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March 22, 2006

**MEMORANDUM TO:** David M. Spooner  
Assistant Secretary  
for Import Administration

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Issues and Decision Memorandum for the Less-Than-Fair-Value  
Investigation of Certain Artist Canvas from the People's Republic  
of China

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**SUMMARY**

We have analyzed the case and rebuttal briefs of interested parties in the antidumping duty investigation of certain artist canvas from the People's Republic of China ("PRC"). The period of investigation ("POI") covers July 1, 2004, through December 31, 2004. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments and rebuttal comments by parties:

## **I. GENERAL ISSUES**

- Comment 1: Country of Origin of Canvas Cut and Stretched in the PRC from Bulk Roll Canvas Woven and Primed in India
- Comment 2: Surrogate Value for Brokerage and Handling
- Comment 3: Surrogate Financial Ratios
- Comment 4: Surrogate Value for Canvas
- Comment 5: Separate Rate for Hangzhou Foreign Economic Relations & Trade Service Co., Ltd.

## **II. MANDATORY RESPONDENTS AND SEPARATE RATE APPLICANTS-COMPANY-SPECIFIC ISSUES**

### **A. Wuxi Phoenix Artist Materials Co. Ltd.**

- Comment 6: Supplier Distances

### **B. Ningbo Conda Import & Export Co., Ltd.**

- Comment 7: Unreported U.S. Sales
- Comment 8: Unreported Factors of Production
- Comment 9: Wuxi Silver Eagle's Unverified Factors of Production
- Comment 10: Constructed Export Price Deduction of U.S. Duties
- Comment 11: Application of Adverse Facts Available to Ningbo Conda
- Comment 12: Market Economy Purchases
- Comment 13: Business Proprietary Treatment of Ningbo Conda's U.S. Affiliate

## **BACKGROUND**

The Department of Commerce ("Department") published its preliminary determination of sales at less than fair value ("LTFV") on November 7, 2005. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Artist Canvas from the People's Republic of China, 70 FR 67412 (November 7, 2005) ("Preliminary Determination"). We invited parties to comment on our Preliminary Determination, verification reports, and Scope Decision memorandum. We received comments from both mandatory respondents Wuxi Phoenix Artist Materials Co. Ltd. ("Phoenix Materials") and Ningbo Conda Import & Export Co., Ltd. ("Ningbo Conda") (collectively, "Respondents"); and from the following interested parties: Michaels Stores, Inc., Aaron Brothers, MacPhersons, ColArt Americas, Inc., Dick Blick Art Materials, Hobby Lobby Stores, Inc., Jerry's Artarama, Jo-Ann's

Stores, Inc., and Hangzhou Foreign Economic Relations & Trade Service Co., Ltd. (“HFERTS”) (collectively, “Coalition”); and from the Petitioner, Tara Materials, Inc. (“Petitioner”). We also received rebuttal comments from Respondents, the Coalition, Design Ideas, Ltd. (“Design Ideas”), and the Petitioner.

In addition to this Issues and Decision Memorandum, the Department has prepared a detailed analysis memorandum for Phoenix Materials, the single mandatory respondent for which it calculated a margin, a facts available memorandum for Ningbo Conda and a corroboration memorandum regarding the rate used as adverse facts available (“AFA”) for this final determination. All such memoranda are dated March 22, 2006, and can be found on the record of this investigation located in the Central Records Unit.

## **DISCUSSION OF THE ISSUES**

### **I. General Issues**

#### **Comment 1: Country of Origin of Canvas Cut and Stretched in the PRC from bulk Roll Canvas Woven and Primed in India**

On February 17, 2006, the Department issued a preliminary decision finding that artist canvas exported by HFERTS and produced using canvas woven and primed in India is of Indian origin, and therefore, exports of such products to the United States are not subject to the investigation covering artist canvas from the PRC. See Preliminary Decision Regarding the Country of Origin of Artist Canvas Exported by Hangzhou Foreign Economic Relations & Trade Service Co., Ltd., - Certain Artist Canvas from the People’s Republic of China Memorandum from Jon Freed, Case Analyst, to Wendy Frankel, Director, dated February 17, 2006 (“Preliminary C/O Scope Decision”).

Petitioner contends that the Department’s Preliminary C/O Scope Decision is unlawful and failed to consider the “totality of the circumstances” of HFERTS’ production. Specifically, the Petitioner argues that the Department failed to consider the substantial value added by the manufacturing operations in the PRC and the possible wholesale circumvention of any antidumping order, which would deny the domestic industry relief. Furthermore, Petitioner states that the Preliminary C/O Scope Decision’s reliance on the U.S. Customs and Border Protection’s (“CBP”) ruling is legally flawed. Therefore, Petitioner contends that the Department’s Preliminary C/O Scope Decision is unsupported by record evidence and should be reversed.

Petitioner argues that the four factors<sup>1</sup> the Department used in the Preliminary C/O Scope

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<sup>1</sup> 1) Whether the processed downstream product falls into a different class or kind of product when compared to the upstream product; 2) whether the essential component of the merchandise is substantially transformed in the country

Decision do not conform with, nor do they reflect, all the specific factors the Department has applied in previous substantial transformation decisions. In particular, Petitioner argues that the Department failed to consider whether its country-of-origin determination would result in the circumvention of any order. See Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea, 69 FR 17645, 17647 (April 5, 2004) (“TTR from Korea”) (citing circumvention as a factor that the Department considers in its substantial transformation analysis); Final Determination of Sales At Less Than Fair Value: Wax and Wax/Resin Transfer Ribbons from France, 69 FR 10674 (March 8, 2004); see also E.I. Dupont De Nemours & Company v. United States, 8 F. Supp. 2d 854, 858 (CIT 1998) (“Dupont”) (stating that the substantial transformation analysis “properly guards against circumvention of existing orders”). Petitioner also alleges that the Preliminary C/O Scope Decision nullifies any possible antidumping duty order because any Chinese manufacturer would be able to buy primed canvas outside of the PRC and use it to manufacture the finished products in the PRC.

Along with the Department’s failure to consider whether the Preliminary C/O Scope Decision would allow for circumvention of an order, Petitioner argues the Department also failed to consider the extent of the value of the finished artist canvas which is added in the PRC. Petitioner contends that HFERTS’ own information indicates that the value for the primed canvas from India accounts for a very small percentage of the total value of the finished stretched canvas manufactured in the PRC, with the majority of the value occurring from the production process in the PRC. Further, Petitioner disputes the Department’s claim that the Final Results of Antidumping Administrative Review: Stainless Steel Plate in Coils from Belgium, 69 FR 74495 (December 14, 2004), and accompanying Issues and Decision Memorandum (“Plate in Coils from Belgium”), and the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat Rolled Carbon-Quality Steel Products from Taiwan, 65 FR 34658 (May 31, 2000), and accompanying Issues and Decision Memorandum (“Cold-Rolled Steel from Taiwan”), do not support added value as a significant factor to determine whether there was a substantial transformation. Specifically, in Plate in Coils from Belgium, Petitioner argues that there is no evidence that any party ever raised value added as a factor for consideration or put any evidence on the record to support an added-value claim. Furthermore, Petitioner contends that in Cold-Rolled Steel from Taiwan, the Department did consider the value added but deemed it irrelevant because the imported input in question was being dumped and therefore undervalued.

Petitioner also argues that TTR from Korea does not support the Department’s failure to consider the value added in this case because the value added in TTR from Korea was a mere fraction of the total value of the production and thus a small factor in the “totality of circumstances.” Petitioner asserts that the value added in the PRC is not a mere fraction of the value of the canvas but a huge portion of the overall value of finished artist canvas due to labor-intensive manufacturing in the PRC. Petitioner adds that the Department’s failure to consider value added

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of exportation; 3) the extent of processing; and 4) the value added to the product. Preliminary C/O Scope Decision at 9.

in the PRC as part of the “totality of circumstances” is a legal error. Furthermore, Petitioner claims the “labor-driven” speculation in the Department’s Preliminary C/O Scope Decision to give less consideration to value added is unreasonable and unsupported by record evidence.

Petitioner contends that it is clear from the Department’s Preliminary C/O Scope Decision that the Department misunderstood CBP’s analysis in its ruling. See U.S. Customs and Border Protection Ruling NY L89513 (December 27, 2005) (“CBP Ruling”). Petitioner states that the CBP Ruling was issued under special textile rules of origin and is not a ruling based on substantial transformation. Petitioner asserts that the Department’s first error was to characterize the CBP Ruling as involving a substantial transformation analysis. Further, Petitioner states the textile origin statute and regulations establish a series of successive, mechanistic steps to determine origin, which have nothing to do with the substantial transformation analysis that CBP applies to non-textile products. Furthermore, Petitioner maintains that textile articles produced in more than one country require analysis of whether certain operations occurred in one of the countries and only if the analysis fails does CBP consider where the “most important assembly or manufacturing process occurred.”

Petitioner argues the “most important assembly or manufacturing process” standard is not the same as substantial transformation and does not involve analysis of the factors applied in reaching a substantial transformation finding. Petitioner contends the CBP Ruling is a simple application of the “fabric forward rule” because its focus is on the location of the processes that resulted in production of the textile product.

Petitioner claims many of the factual conclusions in the Department’s Preliminary C/O Scope Decision are not based on record evidence and cannot form the basis of a lawful decision. Petitioner argues there is no evidentiary support that the “creation of the primer or gesso requires more sophistication and expertise than that required for assembling artist canvas.” Petitioner argues the production of gesso is not a sophisticated process, the mixing of ingredients requires little (or no) expertise, and there is no evidence Indian gesso and Chinese gesso is comparable. Petitioner points out that some interested parties in this proceeding sell gesso and raw canvas to allow customers to “do it yourself.” Furthermore, Petitioner contends the Department’s Preliminary C/O Scope Decision contains no record evidence concerning the gesso application process.

Petitioner argues that other manufacturing operations are more extensive and sophisticated than mixing gesso and applying it to the canvas. Petitioner urges the Department to issue a final decision that artist canvas products manufactured in the PRC using Indian-origin primed canvas are subject to this investigation.

Petitioner refutes the Coalition’s claim that the Department concluded that the weaving and priming of the canvas in India impart the essential character to the stretched canvas. Petitioner argues that this highlights the Preliminary C/O Scope Decision’s reliance on the CBP Ruling and that the core of the CBP Ruling is an application of the location-based “fabric forward rule” and that the preliminary determination strayed from the “substantial transformation” analysis.

Additionally, Petitioner states that the emphasis on weaving underscores the unlawful analysis of the Preliminary C/O Scope Decision. Citing Verification of the questionnaire responses by Hangzhou Foreign Economic & Trade Service Co., Ltd., for the investigation of Artist Canvas from the People’s Republic of China, dated February 13, 2006, at 6 (“HFERTS Verification Report”), stating that the Department “did not observe production of stretched canvas in process,” Petitioner rebuts the Coalition’s claim that the verification report supports that the primer process requires more sophistication and expertise than that required for assembling artist canvas. Petitioner contends this inaccurate reference to the HFERTS Verification Report underscores the absence of substantial record evidence supporting the Preliminary C/O Scope Decision.

The Coalition and Design Ideas argue that the totality of circumstances led to the correct finding that, despite value added to the artist canvas in the Chinese assembly process, the stretching and framing in the PRC did not alter the essential qualities of the Indian woven and primed canvas.

The Coalition supports the Department’s conclusion in its Preliminary C/O Scope Decision that artist canvas exported by HFERTS and produced using woven and primed canvas in India are not subject to this investigation. The Coalition points out that the Department found, based on the totality of circumstances, that artist canvas exported by HFERTS is not substantially transformed in the PRC through stretching and framing of the canvas. The Coalition supports the Department’s conclusion in the Preliminary C/O Scope Decision that the weaving and priming of the canvas in India impart the essential qualities of the primed artist canvas. This conclusion, the Coalition argues, is bolstered by Petitioner’s own statement from the Petition that “gesso or primer is the most critical element in the manufacturing of artist canvas.” See Antidumping Duty Petition: Certain Artist Canvas from People’s Republic of China at 5 (March 31, 2005) (“Petition”).

The Coalition and Design Ideas cite the CBP Ruling as providing “an independent assessment of the relative importance of various manufacturing steps for artist canvas,” and argue that the legal basis for CBP’s decision is based on global textile rules of origin. They further maintain that the Department properly applied the CBP analysis in the Preliminary C/O Scope Decision in this case by also concluding that the weaving and priming of the canvas in India, rather than the stretching and framing in the PRC impart the essential character to the stretched artist canvas.

The Coalition and Design Ideas rebut Petitioner’s argument that the Department did not fully consider the added value incurred in the PRC. The Coalition and Design Ideas contend that the Department took steps to consider the value added in its Verification Report even though it was not required to do so. Furthermore, the Coalition rebuts Petitioner’s claim that the Department’s reliance on Plate in Coils from Belgium and Cold-Rolled Steel from Taiwan was misplaced. Specifically, the Coalition contends that the Plate in Coils from Belgium Issues and Decision Memorandum at Comment 4, states “the Department disagrees with Petitioner’s analysis that the value-added in Germany should be dispositive.” Similarly, the Coalition argues the Issues and Decision Memorandum in Cold-Rolled Steel from Taiwan at Comment 1 provides “{w}hen an input from country A is further processed in country B, without any change in the class or kind of

merchandise taking place, the Department normally will consider the product exported to the United States as originating in country A.” The Coalition concludes that the Department could not have found a more parallel case to the facts pertaining to the Indian canvas than Cold-Rolled Steel from Taiwan.

Additionally, the Coalition argues that the value added in the PRC is mostly from the labor-intensive processes of constructing the frame and attaching the artist canvas to the frame, both of which are performed mostly by non-skilled labor. The Coalition notes other cases in which the Department gave less consideration to labor-intensive production than to capital-intensive production because labor-intensive production can be easily moved to a country where labor can be hired cheaply. See TTR from Korea, 69 FR at 17647-8. Furthermore, the Coalition contends that the Department correctly found that the creation of the primer requires more sophistication than the assembly of artist canvas.

The Coalition claims that Petitioner’s reference to DuPont overlooks the fact “that the ‘substantial transformation’ rule provides a means for Commerce to carry out its country of origin examination and properly guards against circumvention of existing antidumping orders.” Dupont, 8 F. Supp. 2d at 858. The Coalition further states that in TTR from Korea, the Department mentions that it “has considered several factors in determining whether substantial transformation has taken place, thereby changing a product’s country of origin. These have included . . . the possibility of using the third-country processing as low cost means of circumvention.” See TTR from Korea, 69 FR at 17648. Furthermore, the Coalition contends that Petitioner should not use the allegation of possible circumvention as a pretext for drawing Indian origin products into the scope of this case.

#### **Department Position:**

For the final determination, the Department continues to find that the artist canvas exported by HFERTS and produced using primed and woven canvas from India is of Indian origin, and therefore, exports of such products to the United States are not subject to the investigation covering artist canvas from the PRC.

First, we disagree with Petitioner that the Department failed to consider potential circumvention of a possible order. While the potential for circumvention is an issue that the Department may consider when making a substantial transformation ruling with respect to an existing order, circumvention is not the sole or controlling factor that the Department relies upon. See, e.g., Dupont, 8 F.Supp.2d at 854. In general, circumvention focuses on a change in commercial practice (e.g., moving further processing operations to a third country) after issuance of an antidumping order. In this case, there is no pre-existing order and the party’s commercial practice of sourcing its primed canvas from India and further processing the canvas in the PRC was established prior to the filing of the Petition and the potential issuance of an order.

Additionally, the Department disagrees with Petitioner that the Department failed to consider the added value of the stretching and assembling that occurs in the PRC and Petitioner’s

characterization of the relevance of Plate in Coils from Belgium and Cold-Rolled Steel from Taiwan. The substantial transformation rule provides guidance for determining “whether the processes performed on merchandise in a country are of such significance as to require the resulting merchandise to be considered the product of the country in which the transformation occurred.” Dupont, 8 F. Supp. 2d at 858 (citing Smith Corona Corp. v. United States, 811 F.Supp. 692, 695 (CIT 1993) (“noting that in determining if merchandise exported from an intermediate country is covered by an antidumping order, Commerce identified the country of origin by considering whether the essential component is substantially transformed in the country of exportation”). In this case, the Department determined that the value added consideration was of less significance than the essential qualities imparted by the weaving and priming of the canvas in India because the enduring qualities of a particular artist canvas are defined by the unprimed canvas itself and are finally set once the unprimed canvas is coated with priming material (i.e., gesso). See Petition at 5; see also Plate in Coils from Belgium at comment 4 (stating “the Department disagrees with Petitioner’s analysis that the value-added in Germany should be dispositive”). Furthermore, as in Cold-Rolled Steel from Taiwan, the Department determined that the value-added consideration was less significant because the manufacturing process undertaken by HFERTS’ producer in the PRC did not result in a change in the class or kind of merchandise between the Indian primed and woven canvas and HFERTS’ stretched canvas. Although Petitioner is correct in its statement that the Department did not view canvas production specifically during HFERTS’ verification, this does not negate the other information on the record which indicates that the essential qualities of the artist canvas are imparted by the of weaving and priming of the canvas.

We also disagree with Petitioner that the Department misunderstood or somehow relied too heavily upon the CBP Ruling. Similarly, we disagree with the Coalition’s and Design Ideas’ interpretation of the Department’s consideration of the CBP Ruling. As we stated in the Preliminary C/O Scope Decision at 11, “Petitioner is correct that CBP decisions regarding substantial transformation are not binding on the Department.” Thus, while CBP rulings may be instructive for antidumping or countervailing duty scope determinations, the Department is not bound by CBP’s rulings, regardless of whether they are textile specific or whether they address substantial transformation under other provisions of the Customs law.

As noted in the Preliminary C/O Scope Decision, the Department applied, as appropriate, the following analyses in determining whether substantial transformation of the merchandise in question occurred in the PRC: 1) whether the processed downstream product falls into a different class or kind of product when compared to the upstream product;<sup>2</sup> 2) whether the essential component of the merchandise is substantially transformed in the country of

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<sup>2</sup>See TTR from Korea, 69 FR at 17647.



exportation;<sup>3</sup> 3) the extent of processing,<sup>4</sup> and 4) the value added to the product.

As in this case, when considering the above factors, the Department has “generally found that substantial transformation has taken place when the upstream and downstream products fall within two different ‘classes or kinds’ of merchandise.” See TTR from Korea, 69 FR at 17647. For this investigation, the Department found that the scope of the investigation covered one domestic like product, and one “class or kind,” which is artist canvas (i.e., pre-stretched canvases, canvas panels, canvas pads, canvas rolls (including bulk rolls that have been primed), printable canvases, floor cloths, and placemats). See Initiation of Antidumping Duty Investigation: Certain Artist Canvas from the People’s Republic of China, 70 FR 21996 (April 28, 2005). All parties have agreed that the primed, bulk rolls of artist canvas exported from India are the same class or kind of merchandise as the stretched artist canvas exported by HFERTS from the PRC. Thus, the parties have agreed that the processing in the PRC does not change the class or kind of the primed, bulk rolls of artist canvas.

Further, the scope of the investigation indicates that the primed canvas defines a product as artist canvas and conveys its essential character. According to the language of the scope, the essential characteristic for an item to be considered artist canvas is that it is a fabric primed with a solution designed to promote the adherence of artist materials. See Preliminary Determination, 70 FR 67412, 67414. Furthermore, the fact that the scope of the investigation covers artist canvas “whether assembled or unassembled” and excludes stretcher strips sold separately from artist canvas indicates that the frame or panel on which an artist canvas may be mounted or stretched does not impart the essential character to artist canvas. See Preliminary Determination, 70 FR 67412, 67414.

Moreover, the process of stretching and framing in the PRC does not substantially alter the inherent nature of the primed canvas exported from India. The extent of processing in the PRC is limited to the cutting of the canvas to particular dimensions and the stretching of the cut canvas around a frame board. Thus, while the dimension and shape of the canvas are changed in the PRC, the key physical characteristics and qualities of the canvas are not changed. In this case, the essential qualities of the artist canvas exported by HFERTS are established when it is woven and primed in India.

Accordingly, for the reasons stated above and in the Preliminary C/O Scope Decision, we find that the totality of circumstances indicates that the artist canvas exported by HFERTS is not substantially transformed in the PRC through stretching and framing because the weaving and priming of the canvas in India impart the essential character to the stretched artist canvas. The stretched artist canvas that is exported from the PRC by HFERTS is the same class or kind as the

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<sup>3</sup>See Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less Than Fair Value, 51 FR 39680, 39692 (October 30, 1986) (“EPROMs”).

<sup>4</sup>See TTR from Korea, 69 FR at 17647.

bulk, primed canvas exported from India, and the assembly process in the PRC, while adding value to the item, does not alter the essential qualities of the primed artist canvas. Therefore, we continue to determine that the artist canvas exported by HFERTS produced from canvas woven and primed in India is not within the scope of the investigation.

**Comment 2: Surrogate Value for Brokerage and Handling**

Citing case precedent, Phoenix Materials asserts that the Department has relied on Essar Steel data to value brokerage and handling expenses in past non-market economy (“NME”) administrative reviews and states that it does not object to its use for this final determination. See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 70 FR 54361 (September 14, 2005); Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review, 70 FR 54335 (September 14, 2005); Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005), and accompanying Issues and Decision Memorandum (“Glycine from the PRC”); and Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China, 70 FR 24502 (May 10, 2005).

However, Phoenix Materials argues that the Pidilite brokerage and handling value the Department used to average with the Essar value in the Preliminary Determination is unreliable, aberrational, excessive, and does not reflect commercial brokerage and handling rates available in India. Specifically, Phoenix Materials contends that the Pidilite value is over 37 times greater than the Essar brokerage and handling value and contends that a particular Pidilite observation is highly aberrational when compared to the other significantly lower Pidilite transactions. Phoenix Materials argues that this single observation increases the Pidilite brokerage and handling rate by almost 50 percent. Phoenix Materials argues that when the Department applies the aberrational Pidilite data, the brokerage and handling charge accounts for approximately 42 percent of the gross unit price of some of its merchandise. According to Phoenix Materials, it is not reasonable that a normally nominal per-unit charge should account for such a large percentage of an invoice price. Phoenix Materials maintains that the Department is directed by the statute to obtain surrogates based on the best available information. The respondent argues that the aberrational nature of the Pidilite data contaminates the average of the Essar and Pidilite data and is, therefore, not the best available information and should not be used in the final determination. Phoenix Materials asserts that it is the Department’s practice to average two sources of surrogate value information only in limited circumstances when the two sources are of equal relevance in terms of specificity, contemporaneity, and quality, and no compelling basis exists to select one over the other. See Synthetic Indigo From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 53711 (September 12, 2003), and accompanying Issues and Decision Memorandum at Comment 4 (“Indigo from the PRC”). However, Phoenix Materials contends that when one of the sources “is not representative of the range of prices,” the Department will not average two surrogate values. See Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People’s Republic of

China, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 4 (“Pigment from the PRC”). Phoenix Materials maintains that there is no record evidence that Indian brokerage and handling expenses increased exponentially during the POI to justify such a large increase.

Petitioner contends that Phoenix Material’s suggestion that the data are unreliable has more to do with reducing the surrogate value than with the unreliability of the data. Furthermore, Petitioner states that the determination in the underlying investigation in which the Pidilite data were first presented to the Department does not indicate that the data are unreliable. Therefore, Petitioner concludes that the Department should continue to use the Pidilite brokerage and handling data in the final determination.

**Department Position:**

The Department continues to find that it is appropriate to use a simple average of the Essar Steel data and the Pidilite data to value brokerage and handling for the final determination. Section 773(c)(1) of the Tariff Act of 1930, as amended (“the Act”), instructs the Department to use the “best available information” from a market economy country to value the factors of production (“FOP”). When selecting the “best available information” for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department’s practice is to select, to the extent practicable, surrogate values which are publicly available, non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. See Pigment from the PRC at Comment 4. 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. See Glycine from the PRC at Comment 1. Also, when determining the most appropriate surrogate value the Department “considers several factors, including the quality, specificity, and the contemporaneity of the data.” See Honey Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People’s Republic of China, 68 FR 62053 (October 31, 2003), and accompanying Issues and Decision Memorandum at Comment 2 (“Honey from the PRC 2003”).

The Department disagrees with Phoenix Material’s argument that it should exclude Pidilite data on the basis that one underlying value in the Pidilite data is aberrational. Phoenix Materials provided no documentation to support its claim that one of Pidilite’s brokerage and handling charges was aberrational. Additionally, the Department has stated previously that it cannot conclusively determine that a value is aberrational even when there are extreme differences in quantity and value. See Brake Rotors From the People’s Republic of China: Final Results of the Twelfth New Shipper Review, 71 FR 4112 (January 25, 2006), and accompanying Issues and Decision Memorandum at Comment 2 (“Brake Rotors from the PRC”), citing Glycine from the PRC, at Comment 1.

Furthermore, the Department disagrees with Phoenix Material’s argument that brokerage and handling expenses could not account for such a large percentage of an invoice price. The Department found that the values reported by Essar and Pidilite are the actual prices paid by market economy companies and are representative of their normal business practices. The

Department's preference would be to use an Indian brokerage and handling value specific to artist canvas. However, since there are no artist canvas-specific brokerage and handling values on the record, the Department finds, when considering the quality and specificity of the data on the record, that using a simple average of Essar and Pidilite's values achieves the most representative value. One value, taken in isolation, could differ significantly when compared across a wide range of products, values, and special circumstances of a single transaction. However, using an average of these two values represents the broad spectrum of values that are available for a wide range of products and minimizes the potential distortions that might arise from a single price source. Most recently, the Department used the same sources in Brake Rotors from the PRC, Comment 2; Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 4. Therefore, in accordance with Department practice and section 773(c)(1) of the Act, the Department will use the simple average of the Essar and Pidilite values it used in the Preliminary Determination to value brokerage and handling charges for this final determination. See Antidumping Duty Investigation on Certain Artist Canvas from the People's Republic of China: Surrogate Value for the Preliminary Determination Memorandum, from Jon Freed, Case Analyst, to Wendy J. Frankel, Director, at 8-9, dated October 28, 2005 ("Surrogate Value Memo").

### **Comment 3: Surrogate Financial Ratios**

Petitioner argues that the Department erroneously relied on Camlin Ltd.'s ("Camlin") audited financial statement to calculate the surrogate financial ratios for factory overhead, selling, general and administrative expenses ("SG&A"), and profit in the Preliminary Determination. Petitioner argues that while record evidence demonstrates that Camlin sells artist canvas, no evidence exists on the record that shows Camlin is a producer of subject merchandise.

Citing section 351.408(c)(4) of the Department's regulations, Petitioner claims that there is no evidence that Camlin qualifies as a "producer" of identical or comparable merchandise in the surrogate country." Petitioner argues that the data in the financial statement for Camlin's Consumer Products division refer to art material products, which are not comparable to the production of artist canvas. Petitioner further argues that Camlin's financial statement includes a substantial amount for "Unallocated Corporate Expenses" that the auditor could not allocate to corporate segments on a reasonable basis. Petitioner claims the inability to allocate these expenses underscores that Camlin's financial data are too broad and cover too many products to be considered comparable to data for an artist canvas producer. Petitioner asserts that use of Camlin's information was erroneous and that the Department should instead use the surrogate financial data used in the Petition for the final determination.

Phoenix Materials states that the Department correctly relied upon Camlin's audited financial statements in the Preliminary Determination to calculate surrogate financial ratios. Citing section 351.408(c)(4) of the Department's regulations, Phoenix Materials, like Petitioner, argues that the overhead, SG&A, and profit ratios should be calculated from public information from producers

of “identical or comparable merchandise in the surrogate country,” however, Phoenix Materials contends that the Department’s selection of Camlin meets this regulatory requirement because Camlin is an Indian manufacturer of artist canvas.

Citing references on Camlin’s web page to the process and materials used to produce its canvases, Phoenix Materials argues that the administrative record establishes that Camlin manufactures artist canvas. Surrogate Value Memo at Attachment 10. Phoenix Materials also references Camlin’s 2004-2005 Annual Report (Schedule 24 at page 46) which indicates that Camlin has a licensed capacity of 2,074.06 lac pieces and an installed capacity of 1474.20 lac pieces, as further evidence that Camlin has substantial production capabilities and is not just a reseller of artist canvas products. Conversely, Phoenix Materials claims Arvind Mill Limited (“Arvind”), the company suggested by Petitioner, is a manufacturer of textile fabrics (i.e., woven fabrics) that are neither identical nor comparable to finished artist canvas because artist canvas is a further manufactured product. Thus, Phoenix Materials concludes that both the regulatory directive and the record evidence supports the Department’s use of Camlin’s audited financial statements to calculate the surrogate financial ratios.

Ningbo Conda argues the Department should continue to rely on Camlin’s financial data to calculate surrogate financial ratios because Camlin is a producer of subject merchandise located in India, the selected surrogate country, and because its audited financial report is contemporaneous with the POI and provides sufficient details to allow the Department to determine accurate surrogate financial ratios.

**Department Position:**

In accordance with section 351.408(c)(4) of the Department’s regulations, the Department continues to find that Camlin is a producer of merchandise that is identical or comparable to artist canvas for the purposes of calculating the surrogate financial ratios for this final determination. As the Department observed in the Preliminary Determination, evidence on the record, including Camlin’s financial statement and website, supports a finding that it is a producer of artist canvas. See Surrogate Value Memo at Attachment 9 and 10. The fact that it might also produce other products does not warrant moving away from relying on its financial statement in favor of a producer that makes less similar products. Petitioner’s own statement in the Petition recognized that Arvind was not a producer of artist canvas. See Petition at 15-6. While Arvind’s financial data constituted the best available information at the time of the Petition filing and the initiation of this investigation, the Department determines that the Camlin financial data, which was not on the record at the time of initiation, currently constitute the best available information from which to derive the financial ratios for the final determination. See Antidumping Duty Investigation on Certain Artist Canvas from the People’s Republic of China: Surrogate Value Memorandum for the Final Determination, from Michael Holton, Case Analyst, to Robert Bolling, Program Manager, dated March 22, 2006,

**Comment 4: Surrogate Value for Canvas**

Phoenix Materials and the Coalition both argue that the surrogate values for canvas obtained using the Monthly Statistics of Foreign Trade of India (“MSFTI”) data are unreliable and unsupported by the record evidence. The Coalition contends that the purpose of the antidumping statute is to calculate the “margins as accurately as possible.” See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1993); see also Allied-Signal Aerospace Co. v. United States, 996 F.2d 1185, 1192 (Fed. Cir. 1993); and Borlem S.A. - Empreedimentos Industriais v. United States, 913 F.2d 933 (Fed. Cir. 1990). In order to calculate the margin as accurately as possible, the Coalition contends that the Department should use the sale invoices it provided for valuing canvas FOPs. The Coalition asserts that the invoice prices are more reliable and reflective of the Indian market price for canvas. Phoenix Materials contends that for the final determination, the Department should value its cotton canvas input using the Indian wholesale price list for basic bleached cotton sheeting it submitted in its Surrogate Value Submission dated January 9, 2006, at Attachment 1.

Phoenix Materials argues that the Department should not use the MSFTI statistics for three reasons: 1) they represent basket categories that do not reflect the inputs used in the production of artist canvas, 2) they do not represent commercial or statistically valid quantities, and 3) the values are aberrational. Specifically, Phoenix Materials contends that the Department prefers product-specific tariff classifications rather than basket tariff provisions when it relies upon import statistics for surrogate values and argues that the Department may rely on basket category data only when it represents the sole surrogate value source. See Freshwater Crawfish Tail Meat From the People’s Republic of China; Final Results of New Shipper Review, 64 FR 27961 (May 24, 1999) (“Freshwater Crawfish Tail Meat”); Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan, 62 FR 2648 (January 17, 1997); and see also Pigment from the PRC at Comment 4. With respect to its second argument, Phoenix Materials contends that the values used in the Preliminary Determination do not represent commercial quantities (i.e., they amount to less than three metric tons of product) and are, therefore, not representative of Indian commercial transactions. Phoenix Materials contends that the U.S. Court of International Trade (“CIT”) ruled that the Department can rely upon MSFTI data as the basis for a surrogate value only “after concluding that {the import statistics} are based on commercially and statistically significant quantities.” See Shanghai Foreign Trade Enterprises Co, Ltd. v. United States, 318 F. Supp.2d 1339, 1352-3 (CIT 2004) (“Shanghai v. United States”). Phoenix Materials asserts that the import volume in Shanghai v. United States was 1,132 metric tons of product, a significantly larger quantity than the less than three metric tons at issue in this proceeding. Phoenix Materials does not provide any evidence to support its contention that the values contained in the import statistics are aberrational.

The Coalition argues that canvas surrogate values obtained from MSFTI data are unreliable because the unbleached canvas prices are higher than the bleached canvas prices, despite the additional charge for bleaching the canvas. Similarly, the Coalition contends that the prices of primed and coated canvas obtained from the MSFTI data are lower than the non-primed and coated canvas, further calling into question the reliability of these data.

Phoenix Materials cites section 773(c)(1) of the Act, which directs the Department to value reported FOPs using “the best available information regarding the values of such factors.” In selecting the best information, Phoenix Materials asserts the Department relies on surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. Furthermore, Phoenix Materials adds, the Department considers the specificity of the value when choosing surrogate value information and seeks surrogates that are most comparable in terms of design or materials to the actual input consumed by the respondent in the production of subject merchandise. See Honey from the PRC 2003 at Comment 2; Final Determination of Sales at Less Than Fair Value: Bicycles from the People’s Republic of China, 61 FR 19026 (April 30, 1996) (“Bicycles from the PRC”); Final Results of Antidumping Administrative Review of Helical Spring Lock Washers from the People’s Republic of China, 61 FR 41994 (August 13, 1996). According to Phoenix Materials, the CIT affirmed this long-standing practice in Taiyuan Heavy Machinery Import & Export Corp. v. United States, 23 CIT 701 (1999), where the Department selected a surrogate value from an Indian company’s annual report because the information was more specific than MSFTI data. Phoenix Materials also cites Kerr McGee Chem. Corp. v. United States, 985 F. Supp. 1166 (1997), where it asserts the CIT affirmed the Department’s decision to use a surrogate value that was more comparable to the product used by Chinese producers. Moreover, Phoenix Materials alleges that the Department’s administrative practice prefers domestic market prices in the surrogate country over import statistics. See Bulk Aspirin from the People’s Republic of China; Final Results of Antidumping Duty Review, 68 FR 6710, 6712 (February 10, 2003), and accompanying Issues and Decision Memorandum at Comment 1. Phoenix Materials argues that this practice is particularly true when the domestic price is more specific than the import value to the input. See Pure Magnesium From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085, 3087 (January 21, 1998). Phoenix Materials argues the Court has affirmed the Department’s preference for domestic prices over import value for surrogate value use unless there is evidence of distortion in the domestic prices. See Yantai Oriental Juice Co., v. United States, No. 00-00309, 2003 Ct. Intl. Trade LEXIS 152, at \*21 (CIT June 18, 2002).

Phoenix Materials adds that the product-specific data from the price list it put on the record of this proceeding is more specific to its reported FOPs than the broad import data used in the Preliminary Determination. Urging the Department to use the price list data, Phoenix Materials references prior proceedings where, it argues, the Department recognized that MSFTI data are wholly inappropriate when record evidence contains a more representative alternate surrogate. See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People’s Republic of China, 69 FR 3887 (January 27, 2004); Freshwater Crawfish Tail Meat, 64 FR at 27962 (the Department specifically stated when alternate surrogate value information is available “import data from basket categories can be too broad to be reliable”); and Industrial Nitrocellulose From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65667, 65671 (December 15, 1997) (the Department determined that certain price quotes on the record were superior to MSFTI data because “they better approximated the cost of the actual inputs used by the Respondent.”). Thus, Phoenix Materials concludes that the statutory directive and the

Department's stated preference of using the most product-specific surrogate values available must result in a determination that its submitted price list information is a more appropriate surrogate value for cotton canvas than the broad basket category of the import statistics.

Phoenix Materials further argues that both the transactional documentation put on the record by other parties and the published price list discussed above are more specific to the Respondents' canvas inputs than the average unit values taken from basket tariff provisions of the MSFTI as they represent either actual transactions or binding offers for sale. Phoenix Materials contends that considering documentation from actual transactions as a surrogate value source is also consistent with the Department's practice. See Final Determination of Sales at Less Than Fair Value Results: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 11 ("Polyvinyl Alcohol"). Arguing that the Department revises its determinations when surrogate values more comparable to the FOP used by the Chinese producer are placed on the record after a preliminary determination, Phoenix Materials urges the Department to reject the Indian MSFTI data and instead rely on Indian artist canvas prices from the published price list or the invoices that are on the record of this proceeding for the final determination. See, e.g., Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 66 FR15076 (March 15, 2001).

The Coalition argues that the canvas invoices it provided are distinguishable from other cases where the Department rejected the pricing data because it was not sufficiently representative or contemporaneous with the POI and appeared to be self-serving. See 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) ("Retail Carrier Bags"). In this case, the Coalition states that it has submitted more than 30 canvas sale invoices from 9 different suppliers, which are contemporaneous with the POI, thus, meeting the Department's preferences for pricing data from multiple transactions that are contemporaneous with the POI. See Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the People's Republic of China, 66 FR 33522 (June 22, 2001), and accompanying Issues and Decisions Memorandum at Comment 5. The Coalition contends that the invoices (provided by members of the Coalition) are not self-serving because they reflect an accurate market price, are product-specific, and are from the POI, a period prior to the petition's filing. The Coalition maintains that the Department should use its submitted invoices covering a broad range of canvas transactions to calculate the surrogate value. If the Department does not use these invoices, the Coalition urges the Department to use the price list from Phoenix Materials.

Petitioner argues that surrogate value data for artist canvas inputs submitted by the Coalition should not be used in the final determination. Petitioner states that the Department prefers to use industry-wide values rather than single-producer values because they are more representative of the prices and the costs in a surrogate country. See Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China, 66 FR 50608 (October 4, 2001), and accompanying Issues and Decision Memorandum at Comment 4. Petitioner contends that the handwritten invoices submitted by the Coalition are not clear or reliable evidence of



actual artist canvas sales and prices. Petitioner states the invoices are not clear because they are unaccompanied by purchase orders or proof of payment. Furthermore, Petitioner contends there is no evidence that these invoices were paid or were not generated specifically for the antidumping investigation. Additionally, Petitioner argues that the invoices do not indicate whether the cloth sold is used in the manufacturing of artist canvas. Petitioner claims that because the Department cannot substantiate the reliability of the Coalition's documents, they do not provide better or more reasonable surrogate canvas values than the Indian import data and should not be substituted for the data used in the Preliminary Determination.

More specifically, Petitioner contends that the Coloron invoices attached to the Coalition's December 7 letter are single-producer prices, inherently suspect because they were issued to a member of the Coalition, and should not be used as surrogate values in this investigation. See Final Results and Partial Rescission of Antidumping Administrative Review of Certain Cased Pencils from the People's Republic of China, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum at Comment 4 ("Pencils from the PRC"). Petitioner argues that the "over 30 actual invoices" submitted by the Coalition comprise merely nine handwritten receipts from six Indian vendors plus a collection of Coloron invoices. Petitioner contends this information is neither large nor probative, but consists only of documents the Department has repeatedly found unreliable. Arguing against its use, Petitioner contends that the Department does not use price data that have little or no supporting documentation. See Retail Carrier Bags at Comment 9; Pencils from the PRC at Comment 4; see also Kaiyuan Group Corp. v. Unites States, 343 F.Supp.2d 1289 (CIT 2004). The Coalition contends that Petitioner's allegation that the invoices may have been fabricated for the purpose of the investigation has no merit and should be dismissed, and argues Petitioner's reference to Pencils from the PRC is misplaced because the Coalition's invoices are not from parties affiliated with U.S. importers.

Petitioner goes on to argue that Phoenix Materials' price list from a single distributor in India is also unusable as surrogate value data. Petitioner claims that there is no evidence that distributor prices are representative of prices for canvas in India nor that they apply to the type of canvas used to manufacture artist canvas. Petitioner rejects Phoenix Materials' claim that its price list is for comparable canvas used in the production of its artist canvas. Specifically, Petitioner argues that Phoenix Materials' price list refers to "interlining" and "sheeting," which are used to manufacture garments and bedsheets, respectively. Petitioner contends the Department will use surrogate value price quotes advocated by respondents only when it concludes the flaws in using the price quotes are outweighed by the unavailability of another appropriate surrogate value source. See Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003), and accompanying Issues and Decision Memorandum at Comment 1. Petitioners argue that when the Department does resort to price quotes, it prefers to use publicly available data from numerous transactions among many buyers and sellers because a single producer is less representative of the cost of an input from a surrogate country. See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China, 66 FR 33522 (June 22, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

Furthermore, Petitioner contends, the statute grants the Department considerable discretion in choosing surrogate values. See National Ford Chemical Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999). Similar to the discussion put forth by Phoenix Materials, Petitioner avers that in selecting the most appropriate surrogate values (i.e., the best available information), the Department considers the quality, specificity, public availability and contemporaneity of the data. See Retail Carrier Bags at Comment 9 (“Retail Carrier Bags”), citing Honey from the PRC 2003 at Comment 2; see also Final Results of Crawfish Tail Meat from the People’s Republic of China, 66 FR 20634 (April 24, 2001), and accompanying Issues and Decision Memorandum at Comment 2.

Additionally, Petitioner argues that Respondents have the burden of demonstrating that MSFTI data are aberrational and that use of inherently flawed price quotes are necessary. Petitioner notes that the Department will not automatically conclude that MSFTI data are aberrational because the relevant import volume is small. See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 5 (“We disagree that it is the Department’s normal practice to automatically exclude small quantities of merchandise from the calculation of surrogate values.”). Petitioner concludes that Respondents have not demonstrated that the MSFTI data are aberrational arguing that there is no factual basis to support Respondents’ assertion that unbleached canvas should necessarily be less expensive than bleached canvas or that the values derived from the import statistics represent a material misrepresentation of prices. Finally, Petitioner refutes the merits of Phoenix Materials’ arguments that the MSFTI data are unreliable because they are based on a “basket category” which includes material not used in the production of artist canvas, when the price list put forward by Phoenix Materials covers “interlining and sheeting,” both of which are types of cloth not used in production of artist canvas. Petitioner concludes that neither the Coalition’s invoices nor Phoenix Material’s submitted price list meet the Department’s criteria for use as surrogate value information and urges the Department to continue to use the import statistics data for the final determination.

#### **Department Position:**

The Department has revised the data used to value unbleached cotton canvas and bleached cotton canvas from those used in the Preliminary Determination, as detailed below. In the Preliminary Determination, the Department calculated two simple averages, each based on two values obtained from the MSFTI data (i.e., cloth weighing greater than 200 grams/meter squared (“m2”) and cloth weighing less than 200 grams/m2) to value unbleached cotton canvas and bleached cotton canvas FOPs. For the final determination, however, the Department has determined to use a single canvas-specific HTS sub-heading for each of Phoenix Materials’ cotton canvas factors of production. Specifically, the Department has determined that Indian HTS 5209.12.50 and HTS 5209.21.50 represent the best available information to value unbleached cotton canvas and bleached cotton canvas, respectively.

As discussed in the Department's Position in Comment 2 of this memorandum, the Department reviews surrogate value information on a case-by-case basis and, in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs. When doing this, the Department's practice is to select, to the extent practicable, surrogate values which are publicly available, non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.

In this case, Phoenix Materials reported only two cotton canvas production factors: unbleached cotton canvas and bleached cotton canvas. In the Preliminary Determination, for unbleached cotton canvas the Department calculated a simple average surrogate value using two HTS categories, HTS 5208.13.90 (unbleached cloth below 200 g/m<sup>2</sup> basket Indian (described as woven fabrics of cotton - 85% cotton, not more than 200 g/m<sup>2</sup>; unbleached 3-thread or 4-thread twill, including cross twill; other)) and HTS 5209.12.50 (above 200 g/m<sup>2</sup> unbleached canvas (described as woven fabrics of cotton - 85% cotton, more than 200 g/m<sup>2</sup>; unbleached 3-thread or 4-thread twill, including cross twill; canvas, including duck - carded or combed yarn)). The Department calculated the surrogate value for bleached cotton canvas in a similar manner using HTS 5208.22.90 (described as woven fabrics of cotton - 85% cotton, more than 200 g/m<sup>2</sup>; bleached plain weave, weighing more than 100 g/m<sup>2</sup>; other) and HTS 5209.21.50 (described as woven fabrics of cotton - 85% cotton, not more than 200 g/m<sup>2</sup>; bleached plain weave; canvas, including duck - carded or combed yarn). In reviewing the canvas values relied upon by the Department in the Preliminary Determination, we agree with respondent that two of the HTS categories constitute basket categories and may not represent the best available information for valuing the cotton canvas inputs used by Respondents. Specifically, the Department determines that HTS subheading 5208.22.90 and 5208.13.90 used in the Preliminary Determination represent basket categories. When valuing respondents' FOPs the Department prefers product-specific tariff classifications rather than basket tariff provisions, unless there is no other available information. See Freshwater Crawfish Tail Meat 64 FR at 27962. This is in line with the Department's preference to value respondents' actual inputs consumed and reported in their FOPs. See, e.g., Bicycles from the PRC, 61 FR at 19026. While HTS subheadings 5208.22.90 and 5208.13.90 may contain canvas used in the production of artist canvas, it is not clear what actually comprises these two categories. Therefore, the Department has determined that Indian HTS 5209.12.50 and HTS 5209.21.50, both of which are specific to cotton canvas, represent the best available information to value Phoenix Materials' unbleached and bleached cotton canvas, respectively, and has relied upon these values for purposes of this final determination.

When import statistics data comprises only a small quantity, it is the Department's practice to examine whether the value for those imports is aberrational. Where the quantity is small, but there is no indication that the value is aberrational, the Department will continue to rely on that statistic for use as a surrogate value. See Shanghai v United States, 318 F.3d at 1350 ("[I]f the import statistics are based on a small quantity of imports for the period of investigation, the Commerce practice is to determine if the price for those imports is aberrational."). See also, Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 59 F. Supp. 2d 1354, 1360 (Ct. Intl Trade 1999) (explaining that Commerce's practice is to exclude "small-quantity data when the per-unit value is substantially different from the per-unit values of the

larger quantity imports of that product from other countries”) (quoting Heavy Forged Hand Tools, Finished or Unfinished With or Without Handles, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Reviews, 60 Fed. Reg. 49251, 49252 (September 22, 1995)).

Here, the Department finds that although the MSFTI values represent small quantities, there is no indication that the values are aberrational. See Shanghai v United States, 318 F.3d at 1350. Other than the proffered, self-selected price list and invoices, Phoenix Materials and the Coalition do not provide any evidence to support their contentions that the import statistics reflect aberrational values. Indeed, the proposed canvas values placed on the record of this proceeding by Respondents and the Coalition range from approximately \$0.30/m<sup>2</sup> (Phoenix Materials’ price list) to over \$2.00/m<sup>2</sup> (Coalition invoices). The MSFTI values the Department has determined to use for purposes of this final determination range from approximately \$1.43/m<sup>2</sup> to \$1.61/m<sup>2</sup>. Therefore, Indian pricing data on the record of this review supports a finding that the MSFTI values are not aberrational.

Regarding Phoenix Materials’ submitted price list, the Department agrees with Petitioner that the price list does not specifically cover canvas material that is used in the production of artist canvas. The samples of the interlining and sheeting fabric that Phoenix Materials placed on the record (which reflect the merchandise described in the price list) are not representative of the type of canvas used in the production of subject merchandise. Compared with other artist canvas samples, the interlining and sheeting fabric is easily torn, overly stiff (cracks and creases when folded), is not as heavy as other material and not as tightly woven. As Petitioner points out, the price list covers only “interlining and sheeting” fabric and, other than Phoenix Materials’ assertion that the fabric is similar to canvas used in the production of the subject merchandise, there is no record evidence that “interlining and sheeting” fabric is of the same type used in the production of subject merchandise. Thus, there is nothing on the record to indicate that the prices of the fabric reflect the Indian commercial prices for the type of cotton canvas that is used as an input to artist canvas. Finally, even if the Department were to accept that this price list might reflect material used in the production of artist canvas, we would still be facing the issue that it is a single, self-selected, not publicly available price list and that the respondent has not provided any evidence that it is representative of a range of commercial prices for this factor input in India. Therefore, the Department cannot conclude that this price list represents the best available information for use as a surrogate value for cotton canvas in this proceeding.

Regarding the Coalition’s submitted price quotes and invoices, the Department agrees with Petitioner that, as we cannot substantiate the reliability of the Coalition’s documents, they do not provide better or more reasonable canvas surrogate values than the Indian import statistics. Although the price quotes and a few invoices obtained by a member of the Coalition may be for a type of canvas used in the production of artist canvas, there is no record evidence that the price quotes or invoices are for the type of cloth used by Respondents or that they reflect the range of commercial prices in India for the type of cotton canvas that is used as an input to artist canvas. See, e.g., Freshwater Crawfish Tail Meat, 64 FR at 27962 (citing record evidence of an affidavit from industry experts attesting to the production input). Finally, even if the Department were to

accept that these price quotes and invoices might reflect material used in the production of artist canvas, we would still be facing the issue that these are self-selected, not publicly available price quotes and invoices, and that the respondent has not provided any evidence that they are representative of a range of commercial prices for this factor input in India. Therefore, the Department cannot conclude that these price quotes or invoices represent the best available information for valuing for cotton canvas in this proceeding.

Price lists, price quotes and invoices are not publicly available in the sense that the information cannot be duplicated by parties that do not have access to the records from which it was derived. Because of this, the Department finds that such information is not reliable and accepting such information would effectively prohibit interested parties from fully participating in this investigation. See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 24 (“Wooden Bedroom Furniture from PRC”).

Accordingly, as the record evidence does not support a finding that the MSFTI data are aberrational or otherwise distortive and does support a finding that they are country-wide, publicly available, contemporaneous, reflective of the average commercial values, and the factor input used by Respondents, the Department has determined that they constitute the best available information to value the cotton canvas inputs. See Final Determination of Sales at Less Than Fair Value: Floor Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China, 69 FR 35296 (June 24, 2004), and accompanying Issues and Decision Memorandum at Comment 5 (finding that it was not necessary to use a second pricing source because the MSFTI data were not shown to be inaccurate). As a result, we have relied upon the MSFTI data, HTS 5208.13.90 and HTS 5208.22.90, to value bleached and unbleached cotton canvas for purposes of this final determination.

**Comment 5: Separate Rate for Hangzhou Foreign Economic Relations & Trade Service Co., Ltd. and Design Ideas**

Petitioner argues that the Department should conclude that merchandise imported by Design Ideas is covered by this investigation and that its imports are subject to a “PRC-wide” rate. Petitioner states that record evidence shows that Design Ideas is the exporter of artist canvas from the PRC but did not apply for a separate rate, in the investigation. Petitioner alleges that although HFERTS applied for a separate rate, it is not the exporter of artist canvas because Design Ideas purchases the canvas in India and retains ownership of the coated canvas which is shipped to HFERTS which merely acts as a toller for Design Ideas. Because the Department has determined that tollers or subcontractors may not be considered producers for the purpose of an investigation or review, Petitioner argues that HFERTS is not eligible for a separate rate. See Certain Pasta from Italy: Preliminary Results of New Shipper Administrative Review, 63 FR 53641 (October 6, 1998); see also Certain Forged Stainless Steel Flanges from India: Notice of Final Determination of Sales at Less than Fair Value, 58 FR 68853 (December 29, 1993); section

351.401(h) of the Department's regulations; and USEC Inc. v. Unites States, 281 F. Supp. 2d 1334, 1343 (CIT 2003), rev'd in part on other grounds by Eurodif, S.A. v. United States, 423 F. 3d 1275 (Fed. Cir. 2005).

The Coalition asserts that if the Department reverses its scope decision to include artist canvas that is woven and primed in India, the Department should grant HFERTS a separate rate based on its complete cooperation and the fact that the Department found no discrepancies during the HFERTS verification. The Coalition disputes Petitioner's claim that Design Ideas is the exporter rather than HFERTS as not supported by record evidence (e.g., record documentation submitted in HFERTS' Separate Rate Application including shipment documentation and the company's export license. See HFERTS' Resubmitted, Corrected Separate Rate Application at Exhibits 3, 4, and 7 (June 27, 2005). Moreover, the Coalition argues that who pays for the canvas is completely irrelevant to the Department's country-of-origin determination. Additionally, the Coalition maintains that HFERTS supplied the Department with ample verified documentation, that establishes HFERTS as the exporter of subject merchandise. Furthermore, the Coalition contends that any characterization of HFERTS in the Verification Report as a "toller" is a miscommunication of the roles of the parties, arguing that the Verification Report at 5-6 determines that "HFERTS acts as the importer of the primed canvas from India and the exporter of the stretched canvas to the United States."

Design Ideas rebuts Petitioner's argument by stating it is not a Chinese company and, therefore, does not possess the appropriate business licenses to export goods from the PRC.

### **Department Position:**

We determine that the issue of whether or not to grant HFERTS or Design Ideas a separate rate does not apply because neither HFERTS nor Design Ideas exported subject merchandise to the United States during the POI, and therefore, neither party is eligible at this time for separate-rate status. See the Department Position to Comment 1, which addresses the country of origin for the merchandise exported by HFERTS from the PRC and imported by Design Ideas.

## **II. Mandatory Respondents - Company-Specific Issues**

### **A. Wuxi Phoenix Artist Materials Co. Ltd.**

#### **Comment 6: Supplier Distances**

Phoenix Materials argues that it reported the distance between each factor supplier and the relevant factory in its September 30, 2005, Supplemental Response at Attachment S3-D3; however, the Department used facts available in the Preliminary Determination to determine the distance between two of Phoenix Material's coal suppliers and the relevant factories stating the information was not included in Phoenix Material's factor worksheets. Phoenix Materials argues that the Department reviewed the distances between the relevant factories and the two coal

suppliers at Wuxi Phoenix’s verification and argues that the Department should incorporate the verified distances in its final determination.

**Department Position:**

We agree with Phoenix Materials that we were able to verify the distances between its coal suppliers and the relevant factories, and we are applying these verified distances in this final determination. See Verification of the Sales and Factors Response of Phoenix in the Antidumping Investigation of Certain Artist Canvas from the People’s Republic of China, dated February 13, 2006, at 20.

**B. Ningbo Conda Import & Export Co., Ltd.**

**Comment 7: Unreported U.S. Sales**

Ningbo Conda contends that the three sets of sales not reported in Ningbo Conda’s U.S. sales database which were found during verification are negligible and immaterial in both quantity and value. Specifically addressing the first set, Ningbo Conda states that it did not report two sales in its U.S. sales database because it was not in possession of relevant sales documents, had no title to the products before and after shipment, and did not receive payment for these sales. See Verification of the Sales and Factors Response of Ningbo Conda Import & Export Co., Ltd. in the Antidumping Investigation of Certain Artist Canvas from the People’s Republic of China, dated February 17, 2006, at 12 (“Ningbo Conda Verification Report”) Addressing the second set, Ningbo Conda states that the Department’s verification report also documents that these sales were properly excluded from the U.S. sales database. With respect to the third set of unreported sales, Ningbo Conda states that these sales were unreported due to an inadvertent error but that the total value of these sales is small relative to its total reported sales. Ningbo Conda argues that only a portion of the total invoice value representing payment for artist sets relates to subject merchandise.

Citing the Ningbo Conda verification report, Petitioner argues that the unreported sales found by the Department, and the Department’s inability to verify all relevant data at verification as a result of Ningbo Conda’s lack of preparedness and cooperation are clear indications that the Department should resort to the use of AFA for this respondent.

**Department Position:**

We agree with Petitioner that Ningbo Conda’s failure to report all of its sales is part of a more extensive pattern of non-cooperation on the part of Ningbo Conda, its affiliates, and producers. Specifically, with respect to the first set of unreported sales, we do not agree with Ningbo Conda’s characterization regarding payment for these sales, referred to as “Set A” in the Application of Adverse Facts Available for Ningbo Conda Import & Export Co., Ltd. in the Final Determination in the Antidumping Duty Investigation of Artist Canvas from the People’s

Republic of China Memorandum, from Michael Holton, Analyst, through Wendy J Frankel, Director, at 5, dated March 22, 2006 (“Ningbo Conda AFA Memorandum”). Moreover, as a result of the Department’s determination to apply AFA to Ningbo Conda for other reasons, we do not reach the issue of whether these sales were properly reported. With respect to the second set of sales addressed by Ningbo Conda, however, we do agree that these were not sales by Ningbo Conda to the United States and were properly excluded from its U.S. sales database. Finally, with regard to the third set of sales identified, referred to as “Set B” in the Ningbo Conda AFA Memorandum, Ningbo Conda acknowledges that these sales should have been included in its U.S. sales database. In addition, at verification of Ningbo Conda’s affiliated reseller, the Department identified additional unreported sales of subject merchandise by Ningbo Conda and its U.S. affiliate. While Ningbo Conda characterizes the unreported sales as being of minimal quantity and value, we disagree. The unreported sales represent more than eight percent of Ningbo Conda’s sales of subject merchandise to the United States.

Due to the proprietary nature of this issue, we are providing a summary discussion of the issue in this memorandum. For a full discussion of the sales at issue, see Ningbo Conda Verification Report at 2, 10-13; See Certain Artist Canvas from the People’s Republic of China Antidumping Investigation: Verification of ColArt Americas Inc., dated February 17, 2006, at 14-5 (“Colart Verification Report”); and Ningbo Conda AFA Memorandum.

#### **Comment 8: Unreported Factors of Production**

Ningbo Conda contends that the Department’s verification reports for its two unaffiliated producers of subject merchandise, Wuxi Silver Eagle and Wuxi Pegasus, are not completely accurate. Specifically, Ningbo Conda states that the consumption of materials used in its primer for coating were verified. See Verification of the Factors Response of Ningbo Conda Import & Export Co., Ltd. and Wuxi Silver Eagle Cultural Goods Co., Ltd. in the Antidumping Investigation of Certain Artist Canvas from the People’s Republic of China, dated February 17, 2006, at Exhibit S-9 (“Wuxi Silver Eagle Verification Report”); and Verification of the Factors Response of Ningbo Conda Import & Export Co., Ltd. and Wuxi Pegasus Cultural Goods Co., Ltd. in the Antidumping Investigation of Certain Artist Canvas from the People’s Republic of China dated February 17, 2006, at Exhibit 7. (“Wuxi Pegasus Verification Report”). Ningbo Conda asserts that Department officials noted no discrepancies between the FOP submissions and the company’s records. Ningbo Conda states that only a small percentage of the materials were not previously reported to the Department because the companies involved considered the unreported items to be a trade secret. Ningbo Conda contends, however, that the Department was able to verify the consumption of the unreported materials in the companies’ records.

Petitioner states that Ningbo Conda attempts to gloss over Wuxi Silver Eagle’s and Wuxi Phoenix’s withholding of data on materials consumed in their primer production. Additionally, Petitioner argues that Ningbo Conda ignores the plain language of the verification reports and the Department’s refusal to accept the new priming data as minor corrections. Furthermore, Petitioner states that Ningbo Conda also ignores the fact that its failure of disclosure was not the



only problem uncovered at verification. See Wuxi Pegasus Verification Report at 8-12. Petitioner contends that Wuxi Silver Eagle's and Wuxi Pegasus' failure to report their full FOPs prior to verification is part of a more extensive pattern of non-cooperation on the part of Ningbo Conda, its affiliates, and its producers. Petitioner argues that the Department is required to resort to AFA for Ningbo Conda, its affiliates, and its producers.

**Department Position:**

We agree with Petitioner that Ningbo Conda's failure to report its full FOPs prior to verification is part of a more extensive pattern of non-cooperation on the part of Ningbo Conda, its affiliates, and its producers. As described in the Ningbo Conda AFA Memorandum, the Department finds that Ningbo Conda and its producers failed to act to the best of their ability in supplying the Department with the requested information. Specifically, in response to Ningbo Conda's argument, we do not agree with its characterization of the verification reports for Wuxi Silver Eagle and Wuxi Pegasus. See Wuxi Silver Eagle Verification Report; and Wuxi Pegasus Verification Report. First, Ningbo Conda and its producers intentionally did not provide certain critical FOPs (*i.e.*, certain priming and coating material) claiming these represent trade secrets. In its original questionnaire, the Department requested that Ningbo Conda and its producers report all of its FOPs. However, Ningbo Conda and its producers did not report certain critical FOPs even though all of the information concerning these critical FOPs was within their control. Moreover, Ningbo Conda and its producers chose not to inform the Department about these factors until verification. The Department issued its original questionnaire in June 2006 and conducted verification in December 2006, thus, Ningbo Conda and its producers had six months to inform the Department about its concerns regarding the proprietary nature of these FOPs. Instead, Ningbo Conda and its producers waited to inform the Department about these FOPs at verification, thus depriving the Department of the opportunity to address the respondent's concerns about these data and inhibiting other parties full participation in the proceeding. Moreover, the Department had no information on the record with regard to these FOPs to review at verification. While the Department declined to accept this information as a minor correction to Ningbo Conda's questionnaire responses, the Department reviewed the data to identify the extent of information Ningbo Conda and its producers had withheld from the questionnaire responses and determined that the unreported factors comprise a significant element of artist canvas (*i.e.*, essential components of the priming materials). See Ningbo Conda AFA Memorandum.

**Comment 9: Wuxi Silver Eagle's Unverified Factors of Production**

According to Ningbo Conda, Department officials did verify the consumption of PVA, titanium pigment, coal, and certain packing materials. Ningbo Conda argues that Wuxi Silver Eagle's Verification Exhibit S-9 specifically shows the consumption of the aforementioned materials. Ningbo Conda states that Wuxi Silver Eagle did not report hydrochloride consumption and does not know the material input the Department refers to as hydrochloride. Furthermore, Ningbo Conda states that Wuxi Silver Eagle's Verification Exhibit S-9 also shows the consumption of

these materials by each workshop during the entire production process of subject merchandise.

Petitioner argues that Ningbo Conda's attempts to rehabilitate Wuxi Silver Eagle's failed verification should be rejected. Petitioner contends that the Wuxi Silver Eagle Verification Report at 9, 10, and 12 states that various inputs "could not {be} examine{d} ... due to {Silver Eagle's} unpreparedness."

**Department Position:**

We do not agree with Ningbo Conda's characterization of the verification results. While Verification Exhibit S-9 indicates a total monthly consumption for PVA, titanium pigment, coal and various packing materials, Ningbo Conda never provided requested documentation to the verifiers to substantiate the total monthly consumption of these materials as listed in this verification exhibit. In other words, Ningbo Conda was not prepared to provide requested information necessary to trace the reported amounts for these items through its internal books and records to its financial statements. However, with respect to hydrochloride, we agree with Ningbo Conda's assertion that this reference in the verification report is in error.

**Comment 10:           Constructed Export Price Deduction of U.S. Duties**

Citing section 772 of the Act, Petitioner contends that the Department failed to deduct import duties when calculating Ningbo Conda's constructed export price ("CEP"). Petitioner contends that, should the Department not resort to the use of AFA for Ningbo Conda in the final determination, it should ensure that it makes an adjustment to the reported CEP prices for U.S. duties.

**Department Position:**

We agree with Petitioner that Ningbo Conda failed to report this adjustment to U.S. price in its questionnaire responses and that the Department, therefore, incorrectly did not make an adjustment to CEP for this expense. However, because the Department is basing Ningbo Conda's margin on AFA, we are not using Ningbo Conda's reported U.S. prices and do not reach the issue of making adjustments to any such prices for the final determination. See Ningbo Conda AFA Memorandum.

**Comment 11:           Application of Adverse Facts Available to Ningbo Conda**

Petitioner claims that since the beginning of this investigation, Ningbo Conda has been less than cooperative in presenting information to the Department. Petitioner states that it took six supplemental questionnaires for Ningbo Conda to disclose its affiliates, including its channel of trade which requires calculation of CEP sales.

Petitioner argues that the Ningbo Conda verification reports demonstrate the Department's inability to verify the information submitted by Ningbo Conda, its affiliates and producers. Citing these reports, Petitioner states that during verification, Ningbo Conda, its affiliates and its producers were repeatedly unprepared, did not have or did not provide verifiers with specific data, failed to report consumption of various FOPs, and acknowledged numerous discrepancies in their reported production quantities.

Because of Ningbo Conda's failure to substantiate its submitted sales data and FOPs for its producers at verification, Petitioner argues the Department must resort to use of AFA in its final determination. Citing section 776(a)(2) of the Act, Petitioner states that the Department must resort to facts available because Ningbo Conda, its affiliates and its producers withheld requested information material to the investigation, failed to provide information in a timely manner, impeded the investigation by refusing to disclose material information or preventing its verification, and submitted unverifiable information. Furthermore, Petitioner contends that section 776(b) of the Act states the Department may employ adverse inferences if the interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation, 65 FR 5510 (February 4, 2000). Petitioner argues that the verification reports confirm that Ningbo Conda, its affiliates and producers failed to cooperate with the Department during this investigation. Therefore, Petitioner asserts that the circumstances of this case require the application of AFA.

Ningbo Conda argues that there is no basis for the Department to apply adverse facts available to Ningbo Conda, its affiliates and its producers. Ningbo Conda states that even though its verification preparation was not perfect, the important fact is that its reported information was verified without discrepancies. Ningbo Conda argues that it acted to the best of its ability to cooperate with the Department despite being an inexperienced, unsophisticated respondent with limited resources. Ningbo Conda states it has been fully cooperative, submitted all requested information, and provided timely answers to the numerous supplemental questionnaires to the best of its abilities. Furthermore, Ningbo Conda asserts that it fully cooperated with the Department's verification and points out that the Department's verification reports dated February 17, 2006, show that all portions of the reported sales and FOP data were verified.

Ningbo Conda argues that the courts have recognized that "a completely errorless investigation is simply not a reasonable expectation. Even the most diligent respondents will make mistakes, and Commerce must devise a non-arbitrary way of distinguishing among errors." See Nippon Steel Corp. v. United States, 146 F. Supp 2d 835, 841, n.10 (CIT 2001). Furthermore, Ningbo Conda states that "{w}hile the parties must exercise care in their submissions, it is unreasonable to require perfection." See NTN Bearing Corporation v. United States, 74 F.2d 1204, 1208 (Fed. Cir. 1995). Ningbo Conda argues that the Department should continue to rely on its reported FOP data to determine its normal value because the Department verified the consumption of all material factors as discussed in Ningbo Conda's case brief. Therefore, Ningbo Conda contends that the use of total facts available is not warranted.

## Department Position:

The Department finds that reliable information from which to construct an accurate and otherwise reliable margin is not available on the record with respect to Ningbo Conda. Specifically, the Department finds that Ningbo Conda withheld information, provided unverifiable information, significantly impeded the proceeding and failed to provide information requested by the Department in a timely manner and in the form required, pursuant to sections 776(a)(2)(A), (B), (C), and (D); of the Act, therefore, the Department is resorting to the use of facts otherwise available. In addition, the Department has determined that Ningbo Conda failed to cooperate to the best of its ability, and therefore, in accordance with section 776(b) of the Act, is applying an adverse inference in its selection of facts available. For the reasons explained in the Ningbo Conda AFA Memorandum, the Department has applied to Ningbo Conda, as AFA, the highest margin alleged in this proceeding, the 264.09 percent rate from the initiation, for purposes of this final determination.

Specifically, during both the FOPs and the CEP verifications of Ningbo Conda, its producers and its U.S. affiliate, the Department discovered that Ningbo Conda failed to report all of its U.S. sales. Additionally, at the FOP verifications, each of Ningbo Conda's suppliers (affiliated and unaffiliated) stated that they intentionally failed to report certain critical FOPs (*i.e.*, certain priming and coating material), claiming that certain inputs to the priming and coating were a trade secret. However, at no time prior to verification, did Ningbo Conda identify the proprietary nature of these data or even inform the Department that it had these data.

At their respective FOP verifications, the two unaffiliated producers (Wuxi Sliver Eagle and Wuxi Pegasus) suppliers attempted to provide the missing information as minor corrections. While we did not accept the data as minor corrections, we did collect and examine the information to determine the extent of the unreported information. At verification of the affiliated supplier, Jinhua Universal Canvas Manufacturing (Jinhua), company officials disclosed that in reporting their priming/coating factors of production, they had grouped the materials rather than identify the full set of priming materials in their questionnaire responses. When the verifiers asked them to identify the unreported materials the company refused to disclose them, claiming that they were not prepared to disclose the specifics of their priming formula. Instead, company officials provided a chart that purported to report quantities for these materials, but did not identify the actual material inputs. In addition, the company provided VAT invoices to support the quantities, but again redacted the material identification and so there was no manner in which the verifiers could identify the materials to which the invoices or the quantity chart pertained. See Verification of Factors Response of Ningbo Conda Import & Export Co., Ltd. and Jinhua Universal Canvas Manufacturing Co., Ltd. in the Antidumping Investigation of Certain Artist Canvas from the People's Republic of China, dated February 17, 2006.

Further, at the FOP verification of one of Ningbo Conda's unaffiliated producer, Wuxi Pegasus, accounting for a significant percentage of Ningbo Conda's U.S. sales by quantity, the company was unable to substantiate its reported factor consumption rates for all factors used in the production of subject merchandise. See Wuxi Pegasus Verification Report.

At the verification of Ningbo Conda in the PRC, the Department discovered that Ningbo Conda had failed to report several U.S. sales of subject merchandise. See See Verification of the Sales and Factors Response of Ningbo Conda Import & Export Co., Ltd. in the Antidumping Investigation of Certain Artist Canvas from the People's Republic of China, dated February 17, 2006, at 2, 10-13. In addition, at the CEP verification of ColArt US, the Department discovered that the company had failed to report additional sales of subject merchandise to the United States. Furthermore, the Department discovered at the CEP verification that the respondent had failed to report a specific billing adjustment it offered to certain customers and all of its U.S. duties, both of which should have been reported as adjustments to U.S. sales prices. Finally, at the CEP verification, ColArt US also was not able to substantiate its reported international freight expenses (i.e., it could not trace the reported amounts to any documentation contained in its internal books and records). See See Certain Artist Canvas from the People's Republic of China Antidumping Investigation: Verification of ColArt Americas Inc., dated February 17, 2006, at 14-5.

In accordance with our longstanding practice, the Department issued its verification outlines to Ningbo Conda and its U.S. affiliate at least seven days prior to the commencement of the respective verifications. See the verification outlines of November 22, 2005, and January 13, 2006. Consequently, Ningbo Conda and its U.S. affiliate both had sufficient time to prepare their documents for a complete verification by the Department. The purpose of providing a verification outline to respondents is to give them sufficient notice about the types of source documents that the Department seeks to examine during verification, and to afford them sufficient time to compile source documents and prepare them as verification exhibits. At no time prior to verification did Ningbo Conda or its U.S. affiliate contact the Department with questions concerning verification procedures, documents required for verification, or the verification outline. Further, they did not indicate at any time prior to verification that they were experiencing difficulties in supplying information requested in the verification outline. Thus, neither Ningbo Conda, its affiliated and unaffiliated FOP suppliers or its U.S. affiliate can claim that its verification failures were the result of undue or unreasonable burdens imposed on the respondent, or the Department's failure to take into account any difficulties experienced by interested parties in accord with section 782(c)(1) and (2) of the Act.

Based on the failures at verification enumerated above and Ningbo Conda's failure to report complete and accurate data, we determine that Ningbo Conda and its affiliates failed to cooperate to the best of their ability with the Department's requests for information. Therefore, for the final determination, the Department determines that the application of total AFA is warranted for Ningbo Conda and its affiliates pursuant to section 776(a) and (b) of the Act. For a more detailed discussion of this issue, including the proprietary details see the Ningbo Conda AFA Memorandum.

**Comment 12: Market Economy Purchases**

Ningbo Conda argues that pursuant to section 351.408 (c)(1) of the Department's regulations, the

Department should use the actual price paid for its cotton inputs purchased from market economy suppliers and paid for in a market economy currency. See Lasko Metal Products v. United States, 42 F. 3d 1442, 1445-46 (Fed. Cir. 1994).

Petitioner states that the Department must resort to AFA for Ningbo Conda and its affiliates and, therefore, the question of whether to use actual prices paid for market-sourced production inputs should not be reached.

**Department Position:**

We agree with Petitioner that because we are basing Ningbo Conda's margin on AFA, we are not using Ningbo Conda's reported FOPs and do not reach the issue of whether to use market economy purchases in its margin calculation.

**Comment 13: Business Proprietary Treatment of Ningbo Conda's U.S. Affiliate**

Petitioner argues that the identity of Ningbo Conda's joint venture partner should be made a matter of public record. Petitioner states that Ningbo Conda identifies its joint venture partner in the public version of its Supplemental Section A Response at Exhibit SA-10, dated August 22, 2005, and in its Supplemental Response to Quantity and Value Questionnaires submitted June 6, 2005. Despite these public disclosures, Ningbo Conda continues to seek business proprietary treatment for public information. Petitioner concludes that the identity of the joint venture partner should be on the public record. Ningbo Conda did not comment on this issue.

**Department Position:**

We agree with Petitioner that Ningbo Conda has already disclosed this information on the public record of this proceeding and thus cannot continue to claim proprietary treatment for this information. Therefore, since Ningbo Conda has publicly identified that ColArt is its joint venture partner on the record, and has not commented on this issue, it will no longer be treated as business propriety information.

**RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination of sales at less than fair value and the final weighted-average dumping margins for all investigated firms in the Federal Register.

AGREE \_\_\_\_\_

DISAGREE \_\_\_\_\_

\_\_\_\_\_  
David M. Spooner  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date