

January 11, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Silicon Metal from the People's Republic of China: Issues and
Decision Memorandum for the Final Results of the 2008-2009
Administrative Review of the Antidumping Duty Order

SUMMARY:

We have analyzed the case briefs, rebuttal briefs, and wage rate comments submitted by Globe and Shanghai Jinneng in the 2008-2009 administrative review of the antidumping duty order on silicon metal from the PRC. As a result of our analysis, we have made changes to the *Preliminary Results*.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments. Included at the back of this document is an Appendix containing an "Antidumping/Countervailing Duty Proceeding Federal Register Cite Table" wherein all cites are listed alphabetically by short cite.

Case Issues:

- Comment 1: VAT and Export Taxes
- Comment 2: Use of Entries versus Sales
- Comment 3: Whether to Adjust Datong Jinneng's Electricity Consumption
- Comment 4: Whether to Adjust Datong Jinneng's Labor Hours
- Comment 5: Valuation and Treatment of Silica Fume
- Comment 6: Valuation of Coal
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- Comment 9: Selection of Financial Statements
- Comment 10: Adjustments to Financial Ratios

List Of Abbreviations And Acronyms Used In This Memorandum:

Acronym/Abbreviation	Full Name
Act or Statute	Tariff Act of 1930, as amended
AD	Antidumping
AD/CVD	Antidumping and Countervailing Duty
AD Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
AR	Administrative Review
AUV(s)	Average Unit Value(s)
CAFC	Court of Appeals for the Federal Circuit
CEA	Central Electric Authority of India
Centom	Centom Steels and Ferro Alloys Ltd.
CFR	Code of Federal Regulations
CIT or Court	U.S. Court of International Trade
COM	Cost of Manufacture
CPI	Consumer Price Index
Customs or CBP	U.S. Customs and Border Protection
CVD	Countervailing Duty
Datong Jinneng	Datong Jinneng Industrial Silicon Co., Ltd.
Department	Department of Commerce
FOP(s)	Factor(s) of Production
Globe or Petitioner	Globe Metallurgical Inc.
GNI	Gross National Income
GTA	Global Trade Atlas® Online
HTS	Harmonized Tariff System
IDM	Issues and Decision Memorandum
ILO	International Labor Organization
ITC	U.S. International Trade Commission
KV	Kilovolt
Lalwani	Lalwani Ferro Alloys Ltd.
Maithan	Maithan Smelters Limited
ME	Market Economy
MEPs	Market Economy Purchases
MT	Metric Ton
NME	Non-Market Economy
NSR	New Shipper Review
NV	Normal Value
POR	Period of Review
PRC	People's Republic of China
PUDD	Potential Uncollected Dumping Duties

List Of Abbreviations And Acronyms Used In This Memorandum:

Acronym/Abbreviation	Full Name
Saturn	Saturn Ferro Alloys Private Ltd.
SG&A	Selling, General, and Administrative Expenses
Shanghai Jinneng	Shanghai Jinneng International Trade Co., Ltd.
Sova	Sova Ispat Alloys (Mega Projects) Ltd.
SV(s)	Surrogate Value(s)
UHV	Useful Heat Value
USGS	United States Geological Survey
VAT	Value Added Tax
VBC	VBC Ferro Alloys Ltd.
Vipra	Vipra Ferro Alloys Private Limited
WTA	World Trade Atlas® Online

Background:

The merchandise covered by the order is silicon metal, as described in the “Scope of the Order” section of the *Preliminary Results*. The POR is June 1, 2008, through May 31, 2009. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our *Preliminary Results*. Shanghai Jinneng and Globe submitted briefs and rebuttal briefs on August 23, 2010 and September 6, 2010, respectively. Globe submitted its redacted case brief on September 3, 2010. On October 13, 2010, the Department published a notice extending the deadline for the final results of the 2008-2009 administrative duty order of the review to January 11, 2011. See *Silicon Metal From the People’s Republic of China; Extension of Time Limit for the Final Results of the 2008–2009 Administrative Review of the Antidumping Duty Order*, 75 FR 62765 (October 13, 2010). Shanghai Jinneng submitted its comments for wage rate issues on November 30, 2010. Globe submitted its rebuttal comments for wage rate issues on December 6, 2010.

DISCUSSION OF THE ISSUES

Comment 1: VAT and Export Taxes

- Globe argues that the Department should reduce Shanghai Jinneng’s export prices by the amount of an export tax and value-added tax imposed by the PRC upon subject merchandise. Citing documents that it moved to the instant record from the record of the 2007-08 administrative review of this order, Globe claims that Shanghai Jinneng has provided evidence that its export prices are inclusive of an export tax and VAT. Globe further reasons that the instant case is distinguishable from *Magnesium Corp.* (*Fed Cir. 1999*).
- Shanghai Jinneng rebuts that the preliminary determination not to reduce its export prices is consistent with the final results of the 2007-08 administrative review and *Magnesium Corp.* (*Fed Cir. 1999*), and argues that *Magnesium Corp.* (*Fed Cir. 1999*) provides controlling precedent.

Department’s Position: For the final results, pursuant to *Magnesium Corp. (Fed Cir. 1999)* and the Department’s long-standing administrative practice,¹ the Department has continued not to make any adjustment to Shanghai Jinneng’s export prices based upon the PRC export tax and VAT.² The salient issue in the instant case is the same issue that was before the CAFC in *Magnesium Corp. (Fed Cir. 1999)*, and before the Department in the immediately preceding administrative review of this order: whether the respondent’s export prices reflect a NME export tax such that the export tax is “included in such price” within the meaning of section 772(c)(2)(B) of the Act. It is appropriate for the Department to continue to follow *Magnesium Corp. (Fed Cir. 1999)* and not to adjust Shanghai Jinneng’s export prices for the export tax and VAT because the Department continues to treat the PRC as a NME, and because the Department continues to reject reliance upon internal NME prices and costs as reliable measures of value.

The history of *Magnesium Corp. (Fed Cir. 1999)* and the underlying administrative proceeding are set out at-length in the final results of the 2007-08 administrative review of this proceeding.³ The critical parallel between the instant case and *Magnesium Corp. (Fed Cir. 1999)* is that both cases concern application of section 772(c)(2)(B) of the Act in the NME context. Pursuant to the Department’s explanation that it could not value an export tax and similar fees in the Russian Federation (which the Department treated as an NME) given its overall approach to internal NME transfers, the CAFC held that “no reliable way exists” to determine whether an export tax is included in the price of merchandise from a NME because the price of merchandise in a NME does not reflect its fair value. The CAFC explained its reasoning as follows:

In a market economy, Commerce can presume that any tax imposed on the merchandise to be exported will be included in the {U.S. price} of that merchandise. However, that presumption is not available when the merchandise is produced in a non-market economy. By definition, in a non-market economy, the price of merchandise does not reflect its fair value because the market does not operate on market principles. Therefore, no reliable way exists to determine whether or not an export tax has been included in the price of a product from a non-market economy.⁴

The CAFC further found that the Department’s determination not to adjust U.S. price based upon a NME export tax harmonized the statutory definition of NMEs and the statutory instruction to reduce U.S. price based upon export taxes, particularly the requirement of section 772(c)(2)(B) of the Act that the export tax must be “included in such price.”⁵

Globe’s assertion that *Magnesium Corp. (Fed Cir. 1999)* does not apply to the instant case rests entirely upon its argument that *Magnesium Corp. (Fed Cir. 1999)* is a limited, fact-specific holding. According to Globe, the *Magnesium Corp. (Fed Cir. 1999)* respondents did not report having incorporated the export tax and fees into their prices, and the instant case is different because, in the 2007-08 administrative review, Shanghai Jinneng stated that it increased its export prices because of the export tax. The Department disagrees with Globe’s reading of

¹ See, e.g., *Titanium Sponge/Russia (November 15, 1998)* IDM at Comment 8.

² The Department is conducting an evaluation of various aspects of its NME methodology. Consistent with this evaluation, the Department intends to seek public comment with respect to the treatment of export tax and VAT in future NME proceedings.

³ See *Silicon Metal/PRC (January 12, 2010)* IDM at Comment 1.

⁴ See *Magnesium Corp.*, 166 F.3d at 1370.

⁵ See *id.* at 1370-71.

Magnesium Corp. (Fed Cir. 1999), as Globe understates the breadth of the CAFC's holding. The CAFC did not identify the specifics of the respondents' reported data as limiting the scope of its application in any manner. Rather, the CAFC identified the nature of NMEs as an impediment to application of section 772(c)(2)(B) of the Act in NME cases.

Along the same lines, Globe claims that the Department has misinterpreted *Magnesium Corp.* (Fed Cir. 1999) as providing for an across-the-board rule that it will not apply section 772(c)(2)(B) of the Act in any NME proceeding. Globe further claims that the legislative history behind section 772(c)(2)(B) of the Act does not distinguish between its application in the market economy and NME contexts, thus it is inappropriate for the Department to adopt an across-the-board distinction between market economy and NME cases in its application of section 772(c)(2)(B).

However, again, Globe understates the breadth of the CAFC's holding in *Magnesium Corp.* (Fed Cir. 1999). In that case the appellate court recognized that section 772(c)(2)(B) of the Act contemplates scenarios where the export tax is not included in the price of the merchandise,⁶ and deferred to the Department's discretion concerning section 772(c)(2)(B) of the Act in the NME context.

Further, as in the immediately preceding administrative review of this order, it is also appropriate to treat the PRC VAT in the same manner as the export tax, consistent with *Magnesium Corp.* (Fed Cir. 1999), which establishes that tax payments by NME respondents to NME governments are intra-NME transfers. The Department has previously applied this principle to taxes that are not classified as export taxes.⁷ We currently find no basis to depart from this practice here.

Comment 2: Use of Entries versus Sales

- Globe argues that, in the *Preliminary Results*, the Department inappropriately excluded from its dumping margin calculation sales with a date of sale prior to the POR, but with an entry date within the POR. According to Globe, pursuant to its normal practice, the Department should instead analyze all of Shanghai Jinneng's sales that entered the United States during the POR.⁸
- Shanghai Jinneng contends that the Department has the discretion to review either transactions with a date of sale or date of entry during the POR, and that the Department appropriately reviewed transactions with a date of sale to be consistent with its methodology in the prior (2007-2008) administrative review.⁹

Department's Position: As the Department discussed in the 2007-2008 administrative review segment of this proceeding, the statute does not mandate that the Department must limit its

⁶ *Id.* at 1370 (“the statute clearly contemplates a situation where the export tax is *not included* in the price of the merchandise”).

⁷ *Steel Plate/Romania* (January 12, 2000)

⁸ Globe cites the following cases in support of its argument: *Shrimp/Thailand* (August 29, 2008), and *Carbon Steel Flat Products/France* (April 6, 2006).

⁹ Shanghai Jinneng cites the following cases in support of its argument: *Mushrooms/PRC* (June 11, 2001), and *Silicon Metal/PRC* (January 12, 2010) at Comment 10.

review to only those sales that entered during the POR.¹⁰ Instead, the Department's regulations reflect flexibility on this point, directing that an administrative review "will cover, as appropriate, entries, exports, or sales."¹¹ As explained in the *Advance Notice of Proposed Rulemaking*, the Department stated that by referring to "entry," the drafters of section 751 in the 1979 Act likely intended that in a review, unlike an investigation, the Department would examine every transaction....¹²

Shanghai Jinneng reported sales of all merchandise entered into the United States during the POR,¹³ consistent with the Department's questionnaire instructions.¹⁴ Consequently, the universe of transactions reported by Shanghai Jinneng included several sales which were invoiced prior to the POR but which entered the United States during the POR.¹⁵ For the *Preliminary Results*, based upon the invoice dates reported by Shanghai Jinneng, the Department excluded from the margin calculation Shanghai Jinneng's reported transactions with invoices dated prior to the POR¹⁶ because those transactions were reviewed during the prior segment of this proceeding.

In this case, we find it appropriate to continue to exclude sales which were invoiced prior to the beginning of the POR, because to do otherwise would result in the Department examining certain sales which were previously¹⁷ included in the Department's AD margin calculations covering the prior administrative review. While section 751(a)(2)(A) of the Act directs the Department to determine the dumping margin applicable for each sale of subject merchandise, as affirmed by the CAFC,¹⁸ the Department's practice is to review each sale of subject merchandise only once.¹⁹ Moreover, consistent with the Department's position in *Crawfish/PRC (April 22, 2002)*, if the Department's practice were to review sales twice, then respondents could 1) benefit twice from shipping sales with lower-than-average margins on the cusps of two review periods, or 2) be penalized twice for higher dumping margin sales that were shipped on the cusps of two review periods.²⁰ Thus, in order to avoid accounting for transactions that have been previously accounted for in another margin calculation, for these final results, we have continued to exclude from our calculation those sales which were invoiced and reviewed during the previous POR but which entered the United States during the instant POR.

¹⁰ See *Silicon Metal/PRC (January 12, 2010)* at Comment 10.

¹¹ See 19 CFR 351.213(e)(1)(ii). See also *Mushrooms/PRC (June 11, 2001)* IDM at Comment 10.

¹² See 56 FR 63696 (December 5, 1991).

¹³ See Shanghai Jinneng Supplemental D response (January 8, 2010) at page 5.

¹⁴ This is consistent with the Department's practice, in EP situations, to review entries where the exporter knows the date of entry for all of its transactions. See, e.g., *Shrimp/Thailand (August 29, 2008)* IDM at Comment 4.

¹⁵ See *Id.*

¹⁶ See Prelim Analysis Memo (July 7, 2010) at Attachment 2.

¹⁷ See *Silicon Metal/PRC (January 12, 2010)* IDM at Comment 10.

¹⁸ See *Hynix (Fed. Cir. 2005)*; see also 19 CFR 351.213(e).

¹⁹ See *Crawfish/PRC (April 22, 2002)* IDM at Comment 17.

²⁰ See *Shrimp/India (July 15, 2008)* IDM at Comment 8.

Comment 3: Whether to Adjust Datong Jinneng's Electricity Consumption

- Globe argues that the electricity consumption reported for Datong Jinneng²¹ does not reflect all of the electricity which the company consumed to produce silicon metal during the POR, and so that figure should be adjusted to include electricity consumed in Datong Jinneng's water pump station and lab.²²
- Shanghai Jinneng contends that Datong Jinneng reported its electricity consumption correctly, and the reported figure should continue to be used by the Department for the final results.²³

Department's Position: For the final results, we have made no adjustments to Datong Jinneng's reported electricity consumption. Section 773(c)(3)(C) of the Act directs the Department to include the amount of electricity and other utilities consumed by respondents in the calculation of normal value. Furthermore, section 773(c)(1)(B)(a) of the Act directs the Department to base its calculation of costs on the FOPs actually "utilized in producing the merchandise."²⁴ Additionally, in assessing respondent's reported costs, the Department may consider all available evidence, giving particular weight to a producer's own records and its own historical treatment and allocations of its costs.²⁵ Moreover, consistent with the Department's determination in *Tires/PRC AD (July 15, 2008)*, the Department will decline to adjust a respondent's reported energy consumption to include "non-production" energy.²⁶

The Department finds that, with respect to Datong Jinneng's electricity consumption for the laboratory and water pump, the company allocated these electricity costs as overhead (and thus did not report them as direct material inputs), in a manner consistent with its own records and consistent with the Department's findings in the 2007-2008 review of this proceeding.²⁷

The Department disagrees with Globe's contention that Shanghai Jinneng's product brochure, which states that Shanghai Jinneng's furnaces include a "water cooled cable" and "hydraulic control system," constitutes evidence that the water pump was directly involved in the production of silicon metal.²⁸ The Department finds that references to the "water cooled cable" and "hydraulic control system" appear to be technological aspects of Shanghai Jinneng's furnace, and not an indication of the company's use of a water pump in the production of silicon

²¹ Datong Jinneng was Shanghai Jinneng's affiliated producer of subject merchandise during the POR and is involved in the instant administrative review as such (*see* Shanghai Jinneng's Response to Section A (October 16, 2009) at 14.

²² Globe cites the following cases in support of its argument: *Glycine/PRC (January 31, 2001)* IDM at Comment 4, and *Silicon Metal/PRC (January 12, 2010)*.

²³ Shanghai Jinneng cites the following cases in support of its argument: *FSVs/PRC (March 13, 2009)* IDM at Comment 12g, and *Silicon Metal/PRC (January 12, 2010)*.

²⁴ *See* section 773(c)(1)(B)(a) of the Act.

²⁵ *See* section 773(f)(1)(A) of the Act

²⁶ *See, e.g., Tires/PRC AD (July 15, 2008)* IDM at Comment 18H.

²⁷ *See* Shanghai Jinneng's Supplemental D response (January 8, 2010) at pages 13-14 and Exhibit 7; *see also Silicon Metal/PRC (January 12, 2010)* IDM at comment 13.

²⁸ *See* Shanghai Jinneng's Supplemental Section A Response at Exhibit 9.

metal. While Globe claims that documents from the 2005/2006 NSR of this proceeding describe Shanghai Jinneng's water pump usage, this document is not on the instant record.²⁹

Additionally, as acknowledged by Globe, the Department verified Datong Jinneng's production details in a visit to its factory in the 2007-2008 review of this proceeding and found no evidence linking electricity consumed by Datong Jinneng's water pump station to the production of silicon metal.³⁰ Given the lack of evidence linking electricity consumed by Datong Jinneng's water pump station to the production of silicon metal,³¹ and in light of the Department's findings in the 2007-2008 review of this proceeding, we find no reason to adjust Datong Jinneng's reported electricity consumption to include the water pump electricity costs.

Further, with respect to Globe's reliance on *Glycine/PRC (January 31, 2001)*, we find that case to be inapposite. Specifically, in *Glycine/PRC (January 31, 2001)*, water was treated as a material input into the production of the subject merchandise,³² leading the Department to conclude that the electricity used to transport (*i.e.*, pump) the water represented a direct manufacturing cost borne by the producer. Here, water was not reported by Shanghai Jinneng as a material input in the production of silicon metal,³³ and so its transportation costs do not necessarily bear directly on the cost required to produce the subject merchandise. Consequently, in the instant case, there is no record evidence to determine that the electricity consumed by the water pump station was "utilized in producing the merchandise."³⁴

With respect to Datong Jinneng's laboratory electricity consumption, we disagree with Globe's contention that because "sampling and testing" is a direct part of silicon metal production, the reported laboratory electricity consumption should be included as a direct material input to produce silicon metal. We find that there is no record evidence to demonstrate that Datong Jinneng's "sampling and testing" procedures are related to Datong Jinneng's laboratory. Rather, Datong Jinneng reported that its "sampling and testing" takes place after liquid silicon is poured from the furnace into large molds, but before it is crushed³⁵ into smaller, transportable blocks, and Datong Jinneng does not reference the use of its laboratory in the process. While "sampling and testing" *may* take place in Datong Jinneng's laboratory, and that laboratory *may* be utilized for silicon metal production, Globe has cited no evidence substantiating these suggestions or linking laboratory electricity usage to manufacturing activities. Therefore, the Department disagrees with Globe that the electricity consumed by Datong Jinneng's laboratory should necessarily be included as a direct material cost.

Based on the above analysis, the Department finds no record evidence to demonstrate that the electricity consumed by the water pump or the laboratory are directly related to the production of silicon metal, and thus has made no adjustment to the aforementioned electricity consumption for the Department's calculations for these final results.

²⁹ See Globe's case brief at pages 49-50.

³⁰ See *Silicon Metal/PRC (January 12, 2010)* IDM at Comment 13.

³¹ See, *e.g.*, generally, Shanghai Jinneng's Section D Response (November 2, 2009) and Shanghai Jinneng's Supplemental Section D Response (January 8, 2010).

³² See *Glycine/PRC (January 31, 2001)* IDM at Comment 3.

³³ See Shanghai Jinneng's Section D Response (January 8, 2010) at Exhibit 12.

³⁴ See section 773(c)(1)(B)(a) of the Act.

³⁵ See Shanghai Jinneng's Section D response (November 2, 2009) at Exhibit 1.

Comment 4: Whether to Adjust Datong Jinneng's Labor Hours

- Globe argues that the labor usage rate reported for Datong Jinneng does not reflect all the labor that the company employed to produce subject merchandise, and so that figure should be revised by the Department for the final results.
- Shanghai Jinneng contends that Datong Jinneng's labor consumption was reported correctly, and in a manner consistent with the Department's practice.³⁶

Department's Position: The Department disagrees with Globe's argument that Datong Jinneng's reported "administrative" and "managerial" labor should be reclassified as labor directly related to the production of silicon metal. The Department's practice is to not adjust a respondent's reported labor hours in the absence of any evidence that such an adjustment is warranted.³⁷ While Globe contends that Datong Jinneng's "administrative" and "managerial" employees include production-related employees like "statistician and inspector" and "laboratory technician,"³⁸ the Department finds that Globe has not provided record evidence to demonstrate that this labor is directly related to the production of subject merchandise. In contrast, Shanghai Jinneng has submitted substantial evidence documenting the employees in question as "managerial" and "administrative."³⁹ Further, as noted in Comment 3, above, we have found no evidence that Datong Jinneng's laboratory was directly related to the production of silicon metal and so we find Datong Jinneng's FOP reporting reasonable with respect to its laboratory technicians and statisticians. Thus, consistent with the Department's practice and our findings in Comment 3, above, we have continued to use Datong Jinneng's reported labor consumption for the final results.

Comment 5: Valuation and Treatment of Silica Fume

Valuation

- Globe argues that data relied upon by the Department in the *Preliminary Results* (i.e., silicon dioxide imports under Indian HTS category 2811.22.00⁴⁰ published by GTA, filtered to exclude data from countries not identified as producers of silicon metal by the 2007 Report of the USGS) to value silica fume was too broad, resulting in an inaccurate and distorted representation. Globe alternatively recommends:
 - 1) filtering data from the same HTS category based upon Infodrive India, such that the remaining data would be from countries identified by Infodrive as exporters of silica fume, or
 - 2) using the SV from the 2007-2008 review of this proceeding, adjusted for inflation.
- Shanghai Jinneng rebuts that the Department's valuation methodology was consistent with prior practice and judicial precedent. Shanghai Jinneng argues that the Infodrive India data

³⁶ Shanghai Jinneng cites the following cases in support of its argument: *Citric Acid/PRC* (April 13, 2009) IDM at comment 10, and *TRBs/PRC* (November 15, 2001).

³⁷ See, e.g., *Activated Carbon/PRC* (November 17, 2010) IDM at Comment 6a.

³⁸ See Shanghai Jinneng's Supplemental D Response at Exhibit 2.

³⁹ See Shanghai Jinneng's Supplemental D response (May 28, 2010) at page 2 and Exhibits 2, 3.

⁴⁰ According to the HTS this category is defined as "other inorganic acids and other inorganic oxygen compounds of non-metals, silicon dioxide"

fail to meet the Department's criteria for its use. Shanghai Jinneng argues, further, that the SV is not distorted, but instead is within the range of Indian silica fume prices on the record.⁴¹

Treatment

- Shanghai Jinneng argues that Datong Jinneng incurs certain “further processing” expenses (*i.e.*, collection, bagging) related to the by-product that are distinct from its silicon metal production. Shanghai Jinneng therefore asserts that these expenses should be deducted from by-product revenue rather than treated as part of the COM for subject merchandise. Shanghai Jinneng further claims that the surrogate financial ratios should not be applied to these expenses because, to the extent that silica fume particulate is generated in silicon metal production, application of the ratios to the COM will capture the costs associated with production of the particulate. Shanghai Jinneng claims that this approach would be consistent with the 2005-06 NSR.⁴²
- Globe claims that the Department should not treat Shanghai Jinneng's alleged “further processing” expenses any differently from the remainder of its COM. Globe claims that the Department previously found in the 2007-08 administrative review that Shanghai Jinneng's silica fume production process is not distinct from its production of subject merchandise.⁴³

Department's Position: We agree in part with Globe and in part with Shanghai Jinneng.

Valuation

We agree with Shanghai Jinneng that the Department's methodology in the *Preliminary Results* for valuing silica fume is consistent with the methodology followed in the *Remand Redetermination* and upheld by the CIT based on the record evidence in that segment of the proceeding. However, in reviewing the record evidence in this segment of the proceeding with respect to valuation of silica fume, we agree with Globe that the methodology utilized in the *Preliminary Results* does not yield the best available information on the record for valuation purposes, as it does not achieve the greatest level of specificity possible, given alternative data available on the record of this review. As a result, for these final results, we are relying on the value for silica fume utilized by the Department in the 2007-2008 review of this order, adjusted for inflation. The resulting value is \$519 USD/MT.

While the Department often relies on GTA import data because they: 1) consist of average import prices, 2) are representative of prices within the POR, and 3) are product-specific and tax-exclusive, the Department has determined previously that the HTS category for silicon dioxide, by itself, does not provide sufficiently specific data to value silica fume.⁴⁴ The record of this

⁴¹ Shanghai Jinneng cites the following cases in support of its argument: *Globe Metallurgical Inc. v. United States*, Consol. Court No. 07-00386, slip op. 08-105 at 14 (CIT 2008), *Final Results of Redetermination Pursuant to Court Remand*, Court No. 07-00386, at 3 (February 2, 2009), and *LWTP/PRC (October 2, 2008) IDM* at comment 9.

⁴² Shanghai Jinneng cites the following cases in support of its argument: *Shrimp/Vietnam (September 15, 2009)*, and *Guangdong Chemicals Import & Export Corp. v. United States*, 460 F. Supp. 2d 1365 (CIT 2006).

⁴³ Globe cites the following case in support of its argument: *Silicon Metal/PRC (January 12, 2010)*.

⁴⁴ This finding is consistent with our finding in *Silicon Metal/PRC (January 12, 2010) IDM* at Comment 2, and the CIT's direction in *Final Results of Redetermination Pursuant to Court Remand*, Court No. 07-00386, at 3 (February 2, 2009) (“*Remand Redetermination*”) available at <http://ia.ita.doc.gov/remands/08-105.pdf>.

proceeding demonstrates two methods by which the Department has adjusted GTA to provide greater specificity and thus more accurate valuation: 1) excluding from GTA data those countries which do not produce ferroalloy products; and 2) adjusting GTA data utilizing Infodrive.

In the *Preliminary Results*, the Department noted that the quantities reported in the Infodrive data for this POR do not closely match the import quantities reported in GTA such that the Department can rely on the Infodrive data to “look behind” the GTA data.⁴⁵ Specifically, the Department generally evaluates the Infodrive India data as a possible corroborative tool⁴⁶ to “look behind” the GTA import data, on the conditions that: (1) there is direct and substantial evidence from Infodrive India reflecting the imports from a particular country; (2) a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive India data; and (3) distortions of the AUV in question can be demonstrated by the Infodrive data. The Department analyzes these conditions in order to determine whether a “significant correlation” exists between GTA and Infodrive data⁴⁷ such that the Infodrive data can be considered a more detailed listing of the GTA data.⁴⁸

However, after evaluating the Infodrive dataset, we have determined that there is insufficient correlation between the Infodrive data and the official import statistics published by GTA. In particular, the total import quantity reported by GTA for HTS 2811.22.00 – silicon dioxide, was 10,440 MT while Infodrive reported a total of 13,727 MT from the same countries, resulting in an over-reporting of approximately 30 percent.⁴⁹ These differences are magnified when reviewing country-specific data, where Infodrive reported 117 percent more imports from Brazil and 61 percent fewer imports from the United States.⁵⁰ For the specific countries identified as silica fume exporters by Globe (*i.e.*, Norway, Iran, Egypt, South Africa, Iceland, and the Philippines), the differences between reported import quantities in the two datasets range from 52 percent under reported to 99 percent over reported.⁵¹ Given this variability, we find that the Infodrive dataset is insufficiently correlated to the GTA data and therefore fails to satisfy the Department’s conditions for its use. Therefore, because the Department found significant discrepancies between Infodrive and GTA, we find that the Infodrive data are not a reliable representation of imports to India under this HTS during the instant POR, and thus are not a reliable corroborative tool for the GTA import statistics.

Having found Infodrive data for the current POR to be an unreliable corroborative tool with

⁴⁵ See Prelim FOP memo (July 7, 2010) at page 4.

⁴⁶ The Department outlined some of these reservations in *Diamond Sawblades/PRC* (May 22, 2006) and accompanying IDM at Comment 11D, where it noted: “...the Department prefers not to use Infodrive data to derive surrogate values or to use as a benchmark to evaluate other potential surrogate values because it does not account for all of the imports which fall under a particular HTS subheading. The Department has also determined that Infodrive India is unreliable because a majority of the HTS categories do not report the specific import items in a uniformly comparative manner (*i.e.*, cans, bottles, pieces, sets, or numbers) from which we can calculate a reliable or accurate surrogate value. We note that this is not a problem with the GTA data because every HTS category is reported using a single uniform measurement (*e.g.*, rupees per kilogram).”

⁴⁷ See *LWTP/PRC* (October 2, 2008) IDM at Comment 9.

⁴⁸ See *OCTG/PRC* (April 19, 2010) IDM at Comment 20.

⁴⁹ See Globe’s Surrogate Value Submission, dated January 13, 2010, at Exhibit 12.

⁵⁰ See *id.*

⁵¹ See *id.*

respect to GTA import statistics, the Department has two options on the record of this review for valuation of silica fume such that the necessary level of specificity not found in the overall GTA import statistics can be achieved. Those two options are: 1) follow the methodology utilized in the *Remand Redetermination i.e.*, rely on USGS 2007 Mineral Yearbook for Ferroalloys to identify and exclude from GTA data those countries which are not listed as ferroalloy producers; or 2) rely on the value calculated for silica fume in the 2007-2008 administrative review of this order, adjusted for inflation. The 2007-2008 value is based on WTA data adjusted by Infodrive data to result in an average value for only those countries which specifically exported silica fume to India during the relevant period. After careful weighing of these two options, the Department finds that reliance on the second option yields the best available information for valuing silica fume in the current segment of this proceeding.

The Department is required to use the “best available information” when valuing the factors of production, based on publicly available information from a market economy of comparable economic development.⁵²

In the *Remand Redetermination*, the Department determined it could not rely on Infodrive data to adjust WTA data because, among other reasons, we were unable to determine what percentage of the total import data was captured by the Infodrive data. Further, we were unable to find alternative, reliable sources for valuing silica fume, and instead, adjusted the WTA⁵³ Indian import data for silicon dioxide to include only data from countries identified as producers of silicon metal or ferrosilicon by the USGS. Based on these adjustments, we calculated a revised value for silica fume of \$774 per MT, as opposed to the original WTA AUV of approximately \$1700 per MT.⁵⁴

In the context of that *Remand Redetermination*, Globe argued that several countries included in the adjusted AUV supplied significant amounts of products other than silica fume to India during the POR and thus contended that the adjustment methodology did not yield an accurate result. The Department acknowledged in the *Remand Redetermination* that it “continue[d] to be left with imperfect options” but concluded that, given its inability to rely on Infodrive in that particular segment of the proceeding, its use of the adjusted WTA data (based on the USGS report) for valuing silica fume related more specifically to silica fume than the unadjusted WTA data.⁵⁵

The CIT upheld the Department’s methodology, noting that the resulting value was well within the range of silica fume prices in India contained in the record of the review. Specifically, the Court noted that, “Unlike the prior value of \$1700 per MT, the \$778 per MT value is adequately

⁵² See 19 CFR 351.408.

⁵³ In past cases, it has been the Department’s practice to value various FOPs using import statistics of the primary selected surrogate country from WTA, as published by Global Trade Information Services (“GTIS”). See *Certain Preserved Mushrooms from the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 50946, 50950 (October 2, 2009). However, in October 2009, the Department learned that the data reported in the GTA software, also published by GTIS, is reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department now obtains import statistics from GTA for valuing various FOPs.

⁵⁴ See *Remand Redetermination*.

⁵⁵ See *id* at 5.

supported on this record by the adjusted WTA data and other corroborating information. Accordingly, {the Department's} new choice of a value for silica fume was based on data that better relates to the specific by-product silica fume as required by the court's remand and was supported by substantial evidence."⁵⁶

In the subsequent 2007-2008 review of the this order, the Department again concluded, consistent with the CIT's findings, that the WTA data by themselves were too broad to use to value silica fume, noting that the inclusion of other types and grades of silicon dioxide rendered the category too broad and unrepresentative of silica fume prices in India. Because the WTA import data were not sufficiently specific, the Department determined to filter the WTA data in a manner "similar" to the methodology upheld by the CIT in *Remand Redetermination*. However, rather than rely upon the USGS Minerals Yearbook as the filter, the Department relied upon Infodrive data because we concluded that, "based upon the instant record, the Infodrive data meets the criteria set forth in the Department's practice for reliance upon Infodrive as a corroborative tool to evaluate import data."⁵⁷ The Department concluded that this methodology "constitutes the best available information on the record, as it is based on reliable, contemporaneous data that is specific to silica fume."⁵⁸

In addressing the respondents' arguments that the Department should rely on the USGS Mineral Yearbook to filter the GTA data rather than Infodrive, the Department stated that, "Infodrive provides more specific data and, therefore, a more accurate surrogate value. The USGS data only allows the Department to identify those countries that are producers of silicon metal or ferrosilicon; it does not allow the Department to determine whether those countries' entries were, in fact, primarily silica fume. As demonstrated above, Infodrive provides for greater precision in filtering the GTA data than the USGS data."⁵⁹

Having concluded in the 2007-2008 administrative review that the value resulting from an adjustment of GTA using Infodrive information yielded a surrogate value that was more specific to silica fume than reliance on an adjustment based on ferrosilicon producing countries identified by the USGS, we believe the value for silica fume determined in the 2007-2008 review, adjusted for inflation, is the best available information on the record of this review for valuing silica fume. We recognize that the value determined in the 2007-2008 review is not as contemporaneous with the current POR as would be a value based on adjusted POR GTA import statistics. However, while the Department considers several factors when selecting surrogate values including the quality, specificity, and contemporaneity of the data, when presented with a potential surrogate value that is more specific to the input in question but not as contemporaneous with the POR, the Department has inflated the less contemporaneous value.⁶⁰ Therefore, based on the Infodrive analysis conducted in the prior review which resulted in a value more specific to silica fume than using the USGS Minerals Yearbook as the filter for the Indian GTA data, we find that the value determined for silica fume in the 2007-2008 administrative review of this order, adjusted for

⁵⁶ See *Globe Metallurgical* (CIT 2009) at 12.

⁵⁷ See *Silicon Metal/PRC* (January 12, 2010) IDM at Comment 2.

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See *Silicon Metal/PRC* (January 12, 2010) IDM at Comment 8. See also *Garlic/PRC* (October 4, 2010) IDM at Comment 2. See also *QVD Food* (CIT 2010) at 17.

inflation, is the best available information for valuing silica fume for purposes of these final results.

Treatment

With respect to the application of the byproduct offset, we disagree with Shanghai Jinneng and have made no change to the application of the silica fume byproduct offset. Citing *Guangdong Chemicals Import & Export Corp. v United States*, 460 F. Supp. 2d 1365 (CIT 2006) as the Department's current practice with respect to applying the by-product credit, Shanghai Jinneng argues that its production process requires an adjustment to the application of the byproduct practice articulated therein because Shanghai Jinneng incurs "separate and identifiable further-processing costs" associated with the production of silica fume.⁶¹ These costs involve the capturing and bagging of silica fume.

Shanghai Jinneng argues that applying the surrogate financial ratios to the COM of silicon metal only (which doesn't include the additional costs identified by Shanghai Jinneng as associated with silica fume) would be appropriate because the surrogate companies used to calculate the financial ratios do not produce the silica fume by-product. Shanghai Jinneng requests that the Department subtract the costs incurred in producing silica fume that are separate from the production of silicon metal (*i.e.*, bag house energy and labor) from the net by-product revenue, which is then deducted from NV. However, this approach fails to account for the manufacturing overhead, SG&A, or profit costs associated with the production of the silica fume. Shanghai Jinneng would have the Department deduct the full value of the by-product revenue from NV without accounting for the full cost of producing the by-product in NV. In other words, if the Department were not to apply any financial ratios to the by-product-specific costs, it would fail to fully account for the expenses associated with producing the by-product (*e.g.*, overhead).

Second, as we stated in *Nails/PRC (June 16, 2008)*,⁶² the Department is not required to mirror the exact production experience of the respondent in selecting financial statements to calculate the surrogate financial ratios:

In the vast majority of the antidumping duty cases, the surrogate producers selected by the Department produce different products and incur different types of costs than Respondents. In these situations, our practice has been not to attempt to adjust the surrogate producer's overhead figures to account for potential cost differences. In order to account for potential cost differences, the Department in essence would be required to evaluate whether both the surrogate company and the respondent have identical cost structures and then adjust these cost structures on a line-by-line basis to account for observed differences. However, such a requirement is not part of the Department's calculations. (Citations omitted.)

Therefore, we find that the financial statements of producers of comparable merchandise to be the best available information for applying financial ratios to Shanghai Jinneng's costs to produce silicon metal and the additional costs associated with producing the silica fume by-product. Accordingly, Shanghai Jinneng's silica fume related production costs must be treated in

⁶¹ See Shanghai Jinneng's case brief (August 23, 2010) at 33.

⁶² See *Nails/PRC (June 16, 2008)* IDM at Comment 20D.

the same manner as other production costs related to subject merchandise (*i.e.*, their associated SG&A, overhead, and profit expenses) must be accounted for.

Comment 6: Valuation of Coal

- Globe argues that, based on the correlation between the Chinese coal classification and international coal classification standards, Datong Jinneng's coal meets the description of coking coal, and thus the Department should value Datong Jinneng's coal using the AUV of Indian imports of coking coal.⁶³
- Shanghai Jinneng contends that Datong Jinneng did not use coking coal and that the Department correctly valued the coal as Grade A non-coking coal from the Indian Bureau of Mines *Indian Minerals Yearbook 2007* ("*IBM Yearbook*"). Shanghai Jinneng asserts that the Grade A non-coking coal from the *IBM Yearbook* is specific to the coal that Datong Jinneng purchases, because it matches the ash and moisture content, as well as the useful heat value.⁶⁴

Department's Position: Consistent with the Department's decision in the 2005-2006 new shipper review and 2007-2008 administrative review,⁶⁵ and based on Datong Jinneng's reported ash/moisture content and useful heat value of the coal used during production of the subject merchandise, the Department continues to find that Grade A non-coking coal from the *IBM Yearbook* most closely corresponds with the coal consumed by Datong Jinneng.

Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors." It is the Department's stated practice to choose a surrogate value that represents country-wide price averages specific to the input, which are contemporaneous with the POR, net of taxes and import duties, and based on publicly available data from a single surrogate market economy country.⁶⁶ If a surrogate value meets these criteria, the Department finds that it represents a reliable and appropriate price for valuing an individual input. With respect to selecting the surrogate value for coal inputs, the CIT has held that the "best available information" standard requires the Department to articulate a "rational and reasonable" basis between the surrogate value selected and the coal consumed by respondents.⁶⁷

Using Datong Jinneng's ash and moisture content specifications, the Department identified Grade A non-coking coal in the *IBM Yearbook* as the appropriate surrogate data source to value Datong Jinneng's coal input. First, as explained in the Coal Directory of India, a publication of the Indian Ministry of Coal that Globe placed upon the record, the Indian coal system uses an empirical formula to identify commercial-grade non-coking coal.⁶⁸ Specifically, the Indian coal

⁶³ Globe cites the following case in support of its argument: *Hebei Metals (CIT 2005)*. Globe also cites section 773(c)(1) and (4) of the Act and the Department's regulations at 19 CFR 351.408(a).

⁶⁴ Shanghai Jinneng cites the following cases in support of its argument: *Cased Pencils/PRC (July 7, 2010)* IDM at Comment 2; *Hebei Metals (CIT 2005)* (citing to *Shandong Huarong (CIT 2001)*).

⁶⁵ See *Silicon Metal/PRC (January 12, 2010)* IDM at Comment 6. See also *Silicon Metal/PRC (October 16, 2007)* IDM at Comment 6.

⁶⁶ See, e.g., *Hot-Rolled Steel/Romania (June 14, 2005)* IDM at Comment 2.

⁶⁷ *Hebei Metals (CIT 2005)*.

⁶⁸ See Globe's Surrogate Value Submission (January 13, 2010) at Exhibit 6B (Coal Directory of Indian 2006-2007).

classification system identifies commercial-Grade A non-coking coal as having a UHV in excess of 6200 kCal/Kg, pursuant to the following formula: $UHV = 8900 - 138(A + M)$, where A is ash percentage and M is moisture percentage. Applying this formula to Datong Jinneng's coal specifications demonstrates that Grade A non-coking coal is the best available information for valuing this input.⁶⁹

The Department's reliance upon the average value for Grade A non-coking coal provided by the *IBM Yearbook* to value Datong Jinneng's coal input is supported by substantial evidence. Evidence on the record shows that the silicon metal production process does not require that coking coal be used. Specifically, the Department notes that record evidence demonstrates that in the production of silicomanganese, which according to the USGS has a comparable ferroalloy production process to silicon metal, coking coal is not required; rather, the process requires coal with similar characteristics to the quality of coal that Datong Jinneng uses.⁷⁰ Moreover, we note that the production of silicomanganese, like silicon metal, requires the consumption of coke, in addition to other types of coal, which is reflected in Datong Jinneng's reported production process.⁷¹ Datong Jinneng reported that it consumed petroleum coke, charcoal, and coal during the production process to provide the necessary carbon-based reducing agent.⁷² Thus, the Department has separately valued Datong Jinneng's consumption of petroleum coke, which Datong Jinneng reported as a separate factor of silicon metal production, using the Indian import statistics specific to petroleum coke.⁷³ Based on the following: 1) Datong reported its consumption of coke; 2) record evidence demonstrates that non-coking coal may be used for metallurgical applications such as silicon metal; and 3) the Indian Ministry of Steel identifies that non-coking coal with lower ash content and higher fixed carbon than coking coal can be used in metallurgical applications, the Department disagrees with Globe that Datong Jinneng necessarily consumed coking coal.⁷⁴

Moreover, there is nothing on the record to suggest that Datong Jinneng changed its production process from the last review. In the 2007-2008 review, Globe made similar allegations about the

⁶⁹ See Shanghai Jinneng's Response to Supplemental Questionnaire Concerning Electricity Usage (June 7, 2010) at Exhibits 1 and 6.

⁷⁰ See Globe's Surrogate Value Submission (January 13, 2010) at 5. See also Shanghai Jinneng's Comments on the Selection of a Surrogate Country (January 13, 2010) at 2 and Exhibit 1 (USGS 2007 Minerals Yearbook, Ferroalloys). See *Silicon Metal/PRC* (October 16, 2007) IDM at Comment 1. See Shanghai Jinneng's Supplemental Sections C and D Response (March 29, 2010) at 5 and Exhibit SD2-4 (U.S. Patent, "Process for Producing Low Carbon Silicomanganese"). and see Datong Jinneng's coal requirements in Shanghai Jinneng's Response to Question 12 of Supplemental Section D Questionnaire Response (December 23, 2009) at Exhibit 6 as well as Datong Jinneng's coal testing certificates in Shanghai Jinneng's Supplemental Sections C and D Response (March 29, 2010) at Exhibit SD2-1.

⁷¹ See Shanghai Jinneng's Supplemental Sections C and D Response (March 29, 2010) at SD2-4 (U.S. Patent, "Process for Producing Low Carbon Silicomanganese" at sections 3 and 4 for coal specifications); and see Shanghai Jinneng's Supplemental Section D Response (January 8, 2010) at 5-6 for the process that Datong Jinneng uses.

⁷² See Shanghai Jinneng's Supplemental Section D Response (January 8, 2010) at 5-6 for the process Datong Jinneng uses to make silicon metal; see Shanghai Jinneng's Supplemental Sections C and D Response (March 29, 2010) at Exhibit SD2-3 (European Monitoring and Evaluation Programme/European Environment Agency (EMEP/EEA), *Emission Inventory Guidebook 2009*, "2.C.2 Ferroalloy Production" at 4) for a more general discussion of the production of ferroalloys.

⁷³ See Memorandum to the File from Melissa Blackledge, "Selection of Surrogate Values" (July 7, 2010) at 2.

⁷⁴ See Globe's Surrogate Value Submission (January 13, 2010) at Exhibit 6E (Indian Ministry of Steel Glossary of Terms/Definitions Commonly Used in Iron & Steel Industry).

use of coking coal, but the Department reviewed the record and examined evidence at verification, finding that Datong Jinneng did not use coking coal.⁷⁵ Furthermore, Shanghai Jinneng has stated several times during the instant review that there was no change in the “specifications of the coal Datong Jinneng uses to produce silicon metal.”⁷⁶

Globe cites *Hebei Metals (CIT 2005)* to emphasize the responsibility of the Department in establishing the category of coal used or the categories of coal that would normally be used to produce the subject merchandise.⁷⁷ As demonstrated by the preceding discussion, the Department has carefully examined Datong Jinneng’s coal specifications and processes and has determined that Datong Jinneng does not use coking coal. Furthermore, Globe’s own affidavit does not list the requirement that coking coal be used in the production of subject merchandise, stating that “silicon metal is produced by combining high purity quartzite with a carbonaceous reducing agent (such as coal; petroleum coke; charcoal; or coal char) and a bulking agent in a submerged-arc electric furnace” and that coal can be used as a reducing agent if it is “a high grade, low-ash coal.”⁷⁸ As discussed above, Datong Jinneng reported the consumption of petroleum coke, charcoal, and coal (referred to variously as “coal,” “non-coking coal,” and “bituminous steam coal”), and thus the Department finds no record evidence to indicate that Datong Jinneng’s coal was necessarily coking-coal.⁷⁹

With regard to Globe’s argument that the Chinese coal classification system would classify the coal consumed by Datong Jinneng as coking coal, this claim is immaterial to the Department’s selection of the best available information to value Datong Jinneng’s coal input. In the calculation of normal value in NME proceedings, section 773(c)(4) of the Act instructs the Department to value “prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country” and are “significant producers of comparable merchandise.” Since the PRC is not a market economy, the Department must look elsewhere to value FOPs. Determined to be at an economically comparable level of development and to be a producer of comparable merchandise, India was selected as the surrogate country in which to value factors of production. Hence, the Department is valuing coal based on the Indian classification system.

However, even assuming that it would be appropriate to look to the Chinese classification system to determine the surrogate value in India for Datong Jinneng’s coal input, we disagree with Globe’s analysis of the record evidence. With respect to Globe’s references to specific Crucible Swell and Gray-King ranges, which would be classified as good coking coal in India, we find that none of these classification systems are able to definitively classify coal as coking or non-coking; they merely identify coal that may be a good candidate for making into coke and they

⁷⁵ See Shanghai Jinneng’s Rebuttal Comments on Factors of Production (January 29, 2010) at 8.

⁷⁶ See Shanghai Jinneng’s Supplemental Sections C and D Response (March 29, 2010) at 7.

⁷⁷ See Globe’s Case Brief (August 23, 2010) at 29.

⁷⁸ See Globe’s Rebuttal Comments on the Valuation of Coal (April 8, 2010) at Exhibit 5 (Affidavit of Duane Huck).

⁷⁹ See Shanghai Jinneng’s Comments on the Selection of a Surrogate Country (January 13, 2010) at 6. See also Shanghai Jinneng’s Section D Response (November 2, 2009) at 3. See also Shanghai Jinneng’s Response to Question 12 of Supplemental Section D Questionnaire Response (December 23, 2009) at 2. See also Shanghai Jinneng’s Rebuttal Comments on Factors of Production (January 29, 2010) at 4.

help to indicate the strength of potential coke.⁸⁰ To definitively determine if coal is good for coking, *Uses of Energy Minerals and Changing Techniques* states that, “the coking characteristic has to be ascertained by trial burning;” furthermore, the author maintains that “it has not been possible to establish a clear correlation between the coking property and any specific physico-chemical or petrographic parameter.”⁸¹ The American Chemical Society journal article “Prediction of the Quality of Coke by the Use of Volatile Matter—Caking Index Diagrams,” confirms that caking and coking properties do not have a directly corollary relationship, stating that “caking properties are not always proportional to the coking power.”⁸² Moreover, the “Dictionary of Mining, Mineral, and Related Terms” casts further doubt on the relationship between the caking index and the coking abilities of coal, stating that “all caking coals are not good coking coals.”⁸³ Therefore we find Globe’s attempts to classify Datong Jinneng’s coal as coking coal to be without merit. Accordingly, because the Department has determined that the record evidence demonstrates that the coal consumed by Datong Jinneng should be classified as non-coking coal, we find it appropriate to continue to value Datong Jinneng’s coal with the value of Grade A non-coking coal from the *IBM Yearbook*.

Finally, because the Department has determined to value respondent’s coal input using data for non-coking coal, Globe’s arguments regarding the poor quality of coking coal in India and the inappropriateness of using a value reflecting Indian-produced coking coal need not be addressed here. Further, because we are not using GTA data, whether or not GTA data reflect a value for coking coal is similarly irrelevant and also need not be addressed here.

Comment 7: Valuation of Electricity

- Globe argues that the Department should not use the surrogate value for electricity that it used for the *Preliminary Results* and instead should follow the Department’s consistent practice to apply an average of the rates of small, medium, and large industrial users, as published by the CEA of India.⁸⁴ Globe contends that, should the Department depart from past practice and apply a more precise CEA rate for Datong Jinneng, it should choose an electricity rate within the class of large industries at 33 KV that most closely matches Datong Jinneng’s peak energy demand and load factor.⁸⁵
- Shanghai Jinneng asserts that the Department correctly selected the electricity rate using an average of CEA data for large industrial users with a delivery voltage of 33 KV, as that rate is specific to Datong Jinneng’s production experience and represents a broad market average. Moreover, Shanghai Jinneng asserts that the alternatives proposed by Globe are inappropriate because they are inconsistent with the Department’s practice to choose SVs that are specific

⁸⁰ See Globe’s Rebuttal Comments on the Valuation of Coal (April 8, 2010) at Exhibits 2, 3, and 4. See also Globe’s Rebuttal Surrogate Value Submission (January 29, 2010) at Exhibit 1.

⁸¹ See Globe’s Rebuttal Surrogate Value Submission (January 29, 2010) at Exhibit 1 (*Uses of Energy and Minerals and Changing Techniques* at 10).

⁸² See Globe’s Rebuttal Comments on the Valuation of Coal (April 8, 2010) at Exhibit 4 (“Prediction of the Quality of Coke by the Use of Volatile Matter—Caking Index Diagrams,” at 453).

⁸³ See Shanghai Jinneng’s Comments on the Valuation of Coal (June 2, 2010) at Exhibit 1.

⁸⁴ See Globe’s Surrogate Value Submission (January 13, 2010) at Exhibit 9 (March 2008 report titled *Electricity Tariff & Duty Average Rates of Electricity Supply in India*).

⁸⁵ Globe cites the following cases in support of its argument: *Polyester Staple Fiber/PRC (July 14, 2010)*; *FMTCS/PRC (July 14, 2010)*; *FSVs/PRC (March 13, 2009)* IDM at Comment 8.

Department’s Position: In the *Preliminary Results*, we valued electricity using average tax-exclusive price data for large industrial users at 33 KV, as published by the CEA of India. The data are specific to electricity, published in a publicly available source, and contemporaneous to the POR. Moreover, the large industry category contains rates from India’s 28 states and seven union territories, which satisfies the Department’s prior determination that prices from seven Indian states represent a broad market average.⁸⁷ As supported by the record, we continue to find that the rate determined in the *Preliminary Results* most closely aligns with Datong Jinneng’s usage of electricity, and hence is the best available surrogate value for electricity.

The Department’s practice when selecting the “best available information” for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are representative of a broad market average, publicly available, contemporaneous, product specific and tax-exclusive.⁸⁸ The Department undertakes its analysis of valuing the FOPs on a case by case basis, carefully considering the available evidence in light of the particular facts of each industry.⁸⁹ There is no hierarchy for applying the above stated principles. Thus, the Department must weigh available information with respect to each input value and make a case-specific decision as to what the “best” surrogate value is for each input.⁹⁰

In the instant case, the potential surrogate values advanced by the parties are equally contemporaneous and there is no dispute that the potential surrogate values are tax-exclusive. The issue is which surrogate value is most specific to Datong Jinneng’s electricity input. While we agree with Globe that the Department normally uses the average of the small, medium, and large industry electricity values, the instant record demonstrates that electricity rates for large industrial users (at 33 KV) provides a more specific match to Datong Jinneng’s electricity input. Thus, to achieve a more specific valuation, it is appropriate to depart from our normal practice here.

In the 2007-2008 review, the Department rejected Datong Jinneng’s request to use the large industries rate at 33 KV because Datong Jinneng did not provide the company’s 1) delivery voltage, 2) peak energy demand, and 3) load factor—specifications necessary to determine a specific surrogate CEA electricity rate.⁹¹ In the current review, Shanghai Jinneng submitted additional evidence regarding Datong Jinneng’s delivery voltage, which, taken together with consumption, indicates that Datong Jinneng is a large industrial consumer of electricity (at 33

⁸⁶ Shanghai Jinneng cites the following cases in support of its argument: *Cased Pencils/PRC* (July 7, 2010) IDM at Comment 2; *FSVs/PRC* (March 13, 2009) IDM at Comment 12g.

⁸⁷ See *Garlic/PRC* (June 8, 2009) IDM at Comment 2.

⁸⁸ See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process*, March 1, 2004 (“*Policy Bulletin*”) at 4, found at <http://ia.ita.doc.gov/policy/bull04-1.html>; see also *Diamond Sawblades/PRC* (May 22, 2006) IDM at Comment 11a.

⁸⁹ See *Glycine/PRC* (August 12, 2005) IDM at Comment 1.

⁹⁰ See *Shrimp/PRC* (August 13, 2010) IDM at Comment 3.

⁹¹ See *Silicon Metal/PRC* (January 5, 2010) IDM at Comment 3.

KV) according to the CEA classification.⁹² However, because Datong Jinneng has not provided the peak energy demand and load factor, the Department is unable to further refine Datong Jinneng's classification among the rates for large industries at 33 KV.

We disagree with Globe that there is sufficient information on the record to identify Datong Jinneng's peak energy demand and load factor.⁹³ Globe's estimated derivation of Datong Jinneng's peak energy demand and load factor is predicated on several assumptions that are not supported by the facts on the record. Specifically, in estimating Datong Jinneng's peak energy demand, Globe assumes that Datong Jinneng simultaneously utilizes all four electric arc furnaces. However, we note that Datong Jinneng has stated that one of its furnaces was not in operation during the POR.⁹⁴ Additionally, among Datong Jinneng's three remaining furnaces utilized during the POR, the Department notes that the electrical meter readings indicate that the furnaces did not consume electricity evenly, which suggests that the three furnaces may not have been used simultaneously.⁹⁵ Therefore, we find that Globe's estimations are unreliable for the purposes of determining a more specific peak energy demand. Additionally, because Globe's derivation of Datong Jinneng's peak energy demand is further applied to derive Datong Jinneng's load factor, the Department finds that Globe's calculations of Datong Jinneng's load factor are also unreliable and not supported by record evidence. It is undisputed that the CEA electricity rates are sensitive to different levels of load factors; without specific load factor and peak energy demand data, the Department is unable to identify a more precise electrical rate category among the CEA large industrial user rates at 33 KV.

Therefore, because the Department is able to determine that Datong Jinneng is a large industrial consumer of electricity, but is otherwise unable to further specify a more precise category, the Department has averaged the rates of the large industries at 33 KV from the CEA.

Comment 8: Valuation of Labor

- Shanghai Jinneng likens labor to electricity and argues that the Department should value labor like all other factors of production, using only data from India. Additionally, Shanghai Jinneng contests the Department's selection of ISIC-Rev.3 Sub-Classification 27, Manufacture of basic metals, as an accurate representation of the silicon metal industry, stating that the category is not specific to silicon metal. Shanghai Jinneng would prefer that the Department value labor using the average ILO Chapter 5B wage rate for manufacturing.
- Globe asserts that the Department should continue to calculate a surrogate value for labor using data from multiple countries (not only data from India). Additionally, Globe agrees with the Department's choice of industry-specific labor data, arguing that labor data for general manufacturing would be far less relevant to the silicon metal industry. Furthermore, Globe notes that if the Department were to revert to its previous methodology and calculate

⁹² For meter readings, *see* Shanghai Jinneng's Supplemental Section D Response (January 8, 2010) at Exhibit SD-7. For the transformer specifications sheet, *see* Shanghai Jinneng's Response to Supplemental Questionnaire Concerning Electricity Usage (June 7, 2010) at Exhibit 1.

⁹³ *See* Globe's Case Brief (August 23, 2010) at 43-48.

⁹⁴ *See* Shanghai Jinneng's Supplemental Section D Response (January 8, 2010) at 12 and Exhibit SD-7.

⁹⁵ *See* Shanghai Jinneng's Supplemental Section D Response (January 8, 2010) at Exhibit SD-7.

surrogate wage rates from general manufacturing data, it should exclude Albania and Indonesia, as they are not significant producers of comparable merchandise.⁹⁶

Department's Position: We continue to find the industry-specific labor data (using Sub-Classification 27 data) from multiple countries to be the best source for determining the labor surrogate value in this case, as explained below.

In *Dorbest Ltd. v. United States*, 604 F. 3d 1363, 1372 (Fed. Cir. 2010), the CAFC invalidated the Department's regulation, 19 CFR 351.408(c)(3), which directs the Department to value labor using a regression-based method. As a consequence of the CAFC's decision, the Department is no longer relying on the regression-based wage rate and is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For the final results of this review, we have calculated an hourly wage rate by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC reported under ISIC-Rev.3 Sub-Classification 27 for Manufacture of basic metals.

Section 773(c)(4) of the Act requires the Department "to the extent possible" to use "prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the non-market economy country, and (B) significant producers of comparable merchandise." Accordingly, to calculate a wage rate, the Department first looked to the Surrogate Country Memo issued in this proceeding to determine countries that were economically comparable to the PRC.⁹⁷

In analyzing economic comparability, the Department places primary emphasis on GNI.⁹⁸ The Department selected six countries for consideration as the primary surrogate country for this review based on the Surrogate Country Memo.⁹⁹ From the list of countries contained in the Surrogate Country Memo, the Department used the country with the highest GNI (*i.e.*, Colombia) and the lowest GNI (*i.e.*, India) as "bookends" for economic comparability. The Department then identified all countries in the World Bank's *World Development Report* with per capita GNIs for 2009 that fell between the "bookends." This resulted in 55 countries, ranging from India (with USD 950 GNI) to Colombia (with USD 4,070 GNI), that the Department considers economically comparable to the PRC.¹⁰⁰

Next, regarding the "significant producer" prong of the statute, the Department identified all countries which have exports of comparable merchandise (defined as exports under HTS 2804.69, the six-digit HTS code identified in the scope of this order)¹⁰¹ between 2007 and 2009.¹⁰² In this case, we have defined a "significant producer" as a country that has exported comparable merchandise between 2007 through 2009. After screening for countries that had exports of comparable merchandise, we determine that of the 55 countries designated as

⁹⁶ Globe cites the following cases in support of its argument: *Activated Carbon/PRC* (November 17, 2010) IDM at Comment 4.f; *Silicon Metal/PRC* (October 16, 2007) IDM at Comment 1; *Silicon Metal/PRC* (January 12, 2010) IDM at Comment 4.

⁹⁷ See Surrogate Country Memo (October 28, 2009).

⁹⁸ See Policy Bulletin 4.1, available at <http://ia.ita.doc.gov/policy/bull04-1.html>.

⁹⁹ The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. See Surrogate Country Memo (October 28, 2009).

¹⁰⁰ See Wage Rate Memo (November 18, 2010) at Attachment 1.

¹⁰¹ See *Silicon Metal/PRC* (January 12, 2010) at 1592, 1593.

¹⁰² The export data are obtained from GTA.

economically comparable to the PRC the following are also significant producers: 1) Albania, 2) Bosnia and Herzegovina, 3) Colombia, 4) Egypt 5) Fiji, 6) Macedonia, 7) India, 8) Indonesia, 9) Jordan, 10) Philippines, 11) Samoa (Western), 12) Thailand, and 13) Ukraine.¹⁰³

With regard to Shanghai Jinneng's request that the Department use wage data from only India, we are not persuaded by its argument. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country do not constitute the best available information for purposes of valuing the labor input due to the variability that exists across wages from countries with similar GNI. Using the high- and low-income countries identified in the Surrogate Country Memo as bookends provides more data points, which the Department finds to be preferable. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable MEs.¹⁰⁴ As a result, we find reliance on wage data from a single country is not preferable where data from multiple countries are available for the Department to use.

For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (*e.g.*, countries with GNIs between USD 950 and USD 4,100), the hourly wage rate spans from USD 0.47 to USD 1.74.¹⁰⁵ Additionally, although both India and Colombia have GNIs at or below USD 4,100, and both could be considered economically comparable to the PRC, India's observed wage rate is USD 0.47, as compared to Colombia's observed wage rate of USD 1.74 – more than triple that of India.¹⁰⁶ There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the variability in labor rates that exists among otherwise economically comparable countries is a characteristic unique to the labor input. Moreover, the large variance in these wage rates illustrates why it is preferable to rely on data from multiple countries for purposes of valuing labor. The Department thus finds that reliance on wage data from a single country is not preferable where data from several countries are available. For these reasons, the Department maintains its long-standing position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department has employed a methodology that relies on as large a number of countries as possible that also meet the statutory requirement that a surrogate be derived from a country that is economically comparable and also a significant producer. Indeed, for this reason, although the Department is no longer using a regression-based methodology to value labor, the Department has determined that reliance on labor data from multiple countries, as opposed to labor data from a single country constitutes the best available information for valuing the labor input.¹⁰⁷

¹⁰³ *See id.*

¹⁰⁴ *See Pure Magnesium (December 23, 2010) IDM at 16.*

¹⁰⁵ *See* "Expected Wages of Selected NME Countries," revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>.

¹⁰⁶ *See id.*

¹⁰⁷ Both the statute and our regulations recognize the need to source factor data from more than one country. Although 19 CFR 351.408(c)(2) of the Department's regulations provides that the Department will *normally* source the FOPs from a single surrogate country, the language in the regulation provides sufficient discretion for the Department to address situations in which sourcing an FOP from a single source is not preferable. Use of the word

Based on the analysis set forth below, the Department has determined it is most appropriate to rely on industry-specific wage data reported by ILO for the final results. Determinations as to whether industry-specific ILO datasets constitute the best available information must necessarily be made on a case-by-case basis. In making these determinations, the Department considers a number of factors such as the appropriateness of the ILO industry-specific data in light of the subject merchandise and the availability of industry specific data. Shanghai Jinneng did not suggest an alternative sub-classification to that proposed by the Department, but rather suggested the far more general Chapter 5B manufacturing category which contains many disparate industries that are completely unconnected to heavy manufacturing (*e.g.*, “Manufacture of tobacco products” or “Tanning and dressing of leather”).¹⁰⁸

The ISIC code is maintained by the United Nations Statistical Division and is updated periodically. The ILO, an organization under the auspices of the United Nation, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC-Rev.2, ISIC-Rev.3, and ISIC-Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

Due to concerns that the industry definitions may lack consistency between different ISIC revisions, the Department finds that averaging wage rates within the same ISIC revision (*i.e.*, not mixing revisions) constitutes the best available information for the final results.

It is the Department’s preference to use data reported under the most recent revision, however, in this case we found that none of the countries found to be economically comparable and significant producers reported data pursuant to ISIC-Rev.4.¹⁰⁹ Accordingly, in this case, we turned to the industry definitions contained in ISIC-Rev.3 to find the appropriate classification for silicon metal. Under the ISIC-Revision 3 standard, the Department identified the two-digit series most specific to silicon metal as Sub-Classification 27, which is described as “Manufacture of basic metals.” The explanatory notes for this sub-classification states that this sub-classification includes the “manufacture of basic precious and non-ferrous metals,” including, under class 2720 “production of non-ferrous base metals from ore” and “operations carried on by smelters, by electrolytic refiners, or by other means to produce unwrought non-ferrous base metals.”¹¹⁰ Notwithstanding Shanghai Jinneng’s assertions, this category appears to most closely reflect the production of silicon metal because the manufacture of silicon metal requires processes that are similar to the manufacture of other metals and alloys (*i.e.*, use of furnaces, working with molten metal, and consumption of similar raw materials—coal, coke, mineral ores, *etc.*). Because an industry-specific dataset relevant to this proceeding exists within the Department’s preferred ILO source, and because absent evidence to the contrary, the industry-specific data would be *at least* more specific to the subject merchandise than the national manufacturing data, we have determined that this is the best available information, in

“normally” means that this is not an absolute mandate. As we explained, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate country.

¹⁰⁸ See Memorandum to The File from Demetri Kalogeropoulos on Industry-Specific Wage Rate Selection (November 18, 2010) at Attachment 1.

¹⁰⁹ See Wage Rate Memo (November 18, 2010) at Step 3.

¹¹⁰ See Wage Rate Memo (November 18, 2010) at Attachment 1.

accordance with section 773(c)(1) of the Act, from which to derive the surrogate wage rate based on the analysis set forth below.

Accordingly, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 27 of the ISIC-Revision 3 standard by countries determined to be economically comparable to the PRC and significant producers of comparable merchandise. Additionally, when selecting data available from the countries reporting under ISIC-Revision 3, Sub-Classification 27, we used the most specific wage data available within this revision.

Specifically, the Department identified which of the 13 countries found to be economically comparable and significant exporters of comparable merchandise also reported the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B “earnings,” if available and “wages” if not.¹¹¹ We used the most recent data available (2008) and went back five years, resulting in wage data from 2003-2008. Of the 13 countries that the Department has determined are both economically comparable and significant producers, five countries, *i.e.*, 1) Albania, 2) Fiji, 3) India, 4) Samoa (Western), and 5) Colombia were omitted from further consideration for purposes of the wage rate valuation because there were no earnings or wage data available from these countries. The remaining eight countries reported industry-specific data under the ISIC-Revision 3, under Classification 27, “Manufacture of basic metals:” 1) Bosnia and Herzegovina, 2) Egypt, 3) Indonesia, 4) Jordan, 5) Macedonia, 6) Philippines, 7) Thailand, and 8) Ukraine.

While, the Department prefers to use the most specific wage data available within ISIC-Rev.3, because no country that was considered economically comparable and a significant producer reported earnings or wage data below the two-digit level, the Department has relied on the two-digit sub-classification in our industry-specific wage rate calculation. Accordingly, based on the above, the Department relied on a simple average of the data reported under ISIC-Rev.3. Sub Classification 27 “Manufacture of basic metals” from the following countries to arrive at the industry-specific wage rate calculated for this review: 1) Bosnia and Herzegovina, 2) Egypt, 3) Indonesia, 4) Jordan, 5) Macedonia, 6) Philippines, 7) Thailand, and 8) Ukraine. We used the most recent data available (2008) and went back five years, resulting in wage data from 2003-2008. Further, we adjusted the wage data for countries where they were available to the period of review using the relevant CPI.¹¹²

¹¹¹ The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes fewer countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. Thus, if earnings data is unavailable from the base year (2008) or the previous five years (2003-2007) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in *Antidumping Methodologies* (October 19, 2006) still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

¹¹² Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two-year period. *See Antidumping Methodologies*, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which we could draw from two years-

Based on the foregoing methodology, the revised wage rate to be applied in the final results is 2.02 USD/Hour. This wage rate is derived from economically comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in *Dorbest* (*Fed. Cir. 2010*) and the statutory requirements of section 773(c) of the Act.

Comment 9: Selection of Financial Statements

- Globe argues that the Department should include two additional surrogate financial statements in addition to the four Indian surrogate producers (*i.e.*, FACOR, VBC, Sova Sova, and Saturn) used in the *Preliminary Results*. Globe recommends Maithan and Vipra be included in the Department's calculation of surrogate financial ratios for the final results because both companies are Indian producers of merchandise comparable to silicon metal.¹¹³
- Shanghai Jinneng rebuts that the two additional financial statements proposed by Globe are inappropriate for the Department to use in the final results because Maithan has a negative SG&A ratio and Vipra is not a producer of comparable merchandise.¹¹⁴
- Shanghai Jinneng argues, additionally, that the Department should not rely upon FACOR's financial statement because it is a producer of ferrochrome, which is different than the products produced by the other surrogate companies. Shanghai Jinneng argues that the Department should use the financial statements of two additional surrogate companies, Centom, and Lalwani, in its calculation of surrogate financial ratios for the final results because Centom did not receive countervailable subsidies and Lalwani is an appropriate surrogate producer to analyze for financial statement ratios.¹¹⁵

worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department finds it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the CPI. *See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. *See also* Wage Rate Memo at Attachment 1 for the CPI data used in the instant case.

¹¹³ Globe cites the following cases in support of its argument: *Mushrooms/PRC* (April 23, 2008) IDM at Comment 1, *Silicon Metal/PRC* (October 16, 2007) IDM at Comment 3, *Circular Welded Austenitic Pipe/PRC* (September 5, 2008), *Brake Rotors/PRC* (December 29, 1999), *LWTP/PRC* (October 2, 2008) IDM at Comment 1, *Persulfates/PRC* (February 10, 2003) IDM at Comment 11, *Steel Rod/Taiwan* (October 26, 2001) IDM at Comment 2, and *Wire Rod/Germany* (July 18, 1996).

¹¹⁴ Shanghai Jinneng cites the following cases in support of its argument: *PRCBs/PRC* (March 12, 2007) IDM at Comment 3g, *Huvis (CIT 2007)*, *Shrimp/Vietnam* (September 12, 2007), *Steel Rod/Taiwan* (October 26, 2001), *FTMTCs/PRC* (December 17, 2007) IDM at Comment 1, and *Silicon Metal/PRC* (October 16, 2007) IDM at Comment 1.

¹¹⁵ Shanghai Jinneng cites the following cases in support of its argument: *FTMTCs/PRC*, (December 17, 2007), *Pure Magnesium/PRC* (February 9, 2005), *Ironing Tables/PRC* (March 18, 2008), *Woven Electric Blankets/PRC* (July 2, 2010) IDM at Comment 2, *Shrimp/Vietnam* (August 9, 2010) IDM at Comment 1, *Persulfates /PRC* (February 9, 2005) IDM at Comment 1, *Nails/PRC* (July 17, 2010) IDM at Comment 10, *KASR/PRC* (July 24, 2009) IDM at Comment 10, *Polyester Staple Fiber/PRC* (April 19, 2007), *Fence Posts/PRC* (December 4, 2002), *Hand Trucks /PRC*, (May 25, 2010) IDM at Comment 4, *Silicon Metal/PRC* (October 16, 2007) IDM at Comment 3, *Threaded Rod/PRC* (February 27, 2009) IDM at Comment 1, *Circular Welded Line Pipe/PRC* (March 31, 2009) IDM at Comment 13, *Tires/PRC* (July 15, 2008) at Comment 17a, *Seamless Pipe/PRC* (May 12, 2010), *CTL Plate/PRC* (February 24, 2010) IDM at Comment 8, and *Diamond Sawblades/PRC* (May 22, 2006).

- Globe rebuts that the Department should continue to use FACOR. Globe contends the Department should continue to exclude Centom’s financial statements because of subsidies evident in the company’s financial statements.¹¹⁶

Department’s Position: For the *Preliminary Results*, the Department selected financial statements from four Indian surrogate producers (*i.e.*, FACOR, VBC, Sova Sova, and Saturn). Additionally, the Department stated that we did not use the financial statements of Centom placed on the record by Shanghai Jinneng, because of evidence of subsidies.¹¹⁷ After the *Preliminary Results*, parties placed three additional sets of financial statements on the record, from Maithan, Vipra, and Lalwani.

In choosing surrogate financial ratios, it is the Department’s policy to use data from market-economy surrogate companies based on the “specificity, contemporaneity, and quality of the data.”¹¹⁸ It is also the Department’s practice to reject the financial statements of a company that we have reason to believe or suspect may have benefited from countervailable subsidies, particularly when other sufficient, reliable, and representative data are available for calculating surrogate financial ratios.¹¹⁹ The Department has a preference for selecting surrogate value sources that are producers of identical or comparable merchandise, provided that the surrogate data is not distorted or otherwise unreliable.¹²⁰

While the statute does not define “comparable merchandise,” it is the Department’s practice, where appropriate, to apply a three-prong test that considers: (1) physical characteristics; (2) end-uses, and (3) production processes.¹²¹ In the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producer’s experience.¹²² The courts have held that the Department is neither required to “duplicate the exact production experience of the PRC manufacturers,” nor to use “perfectly conforming information,” but rather comparable information.¹²³

Further, in NME cases, it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding, as the Department has no authority to either ask questions or verify the information from the surrogate company.¹²⁴ Because we cannot go behind the financial statements, in determining the appropriateness of including an item in the financial ratio calculations, we look to information within the respective financial statements to determine the possible nature of the activity generating the potential adjustment, to see if a relationship exists between the activity and the principal operations of the company.

¹¹⁶ Globe cites the following cases in support of its argument: *Nails/PRC* (July 17, 2010) IDM at comment 13-15, *KASR/PRC* (July 24, 2009) IDM at Comment 10, *Polyester Staple Fiber/PRC* (April 19, 2007) IDM at Comment 12, *Silicon Metal/PRC* (October 16, 2007) IDM at Comment 1, and *Silicon Metal/PRC* (January 12, 2010) IDM at Comment 4, *Seamless Pipe/PRC* (May 12, 2010).

¹¹⁷ See *Preliminary Results* at 16.

¹¹⁸ See *OCTG/PRC* (April 19, 2010) IDM at Comment 13

¹¹⁹ See *Chlorinated Isos/PRC* (November 17, 2010) IDM at Comment 3.

¹²⁰ See *Cased Pencils/PRC* (July 25, 2002) IDM at Comment 5.

¹²¹ See *Woven Electric Blankets/PRC* (July 2, 2010) IDM at Comment 2.

¹²² See *Rhodia* (CIT 2002).

¹²³ See *id.*

¹²⁴ See *Wooden Bedroom Furniture/PRC* (December 6, 2006) IDM at Comment 5.

After reviewing the financial statements on the record of this review, we have determined that those of FACOR, VBC, Sova, Saturn, Vipra, and Lalwani represent the best available information with which to calculate surrogate financial ratios for the reasons discussed herein. Conversely, we have excluded the financial statements of Centom and Maithan. Shanghai Jinneng and Globe have raised arguments regarding the appropriate surrogate financial statements with which to value manufacturing overhead, SG&A expenses, and profit, and the Department has evaluated the appropriateness of using each of the financial statements addressed by the parties for the final results, below.

First, with respect to the financial statements of Maithan, we have determined not to use these statements for the final results because the company's financial data show a negative SG&A expense resulting from an offset of significant interest income. Specifically, Maithan received "other income" which it described as interest income from an inter-corporate loan to an affiliate.¹²⁵ This income is larger than all of Maithan's SG&A expenses, collectively.¹²⁶ The Department has, in the past, excluded financial statements from its calculations when it has determined that profit ratios are negative or zero,¹²⁷ and we find this situation comparable. We find that the financial statements of a company with a negative SG&A ratio are less representative of the industry as a whole because the SG&A ratio, by definition, represents expenses (*i.e.*, a positive number). Therefore, we find that it would not be appropriate to rely on a company that has a net negative SG&A expense. Because there are several other usable financial statements on the record, and because Maithan's SG&A ratio is negative after accounting for its "other income," we find Maithan's financial statement to be less representative, and have determined to exclude it from our financial ratio calculations. Moreover, because we have determined not to use Maithan's financial statements for the final results, we have not addressed Globe's argument concerning excluding Maithan's loan interest from SG&A.

Second, with respect to Centom, we have continued to exclude its statements from our calculation of financial ratios because we have reason to suspect that Centom may have received a countervailable subsidy.¹²⁸ Centom's statements contain references to the company's entitlement to subsidies from a program called "West Bengal Incentive Scheme 2000." This appears to be a reference to the "West Bengal incentive schemes 1999/1993" that the Department has found to be countervailable.¹²⁹ This scheme began in the year 2000 and the Department has noted that the previous iterations of the scheme (*i.e.*, 1993 and 1999) were all countervailable.¹³⁰ While Centom's financial statements do not appear to detail actual receipt of a benefit from this scheme, the statements explain that some of the subsidy benefits are not accounted for in the year

¹²⁵ See Globe's Surrogate Value Submission (August 4, 2010) at exhibit 3, schedule 18, note E.

¹²⁶ See Globe's Surrogate Value Submission (August 4, 2010) at exhibit 3, page 1.

¹²⁷ See *Shrimp/Vietnam* (September 12, 2007) IDM at Comment 2B.

¹²⁸ See, e.g., *Chlorinated Isos/PRC* (November 17, 2010) IDM at Comment 3. See also *Tires/PRC* (July 15, 2008) IDM at Comment 17A; *Warmwater Shrimp/PRC* (September 12, 2007) at Comment 2, citing *Crawfish/PRC* (April 17, 2007) IDM at Comment 1; see also H.R. Conf. Rep. No. 576, 2d Sess., Vol. 4, 590 (1988) ("Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices").

¹²⁹ See *PET Resin/India* (August 30, 2004) at D, unchanged in final determination *PET Resin/India* (March 21, 2005).

¹³⁰ See *id.*

of receipt, suggesting that Centom may have received benefits that it would then detail in a subsequent financial statement.¹³¹ Therefore, we have reason to believe or suspect that Centom received a countervailable subsidy, which means that Centom's financial statements are less likely to represent the financial experience of a manufacturer of silicon metal than the ratios derived from financial statements that do not contain evidence of subsidization.

While Shanghai Jinneng cited *Tires/PRC (July 15, 2008)* in its argument for accepting Centom's statements, that case is readily distinguishable. In the instant case, the auditor's notes explicitly state that Centom was registered and entitled to a host of subsidies under the incentive scheme, some of which would not be accounted for in the year of receipt.¹³² In *Tires/PRC (July 15, 2008)*, the financial statements contained only a single, zero balance line item reference to the subsidy at issue.¹³³ Here, we have substantially more reason to suspect that Centom may have benefitted from a countervailable subsidy.

Third, with respect to Vipra, we have accepted these statements for use in calculating surrogate financial ratios. While Shanghai Jinneng has argued that 1) Vipra's financial statements are incomplete and 2) Vipra is not a producer of comparable merchandise, we find no evidence to support either argument. First, Vipra's financial statements contain all the schedules referenced therein.¹³⁴ Moreover, we do not find that Vipra's financial statements are incomplete simply because they do not break out raw material consumption and finished goods production. In fact, Vipra's statements contain sufficient detail to classify raw materials costs, as well as overhead, SG&A, and profit.¹³⁵ Second, record evidence indicates that Vipra is a producer of ferromanganese. Vipra is registered with the Indian Ministry of Commerce as a ferromanganese producer.¹³⁶ It consumed raw materials, and depreciated plant and machinery equipment.¹³⁷ The company indicated that a principle product it produces is ferromanganese.¹³⁸ Ferromanganese is a "bulk ferroalloy" which is similar to silicomanganese. In fact, record evidence indicates that silicomanganese is a type of ferromanganese.¹³⁹ Therefore, because Vipra is a producer of comparable merchandise and its statements are complete, contemporaneous, and free of evidence of subsidies, we have used Vipra's statements for the final results.

Fourth, with respect to FACOR's financial statements, we have made no change to our finding in the *Preliminary Results* that FACOR is a producer of comparable merchandise and is a separate company from its affiliated supplier. FACOR produces ferrochrome, a type of ferroalloy. Other types of ferroalloys include ferromanganese and silicomanganese, which Shanghai Jinneng

¹³¹ See Shanghai Jinneng's Comments on the Selection of a Surrogate Country (January 13, 2010) at Exhibit 10, schedule 15, Note E "Subsidy."

¹³² See *id.*

¹³³ See *Tires/PRC (July 15, 2008)* at Comment 17A.

¹³⁴ See Globe's Surrogate Value Submission (August 4, 2010) at Exhibit 3.

¹³⁵ See Globe's Surrogate Value Submission (August 4, 2010) at Exhibit 3, page 1.

¹³⁶ See Globe's Surrogate Value Submission (August 4, 2010) at Exhibit 3, annexure to notes on account no. 8, section V "generic names of three principal products/services of the company."

¹³⁷ See Globe's Surrogate Value Submission (August 4, 2010) at Exhibit 3, schedule 5, "fixed assets."

¹³⁸ See Globe's Surrogate Value Submission (August 4, 2010) at Exhibit 3, annexure to notes on account no. 8, section V "generic names of three principal products/services of the company."

¹³⁹ See Globe's Rebuttal Surrogate Value Submission (August 16, 2010) at page 57. See also, Shanghai Jinneng's Comments on the Selection of a Surrogate Country (January 13, 2010) at Exhibit 1, page 1.

produces.¹⁴⁰ We find nothing on the record to indicate that ferrochrome substantially differs from silicon metal in either its physical characteristics or its production process.

Shanghai Jinneng contends, however, that ferrochrome is not comparable to silicon metal because it has 1) a different main input 2) different end uses, and 3) distorted costs in India. As support for these arguments, Shanghai Jinneng cites certain cases, including *Nails/PRC (July 17, 2010)*. These cases are not applicable to the circumstances present here. Specifically, the cases cited by Shanghai Jinneng, including *Nails/PRC (July 17, 2010)*, were examples where the Department excluded a financial statement because the surrogate producer's raw material inputs (as identified within the surrogate financial statement) were evidence of a different production process.¹⁴¹ Here, in contrast, both ferrochrome, made from chrome, and ferrosilicon, made from silicon, are produced using the same process, so the material inputs are not evidence of a different production process. In fact, record evidence cited by both Globe and Shanghai Jinneng indicates that the production processes are the same. Specifically, both products are produced using a "submerged arc furnace process...by which metal is smelted in a refractory-lined cup shaped steel shell by submerged graphite electrodes."¹⁴² With regard to the end use of the two products, we find that they are comparable. Both products are used as alloying agents,¹⁴³ designed to impart certain characteristics into the metals they join. Finally, while Shanghai Jinneng contends that the Indian Government's intervention in the marketplace distorted the price of some of FACOR's inputs, we find this argument speculative. Our review of the record has yielded no evidence that FACOR actually received any countervailable subsidy from the Government of India with respect to ferrochrome.

Moreover, we disagree with Shanghai Jinneng that a collapsing analysis is warranted with respect to FACOR and its affiliates. FACOR is a surrogate producer, not a respondent in this administrative review. The Department conducts collapsing analyses under section 351.401(f) of the Department's regulations with respect to respondents and their affiliated producers/exporters.¹⁴⁴ Such an analysis occurs based on a thorough examination of the parties' questionnaire responses,¹⁴⁵ and is motivated by a concern that respondents may manipulate prices or production in the context of the dumping law which the Department administers. Because of this concern, we examine the question of whether companies "constitute separate manufacturers or exporters *for purposes of the dumping law*" (emphasis added).¹⁴⁶ As FACOR is not a respondent in this administrative review, we have neither the required evidence, nor the statutory directive to evaluate its corporate affiliations as they may or may not relate to the antidumping law. Consequently, we have not conducted a collapsing analysis with respect to FACOR.

¹⁴⁰ See *id.*

¹⁴¹ For example, in *Polyester Staple Fiber/PRC (April 19, 2007)* IDM at comment 12, the Department stated that it excluded a surrogate producer because its main input evidenced a "difference in production processes."

¹⁴² See Globe's Rebuttal Surrogate Value Submission (August 16, 2010) at Exhibit 3c, Table 2.2-1, listing ferrosilicon, silicon metal, and ferrochrome as products of a "submerged arc furnace process...by which metal is smelted in a refractory-lined cup shaped steel shell by submerged graphite electrodes."

¹⁴³ See Shanghai Jinneng's Comments on the Selection of a Surrogate Country (January 13, 2010) at Exhibit 1.

¹⁴⁴ See, e.g., *Seamless Pipe/PRC (May 12, 2010)*.

¹⁴⁵ See *id.*

¹⁴⁶ See *Granite/Spain (June 28, 1988)*.

As we have found no evidence that FACOR is not a producer of comparable merchandise or is at a different level of integration than Shanghai Jinneng, we continue to find the company's financial statements suitable for use in calculating surrogate financial ratios.

Finally, with respect to Lalwani, an Indian producer of silicomanganese, we have used its financial statements for the final results because we find them complete, contemporaneous, and free of evidence of subsidies.

Comment 10: Adjustments to Financial Ratios

- Shanghai Jinneng argues that the Department should make the following adjustments in regards to Saturn's surrogate financial ratios: 1) use "Net Profit/Loss" rather than "Profit Before Depreciation And Tax" to calculate the profit ratio; 2) exclude "Profe Fee & Other Serv. Export" expense from the SG&A ratio; and 3) exclude "freight outward" from the overhead ratio.¹⁴⁷ Additionally, while Shanghai Jinneng argues that the Department should not use FACOR's financial statement, it argues that the Department should exclude "transport expense" from FACOR's SG&A ratio if the Department relies upon FACOR for the final results.
- Globe argues that the Department should not make the recommended adjustment with respect to FACOR's financial ratios.

Department's Position: For the final results, we adjusted our calculation of Saturn's profit ratio. Specifically, we have corrected the "profit before tax" line item listed in our calculation of Saturn's profit ratio to include depreciation, consistent with the calculation of the financial ratios for other surrogate producers.¹⁴⁸

We disagree with Shanghai Jinneng's contention that "profe fee & other serv. export" necessarily reflect export related expenses that should be excluded from Saturn's SG&A ratio, consistent with the Department's treatment of freight expenses in a manner that avoids double counting.¹⁴⁹ We find that there is no indication in Saturn's financial statements that this expense was related to export-related expenses that the Department accounts for elsewhere in its calculations. Because we do not go behind the financial statements in determining the appropriateness of including an item in the financial ratio calculation, we seek information within the financial statement to determine the nature of the activity generating the potential adjustment, to see if a relationship exists between the activity and the principal operations of the company.¹⁵⁰ In this instance, "profe fee & other serv. export" contains no explanatory notes or footnotes attached to this expense item which would indicate what types of expenses or fees are included within this line item. These circumstances are readily distinguishable from those found in *Bulk Aspirin/PRC* (February 10, 2003) concerning an excluded line item called "brokerage on sales," which the Department excluded from the SG&A ratio calculation because it was able to discern that the

¹⁴⁷ Shanghai Jinneng cites the following cases in support of its argument: *Woven Electric Blankets/PRC* (July 2, 2010) IDM at Comment 4, *LWTP/PRC* (October 2, 2008), and *Bulk Aspirin/PRC* (February 10, 2003).

¹⁴⁸ See Prelim FOP memo (July 7, 2010) at Exhibit 1.

¹⁴⁹ Citing *Bulk Aspirin/PRC* (February 10, 2003).

¹⁵⁰ See, e.g., *Chlorinated Isos/PRC* (November 17, 2010) IDM at Comment 6.

line item reflected an expense, *i.e.*, brokerage, that the Department accounts for elsewhere in its calculations.¹⁵¹ In this case there is no clear detail in Saturn's financial statements that the costs associated with "profe fee & other serv. export" can be traced to export-related expenses that the Department accounts for elsewhere in its calculations, and we have no reason to believe that including it would result in double counting any such expenses. Therefore, in accordance with the Department's practice,¹⁵² we find that this expense should be reflected in Saturn's surrogate SG&A expense ratio.

We also disagree with Shanghai Jinneng's contention that the Department should exclude "freight outward" expenses from Saturn's and "transport expenses" from FACOR's surrogate financial ratios. The Department normally excludes export related freight expenses from SG&A because those costs are accounted for elsewhere in its calculation.

However, with respect to Saturn, we find that the Saturn financial statements already identify a specific line item for export related freight expenses. Specifically, Saturn identifies a line item expense for "freight on export."¹⁵³ The Department found that this line item represents export related freight expenses and excluded it from the calculation of the surrogate financial ratios in the *Preliminary Results*. Because Saturn specifically identified export freight expenses as a separate line item in its financial statements we have no basis to conclude that "freight outward" represents export related freight expenses. Accordingly, we have continued to include "freight outward" expenses in the calculation of the financial ratios.

Similarly, with respect to FACOR, its financial statements identify a line item for "freight, shipment and sales expense."¹⁵⁴ The Department found that this line item, because it references freight and shipment costs, represents export related freight expenses and excluded it from the calculation of the surrogate financial ratios in the *Preliminary Results*. No party challenged the exclusion of these expenses in the *Preliminary Results*. Because FACOR specifically identified these expenses as a separate line item in its financial statements we have no basis to conclude that "transport expense" represents export related freight expenses. Accordingly, we have continued to include "transport" expenses in the calculation of the financial ratios.

¹⁵¹ See *Bulk Aspirin/PRC* (February 10, 2003) IDM at comment 5.

¹⁵² See, e.g., *Activated Carbon/PRC* (November 17, 2010) at Comment 4e.

¹⁵³ See Shanghai Jinneng's Comments on the Selection of a Surrogate Country (January 13, 2010) at Exhibit 10.

¹⁵⁴ See Globe's Surrogate Value Submission (January 13, 2010) at Exhibit 10.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

AGREE _____

DISAGREE _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

Attachment I

<i>Antidumping/Countervailing Duty Proceeding Federal Register Cite Table</i>	
<i>All cites in this table are listed alphabetically by short cite</i>	
Case: Short Cite	Case: Full Cite
<i>Activated Carbon/PRC (November 17, 2010)</i>	<i>First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 70208 (November 17, 2010).</i>
<i>Antidumping Methodologies (March 21, 2007)</i>	<i>Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates, 72 FR 13246, Fn. 2 (March 21, 2007).</i>
<i>Antidumping Methodologies (October 19, 2006)</i>	<i>Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, (October 19, 2006)</i>
<i>Brake Rotors/PRC (December 29, 1999)</i>	<i>Brake Rotors From the People's Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review 64 FR 73007 (December 29, 1999)</i>
<i>Bulk Aspirin/PRC (February 10, 2003)</i>	<i>Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Review, 68 FR 6710 (February 10, 2003).</i>
<i>Calculation Methodology (June 30, 2005)</i>	<i>Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005)</i>
<i>Carbon Steel Flat Products/France (April 6, 2006)</i>	<i>Certain Corrosion-Resistant Carbon Steel Flat Products from France: Notice of Rescission of Antidumping Duty Administrative Review, 71 FR 16553 (April 6, 2006)</i>
<i>Carrier Bags/PRC (June 18, 2004)</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004).</i>
<i>Cased Pencils/PRC (July 25, 2002)</i>	<i>Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China, 67 FR 48612 (July 25, 2002).</i>
<i>Cased Pencils/PRC (July 7, 2010)</i>	<i>Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 38980 (July 7, 2010).</i>
<i>Chlorinated Isos/PRC (November 17, 2010)</i>	<i>Chlorinated Isocyanurates from the People's Republic of China: Final Results of 2008-2009 Antidumping Duty Administrative Review, 75 FR 70212 (November 17, 2010).</i>
<i>Circular Welded Austenitic Pipe/PRC (September 5, 2008)</i>	<i>Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 51788 (September 5, 2008),</i>
<i>Circular Welded Line Pipe/PRC (March 31, 2009)</i>	<i>Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009)</i>
<i>Citric Acid/PRC (April 13, 2009)</i>	<i>Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009)</i>

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table

All cites in this table are listed alphabetically by short cite

Case: Short Cite	Case: Full Cite
<i>Crawfish/PRC (April 22, 2002)</i>	<i>Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review 67 FR 19546 (April 22, 2002)</i>
<i>CTL Plate/PRC (February 24, 2010)</i>	<i>Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 8301 (February 24, 2010)</i>
<i>Diamond Sawblades/PRC (May 22, 2006)</i>	<i>Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006)</i>
<i>Fence Posts/PRC (December 4, 2002)</i>	<i>Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Lawn and Garden Steel Fence Posts From the People's Republic of China, 67 FR 72141 (December 4, 2002)</i>
<i>FMTCs/PRC (December 17, 2007)</i>	<i>Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 71355 (December 17, 2007)</i>
<i>FSVs/PRC (March 13,2009)</i>	<i>Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13,2009)</i>
<i>Garlic/PRC (October 4, 2010)</i>	<i>Fresh Garlic From the People's Republic of China: Final Results of New Shipper Review, 75 FR 61130 (October 4, 2010)</i>
<i>Glycine/PRC (August 12, 2005)</i>	<i>Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005)</i>
<i>Glycine/PRC (January 31, 2001)</i>	<i>Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review, 66 FR 8383 (January 31, 2001)</i>
<i>Granite/Spain (June 28, 1988)</i>	<i>Final Determination of Sales at Less Than Fair Value; Certain Granite Products from Spain, 53 FR 24335, 24337 (June 28, 1988)</i>
<i>KASR/PRC (July 24, 2009)</i>	<i>Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009)</i>
<i>LWTP/PRC (October 2, 2008)</i>	<i>Lightweight Thermal Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (Oct 2, 2008)</i>
<i>Mushrooms/PRC (April 23, 2008)</i>	<i>Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review 73 FR 21904 (April 23, 2008)</i>
<i>Mushrooms/PRC (June 11, 2001)</i>	<i>Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001)</i>
<i>Nails/PRC (June 16, 2008)</i>	<i>Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73</i>

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All cites in this table are listed alphabetically by short cite

Case: Short Cite	Case: Full Cite
	FR 33977 (June 16, 2008)
<i>Nails/PRC (July 17, 2010)</i>	<i>Certain Steel Nails from the People's Republic of China: Final Results of the First New Shipper Review, 75 FR 34425 (June 17, 2010)</i>
<i>OCTG/PRC (April 19, 2010)</i>	<i>Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010)</i>
<i>Persulfates/PRC (February 10, 2003)</i>	<i>Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 6712 (February 10, 2003)</i>
<i>PET Resin/India (August 30, 2004)</i>	<i>Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate ("PET") Resin From India, 69 FR 52866, (August 30, 2004)</i>
<i>PET Resin/India (March 21, 2005)</i>	<i>Bottle-Grade Polyethylene Terephthalate (PET) Resin Final Affirmative Countervailing Duty Determination 70 FR 13460 (March 21, 2005)</i>
<i>Polyester Staple Fiber/PRC (April 19, 2007)</i>	<i>Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007)</i>
<i>Polyester Staple Fiber/PRC (July 14, 2010)</i>	<i>Certain Polyester Staple Fiber From the People's Republic of China: Notice of Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review, 75 FR 40777 (July 14, 2010)</i>
<i>Preliminary Results</i>	<i>Silicon Metal from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review, 75 FR 41143 (July 15, 2010)</i>
<i>Pure Magnesium (December 23, 2010)</i>	<i>Pure Magnesium From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010)</i>
<i>Seamless Pipe/PRC (May 12, 2010)</i>	<i>Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 26716, 26718-19 (May 12, 2010)</i>
<i>Shrimp/India (July 15, 2008)</i>	<i>Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review 73 FR 40492, (July 15, 2008)</i>
<i>Shrimp/PRC (August 13, 2010)</i>	<i>Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010)</i>
<i>Shrimp/Thailand (August 29, 2008)</i>	<i>Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 50933 (August 29, 2008)</i>

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All cites in this table are listed alphabetically by short cite

Case: Short Cite	Case: Full Cite
<i>Shrimp/Vietnam (August 9, 2010)</i>	<i>Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010)</i>
<i>Shrimp/Vietnam (September 12, 2007)</i>	<i>Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007)</i>
<i>Shrimp/Vietnam (September 15, 2009)</i>	<i>Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 74 FR 47191(September 15, 2009)</i>
<i>Silicon Metal/PRC (January 12, 2010)</i>	<i>Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 1592 (January 12, 2010)</i>
<i>Silicon Metal/PRC (October 16, 2007)</i>	<i>Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews, 72 FR 58641 (October 16, 2007)</i>
<i>Steel Plate/Romania (January 12, 2000)</i>	<i>Certain Cut-to-Length Carbon Steel Plate From Romania: Final Results of Antidumping Duty Administrative Review, 65 FR 1847 (January 12, 2000)</i>
<i>Steel Rod/Taiwan (October 26, 2001)</i>	<i>Stainless Steel Wire Rod From Taiwan; Final Results of Antidumping Duty Administrative Review, 66 FR 52587 (October 16, 2001)</i>
<i>Tires/PRC (July 15, 2008)</i>	<i>Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008)</i>
<i>Titanium Sponge/Russia (November 15, 1998)</i>	<i>Titanium Sponge from the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review, 61 FR 58525 (November 15, 1998),</i>
<i>TRBs/PRC (November 15, 2001)</i>	<i>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 57420 (November 15, 2001)</i>
<i>Wooden Bedroom Furniture/PRC (December 6, 2006)</i>	<i>Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews, 71 FR 70739 (December 6, 2006)</i>
<i>Woven Electric Blankets/PRC (July 2, 2010)</i>	<i>Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 38459 (July 2, 2010)</i>

Attachment II

<i>Short Cite Table For Court Cases</i>	
<i>All cites in this table are listed alphabetically by short cite</i>	
Court Cases: Short Cite	Court Cases: Full Cite
<i>Dorbest (Fed. Cir. 2010)</i>	<i>Dorbest Ltd. v. United States</i> , 604 F. 3d 1363, 1372 (Fed. Cir. 2010)
<i>Globe Metallurgical (CIT 2008)</i>	<i>Globe Metallurgical Inc. v. United States</i> , Consol. Court No. 07-00386, slip op. 08-105 at 14 (CIT 2008)
<i>Guangdong Chemicals (CIT 2006)</i>	<i>Guangdong Chemicals Import & Export Corp. v United States</i> , 460 F. Supp. 2d 1365 (CIT 2006)
<i>Hebei Metals (CIT 2005)</i>	<i>Hebei Metals & Minerals Imp. & Exp. Corp. v. United States</i> , 29 CIT 288, 295-96, 366 F. Supp. 2d 1264, 1270, 1273 (CIT 2005)
<i>Huvis (CIT 2007)</i>	<i>Huvis Corp v. United States</i> , 31 CIT 1803 (CIT 2007)
<i>Hynix (Fed. Cir. 2005)</i>	<i>Hynix</i> , 424 F.3d at 1368 (Fed. Cir. 2005)
<i>Magnesium Corp. (Fed. Cir. 1999)</i>	<i>Magnesium Corp. v. United States</i> , 166 F.3d 1364 (Fed. Cir. 1999)
<i>Rhodia (CIT 2002)</i>	<i>Rhodia, Inc. v. United States</i> , 240 F. Supp. 2d 1247 (CIT 2002)
<i>Shandong Huarong (CIT 2001)</i>	<i>Shandong Huarong Gen. Corp. v. United States</i> , 159 F. Supp. 2d 714,719 (CIT 2001)
<i>QVD Food (CIT 2010)</i>	<i>QVD Food Co. v. United States</i> , 721 F. Supp. 2d 1311 (CIT 2010)

Attachment III

<i>Short Cite Table For Memorandum/Reports & Miscellaneous</i>	
<i>All cites in this table are listed alphabetically by short cite</i>	
Memorandum: Short Cite	Memorandum: Full Cite
Globe's case brief (August 23, 2010)	Globe's case brief, dated August 23, 2010.
Globe's rebuttal brief (September 7, 2010)	Globe's rebuttal brief, dated September 7, 2010.
Globe's Rebuttal Comments on the Valuation of Coal (April 8, 2010)	Letter titled "Silicon Metal from the People's Republic of China; 2008-09 Administrative Review; Globe Rebuttal Comments and Rebuttal Factual Information on the Valuation of Coal" dated April 8, 2010.
Globe's Rebuttal Surrogate Value Submission (August 16, 2010)	Letter titled "Silicon Metal From the People's Republic of China; 2008-09 Administrative Review; Submission of Factual Information to Rebut, Clarify, or Correct Surrogate Value Information Submitted by Shanghai Jinneng International Trade Co., Ltd." dated (August 16, 2010).
Globe's Rebuttal Surrogate Value Submission (January 29, 2010)	Letter titled "Silicon Metal from the People's Republic of China; 2008-09 Administrative Review; Submission of Factual Information to Rebut, Clarify, or Correct Surrogate Value Information Submitted by Shanghai Jinneng International Trade Co., Ltd." dated January 29, 2010.
Globe's Surrogate Value Submission (August 4, 2010)	Letter titled "Silicon Metal From the People's Republic of China; 2008-09 Administrative Review; Submission of Surrogate Values," dated August 4, 2010.
Globe's Surrogate Value Submission (January 13, 2010)	Letter titled "Silicon Metal From the People's Republic of China; 2008-09 Administrative Review; Submission of Surrogate Value Data," dated January 13, 2010.
Prelim Analysis Memo (July 7, 2010)	Letter titled "Silicon Metal from the People's Republic of China – Preliminary Analysis Memorandum for Shanghai Jinneng International Trade Co., Ltd.," dated July 7, 2010.
<i>Remand Redetermination</i>	<i>Final Results of Redetermination Pursuant to Court Remand</i> , Court No. 07-00386, at 3 (February 2, 2009). Available at http://ia.ita.doc.gov/remands/08-105.pdf
Shanghai Jinneng's case brief (August 23, 2010)	Shanghai Jinneng's case brief, dated August 23, 2010.
Shanghai Jinneng's Comments on the Selection of a Surrogate Country (January 13, 2010)	Letter titled "Silicon Metal from the People's Republic of China" dated January 13, 2010.
Shanghai Jinneng's Comments on the Valuation of Coal (June 2, 2010)	Letter titled "Shanghai Jinneng's Comments in Response to Petitioner's April 8, 2010 Submission on the Valuation of Coal" dated June 2, 2010.

Short Cite Table For Memorandum/Reports & Miscellaneous

All cites in this table are listed alphabetically by short cite

Memorandum: Short Cite	Memorandum: Full Cite
Shanghai Jinneng’s Final Analysis Memo (September 20, 2010)	“APP-China’s Final Analysis Memo,” dated September 20, 2010.
Shanghai Jinneng’s Rebuttal Brief (September 3, 2010)	Shanghai Jinneng’s rebuttal brief, dated September 3, 2010.
Shanghai Jinneng’s Rebuttal Comments on Factors of Production (January 29, 2010)	Letter titled “Silicon Metal from the People’s Republic of China” dated January 29, 2010.
Shanghai Jinneng’s Rebuttal Surrogate Value Submission (August 16, 2010)	Letter titled “Silicon Metal from the People’s Republic of China” dated August 16, 2010.
Shanghai Jinneng’s Response to Question 12 of Supplemental Section D Questionnaire Response (December 23, 2009)	Letter titled “Silicon Metal from the People’s Republic of China: Response to Question 12 of Shanghai Jinneng Supplemental Section D Questionnaire Response” dated December 23, 2009.
Shanghai Jinneng’s Response to Supplemental Questionnaire Concerning Electricity Usage (June 7, 2010)	Letter titled “Silicon Metal from the People’s Republic of China: Shanghai Jinneng International Trade Co., Ltd. Response to Supplemental Questionnaire Concerning Electricity Usage” dated June 7, 2010.
Shanghai Jinneng’s Section C Response (November 2, 2009)	Letter titled “Silicon Metal from the People’s Republic of China: Shanghai Jinneng International Trade Co., Ltd. Section C Questionnaire Response” dated November 2, 2009.
Shanghai Jinneng’s Section D Response (November 2, 2009)	Letter titled “Silicon Metal from the People’s Republic of China: Shanghai Jinneng International Trade Co., Ltd. Section D Questionnaire Response,” dated November 2, 2009.
Shanghai Jinneng’s Supplemental Section A Response (November 20, 2009)	Letter titled “Silicon Metal from the People’s Republic of China: Shanghai Jinneng’s Supplemental Section A Questionnaire Response,” dated November 20, 2009.
Shanghai Jinneng’s Supplemental Section C Response (December 1, 2009)	Letter titled “Silicon Metal from the People’s Republic of China” dated December 1, 2009.
Shanghai Jinneng’s Supplemental Section D Response (January 8, 2010)	Letter titled “Silicon Metal from the People’s Republic of China: Supplemental Section D Questionnaire Response - Shanghai Jinneng International Trade Co., Ltd.” dated January 8, 2010.
Shanghai Jinneng’s Supplemental Section D Response (May 28, 2010)	Letter titled “Silicon Metal from the People’s Republic of China: Supplemental Section D Questionnaire Response – Shanghai Jinneng International Trade Co., Ltd.” dated May 28, 2010.

Short Cite Table For Memorandum/Reports & Miscellaneous

All cites in this table are listed alphabetically by short cite

Memorandum: Short Cite	Memorandum: Full Cite
Shanghai Jinneng's Supplemental Sections C and D Response (March 29, 2010)	Letter titled "Silicon Metal from the People's Republic of China: Shanghai Jinneng's Supplemental Sections C and D Questionnaire Response" dated March 29, 2010.
Shanghai Jinneng's Surrogate Value Submission (August 4, 2010)	Letter titled "Silicon Metal from the People's Republic of China" dated August 4, 2010.
Surrogate Country Memo (October 28, 2009)	Memorandum to the File titled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Silicon Metal (Silicon Metal) from the People's Republic of China," dated October 28, 2009.
Wage Rate Memo (November 18, 2010)	Memorandum to the File from Demitri Kalogeropoulos titled "2008-2009 Review of the Antidumping Duty Order on Silicon Metal from the People's Republic of China: Industry Specific Wage Rate Selection" dated November 18, 2010.