

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
AD/CVD Enforcement Group III

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Less Than Fair Value Investigation of Certain Malleable Iron Pipe Fittings from the People's Republic of China: April 1, 2002 through September 30, 2002

SUMMARY:

We have analyzed the briefs and rebuttal briefs of interested parties in the less than fair value ("LTFV") investigation of Certain Malleable Iron Pipe Fittings from the People's Republic of China. As a result of our analysis, we have made certain changes from the *Preliminary Determination*. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 33911 (June 6, 2003) ("*Preliminary Determination*"). The specific calculation changes for Jinan Meide Casting Co., Ltd. ("JMC") can be found in Analysis for the Final Determination of Certain Malleable Iron Pipe Fittings from the People's Republic of China: Jinan Meide Casting Co., Ltd. ("JMC Final Analysis Memorandum"). The specific calculation changes for Langfang Pannext Pipe Fitting Co., Ltd. ("Pannext") can be found in Analysis for the Final Determination of Certain Malleable Iron Pipe Fittings from the People's Republic of China: Langfang Pannext Pipe Fitting Co., Ltd. ("Pannext Final Analysis Memo"). The specific calculation changes for Beijing Sai Lin Ke Hardware Co., Ltd ("SLK") can be found in Analysis for the Final Determination of Certain Malleable Iron Pipe Fittings from the People's Republic of China: Beijing Sai Lin Ke Hardware Co., Ltd. ("SLK Final Analysis Memorandum"). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this investigation:

Changes from the Preliminary Determination

General Issues

- Comment 1: Whether to Apply Facts Available for Material Inputs
- Comment 2: Whether to Apply Facts Available for Energy Inputs
- Comment 3: Financial Ratios
- Comment 4: Surrogate Values – Whether to Update Information for the POI
- Comment 5: Surrogate Values – Recycled Iron Scrap
- Comment 6: Surrogate Values – Iron and Steel Shavings
- Comment 7: Surrogate Values – Ferrosilicon
- Comment 8: Surrogate Values – Firewood
- Comment 9: Surrogate Values – Wood Pallets
- Comment 10: Surrogate Values – Zinc Dust and Zinc Powder
- Comment 11: Whether to Consider Certain Inputs as Overhead Items
- Comment 12: Whether the Department Correctly Calculated the Distance for the Non-Market Economy (“NME”) Inland Freight Charge for Respondents
- Comment 13: Calculate Cost of Production (“COP”) on a per-piece basis
- Comment 14: Whether to Add Surrogate Freight to the Surrogate Values of Recycled Scrap

Company Specific Issues

A. JMC

- Comment 15: Whether Certain Sales by JMC should be considered CEP
- Comment 16: Ministerial Errors

C. Pannext

- Comment 17: Whether to Correct Items found at Verification

D. SLK

- Comment 18: Use of Yield-Adjusted Factors of Production for SLK supplier
- Comment 19: Weight-Averaging in the Normal Value calculation
- Comment 20: Use of the Correct Weight of the Finished Product

Background

We published the preliminary determination in this investigation in the *Federal Register* on June 6, 2002. See *Preliminary Determination*. The period of investigation (“POI”) is April 1, 2002, through September 30, 2002. The investigation covers malleable iron pipe fittings sales produced or exported by three companies: JMC, Pannext, and SLK. We invited parties to comment on our preliminary determination. We received case briefs from the above respondents and petitioners¹ on September 8, 2003. We received rebuttal briefs from the same parties on September 15, 2003. A public hearing was held on September 17, 2003.

Scope of Investigation

For purposes of this investigation, the products covered are certain malleable iron pipe fittings, cast, other than grooved fittings, from the People’s Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule (“HTSUS”).

Excluded from the scope of this investigation are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from ½ inch to 2 inches and are carried only in galvanized finish. HTSUS subheadings are provided for convenience and

¹Petitioners in this case are Anvil International, Inc. and Ward Manufacturing Inc. (collectively, petitioners).

Bureau of Customs and Border Protection (“BCBP”) purposes, however the written description of the scope of this proceeding is dispositive.

DISCUSSION OF THE ISSUES:

Changes from the Preliminary Determination

Based on the results of verification, we have made revisions to the data used for the final determination. For further details, please see the JMC Final Analysis Memorandum; Pannext Final Analysis Memorandum; and SLK Final Analysis Memorandum, dated October 20, 2003, which are on file in Import Administration’s Central Records Unit, room B-099 of the Department of Commerce Building.

General Issues

Comment 1: Whether to Apply Facts Available to Value Material Inputs

Petitioners argue that respondents’ failure to supply the requested malleable iron input data warrants the continued application of facts available. Petitioners argue that each of the respondents have reported substantially fewer inputs than were reported by petitioners. They point out that a more efficient production process cannot account for the differences in input amounts because the Chinese producers would not be more efficient than petitioners, as they use older technology. Therefore, petitioners argue that the Department should apply facts available (“FA”) for the Final Determination to account for deficiencies in respondents’ record keeping and reporting. Petitioners allege that respondents’ underreporting of metallic inputs is compounded by their failure to provide POI quantities of malleable iron used in production and that no respondent has provided POI records showing the quantity and source of material recovered and used in production of subject merchandise. Citing the *Preliminary Determination*, petitioners note that it is the Department’s practice to require the reporting of all inputs in the production process and that respondents have failed to supply required input information since the *Preliminary Determination*. Petitioners argue that FA is warranted because respondents failed to report certain inputs as requested by the Department in accordance with the statute. The petitioners argue that the best information available for these inputs is an adjustment based on the petition and Petitioners’ May 15, 2003, letter, which the Department relied on for its *Preliminary Determination*.

Petitioners further argue that respondents’ calculation of a theoretical value for the amount of recovered malleable iron that is recycled into production does not identify the amount of malleable iron recovered from outside the casting workshops that is put into production. They point to the lack of information on the record to support respondents’ assertion that nearly all the malleable iron from the rivers (excess material that joins subject merchandise in the molds during the casting process) is recovered and recycled into production. Petitioners argue that the theoretical river ratios based on the weight of the semi-finished fitting after the casting workshop should be rejected because they were shown to be unreliable measures of actual inputs. In support of this assertion, petitioners cite Pannext’s explanation that the discrepancies in Pannext’s input data were “likely the result of the distortive effect of yield-loss adjustments calculated using these river ratios.” *See* Pannext’s June 16, 2003, Response at 5. Petitioners further argue that, even if the river ratios accurately reflect recyclable yields, respondents failed to provide input data accounting for any material taken from outside the workshop used in production. Petitioners point to the difference between the inputs reported in the petition and the inputs reported by respondents. Petitioners note that JMC has the greatest potential of having inputs that are not accounted for because JMC could have used malleable iron recovered from its other workshops that produce to different international standards in its production of American standard fittings. Petitioners argue that JMC hampered the detection of this discrepancy by failing to report FOP data for these workshops, which “appear to be within the scope of the investigation.” *See* Petitioner’s Case Brief at 8-9. In support of their position, petitioners cite the Court of International Trade’s (“CIT”) rejection of the argument by Baosteel that:

Commerce should ‘recalculate the weighted-average normal values for Baosteel based on the factors of production for those producers within the Baosteel Group that sold subject merchandise in, or to, the United States during the POI.’ {The CIT held that} the term “subject merchandise” refers to “the class or kind of merchandise within the scope of investigation.”...Furthermore...Plaintiffs preferred methodology would essentially facilitate manipulation of prices as “foreign producers with multiple facilities would be able to move the product of the U.S. sales to the most efficient operations.

See Anshan Iron & Steel Company, Ltd., v. United States, Slip Op 03-83 at 32-33 (CIT, July 16, 2003) (“*Anshan*”). Petitioners argue that JMC’s failure to report FOP information for a large portion of subject merchandise casts doubt on the source of malleable iron used in the production of MPF exported to the United States, and is grounds to not use respondent-provided data for missing inputs.

Petitioners also argue that the recent sample data provided by respondents should not be used in this investigation because they were collected after the POI, and because these data demonstrated that the FOP data that respondents reported from the POI were not reliable. Petitioners argue that the data collected by respondents in June and July 2003 are not suitable for deriving FOPs, since they reflect a sample period after the POI. Petitioners argue that the sample data establish the unreliability of respondents’ “closed loop” argument, as there is a discrepancy between the amount of malleable casting scrap input and the amount of casting rivers recovered. *See* Petitioners’ Case Brief, dated September 9, 2003 (“Petitioner’s Case Brief”) at 10. According to petitioners, this discrepancy is found in the differing ratio of metallic input to finished output in the recent data versus the original FOP data for the POI. Petitioners argue that these discrepancies, together with the failure of respondents to provide casting recovery and recycled data, justify the use of FA in the final determination, and that the best facts available to the Department on metallic inputs are those found in the petition.

Respondent Pannext argues, citing to information on the record, that because the Department verified Pannext’s record keeping, production processes during the POI, and reselling activities, Pannext’s original database correctly reports all material inputs. *See* Pannext’s Case Brief, dated September 8, 2003, at 3 (“Pannext Case Brief”). Citing section 773(c)(1) of the Tariff Act (19 USC 1677b(c)(1)), Pannext argues that the statute provides that the Department “shall determine normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise.” Pannext also argues that the Department’s verification report confirmed that Pannext accurately reported its FOPs. Pannext further argues that though the Department’s use of partial FA in the *Preliminary Determination* for recycled steel scrap was based on the fact that Pannext did not provide alternatives for accounting for the unreported inputs, Pannext in fact reported its FOPs in a manner that accounted for all inputs, including recycled steel scrap, and therefore the fact that the Department rejected the alternative method supplied does not provide a basis to resort to FA.

Pannext points out that its six-week study information on the amount of raw materials used in production demonstrates the amount of recycled scrap consumed for each kilogram of purchased scrap that was used in the preparation of the revised FOP file submitted to the Department on August 29, 2003, along with FOP data submitted for the *Preliminary Determination*. Pannext argues that for the final determination the Department should use the FOP data submitted on March 3, 2003, but, in the event the Department does not use these data, the Department should use the most recently submitted FOP data. Pannext notes that this information was in response to the Department’s request and was based on previously submitted information subject to verification, which satisfies the requirements of section 782(e) of the Tariff Act (19 USC 1677m(e)).

Pannext further argues that the Department further erred in its use of FA in the *Preliminary Determination* to account for metallic inputs that are less than one kilogram of input to make one kilogram of output, as this was an anomaly resulting from the reporting of casting yields on a CONNUM-specific basis as requested by the Department, rather than the product-specific basis used by Pannext. Pannext points out that because it averaged several different products, and reallocated material usage, some models have more usage while others have less, though the total reported usage corresponds to the verified amounts. *See* Pannext Case Brief at 6. Therefore, Pannext argues,

application of FA penalizes Pannext for reporting data as the Department requested, and the Department should apply the verified weighted average recycled scrap usage rate, rather than the value used in the *Preliminary Determination*.

Pannext further argues that the Department should use the product-specific casting input yields reported by Pannext on March 3, 2003, or if the Department continues to use CONNUM-specific casting input yields, the Department should use the yields from the data submitted on July 28, 2003. Pannext notes that the Department has verified that Pannext reported this information to the best of its ability using accounting records from the normal course of business.

Respondent JMC argues that the Department should value casting scrap consumption and recovery using the data reported by JMC rather than resorting to FA, because the grounds for applying FA cited by the Department in the *Preliminary Determination*, that JMC failed to supply alternative methodologies, no longer applies. JMC argues that it has provided the Department with two valid methods for valuing scrap: the FOP06 database, which is based on JMC's estimated river recycling ratios; and the FOP07 database, which is based on the data collected pursuant to the Department's June 3, 2003, instructions ("six-week study"). Citing 19 USC 1677e, JMC notes that the Department may resort to FA when "necessary information is not available on the record," and argues that because the Department justified its application of FA in the *Preliminary Determination* on the sole grounds that JMC had failed to provide an alternative means of accounting for recycled scrap inputs, the Department should not resort to FA for the final determination. JMC argues that it has provided two valid means for valuing recycled casting scrap usage and output in FOP06 and FOP07. JMC further argues that because both of these databases report used and produced recyclable scrap, and the total weight of the metallic inputs exceed the gross output, the Department should no longer adjust the total scrap input for certain CONNUMs as it did in the *Preliminary Determination*.

JMC notes that it informed the Department that it did not maintain records of cupola inputs on a batch, charge, model, or CONNUM-specific basis in the ordinary course of business at the beginning of this investigation, and that verification demonstrated this fact. Specifically, JMC argues that verification confirmed that JMC records and tracks daily material withdrawals from inventory (*see* JMC Verification Report dated August 29, 2003 ("JMC Verification Report") at 8, 19-22), that JMC does not record quantities of each input included in each cupola charge and instead maintains the ratio of inputs in each charge (*see* JMC Verification Report at 7-8), and that JMC does not record the weight of recyclable scrap. JMC points to JMC Verification Report at 8, 23-24, noting that although JMC collects several types of scrap, employees do not weigh or record this scrap and that it does not leave the cupola area, confirming that JMC does not maintain records on input consumption or recyclable scrap output on a CONNUM-specific basis.

JMC argues that the estimated river recycling ratios used in FOP06 were the only means of estimating recyclable scrap output maintained in the ordinary course of business. JMC explains that it maintains river ratios for each model, which are the ratio between the rivers and the total weight based on estimates from periodic testing (*see* JMC Verification Report at 4-5), and that these ratios are the most specific means of reporting recyclable scrap consumption and output. JMC states that they used these ratios to calculate the recovered scrap in kilograms reported to the Department.

JMC further argues that the similarity of the results of the six-week study confirm the reliability of FOP06 in relation to the river ratios, scrap consumption and recovery, and yield experience. JMC notes that the river ratios of each CONNUM shows some difference between the estimated and actual amounts, but the weighted average difference was very small, validating the use of the ratios to track recyclable scrap. Additionally, JMC CLAIMS that the study validates the use of scrap recovery amounts to determine scrap consumption, as it confirms the high percentage of scrap recovery. JMC also notes that a comparison of FOP06 to the six-week study data shows very similar rates of yield of castings and malleable scrap to total inputs.

JMC argues that the Department verified the casting workshop data, cupola operations, JMC's production and accounting records, as well as the six-week study information, confirming its reliability through conversations with workers and recreations of the process. JMC further notes that the recyclable scrap consumption and output data that petitioners have requested are not maintained by

JMC, and though JMC has provided these data in the six-week study, petitioners are now arguing that it should be rejected, as it is not from the POI. Citing *Timken Co. v. United States*, 2001 CIT 96, 166 F. Supp.2d 608,616 (2001) (“*Timken*”), JMC argues that the Department has broad discretion to determine the best information available, and that though the Department prefers records from the POI, it may clearly utilize data from other periods when “necessary data” from the POI are not available. JMC further argues that having requested and verified the “necessary data” after the *Preliminary Determination*, the Department cannot credibly discard the six-week study results.

JMC further argues that it has provided two verified means of accounting for malleable scrap recovery and recycling, and given that the Department prefers allocations based on production records maintained in the normal course of business, the Department should use FOP06 for the final determination. JMC argues that since it is not feasible to report actual inputs using JMC’s normal production records, FOP06 reports malleable scrap consumption and recovery accurately. Citing 19 CFR 351.401(g)(1), JMC argues that FOP06 tracks scrap recycling on “as specific basis as feasible” using river ratios, and notes that neither of the other respondents in this investigation record actual scrap recycling, which confirms that the “normal accounting practices in the country and industry in question” do not require such records. Further, JMC argues that the six-week study confirms that FOP06 “does not cause inaccuracies or distortions,” (see 19 CFR 351.401(g)(3)) as it validates the river ratios, the use of total scrap recovery to arrive at total consumption, and melting yields (the ratio of gross yield to total metallic inputs). JMC argues that under the standards set forth in 19 CFR 351.401, FOP06 is valid. Therefore, JMC argues, FA is not warranted, and that the Department should adhere to its preference for allocations based on records maintained in the ordinary course of business, using FOP06 in the final determination. JMC further notes that nothing in the Act, the regulations, or Department practice supports petitioners’ argument that the Department should not use the six-week study because it is after the POI. The Department requested this information after the *Preliminary Determination*, verified the information, and then requested a new database (FOP07), and this information should be used in lieu of FA.

Respondent SLK argues that the Department should not apply FA for recycled scrap because it is produced and recycled in a closed-loop production process, and should base the value of recycled scrap on the amount consumed. SLK argues that during verification, the Department confirmed that produced scrap is recycled back into the cupola and that over a period of time the output of this scrap will equal the amount of input. Because of this, SLK argues that the Department should not include recycled scrap as a material factor in its calculation, but instead should use the actual reported data to value this scrap. SLK notes that since the *Preliminary Determination*, SLK’s suppliers have reported the amount of recycled scrap reintroduced during the production process, as well as the eight-week production period reports showing consumption and recovery of inputs for two of the suppliers. SLK argues that because the record includes the consumption of recycled scrap, the Department should use the actual data to value recycled scrap and not apply FA. SLK notes that any difference in the amount of river scrap between molds would have no effect on the FOPs for each fitting.

SLK further argues that the Department should offset the input malleable scrap by the amount of scrap recovered during production, as the Department verified that the producers consume scrap in a closed-loop process, and therefore unless the consumption is offset, the Department would overstate the scrap consumption. SLK notes that some of their suppliers have reported the amount of recycled scrap recovered, and argues that the Department should apply an offset for this reported amount. For the supplier that did not report the amount of recovered scrap, SLK argues that the Department should use an average of the offset for all other responding producers.

Petitioners in rebuttal argue that the statute requires that normal value (“NV”) be based on the factors of production, and that because respondents state that they do not keep records of the recycled malleable iron input, the Department should continue to use FA from the petition to value the unreported inputs. Though all respondents argue that for the final determination the Department should not use the petition data because they submitted the best information they had available, petitioners argue that the Department relied on FA because the respondents do not keep records of the inputs of

recycled scrap and that this has not changed since the *Preliminary Determination*. See *Preliminary Determination* and Petitioners' Rebuttal Case Brief, dated September 16, 2003 ("Petitioner's Rebuttal Brief"), at page 4. Petitioners argue that because the statute requires the Department to base NV on the factors of production (*see* 19 USC 1677(c)), the Department should use FA for the input of malleable iron for the final determination, noting that the present case and the case on non-malleable pipe fittings are the only cases where respondents claim they do not maintain records on types and quantities of inputs. Petitioners allege that neither of the two sources for malleable iron provided by respondents supplies the missing POI data.

Petitioners argue that the two sources of input information provided by respondents, the river ratio calculations and six-week data, are flawed and unacceptable, noting that the river ratio method is based on a "closed-loop" production process presumption. Petitioners rebut respondents' assertion that river ratios validly value scrap consumption and recovery, stating that respondents themselves do not believe these are reliable measures and that this methodology is based on the premise of a closed-loop production process. Petitioners note that SLK states that its process is a closed-loop process where all recovered scrap is reintroduced, but that there is no information on the record to support this assertion, as the data needed to address this theory – the quantity and source of malleable iron input and recovered from production – is the data that respondents state they do not have. Petitioners argue that without this information, MPF generated outside the workshop producing American standard fittings can be entered into production without being used in the NV calculation, which allows respondents to report different MPF input amounts than petitioners. Petitioners state that because petitioners record this information, their data are the most credible and accurate data on the record.

Petitioners reject respondents' claim that the six-week data are an appropriate source for data regarding material inputs used in production, as the use of the six-week data would replace six months of data with six weeks, and this may not accurately reflect respondents' production. Further, citing *NSK Ltd. v. United States*, 919 F. Supp. 442, 449 (CIT 1996); *Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992); and *Mannesmannrohren-Werke v. United States*, 120 F. Supp. 2nd 1075, 1087 (CIT 2000), petitioners argue that the burden is on respondents to place adequate input data on the record, and acceptance of the six-week data would allow respondents to fail to report certain data when it could result in high margins or when respondents' data would be unverifiable.

In rebuttal, counsel for Pannext argues that petitioners' assertions are contradicted by the verified information on the record. Pannext notes that petitioners' allegation that respondents have underreported metallic inputs is based solely on a comparison to petitioners' constructed costs, and finds no support on the record. Pannext argues that the Department's verification report confirms the accuracy of Pannext's reporting during the POI and that Pannext does not record recycled scrap. As the Department's verification report confirmed that Pannext produced only subject merchandise during the POI, Pannext argues that petitioners' argument that recycled scrap could have been used in production of other merchandise has no basis. Noting that the Department verified Pannext's recycled scrap data from the six-week study, Pannext argues that the Department should rely on the study information to value scrap, which represents the most reasonable data on the record, and that this is the most accurate information available for inputs during the POI, as required by *CITIC Trading Co. Ltd., et al. v. United States*, 2003 Slip Op. 03-23 at 15, March 3, 2003, (CIT 2003). Further, Pannext argues that the CIT has stated that the Department may not make unrestrained use of FA and 19 USC 1677m is designed to provide that the "information which 'may not be ideal' should not be disregarded if the party has 'acted to the best of its ability.'" Pannext cites GATT Annex II, Section 5, at 168, and *Borden Inc. v. United States*, 4 Supp. 2nd 1221, 1245 (CIT 1998) in support of its contention.

In rebuttal, JMC argues that it has provided two valid and reliable means of valuing inputs and offsets, and note that petitioners' case brief contains mathematical errors or ignores the Department's verification findings. In its rebuttal, JMC reiterates that the Department resorted to FA for the *Preliminary Determination* solely on the basis of respondents' failure to supply an alternate methodology for reporting their input and recovery malleable iron scrap, a situation that no longer

applies, as JMC has provided two valid and reliable methodologies and accompanying data for valuing this scrap (FOP06 and FOP07). JMC counters petitioners' assertion that the Department is restricted from using the six-week study data, arguing that nothing in the statute, the regulations, or Department practice supports this position and, that the Department cannot credibly discard this information as it was collected and verified at the Department's request. JMC contends that petitioners' calculation of a ratio between recovered casting scrap and casting rivers fails to take into account the four additional types of scrap that are collected by JMC, and that the addition of these types of scrap to the recovered casting scrap figure arrives at a ratio that validates the data in FOP06 and FOP07. Additionally, JMC argues that petitioners' argument for rejecting JMC's river recycling ratios is based solely on Pannext's statements and that the six-week study validates the appropriateness of using JMC's own data as probative to JMC's actual production experience. Therefore, JMC argues that the Department should use JMC's river ratios as a reliable measure of casting scrap recovery. JMC further argues that petitioners cite no grounds for rejecting JMC's river ratios, and invalidly compare the weighted-average yield during the six-week study with the simple average reported in FOP07. JMC notes that this miscalculation results in an understating of the statistical effects of the most common CONNUMs, leading to petitioners' claim of underreporting of metallic inputs. Pointing to the methodology used in JMC Case Brief, JMC notes that the calculation, when done on a weighted average basis validates the use of FOP07 (*see* JMC Case Brief at exhibits 1, 2, and 3). Further, JMC notes that the Department did not find that JMC uses scrap from other workshops in its production of American standard fittings. JMC also argues that petitioners' allegation that JMC uses casting scrap from other workshops is groundless, citing the JMC Verification Report at 8-9 and 20.

JMC argues that petitioners' allegation of unreported metallic inputs stems solely from the petition data, which includes an average of four models of fittings, providing only limited information on the domestic production process that has not been verified and is an insufficient basis for FA. JMC notes that the petitioners provided no detail on their production process and that this information cannot be gauged for reliability, unlike JMC's own responses. JMC further argues that petitioners have not substantiated the claim that the four models analyzed in the petition account for most subject imports. JMC also argues that petitioners' submission demonstrates that scrap that JMC would recover accounts for the alleged loss in the heating of metallics, and that this accounts for any significant difference between JMC's and Ward's yield experience. JMC notes that the bulk of petitioners' yield losses came from scrap that the Department verified JMC recovers. JMC cites information from the petition that it argues indicates that petitioners actually recover waste originally classified as loss. *See* Petition at Exhibit 10, Letter from Petitioners to the Department, dated May 5, 2003, Letter from Petitioners to the Department, dated May 15, 2003, and JMC Rebuttal Brief. Citing the American Foundryment's Association, Inc., *The Cupola Handbook* (5th Ed. 1984) ("*Cupola Handbook*") that identifies two channels for yield loss during melting, oxidization and entrainment with top gasses, JMC argues that the remainder exits the cupola as molten iron, and these two losses cannot account for petitioners' loss in heating metallics. JMC cites the affidavit from Ward's operations manager in Petitioners' May 14, 2003, Letter at Exhibit 1, noting that Ward's oxidation is a small portion of the total loss claimed by petitioners. JMC argues that because the *Cupola Handbook* identifies remelting yields at 95% and above, petitioners cannot claim that the remaining amount of loss is from entrainment, especially given that the petitioners' own data implies substantial recycling at the cleaning and sorting stage. JMC further argues that any difference between Ward's and JMC's reported yields are dependent on scrap recovery practices, as Ward's operating manager reports a loss due to oxidation through slag and entrainment comparable to JMC's unrecoverable losses reported in FOP06 and FOP07. Citing its responses and JMC Verification Report, JMC argues that its intensive scrap recovery efforts with manual labor and mechanical methods, as well as probable differences in production processes, can account for the differences in yields. JMC further notes that the petition accounts for yield loss at every stage of the production process except the melting stage, and argues that petitioners have submitted insufficient data on scrap recovery to assess the difference between Ward's and JMC's scrap management, and as such the petition provides no reliable grounds for rejecting JMC's data.

JMC further argues that the *Cupola Handbook* has not been revised for thirty years and does

not address several scrap grades used by JMC, but still notes that JMC's reported yield experience is consistent with the data in the *Cupola Handbook*. JMC contends that the *Cupola Handbook* verifies that JMC's yield experience is consistent with its reported combination of inputs, and therefore the *Cupola Handbook* provides no basis for rejecting JMC's data. See JMC Rebuttal Brief at 17.

Additionally, petitioners' case brief raises a new issue that JMC did not report factors data for the British and German fittings it produces, and JMC notes that JMC reported all product types sold to the United States, which were produced only in American standard workshops, as well as full factors data on one other country's fittings. Regarding petitioners' assertion that JMC's failure to report FOPs for German and British standard malleable fittings prevented detection of unreported transfers of scrap from one workshop to another, JMC argues that the Department found no such transfers during verification. JMC cites the general instructions to the Department's questionnaire, which states that "Section D requests information about the factors of production of the merchandise sold in or to the United States" and that JMC should "report factors information for all models or product types in the U.S. market sales listing submitted" (see Antidumping Questionnaire from Abdelali Elouaradia to Respondents, dated January 8, 2003, at G-1 and D-1). JMC notes that it only sells American standard fittings to the United States, and therefore its section C database includes only American standard CONNUMs, which are distinct from any British or German standard CONNUMs. JMC argues that because all sales to the United States were produced in seven workshops, JMC reported factors only for each of these subject workshops. Further, JMC argues that it clearly explained this methodology to the Department, and also explained that it produces to British and German standards (see JMC Section A Questionnaire Response, dated January 30, 2003, ("JMC Section A") at 10), providing listing of all products manufactured in each of its workshops and identifying separately the workshops producing each type of fitting. Citing information on the record in this case, JMC argues that it clearly advised the Department that it reported FOPs for its American standard producing workshops only, and that petitioners never objected to this methodology. JMC points out that though petitioners argued that JMC might be diverting scrap from other workshops, they did not request that the Department ask for production in these other workshops. Further, the Department never issued any supplemental questions requesting this information or notified that this information was deficient, despite several Section D supplemental questionnaires. The Act at 19 USC 1677m(d) requires that the Department promptly notify respondents of any deficiencies, and JMC argues that this prompt notice is required before resorting to facts available, as stated in 19 USC 1677e(a). JMC also notes that in *Outokumpu Copper Rolled Products AB v. United States*, 829 F.Supp. 1371, 1386 (CIT 1993) ("*Outokumpu*"), the CIT found that notice of any deficiencies must unambiguously identify the deficiency and need for correction, and also that in *NTN Bearing Corp. of America v. United States*, 826 F.Supp. 1435, 1441 (CIT 1993) ("*NTN Bearing 1993*") the CIT held that the Department's reliance on FA rather than the manufacturer's actual cost of production was an abuse of discretion where the manufacturer substantially cooperated and the Department never asked it to clarify any of the cost data it had submitted, despite concerns about potential distortions.

JMC also rejects petitioners' use of *Anshan* as appropriate in this case. JMC notes that in *Anshan*, Baosteel complained that the Department incorporated FOP data for facilities that did not produce for the U.S. market, which implies that some of its subsidiaries produced the same products as sold to the United States, otherwise they would not have matched to U.S. sales. JMC notes that the Department has established product specification as the first criterion in product matching, which prevents any British or German standard fittings from matching to American standards. Further, JMC argues that *Anshan* only confirmed that the Department may incorporate FOP data from non-exporting factories, not that the Act required it (citing *Anshan* and *NTN Bearing Corp. of America v. United States*, 104 F.Supp. 2nd 110,142 (CIT 2000) ("*NTN Bearing 2000*"). JMC notes that it provided factors data for certain fittings other than American fittings that are also produced in subject workshops, which the Department verified and were revised for every model during the POI and reported in the six-week study. JMC further notes that all the information is on the record that would enable the Department to calculate FOPs for non-American standard fittings for FOP06. JMC argues that it has complied with the Department's requests for FOP information, and that the record provides no basis for disregarding JMC's data in favor of the unverified petition data.

In rebuttal, SLK argues that the Department should reject petitioners' assertion that the Department should use FA to value material inputs in the final determination, because the record since the *Preliminary Determination* contains actual data of all consumed and recovered scrap. SLK argues that in its supplemental questionnaire responses it submitted after the *Preliminary Determination*, the suppliers of SLK reported the amount of scrap consumed and recovered during production (see SLK Supplemental Questionnaire Response, dated July 27, 2003), and reported the quantities of inputs consumed and recovered during the six-week study. SLK further notes that it has complied with the requests to the best of its ability and that the Department verified the information that SLK maintains a closed loop production process, and that all inputs were accounted for, with none from outside workshops.

SLK further argues that petitioners' allegation that respondents must have underreported their inputs because petitioners utilize a different amount is baseless. SLK notes that the Department has verified that the data is complete and accurate, and has specifically observed the weighing of actual inputs into the cupola, whereas the petition data are unverified and not based on objective sources.

Department's Position:

We agree with petitioners that the use of facts available continues to be appropriate for respondents' metallic material inputs. In this regard, we note that section 776(a) of the Tariff Act instructs the Department to use "the facts otherwise available" in reaching its determination if "necessary information is not available on the record" or "an interested party...fails to provide such information by the deadlines...or in the form or manner requested." Additionally, section 773(c) of the Tariff Act requires the Department to value all inputs. Prior to the *Preliminary Determination* the Department made repeated requests that respondents report all metallic inputs and outputs, specifically any cast iron scrap recovered from the production process, which accounts for a large portion of total metallic inputs in the production of MPF. Respondents failed to provide this information and, further, failed to provide a reasonable alternative methodology to account for these inputs.

For the *Preliminary Determination*, the Department applied neutral facts available to account for the unreported metallic inputs and underreported steel scrap. After the *Preliminary Determination*, the Department provided all respondents with an opportunity to address its concerns regarding the underreporting of metallic inputs in the form of steel scrap and cast iron scrap, for which the Department applied neutral facts available in the *Preliminary Determination*. In a questionnaire, the Department asked respondents "as it is improbable that {respondents are} able to produce one kilogram of subject merchandise with less than one kilogram of input...for all observations where the sum input of steel scrap is less than one kilogram to produce one kilogram of output, please report the actual steel scrap input needed to produce one kilogram of output." See Supplemental Questionnaire from Abdelali Elouaradia to JMC, dated June 4, 2003, and Supplemental Questionnaire from Abdelali Elouaradia to Pannext, dated June 4, 2003, (Post-Prelim Supplemental). Further, the Department provided respondents with an opportunity to collect actual input and output data on a CONNUM-specific basis through six or eight-week production reporting prior to verification. In a letter to respondents dated June 3, 2003, the Department requested that respondents "weigh and keep accurate written records of each ingredient that goes into the cupola for each charge on a CONNUM specific basis...Provide the source of each input, e.g. purchased or reprocessed material...{and} for each CONNUM, record (1) the total casting weight, (2) the total weight of produced subject merchandise, and (3) the total weight of generated scrap," in an effort to allow respondents another opportunity to alleviate the Department's concerns regarding the quantities of inputs reported to date. See Input Request letter from Abdelali Elouaradia to JMC, Pannext, and SLK, dated June 3, 2003, (six-week study letter). Although respondents submitted this additional production information, the information provided to the Department by respondents after the *Preliminary Determination* did not address the Department's concern that respondents have failed to report sufficient quantities of inputs to account for total production during the POI.

Pannext:

With respect to Pannext, for a number of CONNUMs produced, Pannext has continued to

report less than one kilogram of input metallics for each kilogram of production. The Department gave Pannext an opportunity to address this deficiency during the six-week production reports. However, the data submitted by Pannext did not comport with the methodology requested by the Department, and contained only minimal differences from the data submitted directly after the *Preliminary Determination*. The data submitted by Pannext failed to comply with the Department's request to submit a revised database utilizing the actual inputs used during the six-weeks and actual scrap output during the six-week period. Instead, Pannext reported its revised data based on an allocation methodology that did not address the core concerns of the Department that Pannext was producing one kilogram of output using less than one kilogram of input material. Pannext claims that this is a result of the fact that it has weight-averaged several different products produced by Pannext together to create CONNUM-specific FOPs, and that the individual products would not have this error. However, Pannext has not provided examples of any such instance. It is the Department's position that it is impossible to produce one kilogram of output with less than one kilogram of input. In fact, Pannext agrees that its allocation methodology "resulted in some articles reporting more material usage and other products reporting less usage" (see Pannext Case Brief at 6), and that this is a "physical and technical impossibility" (see Pannext's Post Preliminary Supplemental Questionnaire Response, dated June 16, 2003, at 5 (Pannext Post Prelim Questionnaire)) but has done nothing to explain this inconsistency in its methodology. Its only attempt to address this discrepancy, which the Department requested in its Post Preliminary Questionnaire, was to apply the Department's own methodology of increasing purchased scrap inputs in its revised database.

The Department has determined that Pannext's methodology continues to be fatally flawed, in that Pannext's own data does not allow for production of the quantities of subject merchandise that it reported. While the Department has verified Pannext's purchases of scrap and other inputs in the production process, Pannext has provided no credible means for accounting for all metallic inputs used in production on a CONNUM-specific basis, specifically the scrap produced in the production process that is reintroduced. Therefore, for the final determination, the Department must resort to facts available to account for metallic inputs used in the production of subject merchandise.

JMC:

Certain facts have come to light with regard to JMC that were not known at the time of the *Preliminary Determination* that cast doubt on the reliability of JMC's reported metallic inputs. Prior to the *Preliminary Determination*, JMC reported a single FOP for its consumption of steel scrap, which it explained contained steel scrap from inventory. See JMC's Section D Questionnaire Response, dated February 24, 2003, at 14-16. However, in JMC's Third Section D Supplemental Questionnaire Response, dated June 17, 2003, at page 3, JMC clarified that this steel scrap from inventory did not consist of only steel scrap. In fact, this FOP consisted of purchased scrap, scrap from production of pipe nipples, and recycled malleable scrap from production of subject merchandise, rather than just purchased steel scrap. At verification, the Department further clarified this response, noting that "the furnace warehouse...contained five types of steel scrap: purchased, compressed malleable shavings, defective steel pipe, compressed steel shavings, and defective malleable fittings." See JMC Verification Report at page 6. When the recycled malleable scrap is removed from this total steel scrap figure, the total purchased scrap used in the production of one kilogram of subject merchandise is less than one kilogram for nearly all CONNUMs in JMC's FOP06 database.

It is the Department's position that, given the above facts, that JMC is reporting less than one kilogram of purchased scrap per kilogram of subject merchandise. As a result, JMC's metallic input data lacks credibility. Because JMC claims that it has a closed-loop system (see e.g., JMC's Second Supplemental Section D Questionnaire Response at 9, JMC's Response to Petitioner's May 2, 2003 Letter, dated May 9, 2003, at 5, and JMC's Rebuttal Brief at 10-11), JMC must maintain a consistent amount of recycled material through the casting process in order to maintain production levels. JMC acknowledges that it continuously reuses its recycled material (see *id.*), and as a result, JMC must supplement its production with certain amounts of outside sources of scrap (whether purchased or recycled from non-subject merchandise) that, at a minimum, exceed the volume of production output. It is the Department's position that if JMC were to use less than one kilogram of purchased material per

kilogram of output, it would deplete its inventory of recycled scrap in a short amount of time to the point that it would not be able to continue production. Therefore, the fact that JMC's total scrap from outside sources does not exceed production in the aggregate, nor for certain CONNUMs on the product basis, is, as Pannext has stated a "physical and technical impossibility." See Pannext Post Prelim Questionnaire at 5. For these reasons, it is unreasonable that JMC would, in a closed-loop system, be able to continuously make malleable pipe fittings with less outside-sourced scrap utilized in production than output produced. Because JMC's database contains this credibility gap in the major input into production, and because the six-week study information did not provide any additional information that was credible, the Department is unable to determine with any accuracy the actual metallic inputs used in production of subject merchandise. Therefore, for the final determination the application of facts available is necessary.

SLK:

For SLK, we note that SLK has several suppliers, each of which has a different fact pattern with respect to material inputs. Despite repeated inquiries prior to the *Preliminary Determination*, SLK maintained that none of its producer-suppliers kept daily records of material inputs into the cupola. After the *Preliminary Determination* SLK submitted revised databases, for three of its producers, with no accompanying narrative, that included reported FOPs for recycled scrap as well as the purchased scrap previously reported on June 27, 2003.

At verification, the Department found that for one of the suppliers, this data was based on daily cupola reports that, up to this point, SLK had claimed did not exist. SLK explained at verification that it used these cupola reports to calculate a revised FOP database for its supplier. When presented with the information used to calculate the recycled scrap input reported, the Department's verifiers found numerous deficiencies in its reported information. Most salient to the arguments raised by SLK in its briefs, that SLK has supplied complete recycled scrap information and that the Department should use SLK's recycled scrap input and output data to calculate margins for the final determination, the Department's verifiers found that this supplier had only limited cupola reports for the POI, and that SLK had used these incomplete records to quantify the reported recycled scrap inputs for the entire POI, without indicating the data's incomplete nature. The Department noted in its report that "the number of monthly cupola records used for reporting purposes ranges from 18 out of 30 days in September 2002 to 24 out of 30 days in June 2002." See SLK Supplier Verification Report, dated September 3, 2003, at page 6. The data based on these reports were clearly deficient, as it used this limited data as the basis of its calculation for the entire POI, and was presented to the Department as complete information. The fact that SLK was not forthcoming with this information until after the *Preliminary Determination*, coupled with the extensive deficiencies in the data provided for recycled scrap inputs found at verification, necessitates the use of facts available to account for these material inputs.

For the other two suppliers that reported the additional FOPs for recycled scrap inputs on June 27, 2003, the Department has determined that because this information was unsubstantiated, lacked both any narrative explaining the source of these data, and lacked corroborating exhibits to substantiate the period to which they pertain and their accuracy, they are unreliable as a means to calculate dumping margins. One of these suppliers has been closed since January 1, 2003, and SLK has not explained how it obtained the information for the closed company. See SLK production report dated June 26, 2003, at Exhibit 4.

For one other supplier, SLK has submitted no additional information after the *Preliminary Determination*, despite Department requests, because this supplier was closed by the Chinese authorities during the SARS epidemic and for environmental reasons. *Id.*, at Exhibit 5. Because of the lack of response from this company to the Department's requests for input information necessary to calculate accurate margins, the use of facts available is necessary for unreported inputs.

For SLK's final supplier, there are extensive deficiencies in the reported amounts for scrap inputs that have not been addressed. These deficiencies have not been sufficiently explained or alleviated to accurately calculate a margin. Therefore the use of facts available is necessary. See SLK Analysis Memo for proprietary supplier information.

Therefore, in the absence of either six-week data that validly quantifies material inputs including recycled scrap, or more importantly actual POI data accounting for all inputs and outputs on a CONNUM-specific basis, the Department cannot determine with any accuracy, the actual metallic material inputs used by respondents during the POI to produce subject merchandise. The respondents in this case have failed to provide information to the Department in the “form or manner requested” as required by section 776(a) of the Tariff Act, which further instructs the Department to use “the facts otherwise available” when “necessary information is not available on the record.” As a result, the Department must resort to facts available in order to satisfy section 773(c)(1) of the Act, which states that the Department “shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise.” *See e.g., Preliminary Determination*, at 33917.

For Pannext, as facts available for the under-reported purchased scrap inputs, the Department is continuing to increase purchased scrap, where necessary, to the POI-wide average quantity for steel scrap input as reported in its response, when the reported metallic inputs (including steel scrap and pig iron) to produce one kilogram of output were less than one kilogram. *See e.g., Pannext’s Section D Questionnaire Response*, dated March 3, 2003, at Exhibit 7. For JMC, because the POI-wide average employed for the *Preliminary Determination* included recycled scrap from subject merchandise, as described above, the Department is applying a different factor for the final determination. For the final determination as facts available, the Department is increasing the reported purchased and non-subject merchandise recycled scrap inputs for those CONNUM where the sum of these inputs is less than one kilogram to produce one kilogram of output. The factor used to increase these CONNUMs is the average of the CONNUMs where the sum of the inputs is greater than or equal to one. *See JMC Proprietary Analysis Memorandum*. For SLK the Department has also increased the inputs when the sum of the inputs are less than one kilogram to produce one kilogram of output for certain suppliers. *See SLK Proprietary Analysis Memorandum*.

Additionally, as facts available for recycled scrap that was not reported in the “form or manner requested” (*see* section 776(a) of the Tariff Act), the Department is relying on information provided by the petitioners in its calculation of the unreported inputs. In their May 15, 2003, submission to the Department, petitioners provided worksheets based on data from the Petition and respondents’ submissions, demonstrating the unreported factors of production for metallic inputs using petitioners’, JMC’s, and Pannext’s data. *See Letter from Petitioners to the Department dated May 15, 2003 at Exhibit 4 (Petitioners’ May 15th Letter)*. Petitioners calculated an adjustment factor for the unreported metallic inputs based on the total quantity of inputs of purchased scrap and recycled scrap from the Petition, adjusting for respondent’s reported yield losses and by-product adjustments for an average of several types of subject merchandise. The Department does not have sufficient information to recalculate these input adjustments for the unreported metallic inputs on a CONNUM-specific basis, but has corroborated this information to the extent practicable. *See Corroboration of the Petition for the PRC-wide Rate from Case Analysts to the File*, dated October 20, 2003 (*Corroboration Memo*). For this final determination, the Department is using an average of the adjustment ratios for JMC and Pannext as calculated in petitioner’s May 15, 2003 submission at Exhibit 4, and increasing JMC, Pannext, and SLK’s reported values for metallic inputs by this average, 56.83%.

Comment 2: Whether to Apply Facts Available to Value Energy

Petitioners argue that the values reported by respondents for energy usage should be similar to the usage reported by petitioners, as both use the same basic technology, and they argue that the large difference in usage necessitates the use of FA from the petition to determine energy inputs. Petitioners argue that the energy consumption numbers reported by respondents are not credible, and that the Chinese producers are dramatically understating their energy usage, as they possess no technological or efficiency advantage over U.S. producers. Petitioners point out that the discrepancy cannot be explained by the use of different fuels, though they acknowledge that different fuels provide different amounts of energy per unit. Citing the U.S. Department of Energy and California Energy Commission, petitioners note that coke yields 24.8 million BTUs per short ton, while bituminous coal yields 21.93

million BTUs per short ton, firewood yields 17.2 – 19.4 million BTUs per short ton, natural gas yields 1,027 BTUs per cubic foot, and electricity yields 3,412 BTU per kilowatt hour. *See* Energy Information Administration, U.S. Department of Energy, “Glossary: Coke (coal),” at http://www.eia.doe.gov/glossary/glosary_main_page.htm, Energy Information Administration, U.S. Department of Energy, “Annual Energy Review 1996,” DOE/EIA-0384 (96)-1995 Data, California Energy Commission, “Fireplaces and Woodburning Stoves,” at <http://www.consumerenergycenter.org/homeandwork/homes/inside/heatandcool/fireplaces.htm>, and Petitioner Case Brief at 11-12. Petitioners argue that unless there is a technological difference, the total BTUs used by both petitioners and respondents to melt scrap and recycled MPF to form iron, anneal fittings, thread fittings, and melt zinc for galvanizing should be similar. Petitioners note that the data used for petitioners was from Ward Manufacturing, which has a cupola foundry similar to the Chinese respondents, though more efficient in productivity and energy. Petitioners argue that because Ward requires a certain amount of BTUs for their production process using primarily natural gas, respondents would require a similar amount of BTUs for their production process no matter what energy source they use. However, petitioners point out, the nature and usage amounts of the energy sources reported by respondents would yield less BTUs than petitioners, leading to an energy shortfall when compared to petitioners. Petitioners argue that reliance on this “obviously inaccurate data” would distort the margin. *See* Petitioner Case Brief at 12-13.

Petitioners further argue that although petitioners continuously heat their cupola, and respondents run their cupola for only an eight hour shift, no difference in production methods or technology cited can account for the vast difference in energy usage, because nearly the same amount of BTUs are needed to melt the inputs regardless of production methodology. *See* Petitioner Case Brief at 13-14. Petitioners argue, therefore, that the energy usage reported by respondents is not comparable to the energy used by U.S. producers, and because the respondents have not demonstrated any technology that would account for increased efficiency on their part, the Department should apply appropriate amounts from Ward Manufacturing, rather than rely on the input amounts reported by respondents.

In rebuttal, Pannext argues that the Department verified that Pannext accurately reported POI energy consumption, and that petitioners’ argument that the numbers are not credible is unfounded. Pannext argues that in fact, it over-reported energy usage (*see* Pannext Verification Report at 28), and that reported consumption should be relied upon by the Department. Pannext argues that petitioners’ analysis of energy consumption is based solely on speculation and the Department should base its final determination on verified information.

In rebuttal, JMC argues that the Department should reject petitioners’ allegation that FA is necessary for energy consumption, as any differences between the energy consumption of respondents and petitioners have been verified and demonstrated as production practice differences. JMC argues that differences in energy consumption between petitioners and JMC reflect demonstrated, verified differences in production facilities. JMC contends that petitioners’ proposed methodology does not take into account variations in pressure, temperature, apparatus, regulatory requirements, and other variations in operating conditions. Therefore, JMC argues that the limited general public data relied upon by petitioners is insufficient to supplant JMC’s verified actual data. JMC further argues that petitioners’ pre-verification contention that the cupola must be heated continuously was overturned by verification, which demonstrated that JMC’s cupola is subjected to eight-hours of heating each day followed by sixteen hours without heating, and this accounts for differences in coke and coal consumption between petitioners and respondents. JMC also notes that it heats its annealing kilns to a lower temperature than petitioners. Therefore, citing the JMC Verification Report at 27, JMC argues that petitioners’ claim that they must have comparable energy consumption is unfounded and that the petition data should not be used.

JMC further argues that as the Department verified JMC’s energy information and found no discrepancies, the record does not support the use of FA. Further, JMC argues that the Department found that JMC reported in its responses a higher consumption of electricity than found at verification,

which JMC explains is as a result of its reliance on manual labor. JMC notes that petitioners applied JMC's ranged labor consumption (as reported to the Department in the investigation of Non-Malleable Pipe Fittings from the People's Republic of China) for valuing labor in the petition, which was used in the calculation of the petition margin. JMC argues that this is because JMC uses machinery for critical functions only, contrary to the domestic industry's modern facilities. JMC therefore argues that the Department should use JMC's reported energy consumption data.

SLK argues that a comparison of BTU usage with petitioners' data is inappropriate as there is no evidence showing that petitioners' facilities are similar to respondents'. Noting that the Department verified that its supplier's facility is unautomated and relies on manual labor, SLK argues that its facilities require less energy usage than an automated factory. Further, petitioners' allegation that Ward Manufacturing's facility is similar and more efficient is unsupported by evidence on the record, and SLK argues that this demonstrates the unreliability of the petition data as it relates to respondents' FOPs. Therefore, SLK argues that the Department should reject any use of FA in this case.

Department's Position

We agree with petitioners that the application of facts available for energy inputs is warranted in this case. Section 776(a) of the Tariff Act states that the Department may use "the facts otherwise available" in reaching its determination if "necessary information is not available on the record." In general, respondents have based their reported energy inputs on the same yield loss ratios used to calculate metallic inputs. *See e.g.* JMC's response. The Department has also analyzed respondents' data for energy inputs and found that there is a clear correlation between the amount of input material used to manufacture subject merchandise and the amount of energy used in its production. Specifically, the respondents' own proprietary database showed that as metallic inputs per kilogram of output increases, the quantity of energy reported per kilogram of output increases at a comparable rate, indicating a direct correlation between the amount of metallic inputs used and the amount of energy necessary to produce the finished merchandise. The Department found that respondents' data, demonstrate that the higher the quantity of metallic inputs used, the more energy, in the form of firewood, coke, coal, and electricity, was needed to produce subject merchandise. *See* JMC, Pannext, and SLK Proprietary Analysis Memoranda. The Department finds this correlation to be appropriate, as it takes more energy to melt higher quantities of metallics than it takes to melt lower quantities of metallics.

As noted in Comment 1, the Department found that respondents' reported values for metallic inputs were underreported and therefore increased these inputs to compensate for the incomplete and unreliable data submitted to the Department. Respondents have reported specific energy usage rates necessary to melt these quantities of inputs that were underreported. Respondents themselves note that the Department verified these energy consumption factors. *See* JMC Rebuttal Brief at 25. However, these energy consumption factors were based on the reported amount of metallic inputs that the Department has found to be underreported and unreliable (*see* Comment 1). Because there is a direct correlation between the amount of inputs used to manufacture the subject merchandise and the amount of energy used in production, the Department must adjust respondents' energy usage to reflect the relationship between metallic inputs and the appropriate energy needs.

For this final determination, in order to determine normal value, in accordance with 773(c)(1) of the Tariff Act, the Department must apply facts available to quantify the respondents' energy inputs. As facts available for these underreported energy inputs, the Department has used respondents' reported energy data to find an appropriate facts available adjustment for these underreported inputs. First, the Department calculated the per-kilogram quantities of metallic inputs and their corresponding energy usage amounts for each CONNUM. Next, the Department calculated the revised metallic input amounts for all CONNUMs based on the facts available described in Comment 1. Then the Department calculated the simple average of these inputs. The Department then found the corresponding energy usage for this simple average and applied these energy usage factors for firewood, electricity, coke, and coal, to all CONNUMs. *See* JMC, Pannext, and SLK Proprietary Analysis Memoranda for an explanation of company-specific factors.

Comment 3: Financial Ratios

JMC argues that the Department is required to apply financial ratios using data from surrogate producers of identical or comparable merchandise, and that for this purpose the Department should use for its final determination ratios derived from the 2001-2002 annual reports of Vishal Malleables Ltd. and Jayaswals Neco Ltd. JMC cites information on the record showing that Vishal's core products include malleable pipe fittings, and that the primary raw materials it consumes are scrap and pig iron, as well as zinc. JMC also claims that Jayaswals produces identical merchandise and that it is a sound surrogate producer of subject merchandise. JMC concludes that for the Final Determination, the Department should apply the average financial ratios of these producers of allegedly identical merchandise, using an overhead ratio of 12.78 percent, SG&A expense ratio of 20.23 percent and a profit ratio of 1.06 percent.

JMC also argues that the financial ratios derived from three Indian producers of brake rotors and from SAGE Metals Ltd., which all produce comparable merchandise, is a superior source of surrogate financial ratios than the Reserve Bank of India data for 964 Large Public Companies used in the *Preliminary Determination*. JMC points out that the RBI data encompass companies in diverse industries that are not comparable to producers of subject merchandise, and therefore bear little relationship to the actual costs incurred by respondents. JMC contends that RBI financial ratios are a surrogate of last resort.

Pannext supports the use of the financial ratios placed on the record by JMC and contends that use of the RBI data is contrary to section 351.408(c)(4) of the Department's regulations, which provides that normally non-proprietary information from producers of identical or comparable merchandise in the surrogate country should be used for this purpose.

Petitioners argue that if the Department finds that none of the producers for which financial data have been submitted manufacture merchandise comparable to subject merchandise, the Department should continue to use the RBI data to derive the financial ratios. According to petitioners, RBI data is a credible and well-established source and comes from an industry group that would include producers of comparable merchandise. Moreover, petitioners claim that the Department has a preference for a broad range of financial data, which minimizes the effect of potentially anomalous data from a single producer.

Petitioners contend that Vishal Malleables is the only producer cited that possibly manufactures comparable merchandise, but that JMC did not accurately calculate the financial ratios for this company. Petitioners cite four errors in JMC's calculation: (1) JMC included "job and process charges" in Vishal's materials, labor and energy costs, although the financial statements separately list labor and energy costs; (2) JMC understated the value of depreciation as Rs 322,289, whereas the financial statement lists the value as Rs 3,222,899; (3) JMC classified the depreciation associated with Vishal's Wind Power Project as an SG&A expense, which should be included in overhead expense, since the wind-powered electrical generators are a product which the company produces and uses in production; and (4) JMC increased Vishal's material, labor and energy costs by the difference between the beginning and ending values for finished inventory and work in process inventory, listed as "Decrease in Stock" on the profit and loss statement, which petitioners contend is an incorrect accounting methodology. *See* Petitioners' Rebuttal Brief, at 9-10 (September 15, 2003). Petitioners recalculated Vishal's financial ratios and found an overhead ratio of 29.43 percent, a SG&A expense ratio of 15.55 percent and a profit ratio of 1.10 percent.

Petitioners further argue that Jayaswals Neco Ltd.'s data should not be used because the company does not produce comparable merchandise and has severe liquidity problems, which disqualify its financial data. Petitioners point out that Jayaswals' financial statements indicate that its castings division caters to the tractor industry and other automotive units, and that the Department used Jayaswals' financial statements, along with those of other brake rotor producers, to derive the financial ratios in the Sixth New Shipper Review of *Brake Rotors from the People's Republic of China* (August 14, 2002). In addition, petitioners characterize JMC's claim in its case brief that Jayaswals

lists cast/ductile iron pipes and pipe fittings among its core products, including cast pipe fittings, as misleading and argues that this listing does not refer to Jayaswals Neco Limited, but rather to the “Neco Group of companies.” Finally, petitioners argue that the Department should reject the financial data for the brake rotors producers, because brake rotors and subject merchandise differ not only in production processes but also in physical characteristics and end uses, and thus are not comparable.

Department’s Position:

We agree in part with JMC and Pannext, and in part with petitioners. We agree with JMC that data from surrogate producers of identical or comparable merchandise are preferable to RBI data, which are averages for an industrial sector encompassing a broad range of industries. Section 351.408(c)(4) of the Department’s regulations provides:

For manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

The Department’s preference in NME cases is to use as surrogate values the financial ratios of producers that are most comparable to the producers of the subject merchandise, when available, provided they are not aberrant because of hyperinflation or the company’s financial illiquidity. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People’s Republic of China*, 67 FR 20090 (April 24, 2002) (*Tables and Chairs*), and accompanying *Issues and Decision Memorandum*, Comment 9 (*Tables and Chairs Decision Memo*)

We disagree with petitioners’ contention that Jayaswals Neco Ltd. is not a producer of comparable merchandise. The website for the Neco Group of Industries has a link to web pages for Jayaswals. *See* http://www.necoindia.com/company_jnl.htm. These web pages list four castings divisions and their products. Two of its divisions make fittings, but apparently neither division makes malleable fittings. Thus, the products include comparable, but not identical, merchandise. The company also has two unrelated divisions producing pig iron and soybean oil. We agree with petitioners, however, that Jayaswals ratios should not be used because according to Jayaswals’ Annual Report, the company has been “experiencing severe liquidity problems since last couple of years,” and is undergoing a restructuring process. *See* JMC July 16, 2003, response, Exhibit 19 at 10. We also agree with petitioners that brake rotors are not comparable to subject merchandise.

We agree with JMC that Vishal Malleables is a producer of comparable merchandise. Thus, Vishal’s financial ratios are the only suitable surrogate values on the record of this investigation. However, we agree with petitioners that JMC made errors in calculating Vishal’s financial ratios and have accepted petitioners’ corrections. As argued by petitioners, job and process charges are payments made to outside subcontractors for processing, and are properly considered as a variable overhead expense. We agree that JMC made a transcription error in calculating depreciation, and that JMC improperly included depreciation for the wind power project under SG&A. We also agree with petitioners’ analysis of the correct treatment of changes in inventory values in their Rebuttal Brief at footnote 4, pages 9-10. We have therefore used Vishal’s financial ratios for the final determination, as recalculated by petitioners.

Comment 4: Surrogate Values - Whether to Update Information for the POI

JMC argues that the Department should use Indian Import Statistics from the entire POI to value coal, polyethylene bags, ferromanganese and cartons, instead of the first three months of the POI as used in the *Preliminary Determination*.

Petitioners did not rebut this argument.

Department’s Position:

We agree with JMC. It is the Department practice to use the most contemporaneous data

available when valuing factors of production. Therefore, except as noted in the *Calculation of Surrogate Values for Use in Final Determination of Malleable Pipe Fittings from the People's Republic of China* ("Surrogate Values Memo"), we have updated all surrogate values using more contemporaneous Indian import data, obtained from the World Trade Atlas, which notes that its data was obtained from the Ministry of Commerce of India. In addition, the Department has updated certain surrogate values not mentioned below based on supplemental information and information from the verification reports. See Surrogate Values memo.

Comment 5: Surrogate Values – Recycled Iron Scrap

JMC argues that to value recycled iron scrap the Department should continue to use Indian Import Statistics from the POI, HS 72041000, which encompasses "waste and scrap of cast iron" because the malleable iron scrap that JMC recycles is all cast iron scrap. JMC argues that this heading applies to recovered malleable iron scrap from inventory, and internally recycled casting workshop malleable iron scrap, and should therefore be used to value its recycled iron scrap.

Petitioners rebut JMC's argument, contending that the malleable iron and defective fittings are not waste, and that JMC's recycled material has the same material composition as the finished fittings, and therefore should be valued as HS 72069002, "Iron/Non-alloy steel in blocks, lumps, and similar form."

Department's Position:

We agree with JMC. See JMC Verification Report, page 6, Pannext Verification Report, pages 13-14. The Department does not find that petitioners' suggested heading for "Iron/Non-alloy steel in blocks, lumps, and similar form" is appropriate, because this heading refers to products that have been made into useful forms, whereas the only useful purpose of the defective fittings is recycling. Therefore, the Department will continue to value recycled iron scrap as HS 72041000.

Comment 6: Surrogate Values – Iron and Steel Shavings

JMC argues that to value recovered malleable iron shavings and turnings from inventory the Department should use Indian Import Statistics for HS 72041000, from the POI, which JMC says encompasses "turnings, shavings, chips, milling waste, sawdust, filings, trimmings, and stampings, whether or not in bundles."

Petitioners argue that the shavings, even when compressed, do not significantly contribute to the molten iron, and therefore should not be given any value.

Department's Position:

We agree with JMC. The Department verified that JMC recycles iron and steel shavings by compressing them into briquettes, which are fed into the cupola with other iron scrap, and therefore the Department will value the shavings accordingly. See JMC Verification Report, page 6. The Department notes that JMC appears to have made a typographical mistake in its September 8, 2003, brief and used HS 7204.1000 (waste and scrap of cast iron), with the description for 7204.4100 (turnings, shavings, chips, milling waste, sawdust, filings, trimmings, and stampings, whether or not in bundles). For the final determination the Department will value these shavings under heading HS 7204, "Ferrous waste and scrap; remelting scrap ingots of iron or steel;" under subheading 72044100, "turnings, shavings, chips, milling waste, sawdust, filings, trimmings, and stampings, whether or not in bundles."

Comment 7: Surrogate Values – Ferrosilicon

JMC argues that to value ferrosilicon the Department should use Indian Import Statistics from the POI, under HS 72022100, which encompasses "ferrosilicon containing more than 55% silicon," because the Department verified that JMC uses ferrosilicon which contains more than 55 percent

silicon.

Petitioners did not rebut this argument.

Department's Position:

We agree with JMC. The Department verified that respondents use ferrosilicon containing greater than 55 percent silicon. See JMC Verification Report at page 2; Pannext June 16, 2003 Submission, at Exhibit 4; SLK's supplier Verification at Exhibit 12, page 3. Therefore, for the final determination the Department will value respondents' ferrosilicon using only HS 72022100, "ferrosilicon containing more than 55% silicon."

Comment 8: Surrogate Values – Firewood

JMC argues that to value firewood the Department should use Indian Import Statistics from the POI, under HS 44013000, which encompasses "saw dust and wood waste/scrap whether or not agglomerated in logs, briquettes, pellets, or similar forms," instead of the more general heading the Department used for the *Preliminary Determination*, HS 4401, "fuel wood." JMC argues that the Department should not use the entire heading 4401, arguing that HS 44012100 and HS 44012200, which are wood "chips or particles" should be excluded because the Department verified that JMC uses "various sticks," and not chips or particles, as firewood.

Petitioners did not rebut this argument.

Department's Position:

We agree in part with JMC that wood chips or particles should not be included in the surrogate value for firewood. However, the heading suggested by JMC includes sawdust, which we have no evidence that respondents use. See JMC Section D, exhibit 7, Pannext June 16, 2003 Submission, exhibit 4. Therefore, for the final determination the Department will value firewood using HS 440110, "Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms," which does not include wood chips, particles, or sawdust.

Comment 9: Surrogate Values – Wood Pallets

JMC argues that instead of valuing wood pallets as a whole, the Department should use Indian Import Statistics from the POI to separately value the wood and nails JMC used to construct wood pallets.

Petitioners argue in their rebuttal that the Department should value JMC's wood pallets based on the cost of wood crates, as it did in the *Preliminary Determination*.

Department's Position:

We agree with JMC. The Department verified that JMC and Pannext construct their own wooden pallets for shipping using wood and nails, and that JMC and Pannext included the labor to make these pallets in their FOPs for labor. See JMC Verification Report, page 28, Pannext Verification Report, page 29. However, the Department also verified that SLK purchases wood pallets rather than making their own from wood and nails. Based on the information found at verification, for the final determination, the Department will value JMC and Pannext's inputs as wood and nails using surrogate values for wood (HS 44039900) and nails (HS 7317). The Department will value SLK's inputs as wood pallets under HS 441520000.

Comment 10: Surrogate Values – Zinc Dust and Zinc Powder

JMC argues that to value zinc dust the Department should use Indian Import Statistics from the POI, under HS 79031000, and to value zinc powder the Department should use Indian Import Statistics from the POI, under HS 79039000, rather than valuing both values under HS 7903.

Petitioners did not rebut this argument.

Department's Position:

We agree with JMC. For the *Preliminary Determination*, we valued both zinc dust and powder as HS 7903. At verification, the Department found that JMC and SLK produce both zinc dust and zinc powder, and that Pannext produces both zinc scrap and zinc dust. See JMC Verification Report, page 29; Pannext June 16, 2003 Submission, exhibit 4, SLK Supplier Verification Report, page 7. Therefore, for the final determination the Department will value zinc dust using HS 79031000, zinc powder using HS 79039000, and zinc scrap using HS 79020000.

Comment 11: Whether to Consider Certain Inputs as Overhead Items

JMC argues that the Department should treat sand, coal powder and bentonite usage as overhead expenses. JMC argues that the Department's use of the surrogate value for non-reusable resin-coated sand to value JMC's molding sand in the preliminary determination was erroneous, because verification confirmed that JMC recycles the same silica sand mixed with coal powder and bentonite to produce sand molds and sand cores. JMC claims that the Department consistently recognizes green sand molding materials as overhead expenses in investigations of Chinese foundries, noting that Indian accounting practices classify molding materials as overhead items under "stores and spares consumed." JMC cites *Notice of Final Determinations of Sales At Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160, 9164 (February 28, 1997) (*Brake Rotors*) and subsequent reviews as treating these items as indirect materials, and therefore a part of factory overhead. JMC argues that treating these molding materials as direct inputs would double-count these expenses.

Pannext argues that it owns its water well and uses water for administration and employee housing in addition to production. Pannext claims that the verification report makes clear that water should be treated as an overhead item rather than a direct material. Pannext also claims that steam coal is more appropriately treated as an overhead expense because it is used to heat the living quarters in addition to its uses in the annealing and galvanizing processes.

SLK argues that the Department should treat testing oil, steel balls, firewood and water as part of overhead expenses, and that it is the Department's normal practice to classify minor indirect materials as part of overhead expense, rather than valuing them separately as material factors. SLK explains that testing oil is used in the process of testing the fitting and is not used for the protection of the final product; steel balls are used in the machinery during the tumbling process and are not consumed as part of the fitting; firewood is used to start the cupola and for drying the bricks, and is not a source of the main energy consumed to produce the subject merchandise; and finally, that water is used for cooling and cleaning fittings, and SLK's suppliers do not consider it to be a raw material in production. SLK cites *Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Sebacic Acid from the People's Republic of China* at Comment 3 (*Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537, August 14, 2000) (*Sebacic Acid*) as authority for treating water as part of factory overhead. SLK also argues that the Department verified that one of the producers that SLK bought fittings from during the POI pumps water from its own well, and that because the electricity used for the pump is already included in energy costs, all costs associated with water have already been captured. SLK cites *Sulfanilic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 61 FR 53711, 53716 (October 15, 1996) as precedent for treating well-pumped water as part of factory overhead.

Petitioners counter that the CIT upheld the Department's treatment of water as a separate factor of production in *Pacific Giant, Inc. v. United States*, 223 F. Supp 2d 1336, 1345 (CIT 2002) (*Pacific Giant*) in stating:

...water constitutes a factor of production in this case because of its use for more than incidental purposes... Finally, because Commerce could not know whether the respondents included water cost in their factory overhead, Commerce reasonably determined to value water separately.

Petitioners point out that the Department instructed the respondents to report water usage separately in this investigation, implying that the Department considers water to be more than an incidental FOP. Petitioners contend that SLK has not provided any evidence that the Indian companies whose financial ratios may be used did not include water as a material consumed in production, or as energy, and thus has not shown that separate consideration of water as a FOP double counts this input. Further, petitioners state that the CIT in *Pacific Giant* dismissed the relevance of whether the producer pays for water pumped from its own source, since “the statute plainly focuses upon the quantity of inputs for factors of production rather than the costs associated with them.” For all other inputs, petitioners urge the Department to follow its standard practice, which involves first determining whether the input is used for more than incidental purposes, and treating those used for more than incidental purposes as separate factors, unless the respondent demonstrates that they were included as overhead items by the company whose financial statements are used to establish the financial ratios.

Department’s position:

We agree with JMC, agree in part with SLK, and disagree with Pannext. We agree with JMC that the Department verified during a plant visit that JMC recycles its molding sand, and therefore, that silica sand, coal powder and bentonite should be treated as indirect materials under overhead. In *Brake Rotors*, the Department stated:

We have continued to treat molding materials listed in the “Factors of Production” section of this notice as indirect materials because although these inputs are used to produce the subject merchandise, these inputs are not incorporated into the final product and are also categorized as “stores and spares consumed” based on Indian accounting standards. According to the Compendium of Statements and Standards, in order for a material to be considered as part of factory overhead, it must “assist the manufacturing process, but ... not enter physically into the composition of the finished product.”(62 FR 9160, 9170)

Therefore, because the Department has recognized in other PRC antidumping cases that these inputs are not physically incorporated into the final product and that Indian accounting practices treat molding materials (sands, molding clays, bentonite and coal powder) as overhead items, we agree with respondents that we should not treat these items as direct material inputs.

We agree with SLK that steel balls used in the tumbling process should be treated as a variable overhead expense, because they are not physically incorporated in the subject merchandise, are reusable, and are included as overhead expenses under “stores and spares consumed” in Indian financial statements. We note that we did not treat steel balls as a direct material input in the *Preliminary Determination*, consistent with past practice. See *Brake Rotors* at 9169. We also agree with SLK that testing oil, which is mixed with water and used to prevent the fittings from rusting during the process of pressure testing the finished fittings, should be treated as a variable overhead expense. In contrast to anti-rust oil, which is used to coat the finished fittings prior to packing, and is used as a packaging material, testing oil is not incorporated in the finished product.

We disagree with Pannext that steam coal should be treated as an overhead expense simply because it is also used to heat the living quarters. As noted in Pannext Verification Report, at 28, as coal is withdrawn from the warehouse for the annealing and galvanizing workshops, the quantities are recorded on material issuing slips and recorded in Pannext’s warehouse record separately from coal for the living quarters. Pannext is therefore able to measure the amounts directly consumed as an energy source in production. As noted below in Comment 16, Pannext erroneously reported all coal consumption during the POI, which the Department will correct for the final determination.

We also disagree with SLK’s claim that firewood is not integral to the production process. Firewood is used to start heating the cupola to melt the iron and steel scrap in the first stage of the production process, and is therefore not an incidental energy source. See *Brake Rotors*, 62 FR 9160,

9169. Therefore for the final determination we are continuing to treat firewood as a FOP for energy.

Finally, we agree with petitioners that whether the producer pays for water is irrelevant in determining whether it should be considered a direct material input. SLK argues that water is “normally” treated as an overhead expense and cites *Sebacic Acid* as precedent in support of its argument that the Department should not treat water as a direct input. However, the Department’s discussion of the issue in *Sebacic Acid* at Comment 3 makes clear that its decision to treat water as an overhead expense was based upon the use, in that case, of Reserve Bank of India data for surrogate financial ratios, and the treatment in those data of water as overhead expense. See *Sebacic Acid*, 65 FR 49537, and accompanying *Issues and Decision Memorandum*, Comment 3. The case precedents cited in *Sebacic Acid* all pertain to chemical products. Neither SLK nor Pannext has provided evidence that the Indian producer of malleable castings whose financial statements have been used for this final determination to establish the financial ratios has accounted for water as an overhead expense. We further note that the Department included water as a direct material input in *Tables and Chairs*, and not as an overhead expense. See *Tables and Chairs Decision Memo*, Comment 34. We therefore have continued to treat water as a direct input for the final determination.

Comment 12: Whether the Department Correctly Calculated the Distance for the NME Inland Freight Charge for Respondents

Petitioners argue that the NME inland freight on material inputs should be based on the shorter of the distance between the respondents’ factory and the port, or the distance between the respondents’ factory and the NME input producer. In the *Preliminary Determination*, petitioners note that the Department stated that it calculated its surrogate inland freight on material inputs using the shorter of the reported distance from the domestic producer to the factory or the distance from the nearest seaport to the factory, in accordance with the Court of Appeals for the Federal Circuit’s decision in *Sigma Corp. v. United States* (“*Sigma*”), 117 F. 3d 1401, 1407-1408 (Fed. Cir. 1997).

Petitioners argue that the distances used in the Department’s preliminary determination to calculate the surrogate inland freight cost on material inputs were not based on the distances from the NME input producer to the factory. Instead, petitioners note that the distances relied on by the Department in its preliminary determination to calculate a surrogate inland freight cost on certain material inputs were the distances from JMC’s factory to JMC’s alleged potential upstream sources and not to the actual producers of the inputs. Petitioners cite JMC’s own response, dated April 2, 2003 (pages 20-21), in which JMC stated that it “has no basis for determining its actual suppliers’ upstream suppliers. JMC’s actual suppliers are not affiliated with JMC; they have no contractual or legal obligation to disclose their upstream suppliers to their customers.” Because JMC did not purchase its inputs from producers and did not identify the actual producers of the inputs, the Department, for these inputs, must use the distance from JMC’s factory to the port to calculate its inland freight cost for the final determination.

Besides potential upstream sources, petitioners argue that JMC also classifies one particular material input as self-sourcing suppliers because JMC has stated that the self-sourcing suppliers are not actual producers of the input, based on the type of input and its suppliers’ names. Instead, JMC has stated that these self-sourcing suppliers do not produce the input but rather purchase and resell it. Petitioners argue that the Department, in its final determination, without any evidence that these parties produce the input, should use the distance from the port to JMC’s factory to calculate the NME inland freight cost.

Petitioners note that JMC has stated that “{s}egregating the respondent’s actual suppliers into ‘producers’ or ‘distributors’ is inconsistent with settled Department practice, methodologically unsound and procedurally cumbersome.” See Petitioners’ Case Brief at 18, citing JMC’s April 2, 2003 response at 20. However, petitioners argue that the Federal Circuit’s decision in *Sigma* implies the necessity of identifying whether the input supplier is a producer or a distributor.

Petitioners note that in the instant case, as in *Sigma*, certain material inputs were valued using Indian import statistics and that this import price is inclusive of ocean freight and handling up to the port of entry, citing the *Monthly Statistics of Foreign Trade of India*, at item 8 of Introductory Note, where item 8 states that “Values conform to c.i.f.” We note that c.i.f. means cost, insurance, and

freight. Thus, petitioners observe that the adding of freight from the port to the respondent's factory to the import price captures the full freight cost on the input up to the respondent's factory.

Petitioners state that in *Sigma*, the respondent purchased directly from the NME producer of the input (*i.e.*, pig iron). Petitioners state that the Federal Circuit in *Sigma* "reasoned that a rational NME buyer when choosing between identical inputs at equal prices – one located at the port and another at the input producer's facility – would buy from the closer source in order to minimize inland freight charges" and cites the CIT's reasoning as a basis for its argument:

If a producer in a surrogate country had a foundry next to a port (and thus had negligible freight expenses from the port to the foundry), it would purchase its pig iron at the import price, rather than purchasing equivalently priced domestic pig iron that had to be shipped at significant expense from a domestic pig iron mill. By the same token, if the surrogate country producer had a foundry next to a domestic pig iron mill and far from the nearest port, it would purchase the pig iron from the domestic mill and thereby avoid the inland freight charge on equivalently priced imported pig iron.

See Sigma at 1408. Petitioners note that the "equivalent prices" to which it refers related to the input alone, exclusive of any inland freight costs. Therefore, according to petitioners, the buyer's decision whether to buy from the port or the NME producer related only to the inland freight charge. Furthermore, petitioners assert that when the input buyer purchases from a producer, the price does not include inland freight because the input is manufactured at the producer's facility but when the input buyer purchases from a non-producing distributor, the distributor's price to the buyer includes the cost of freight from the producer of the input to the distributor.

Petitioners argue that the Federal Circuit's decision in *Sigma* only applies to the facts of that case, where the respondent purchases from an NME producer of the input and not where the respondent purchases from a distributor of the input. Petitioners argue that for those inputs for which respondents have not identified the actual producers of inputs, the Department should determine the distance for the NME inland freight based on the distance between the respondents' factory and the port for the final determination.

JMC argues that for the final determination the Department should value delivery freight based on the distance to JMC's actual suppliers, not its potential upstream producers. JMC states that the Department's practice is to value freight for the delivery of raw materials "using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory," citing *Certain Ball Bearings and Parts Thereof from the People's Republic of China*, 67 FR 63,609, 63,614 (October 15, 2002). In support of its position, JMC also cites *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 67 FR 45451, 45454 (July 9, 2002); *Ferrovandium from the People's Republic of China*, 67 FR 45088, 45092 (July 8, 2002); and *Sulfanilic Acid from the People's Republic of China*, 67 FR 31,770, 31,772 (May 10, 2002).

JMC argues that petitioners have not cited any Department determinations or judicial rulings where *Sigma* was used as the basis for interpreting the distance from the domestic supplier of a material as the distance from the original production facility of a raw material. JMC states that there is no Department practice to distinguish domestic suppliers of material inputs that are distributors from those that are producers of a raw material.

JMC also argues that the surrogate values already include the cost of transporting inputs from the producing plant to intermediate distributors. JMC contends that the Federal Circuit recognized in *Sigma* that import values based on Indian Import Statistics "already included ocean freight and foreign inland freight," citing *Sigma* at 1407. JMC notes that surrogate values from the Indian Import Statistics already include foreign inland freight, ocean transport (to India), marine and inland insurance, and other costs. JMC notes that the international freight costs are already included in the surrogate

value and exceed the value of freight across these verified distances from the regional upstream producers of material inputs to JMC's actual suppliers and argue that the Department should not add the additional constructed freight costs from the ultimate producer rather than utilizing the actual supplier of the material inputs.

JMC argues in its rebuttal that it prepared brochures and price lists demonstrating that the upstream producers identified in Exhibit S3 CD-9 of its June 16, 2003, supplemental response manufacture the inputs and that the Department verified these distances from JMC to both actual suppliers and upstream suppliers. Because the Department verified these distances, JMC argues that since it identified regional manufacturers of the specific inputs as the most likely upstream producers, at a minimum, JMC established the distances to actual domestic input producers, which could supply JMC's actual suppliers. JMC notes that it could not affirmatively identify the actual input producers because it did not have access to its suppliers' books.

JMC observes that the NME methodology assumes that respondents pay the same surrogate price for an input regardless of the source, and purchase inputs from the nearest available source. Based on this assumption, if a respondent is closer to the port than to its actual supplier, JMC points out that *Sigma* requires the Department to value delivery freight based on the shorter distance to the port, presuming that respondents purchase rationally. JMC argues that if the Department accepts petitioners' distinction between domestic producers and domestic suppliers, then the Department must value delivery freight to the nearest domestic producer, which was verified. JMC argues that if JMC pays the same surrogate price (exclusive of constructive freight) for imported and domestically produced inputs, *Sigma* "dictates that JMC would purchase inputs from the regional producers rather than carting imported materials from the port."

JMC argues that scrap is a waste product that is produced in Pingyin, where JMC's factory is located, by the city's steel mill, steel bearings plant, and other heavy industry. Thus, JMC argues that the distance to scrap suppliers located in the Pingyin industrial area validly measures the distance to the scrap suppliers' ultimate source.

Petitioners did not submit rebuttal arguments to JMC's arguments.

Pannext contends that the Department properly valued delivery freight using the reported distances to Pannext's actual suppliers in the preliminary determination. Pannext argues that the Department's practice is to assess inland freight using the shorter of the distances from the respondents' plant to the nearest seaport or to the respondents' actual suppliers, citing *Non-Malleable Pipe Fittings from the People's Republic of China*, 68 FR 33913 and *Certain Ball Bearings and Parts Thereof from the People's Republic of China*, 67 FR 63614. Pannext states that it has reported the distances to its actual suppliers, these distances were verified, and should be used by the Department for the final determination.

Department's Position:

We agree with petitioners in part, and with respondent JMC in part, but disagree with respondent Pannext. In constructing the NV in an NME case, the Department uses market economy surrogates for FOP values associated with NME producers. See Section 773(c)(4) of the Act. In this investigation, the Department is using various prices that consumers of the same FOP in India pay for imported inputs, based on a cost plus insurance and freight (CIF) price at the Indian port of importation. In a market economy, the cost of an input to a producer would also include the cost of transporting that input to the place of production of the subject merchandise; hence an inland freight amount is added to the input price to account for this transportation cost.

In *Sigma*, the CAFC held that when a CIF import price is used as a surrogate for the price at which an input is domestically-sourced in an NME country, this price already includes some freight expense, so that the automatic addition of a surrogate freight value based on the entire distance from the NME domestic source to the production location could over-estimate the value of the inland freight element. See *Sigma*, 117 F.3d at 1408. Thus, the appellate court remanded for the Department to

devise an inland freight methodology that reflects the presumption that a manufacturer would want to minimize its material and freight costs “by purchasing imported pig iron if the cost of transportation from the port to the foundry were less than the cost of transportation from the domestic pig iron mill to the foundry.” *See id.*, at 1408. In response, the Department created, and the Court of International Trade (“CIT”) upheld, what has been termed the “Sigma Rule” for determining the distance used in calculating a surrogate estimation of a market value for the inland freight component of the value of a domestically-sourced input valued using surrogate CIF import prices. *See Sigma Corp. v. United States*, 24 CIT 97, 86 F. Supp. 2d 1344, 1349 (2000).

Under the “Sigma Rule,” the Department uses, as the distance upon which the inland freight component of such an input is valued, the shorter of the two reported distances from either {1} the closest PRC seaport to the location producing the subject merchandise or from {2} the PRC domestic materials supplier to the location producing the subject merchandise. *See id.* at 1408. This formula reflects the Court’s premise that, although the market CIF price in fact serves as the value of the input at its NME domestic source, it could also serve as a surrogate for a CIF price of an imported input available to the producer at a corresponding NME port, and that, within a market economy context, the producer would likely source the input from the nearer of the NME port of entry or the domestic supplier.

The underlying facts in *Sigma* were that a pig iron producer had supplied pig iron directly to the manufacturer of the subject iron castings. *See 117 F.3d* at 1401. In that case, therefore, a direct link existed between the original source of the input (pig iron) and the manufacturer of the subject merchandise. In this case, however, several manufacturers of the subject merchandise, including JMC and Pannext, purchased inputs from non-producing resellers, rather than from the original producers of these inputs. Pannext and JMC provided the location of these resellers as the “source” point from which the inland freight distance should be measured. Also, at the Department’s request, Pannext provided the actual producers and JMC provided potential upstream producers for these inputs. *See* Exhibit S3CD-9 of JMC’s June 16, 2003 supplemental response; JMC verification exhibit 21; Exhibit D-3 of Pannext’s April 11, 2003 response.

In *Sigma*, the court did not make a distinction as to whether the supplier is a producer or a reseller of the input but the court did use the distance to the producer because the material input was purchased from the producer and a reseller was not otherwise mentioned. It is the Department’s practice to use the distance to the supplier, which we generally consider to be the producer for this purpose. Pannext’s argument that we should value freight using the reseller is therefore not consistent with Department practice. Thus, we are applying the Sigma rule by using the shorter of the distance from either the producers to the respondents’ factory or the distance from the nearest port to the factory. For a listing of the distances used for each input for each supplier, *see* JMC, Pannext, and SLK’s proprietary Analysis Memoranda.

We disagree with petitioners’ suggestion to use the distance to the port for JMC for those material inputs where JMC could not, with certainty, identify the actual producer of the material input it purchased from a reseller/distributor. We note that JMC made an effort to identify the actual producer but, because it bought these inputs from resellers, it was able to only identify potential producers since this information is business proprietary to its reseller. Furthermore, at verification we were able to obtain information which strongly indicates the location of these producers. Based on these facts, for JMC, we are using the distance to the potential upstream producers and not the distance to the port.

For respondents’ purchases of scrap input, we agree with JMC. Therefore, for the final determination, we are using the distance from the scrap suppliers to the factory.

Comment 13: Calculate COP on a per-piece basis

SLK argues that the Department should determine the U.S. price and normal value on a per-piece basis rather than on a per-kilogram basis, because the subject merchandise is sold and produced by the piece rather than by the weight. Furthermore, SLK claims that the use of weight, rather than pieces, unnecessarily complicates the data for an importer such as LDR, which sources from several factories, because the unit weight of each fitting varies from producer to producer and from mold to mold. SLK distinguishes pipe fittings from steel products, arguing that the Department’s practice in

similar cases, such as bearings, has been to calculate the margin by comparing the piece-based price with NV on the same basis. SLK argues that a piece-based methodology would not affect the calculation of the NV because all FOPs are reported as kilogram consumed per piece of fitting, which would be applied to the kilogram-based SV data. SLK further argues that their preliminary margin was grossly overstated because of inconsistencies in the weights reported in the U.S. sales and FOP databases, which would have been avoided in a per-piece calculation.

JMC supports SLK's position, arguing that because all respondents reported their FOP and sales data on a per-piece basis, calculating margins on a per-piece basis minimizes the risks of mathematical errors and distortions.

Petitioners did not respond to this comment.

Department's position:

We disagree with SLK and JMC. Our normal practice, particularly in steel cases, is to calculate costs and prices on a weight basis in order to ensure that products that vary in size, thickness, and weight are appropriately compared ("like products") and that dumping duties are assessed on a uniform basis. In such cases, it is the normal practice of the Department to apply this methodology. In other antidumping proceedings involving products that are sold by the piece, such as stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines, folding metal tables and chairs from the PRC, and non-malleable pipe fittings from the PRC, the Department has calculated the margins on a per kilogram, rather than a per piece basis. *See, e.g., Final Analysis Memorandum: Stainless Steel Butt-Weld Pipe Fittings from Italy* and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Italy*, 65 FR 81830 (December 27, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 24, 2002); and *Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 68 FR 7765 (February 18, 2003). None of the parties in these cases objected to this methodology, including JMC, which was a respondent in the non-malleable pipe fittings investigation.

At verification in this investigation, the Department found that respondents maintained their purchase, production and inventory records on a kilogram or metric ton basis. In order to report factor usage on a per-piece basis, they had to divide the total input weight by the output weight and then allocate the per-kilogram input amounts for each FOP to the products based on their respective weights. In non-market economy cases such as the present proceeding, FOPs and surrogate values are calculated on a weight basis. The values of some inputs are calculated on the basis of semi-finished weights, while others are calculated on the basis of finished weights. There is no simple, uniform way to construct NV on a per-piece basis.

SLK's claim that our methodology grossly overstated their preliminary margin resulted not from the Department's methodology, but from SLK's failure to disclose that it had added a weight field in the sales database it submitted prior to the *Preliminary Determination*. In this database, the weight of the product, as sold, was reported in pounds, while all the weights in SLK's production databases were in kilograms. SLK has since revised its reported information, which the Department has accepted for the final determination. *See* Comment 20. Respondents have offered no additional evidence that this methodology distorts the margin calculations. The Department found no evidence that this methodology distorts the margin calculations. Therefore, for the final determination, as no party has submitted evidence of distortions, the Department has continued to calculate NV on a per kilogram basis.

Comment 14: Whether to Add Surrogate Freight to the Surrogate Values of Recycled Scrap

SLK argues that the Department should not apply a freight factor to the surrogate value for recycled scrap, because this scrap is supplied by the producer of the subject merchandise and does not incur any freight cost. No other parties commented on this issue.

Department's Position:

Inasmuch as the Department never considered applying a freight factor to recycled scrap that is internally produced and reused in the foundry, and therefore does not incur movement expenses, this argument is moot.

A. Company-Specific Issues - JMC

Comment 15: Sales by JMC Where It Used a Commissionaire Should be Considered CEP transactions

Petitioners state that JMC's sales to a certain number of U.S. unaffiliated purchasers were not made directly from JMC's Chinese sales office but by an unaffiliated, commissioned selling agent located in the United States, acting for the account of JMC. Thus, petitioners contend that these sales are within the "for the account of the producer or exporter" provision of the CEP subsection of section 772(b) of the Tariff Act (19 USC section 1677a(b)). Petitioners note that JMC has argued that its sales by its unaffiliated U.S. commissionaire cannot be CEP transactions because JMC's sales division in China is responsible for negotiating the terms of sale. However, petitioners state that the Federal Circuit rejected the argument that CEP sales are distinguished from EP sales based on which party set the terms of sale, citing *AK Steel Corporation et al. v. United States* ("AK Steel"), 226 F. 3d 1361, 1373 (Fed. Cir. 2002).

Instead, petitioners contend that, based on certain activity defined in the commission agreement, the affiliate or agent of the producer or exporter is engaged in selling activities in the United States and these transactions are properly classified as CEP sales (for a description of the activities identified by petitioners, *see* the proprietary version of JMC Final Analysis Memorandum).

Petitioners state that the Federal Circuit ruled that the act of selling is "a contract whereby the absolute, or general, ownership of property is transferred from one person to another for a price, or sum of money, or loosely, for any consideration," citing *NSK v. United States* 115 F. 3d 965, 974-975 (Fed. Cir. 1997). Thus, petitioners claim that selling consists of many activities, such as advertising, contacting prospective buyers, importing, and negotiating terms and that, because of the selling activities of JMC's unaffiliated U.S. selling agent, these sales should be classified as CEP sales.

Additionally, petitioners cite the SAA, which states the following:

under new section 772(d), 'constructed export price' will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following expenses (and profit) associated with economic activities occurring in the United States: (1) any commissions paid in selling the subject merchandise; (2) any expenses which result from, and bear a direct relationship to, selling activities in the United States; (3) any selling expenses which the seller pays on behalf of the purchaser (assumptions); (4) any 'indirect selling expenses' (defined as selling expenses not deducted under any of the first three categories of deductions); (5) any expenses resulting from a manufacturing process or assembly performed on the merchandise after its importation into the United States (except in the limited circumstances discussed below).

SAA at 823. Petitioners also note that the deductions described in the SAA are also part of the statute itself, citing 19 U.S.C. section 1677a(d)(1)(A), and specifically note that commissions, such as those paid by JMC to its U.S. selling agent, are identified in the SAA and the statute as deductions from CEP.

Therefore, petitioners argue that for the final determination, the U.S. sales made by JMC through its U.S. commissioned selling agent should be classified as CEP transactions, and the commission expense should be deducted from its prices for these respective sales in calculating the CEP.

JMC counters that its sales to certain U.S. customers are EP sales, stating that these sales were made "before the date of importation by the producer or exporter of the subject merchandise outside of

the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” citing 19 U.S.C. section 1677a(a). JMC contends that the sales process to these certain customers is the same as to all of its other customers. JMC stated that for these certain customers, it receives the orders from these customers, directly negotiates the sales terms with these customers, invoices and ships the merchandise directly to these customers. As an example, JMC cites the sales documentation in Verification Exhibit 6, for a sale that petitioners argue should be reclassified as a CEP sale. JMC notes that although a certain U.S. commission agent received a commission on this sale, this agent’s name does not appear on any of the sales documentation, and that this agent only relayed the purchase order to JMC. JMC states that this particular customer issued the purchase order on its own letterhead, and the *pro forma* invoice, commercial invoice, and shipping documents all identify this company as the customer and importer.

JMC notes that it is not affiliated with its U.S. commission agent, including no direct or indirect ownership or direct or indirect control over its U.S. commission agent. JMC contends that its commission agreement is an incentive for encouraging certain customers to order subject merchandise from JMC, and that this agreement does not endow the agent with real or apparent authority to make commercial representations, to make offers for sales, or accept offers for purchase on JMC’s behalf. Thus, JMC argues that its commission agreement does not establish a basis for collapsing JMC and its agent as related parties under 19 U.S.C. section 1677(4)(B).

JMC contends that its U.S. commission agent does not sell JMC products to these customers and that JMC directly contracts with, invoices, ships to, and transfers title and possession to these customers and not to its U.S. commission agent. JMC argues that petitioners’ selective citation of *AK Steel* is misleading and cites the following from the court’s ruling in *AK Steel*:

Black’s Law Dictionary (6th ed. 1990) defines ‘seller’ as ‘one who has contracted to sell property . . . the party who transfers property in the contract of sale.’ As to ‘sold,’ this court previously addressed the meaning of that term in the definition of the Exporter’s Sales Price (now CEP). See *NSK Ltd. v. United States*, 115 F.3d 965, 973 (Fed. Cir. 1997). In that case we defined ‘sold’ to require both a ‘transfer of ownership to an unrelated party and consideration.’ *Id.* at 975 (emphasis added). We see no reason to depart from those definitions, and therefore hold that the ‘seller’ referred to in the CEP definition is simply one who contracts to sell, and ‘sold’ refers to the transfer of ownership or title.

JMC notes that the Federal Circuit in *AK Steel* determined that the sales at issue constituted CEP sales because of the sales activities of the U.S. affiliates. JMC stated that in *AK Steel*, the court held that the U.S. affiliates contracted for sale with the unaffiliated U.S. purchasers and that the title passed from the U.S. affiliate to the unaffiliated U.S. purchaser and thus, these U.S. affiliates were determined to be the sellers. In the instant case, JMC notes that, in contrast, its U.S. commission agent does not receive title or possession of the merchandise and JMC directly contracts with, invoices, ships to, and transfers title to these customers.

JMC cites Chapter 7 of the Department’s *Antidumping Manual*, at page 6, which details four criteria that must be met for a U.S. sale to a U.S. affiliate to be classified as an EP transaction. JMC states that its unaffiliated U.S. commission agent meets each of these four criteria and argues each criterion separately in its rebuttal brief.

JMC rebuts petitioners’ argument that its U.S. commission agent’s activities brings JMC’s sales within the “for the account of the producer or exporter” provision of 19 U.S.C. section 1677a(b). JMC states that this provision is only for consignment sales. JMC argues that 19 U.S.C. 1677a(b) only applies CEP to sales made in the United States by U.S. affiliates and to consignment sales made in the U.S. for the account of the foreign producer or exporter. See JMC Rebuttal Brief at 35, citing *Certain Fresh Cut Flowers From Columbia*, 62 FR 16,772, 16,776 (April 8, 1997).

Department’s Position:

We disagree with petitioners. Verification Exhibit 6 supports JMC’s claim that the U.S. customer issued the purchase order (on its own letterhead) and the customer was identified on the *pro*

forma invoice, commercial invoice, and shipping documents as the customer and importer. The Department did not find the agent's name on any of the sales-related documentation. Also, based on this sales documentation, the Department did not find any evidence that JMC sold subject merchandise to the agent or that this agent took title to the subject merchandise and, in turn, sold it to a U.S. customer. Hence, based on these facts, the agent cannot be the seller of JMC's subject merchandise because it did not take title (*i.e.*, purchase or buy the subject merchandise). Moreover, at verification the Department did not find an invoice from the agent to the U.S. customer, and there is no record evidence that the agent negotiated the sales terms on behalf of JMC.

We agree with JMC that the "for the account of the producer or exporter," in section 772(b) of the Tariff Act, refers to consignment sales and that, based on the facts of these transactions in the instant case, these sales are not consignment sales.

Therefore, for the final determination, we have not reclassified JMC's sales to its agent as CEP sales, and accordingly the Department has not deducted the commissions paid by JMC to its agent for these respective sales.

We further note that the four criteria cited by JMC in the Department's *Antidumping Manual* are no longer used by the Department in our determination of whether a sales transaction is EP or CEP, because of the Federal Circuit's decision in *AK Steel*, where the court held that this test is not consistent with the statute. *See AK Steel*, 226 F.3d at 1374. Hence, JMC's arguments using these criteria are moot.

Comment 16: Ministerial Errors

JMC argues that the Department should correct three ministerial errors made in the *Preliminary Determination* regarding (a) reported distances to domestic producers, (b) marine insurance, (c) zinc dust by-product. *See* the Department's June 19, 2003 Analysis of Allegation of Ministerial Error Memorandum.

Petitioners urge the Department to correct two other alleged ministerial errors. First, petitioners point out that the preliminary determination margin calculation program did not convert the reported labor hours per piece to a per kilogram basis in the calculation of normal value. Second, petitioners allege that the Department erred in not dividing the materials and energy inputs by the weight of the finished product, instead of the weight of the rough fitting at the casting stage. Petitioners point out that the JMC Preliminary Determination Analysis Memorandum at page 5 states that coal and electricity are divided by the finished weight, although the program uses the semi-finished weight for these inputs.

Department's Position:

We agree with JMC that the distances to the domestic producers contained a ministerial error. We misinterpreted exhibit 19 in JMC's April 2, 2003 Supplemental Section C & D response. For the final determination we have made these corrections.

We also agree that ministerial errors were made in the calculation of marine insurance for the preliminary determination and in the omission of zinc dust from the by-products calculation. We will correct these errors for the final determination.

We agree in part with petitioners that a ministerial error was made in the preliminary determination by not dividing the labor inputs by the weight of the product to convert to a per kilogram basis. However, we note that neither this issue, nor the issue of whether the appropriate weight to use as the divisor is the weight of the semi-finished fitting at the casting stage, or the weight of the finished product after annealing, grinding, tumbling, galvanizing and threading was brought by petitioners at the time of the preliminary determination. The Department notes that the appropriate weight depends on the methodology the respondent used to allocate the inputs to the subject merchandise. For the direct material inputs, coal, water, and by-products, JMC used the semi-finished weight of the fittings to allocate inputs per piece. Therefore, we have continued to use the semi-finished weight in our calculations of NV for the final determination for these FOPs. However, for labor and electricity inputs, JMC compiled the inputs by processing stages, using the finished weight only for the input consumption in the threading workshop. Because JMC used a hybrid methodology to calculate each

reported labor and electricity input, with the exception of the electricity used for packing, and only reported the total, we are unable to calculate these inputs (unskilled, skilled and indirect labor, and electricity used for production) on a workshop-specific basis. Therefore for the final determination we have divided the reported values per piece for these inputs by the finished weight of the product.

B. Company-Specific Issues - Pannext

Comment 17: Whether to Correct Items found at Verification

Pannext argues that the Department should correct the consumption of coal and electricity for the final determination based on the overstatements found at verification.

Petitioners did not comment on this issue.

Department's Position

We agree with Pannext that we should modify the margin calculation for corrections accepted at verification and will make such corrections to coal and electricity consumption. *See* Pannext Final Analysis Memorandum at 4, and Pannext Verification Report at 2.

C. Company-Specific Issues - SLK

Comment 18: Use of yield-adjusted FOPs for SLK supplier

SLK argues that the Department should not use the yield-adjusted FOPs reported by one of its suppliers for the preliminary determination, because the reported consumption figures already account for any yield losses and differences in yield rates among products.

Petitioners did not comment on this issue.

Department's Position:

We agree that SLK's methodology of dividing the total factor consumption during the POI by the total weight of the unfinished fittings at each stage of the production process, and allocating the factor consumption to individual products by multiplying the per kilogram consumption by the weight per piece at each stage and dividing by the weight of the finished product properly accounts for yield losses. We therefore have not used the yield-adjusted FOPs for the final determination.

Comment 19: Weight-averaging in the Normal Value calculation

SLK contends that averaging the normal values of SLK's producers using each producer's quantity of production as the weight is erroneous, because it allegedly skews the result in favor of a producer with the larger production, regardless of the quantity of fittings SLK purchased from that producer and sold in the United States. SLK argues that use of the purchase quantity to weight-average NV would be consistent with SLK's calculation of unit weight and foreign inland freight distance, which SLK weight-averaged by the quantities purchased from each producer.

Department's position:

We disagree with SLK. SLK sourced the subject merchandise from several unaffiliated producers. Most of the products sold in the United States were supplied by more than one of these producers, who reported different combinations and weights of inputs. To calculate the NV for a particular product, the Department had to combine the NVs calculated for each producer of that product. In reporting the factor inputs for each product, SLK divided total factor usage by the total

weight of production and then allocated the input per kilogram of production to the product based on its weight. Since the value of inputs was calculated using production weights, the Department's methodology of weight-averaging NV by each producer's production is reasonable.

COP reflects the scale and efficiency of production. To the extent that economies of scale exist, larger producers should have lower per unit costs, and hence lower NVs. SLK has not explained its contention that our methodology is *ipso facto* erroneous because it gives greater weight to larger producers, nor has it placed on the record evidence demonstrating that its proposed alternative would result in a lower margin. Moreover, SLK was unable to cite a single precedent for the alternative methodology it advocates. SLK's statement that our methodology "skews" the results is without evidence. Therefore, for the final determination the Department has not changed its methodology.

Comment 20: Use of the Correct Weight of the Finished Product

SLK claims that the Department "erroneously assumed" that the weight SLK reported in its revised sales listing prior to the preliminary determination was in kilograms, resulting in an erroneous dumping margin for SLK. SLK states that if the Department determines the final margin on a kilogram basis, it should ensure that it bases it on the correct weight data, as reported in SLK's revised database.

Department's position:

As noted by SLK, we rejected their request to amend the preliminary determination because we disagreed with SLK's claim of ministerial error. The Department's assumption that SLK's data was reported in kilograms was reasonable, given the information reported by SLK. SLK reported its FOP data and total quantity sold on a per kilogram basis. It added a field called WEIGHTU to its sales database on its own initiative and failed to specify that the weight was reported in pounds. SLK has since revised its database to report the weight in kilograms and the Department has accepted the revised information. Therefore, no corrective action on the part of the Department is required.

RECOMMENDATION:

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

AGREE_____ DISAGREE_____

James Jochum
Assistant Secretary
for Import Administration

Date