.” 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. See CTL Plate from the PRC 62 FR at 61987.

The potential surrogate values, derived from import data, on the record include \$23.98/MT from Denmark, \$20.70/MT from India, \$43.02/MT from Ireland, \$343.60/MT from Singapore, \$2,689.73 from South Africa, \$24.99/MT from the United States, and, from export statistics, \$59.79 from South Africa. These potential values appear similar in terms of reliability. However, since the WTA data are contemporaneous with the POI, and the Department prefers to use, to the extent possible, a single country from which to obtain data for use in valuing the factors of production, we have used WTA export data (\$59.79) from South Africa to value sulfuric acid in the final determination.

Comment 20: Whether the Department Should Include in Normal Value the Value of the Factors of Production for Grinding Raw Vanadium Slag

Pangang claims that the Department erred when it constructed normal value using the factors of production from the “grinding” stage because the surrogate used by the Department to value

vanadium slag represents the value of ground slag. Specifically, Pangang argues that vanadium slag sold on the commercial market is in “ground” form because it would be impossible to package and transport “raw” vanadium slag in the form first produced from the steel furnace. In fact, Pangang notes that during verification, Department officials observed that after:

“raw” vanadium slag is poured out of the steel furnace as an enormous, molten mass; Pangang must first cool and “grind” the slag into smaller pieces before it can even be transported to its ferrovanadium production facilities.

See Pangang’s case brief dated October 1, 2002, at page 5 (Pangang’s Case Brief).

For the above reasons, Pangang contends that the surrogate value for vanadium slag calculated from South African export statistics includes the cost of the grinding process.

According to the petitioners, the Department should include the value of the factors of production for grinding vanadium slag in normal value for the following reasons. First, Pangang did not support its assertion regarding the physical attributes of vanadium slag sold on the commercial market. Second, the Department verified that grinding is one of the stages of production performed by Pangang’s ferrovanadium supplier. Third, even if the surrogate value selected by the Department is not for vanadium slag in exactly the same form as that consumed by Pangang’s ferrovanadium supplier, this is not a valid basis for excluding from normal value the value of the factors of production for an entire production stage.

Lastly, if, as argued by Pangang, the surrogate selected by the Department to value vanadium slag is ground slag, it would be appropriate to use a value for ground slag because this is the very form of slag consumed by Pangang’s ferrovanadium supplier. The petitioners note that Pangang reported that the ferrovanadium slag generated by the steel making plant must be ground “into smaller pieces before it can even be transported to its ferrovanadium production facilities.” See Pangang’s Case Brief at 5. According to the petitioners, this statement, together with the fact that the Department verified that the ferrovanadium facility ground vanadium slag, demonstrates that the facility’s grinding workshop must involve a second round of grinding in addition to that done at the steel making plant. Thus, the petitioners contend that it is entirely appropriate to use as a surrogate vanadium slag already in ground form because the vanadium slag in question was first ground at the steelmaking factory which supplied the slag, transported to the ferrovanadium facility, and then consumed as an input at that facility’s grinding workshop.

Department’s Position:

We disagree with Pangang. Pangang’s argument that the factors of production from the “grinding” stage of the production process should be removed from our calculation of normal value is based upon its claim that the surrogate value is derived from South African export sales of ground vanadium slag, rather than “raw” vanadium slag. While we agree that it is logical to

assume the South African export statistics from which we calculated our surrogate reflects sales of vanadium slag after the initial block of raw slag has been broken into smaller pieces, we note that Pangang has placed no evidence on the record identifying the size of the vanadium slag for these export sales. The only evidence on the record relevant to this issue is the U.S. importation documents for vanadium slag exported from South Africa contained in Exhibit 4 of the Factor Valuation memorandum from the preliminary determination. While this documentation does not indicate the actual size of the slag being imported into the United States, the entry summaries do indicate the size of the containers in which the slag is packaged. From this information, it is possible to conclude that the slag is first broken into smaller pieces from its initial block form prior to being sold and transported. However, with no evidence demonstrating that the size of the ground vanadium slag exported by South Africa is the same size as the ground vanadium slag consumed by Panhong in producing V_2O_3 and V_2O_5 , it would be inappropriate to assume that they are the same size and remove the “grinding” factors of production from our calculation of normal value.

However, we note that the petitioners are incorrect in asserting that vanadium slag is ground both at the steelmaking factory and at the ferrovanadium facility. Although the verification report does not contain a description of the grinding process, at verification Department officials observed blocks of raw vanadium slag being broken into several smaller pieces in Panhong’s yard and then further ground in a grinding machine.⁸ All of the breaking and grinding occurs at the ferrovanadium facility.

Comment 21: Whether to Correct Certain Information Relating to Inland Freight

Pangang argues that the Department should correct the following information relating to inland freight. First, Pangang maintains that in calculating the margin for the final determination, the Department should use the revised verified distance between Pangang’s supplier’s factory and the nearest port that was reported in Pangang’s May sales listing.⁹ Second, Pangang states that, at verification, the Department noted that ammonia sulfuric acid from one supplier was transported by train, rather than by truck, as reported. Thus, Pangang contends that the Department should use the surrogate value for train transportation for this input.

The petitioners contend that Pangang failed to explain why it revised the reported distance

⁸ As pointed out by the petitioners, Pangang noted in its case brief that ferrovanadium slag must be ground “into smaller pieces before it can even be transported to its ferrovanadium production facilities.” However, based upon the Department’s observations at verification, this statement refers to the fact that raw slag is first ground in Panhong’s yard prior to being conveyed to Panhong’s V_2O_3 and V_2O_5 production facility.

⁹ Although Pangang points out that the verification report does not contain a discussion of the distance in question, Pangang maintains that the Department noted the correct distance at verification.

between its factory and the nearest port. If the Department did not specifically verify the revised distance, the petitioners argue that we must continue to use the original distance reported by Pangang.

Regarding the use of the surrogate value for train transportation, the petitioners argue that since the Department found this error for only one of several suppliers of ammonium sulfuric acid, it can use the train surrogate value for the quantity of ammonia sulfuric acid purchased from only this particular supplier. Because there is no evidence on the record to indicate that the quantities purchased from the other suppliers were transported via train, the Department must continue to value the freight cost with the surrogate value for truck transportation for the remaining quantity.

Department's Position:

We agree with both parties, in part. First, the verification report does note that the Department reviewed the revised distance from the plant/warehouse to the port of exit (DINLFTPU), and found no discrepancies. See Verification Report at pages 13-14 (where we stated that we found no discrepancies in our verification of the DINLFTPU variable). Therefore, we will use the revised distance in our final determination. Second, we noted a discrepancy with respect to the method of transportation reported for only one of the suppliers of ammonia sulphuric acid. Accordingly, we will only change the mode of transportation for this particular supplier.

Comment 22: Whether to Deduct Marine Insurance in Calculating the Net Price for One U.S. Sale

Pangang asserts that the Department should not have deducted marine insurance from the gross sales price of one U.S. sale in order to calculate the net sales price because it did not incur marine insurance costs for this transaction.

The petitioners did not comment on this issue.

Department's Position:

We agree with Pangang and have corrected this error for the final determination.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination in this investigation and the final weighted-average dumping margins for Pangang and the PRC-wide entity in the Federal Register.

Agree _____ Disagree _____

Bernard T. Carreau
Acting Assistant Secretary for
Import Administration

Date