71 FR 53079, September 8, 2006

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Investigation
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DATE: August 30, 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 Lined Paper Products from the People's Republic of China

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Summary

We have analyzed the comments of interested parties in the antidumping duty investigation of certain lined paper products ("CLPP") from the People's Republic of China ("PRC"). The period of investigation ("POI") covers January 1, 2005, through June 30, 2005. As a result of our analysis, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum.

Background

The Department of Commerce ("the Department") published its preliminary determination of sales at less than fair value ("LTFV") on April 17, 2006. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China,* 71 FR 16695 (April 17, 2006) ("*Preliminary Determination*"). The mandatory respondents in this case are Watanabe Paper Product (Shanghai) Co., Ltd. ("Watanabe Shanghai"); Hotrock Stationery (Shenzhen) Co. ("Watanabe Shenzhen"); and Watanabe Paper Product (Linqing) Co., Ltd. ("Watanabe Linqing"), collectively (the "Watanabe Group"); Shanghai Lian Li Paper Products Co., Ltd. ("Lian Li"); and Atico International (HK) Ltd. & Atico Overseas Ltd. (collectively "Atico"). Other interested parties are the Association of American School Paper Suppliers and

its individual members (MeadWestvaco Corp. ("Mead"), Norcom, Inc., and Top Flight, Inc.) ("Petitioner"), a domestic producer of the like product, and the 27 separate-rates respondents.[1]

On April 13, 2006, we sent a separate-rate verification agenda to a separate-rate applicant, Planet International. On April 18, 2006, Planet International notified the Department of its withdrawal from the verification. On May 5, 2006, we sent a separate, rate verification agenda to a separate rate applicant, Lansheng and on May 8, 2006, it notified the Department of its withdrawal from the verification. From May 8 through18, 2006, the Department conducted a sales verification of Lian Li and a factors of production verification of its unrelated producers Shanghai Sentian Paper Products Co., Ltd. ("Sentian") and Shanghai Miaopanfang Paper Products Co., Ltd. ("MPF"). From May 29 through June 9, 2006, the Department conducted a sales and factors verification of Watanabe Linqing and Watanabe Shenzhen. On June 13, 2006, Watanabe Group, Lian Li, and Petitioner filed surrogate value information and data. On June 23, 2006, a rebuttal surrogate value submission was filed by Petitioner.

We invited parties to comment on our *Preliminary Determination* and verification reports. Case briefs were filed with the Department on July 28, 2006, by Excel, a separate-rate respondent; on July 31, 2006, by the Watanabe Group,[2] Lian Li,[3] and by separate-rate respondents MGA, Maxleaf, Te Gao Te, and Wenbao; and on August 1, 2006, by Petitioner.[4] On August 7, 2006, the Watanabe Group,[5] and Lian Li[6] filed rebuttal briefs responding to issues raised in the case

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[1]Anhui Light Industries International Co., Ltd.; Changshu Changjiang Printing Co., Ltd.; Chinapack Ningbo Paper Products Co. Ltd.; Dongguan Yizhi Gao Paper Products Ltd.; Essential Industries Limited; Excel Sheen Limited ("Excel"); Fujian Hengda Group Co., Ltd.; Jiaxing Te Gao Te Paper Products Co., Ltd. ("Te Gao Te"); Linqing Silver Star Paper Products Co., Ltd.; Maxleaf Stationery Ltd. ("Maxleaf"); MGA Entertainment (H.K.) Limited ("MGA"); Ningbo Guangbo Imports and Exports Co. Ltd.; Orient International Holding Shanghai Foreign Trade Co., Ltd.; Planet International Company Ltd. ("Planet"); Planet (Hong Kong) International Company Ltd. ("Planet Hong Kong"); Shanghai Lansheng Stationery & Sporting Goods Import & Export Co., Ltd. ("Lansheng"); Shanghai Foreign Trade Enterprise Co., Ltd.; Sunshine International Group (HK) Ltd.; Suzhou Industrial Park You-You Trading Co., Ltd.; Suzhou Industrial Park Asia Pacific Paper Converting Co., Ltd.; Wah Kin Stationery and Paper Product Limited; Yalong Paper Products (Kunshan) Co., Ltd.; Yantai License Printing & Making Co., Ltd.; You-You Paper Products (Suzhou) Co., Ltd.; Paperline Limited ("Paperline"); and Shanghai Pudong Wenbao Paper Products Factory ("Wenbao Paper"). Also, Paperline and Wenbao Paper are collectively known as ("Wenbao") and Planet and Planet Hong Kong are collectively known as ("Planet International").

[2] ("Watanabe Group Case Brief").

[3] ("Lian Li Case Brief").

[4] ("Petitioner Case Brief"); This case brief was timely because one copy was originally filed on July 31, 2006, as "bracketing not final."

[5] ("Watanabe Group Rebuttal Brief").

[6] ("Lian Li Rebuttal Brief").

briefs. On August 8, 2006, we received a rebuttal brief from Petitioner.[7] On August 9, 2006, we rejected Petitioner's rebuttal brief because it contained argument that did not constitute a rebuttal. On August 9, 2006, Petitioner also filed a rebuttal brief commenting only on issues raised in Maxleaf's brief.[8] Additionally, on August 9, 2006, the Department solicited comments on the appropriate surrogate value with which to value metal covers and backs utilized by Lian Li in the production of certain in-scope products. On August 10, 2006, Petitioner timely refiled its redacted rebuttal brief.[9] On August 11, 2006, we received comments regarding the appropriate surrogate value with which to value metal covers and backs from Lian Li and Petitioner. Below is the complete list of the issues in this investigation for which we received comments and rebuttal comments from interested parties:

List of Comments:

I. GENERAL AND SURROGATE VALUE ISSUES

Comment 1: Surrogate Financial Statements to Value Factory Overhead, Selling, General and Administrative Expenses ("SG&A") and Profit
Comment 2: Application of *Sigma*
Comment 3: Text Paper Surrogate Value
Comment 4: Paperboard and Insert Paper Inputs
Comment 5: Recycled Paper
Comment 6: Wire Coated With Zinc
Comment 7: Rubber Band

II. ISSUES SPECIFIC TO THE WATANABE GROUP

Comment 8: Unreported U.S. Transactions
Comment 9: Watanabe Linqing Labor
Comment 10: Watanabe Shenzhen Labor
Comment 11: By-Product Offset
Comment 12: Product Weights

[7] This rebuttal brief was timely because one copy was originally filed on August 7, 2006, as "bracketing not final."

[8] On August 4, 2006, we extended the time in which to file rebuttal to the briefs filed by Maxleaf and MGA due to a delay in the receipt of these briefs by the other parties.

[9] ("Petitioner Rebuttal Brief")

III. ISSUES SPECIFIC TO LIAN LI

IV. ISSUES RELATED TO SEPARATE-RATES APPLICANTS

I. GENERAL AND SURROGATE VALUE ISSUES

Comment 1: Surrogate Financial Statements to Value Factory Overhead, Selling, General and Administrative Expenses ("SG&A") and Profit

Lian Li and the Watanabe Group argue that the financial statements that the Department used in the *Preliminary Determination* should not be used in the final determination, because Kanoi Paper & Industries Ltd. ("Kanoi") is a producer of paper from pulp (*e.g.*, jumbo paper rolls) and neither Lian Li nor the Watanabe Group manufactures paper from pulp. Specifically, the Watanabe Group claims that it uses "jumbo paper rolls" to produce its subject merchandise and that paper manufacturing operations like Kanoi are far more capital intensive than paper converting operations, such as those at the Watanabe Group.

Petitioner argues that the Department should not revise its surrogate financial ratios because, as a producer of comparable merchandise, Kanoi's financial statements are the best available on the record. Petitioner supports its argument by citing *Diamond Sawblades Inv. Final*[10] and the Department's use of a two-prong test, where the Department considered first whether the product itself is comparable and then whether the production process is similar. *See Persulfates 7.*[11]

The Watanabe Group also states that the Department correctly decided not to use Navneet Edutainment Limited ("Navneet") in the preliminary determination an argues, along with Lian Li, that the Department should not derive surrogate financial ratios from Navneet in the final determination because, even though Navneet is an Indian producer of identical products, the majority of its operations relate to the publishing of text books, and its financial statements do not accurately reflect financial results that relate to the production of scope merchandise (*i.e.*, notebooks), making it an inappropriate surrogate company for the financial ratios.

Petitioner claims that Lian Li's and the Watanabe Group's argument for not utilizing Navneet's financial statements in the final determination is flawed and unsupported by evidence on the record. Petitioner rebuts the Watanabe Group's argument that the Watanabe Group and Navneet are not comparable producers because the Watanabe Group is not an integrated producer, whereas Navneet describes itself as an integrated producer. Petitioner alleges that the Watanabe Group's and Navneet's core business is the same, that is, manufacturing and sales of paper products, office products, and multimedia.[12] Furthermore, Petitioner contends that if Navneet were an integrated producer, as described by the Watanabe Group, its financial statements would not address "paper price" trends, but instead, the prices of raw materials consumed. Petitioner supports its above arguments by citing to the Navneet Annual Report.[13]

Lian Li and the Watanabe Group argue that the Department should derive surrogate financial ratios from companies that produce merchandise identical or comparable to the subject

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[10] *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) ("*Diamond Sawblades Inv. Final*"), and the accompanying Issues and Decision Memorandum at Comment 1.

[11] *See Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 7725 (February 14, 2006) ("*Persulfates 7*"), and the accompanying Issues and Decision Memorandum at Comment 1.

[12] *See* the Watanabe Group's Separate Rates Application for Watanabe Shenzhen (November 7, 2005), at Exhibit 3, where the English translation of the business scope of Watanabe Shenzhen's business includes "Manufacturing and sale of paper products, office products, pursuing the technology exploitation on multimedia" and Exhibit 12, where the English translation of the notes to Watanabe Sh enzhen's 2004 audited financial statements includes " producing and operating of paper products, articles for office use, engaging the exploitation of multimedia."

[13] *See* Navneet Annual Report, at 46.

merchandise (*i.e.*, paper converting companies). Both Lian Li and the Watanabe Group support their argument by citing section 351.408(c) of the Department's regulations. The Watanabe Group also supports its argument by citing *Chlorinated Isocyanurates Inv. Final*.[14] Both Lian Li and the Watanabe Group argue that the Department should use the financial information of Indian companies that is on the administrative record because the operations of these companies are identical to Lian Li and the Watanabe Group, in that they too are paper converters (*i.e.*, Sundaram Multi Pap Ltd. ("Sundaram") and Shiv Ganga Paper Converters Pvt. Ltd. ("Shiv Ganga")). Lian Li also argues that the Department should include with Sundaram and Shiv Ganga the financial information of Haryana Traders Private Limited ("Haryana").[15]

Citing the Preliminary Factors of Production Valuation Memorandum,[16] both Lian Li and the Watanabe Group point out that for the preliminary determination, the Department declined to rely upon financial ratios derived from the Indian paper converters Sundaram and Shiv Ganga because Sundaram's financial statements were missing pages and there was a question concerning the public availability of the financial statements on the record for both Sundaram and Shiv Ganga. The Watanabe Group points out that it has placed the missing pages on the record.[17] The Watanabe Group argues that because Sundaram is traded on the Bombay Stock Exchange, it is a public company, and supports its argument by citing its Watanabe Group June SVs, where it included a web page of Sundaram financial information as Exhibit SSV-3. The Watanabe Group points out that Shiv Ganga is a "Private Limited Company" and, as such, is required by Indian law to file audited financial statements with the Indian Ministry of Company Affairs' agency, "Registrar of Companies." For a fee, this agency makes available to the public financial statements registered with the agency, and, for an additional fee, the public can obtain a certified copy of the registered documents. Also, if one is a subscriber to the site it can directly access documents registered with the agency. However, the Watanabe Group points out that at this time, not all records are available electronically and cannot be accessed via the website. *See* Watanabe Group June SVs at Exhibits SSV-4 and SSV-5 and footnote 18 at 6. Moreover, the Watanabe Group claims that in the past the Department utilized financial statements from Indian

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[14] *See 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) ("*Chlorinated Isocyanurates Inv. Final*").

[15] *See* Lian Li's surrogate value submission (June 13, 2006) ("Lian Li June SVs").

[16] *See* Memorandum to Wendy J. Frankel, Office Director, through Charles Riggle, Program Manager, from Marin Weaver, Paul Stolz, Fran Veith, and William M Quigley, International Trade Compliance Analysts Re: Preliminary Determination of the Investigation of Certain Lined Paper Products from the People's Republic of China, Subject Factors-of-Production Valuation for Preliminary Determination (April 7, 2006) ("Preliminary Factors of Production Valuation Memorandum").

[17] *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China*, 71 FR 31159 (Thursday, June 1, 2006) ("*Amended Preliminary Determination*"). *See also*, the Watanabe Group supplemental surrogate value submission dated June 13, 2006.

private limited companies. To support its argument, the Watanabe Group cites *Persulfates 4* [18] and *Wooden Bedroom Furniture Inv. Final.*[19]

In conclusion, both Lian Li and the Watanabe Group state that since the administrative record contains data from Indian companies whose operations are limited to paper conversion, and whose financial statements more accurately represent the same degree of integration, both vertically and horizontally, in their operations, the Department should derive the financial ratios from those companies' financial statements.

Petitioner argues that, should the Department decide not to use Kanoi's financial statements in the final determination, it should use the financial statements of the publicly traded companies Navneet or Sundaram and not the financial statements of the privately held Indian companies on the record, Shiv Ganga and Haryana. Furthermore, Petitioner asserts that Haryana's financial statements are largely illegible and undecipherable.[20]

In conclusion, Petitioner argues that the Department should ensure that its surrogate value calculations are pursuant to its practice and precedent and not the calculations put on the record by the Watanabe Group or Lian Li. Petitioner cites *Honey 03-04 Final, FMTC*, and *Wooden Bedroom Furniture Inv. Final*[21] to support its argument.

Department' s Position:

In valuing factors of production ("FOP"), section 773(c)(1) of the Tariff Act of 1930, as amended ("the Act"), instructs the Department to use "the best available information" from the appropriate market-economy country. In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy surrogate companies based on the "specificity, contemporaneity,

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[18] *See Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003) ("*Persulfates 4*"), and the accompanying Issues and Decision Memorandum at Comment 8.

[19] *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) ("*Wooden Bedroom Furniture Inv. Final*").

[20] *See* Lian Li June SVs at Attachment 2.

[21] *See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June16, 2006) ("*Honey 03-04 Final*"), and accompanying Issues and Decision Memorandum at Comment 3; *See also, Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 1, 2006) ("*FMTC*"), and accompanying Issues and Decision Memorandum at Comment 1a; and *Wooden Bedroom Furniture Inv. Final* at Comment 3.

and quality of the data."[22] Moreover, for valuing factory overhead, SG&A, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. *See* 19 CFR 351.408(c)(4) and section 773(c)(4) of the Act.[23] Finally, the Court has recognized the Department's discretion in selecting surrogate values. In *FMC*, the U.S. Court of International Trade ("CIT") upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." *See FMC Corporation v. United States*, No. 01-00807 Slip Op. 03-15 at 10 (CIT February 11, 2003) ("*FMC*"), at 10 (citing *Technoimportexport, UCF America Inc. v. United States*, 783 F. Supp. 1401, 1406 (CIT 1992)); affirming *FMC Corporation v. United States*, 87 Fed. Appx. 753 (Fed. Cir. February 9, 2004). Similarly, in *Polyethylene Retail Carrier Bag Committee,* the CIT stated "in determining the valuation of the factors of production, the critical question is whether the methodology used by Commerce is based on the best available information and establishes antidumping margins as accurately as possible." *Polyethlyene Retail Carrier Bag Committee, et al., v. United States*, No. 04-00319 Slip Op. 05-157 at 11 (CIT December 13, 2005) (*"Polyethylene Retail Bag Committee"*), (*citing Shakeproof Assembly Components v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001)). Also, in *Crawfish Processors Alliance*, the Court held that "{i}f Commerce's determination of what constitutes the best available information is reasonable, then the Court must defer to Commerce." *Crawfish Processors Alliance v. United* States, 343 F. Supp 2d 1242, 1251 (CIT 2004) ("*Crawfish Processors Alliance* ").

For the reasons discussed below, we find that the year-ended March 31, 2005, financial statements for Sundaram and Shiv Ganga are the best available information for valuing financial ratios to establish antidumping margins as accurately as possible, because they are contemporaneous, publicly available audited financial statements of Indian producers of identical merchandise.

For the *Preliminary Determination,* the Watanabe Group submitted financial information for the year-ended March 31, 2005, from two Indian producers of identical merchandise: Sundaram and Shiv Ganga. The Watanabe Group also submitted financial information for Kanoi, a producer of comparable merchandise, and Navneet Edutainment Limited, a subsidiary of Navneet,[24] a named respondent in the companion Indian investigation, for consideration in valuing financial ratios. In the *Preliminary Determination* the Department utilized data from the Kanoi financial

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[22] *See*, *e.g.*, *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum ("*Garlic*") at Comment 5.

[23] *See e.g., Diamond Sawblades Inv. Final* at Comment 1.

[24] *See* the Watanabe Group's submission dated February 21, 2006, at Exhibit 5 for Shiv Ganga's financial statements; Exhibit 6 for Kanoi's financial statements; and Exhibit 7 for Navneet's financial statements.

statements as of year-ended March 31, 2005, to value Lian Li's and the Watanabe Group's financial ratios. The Kanoi financial statements, based on the data contained in the record at the time, were deemed the best available information with which to calculate financial ratios, as they were for a company that produces comparable merchandise, they appeared to be complete, they were publicly available, and there were contemporaneous with the POI.[25]

However, in our *Preliminary Determination* we stated that the Department may consider other publicly available financial statements for the final determination. In its Preliminary Factors of Production Memorandum,[26] the Department explained that "{f}or the final determination, we will assess the comments placed on the record regarding the public availability of financial statements that were submitted for consideration in valuing factors of production." After the *Preliminary Determination*, Lian Li submitted the year-ended March 31, 2005, financial statements of an additional producer of comparable merchandise, Haryana. In addition, the Watanabe Group submitted the missing pages from Sundaram's financial statements.[27] Therefore, for purposes of the final determination, the Department has additional possible sources for valuing financial ratios, as well as those financial statements that were already on the record prior to the *Preliminary Determination.*

For Navneet, a mandatory respondent in a companion Indian antidumping investigation, *CLPP India*,[28] the Department concluded in the Indian investigation that Navneet's information was not usable for the final determination and determined that the use of adverse facts available ("AFA") was appropriate for Navneet. In *CLPP India*, the Department stated that it was unable to adequately determine whether the cost information contained in Navneet's responses reasonably and accurately reflect the costs incurred by Navneet to produce the subject merchandise. Consequently, we have declined to consider Navneet's financial information for use in the instant investigation.

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[25] *See* Memorandum to Wendy J. Frankel, Director, from Charles Riggle, Program Manager Re: Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China; Allegations of Ministerial Errors (June 1, 2006).

[26] *See* Preliminary Factors of Production Memorandum dated April 7, 2006, at pages 4 & 5.

[27] See *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China,* 71 FR 31159 (June 1, 2006) ("*Amended Preliminary Determination*").

[28] *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006) ("*CLPP India*"), and the accompanying Issues and Decision Memorandum at Comment 14.

For purposes of this investigation, Petitioner has incorrectly characterized the Department's preference for determining whether a given source is appropriate, as stated in *Persulfates 7*.[29] In that case, the Department considered whether the production process was comparable because it found the financial statements of a producer of identical merchandise to be distorted. In most cases, as we stated in *Persulfates 7* and *Color TVs Inv. Final,*[30] the Department's preference for surrogate value sources are "producers of identical merchandise, provided that the data are not distorted or otherwise unreliable." Petitioner's argument that the Department should not use the financial statements of Shiv Ganga and Haryana simply because they are privately held Indian companies is unsupported. In fact, the annual reports for both companies are available on the Indian Government's website and, for a fee, the financial statements are displayed on the website or a hard copy is available to the public at the registrar's office. Using the web addresses provided by the Watanabe Group, any party is able to obtain the financial statements provided by the Watanabe Group and Lian Li. Accordingly, we determine that both Shiv Ganga and Haryana's financial statements are publicly available. The Department has determined that financial statements of private companies filed with the Indian Registrar of Companies are in the public realm.[31] However, we do agree with Petitioner that Haryana's financial statements are illegible and undecipherable. Furthermore, the financial statements do not appear to be a complete report (*i.e.*, page numbers are hand written and circled on each page), many of the pages are illegible and many have large blank spaces where data or description is expected. Therefore, for the final determination, because of the deficiencies noted above, we have not considered Haryana's financial statements for the calculation of surrogate financial ratios in this investigation.

Since the *Preliminary Determination*, the Watanabe Group has supplemented the record with the missing pages from Sundaram's financial statements. We have also concluded that, as discussed above with respect to Shiv Ganga and Haryana, using the web addresses provided by the Watanabe Group, any party is able to obtain the financial statements and, therefore, the financial statements are publicly available.

Because we now have financial information on the record for producers of identical merchandise that are complete, publicly available, and contemporaneous with the POI, we have determined that for the final determination, consistent with the Department's stated preference for financial statements of producers of identical merchandise (so long as the data are not distorted or otherwise unreliable), it is no longer appropriate to use the data from a producer of comparable

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[29] *See Persulfates 7* at Comment 1, and *see also*, *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) ("*Color TVs Inv. Final*"), and accompanying Issues and Decision Memorandum at Comment 14.

[30] Id.

[31] *See Persulfates 4* at Comment 8.

merchandise. Therefore, in this final determination, we have used the year-ended March 31, 2005, financial statements of Sundaram and Shiv Ganga to value factory overhead, SG&A, and profit for the respondents in this proceeding.

Comment 2: Application of *Sigma*

Petitioner argues it is more accurate to calculate freight distance using the actual distance between two suppliers. It asserts the Department should do this instead of applying a *Sigma* cap.[32] Petitioner points out that the U.S. Congress is considering proposed legislation that would amend section 773(c)(3) the Act to base transportation costs on "actual freight distance."[33] Petitioner contends the Department should proactively initiate this practice.

If this practice is not adopted, Petitioner argues the Department should apply the *Sigma* cap after weight averaging the supplier distances. Petitioner acknowledges that the CIT has upheld the *Sigma* cap.[34] Petitioner states that *Sigma* dealt with an input (pig iron) from a single supplier but that the CIT did not speak to the case of multiple suppliers for a single input. According to Petitioner, it was a mistake for the Department to apply the *Sigma* cap prior to calculating a weighted-average freight distance in the *Preliminary Determination,* affecting multiple suppliers of both Lian Li and Watanabe. Petitioner argues that this was a deviation from the Department's past practice of applying the *Sigma* cap after weight averaging the supplier distances.[35] Petitioner claims that the "weight averaging process creates an imputed distance representing what the distance would have been had there been a single supplier for that input."[36] Petitioner asserts that after weight averaging, the Department compares the distance of an "imputed single supplier" with the distance of the nearest sea port, therefore following the *Sigma* single-supplier methodology. This, Petitioner again points out, did not happen in the instant investigation.

However, Petitioner acknowledges that the Department's application of the *Sigma* cap in the *Preliminary Determination* is in keeping with its methodology in more recent cases, such as the remand redetermination of the eleventh administrative review of heavy forged hand tools,

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[32] The term "*Sigma* cap" refers to the Department's practice of capping the distance of each supplier at the lesser of plant to port or plant to supplier, resulting from *Sigma Corp. v. United States*,, 86 F. Supp. 2d 1344 (CIT 2000) ("*Sigma*"); and *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed Cir. 1997).

[33] *See* Petitioner Case Brief at 44, citing to 109th Congress, 2d Session, H.R. No. 5529 at Section 112.

[34] *See Sigma*.

[35] *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges*, 68 FR 53347 (September 10, 2003) ("*Hand Tools 01-02 Final*"), and accompanying Issues and Decision Memorandum at Comment 15.

[36] *See* Petitioner Case Brief at 46.

finished or unfinished, with or without handles, from the PRC.[37] Petitioner asserts that the Department's logic in the *Hand Tools Redetermination* is flawed, specifically the assumptions that "the prices before freight were the same for every possible supplier" and, seeking to minimize expenses, that a nearer supplier will always be chosen over a more distant one because of the cost of transport.[38] Petitioner maintains that in this investigation, there is no record evidence supporting that the price of an input was the same from all suppliers before transport cost.

Furthermore, Petitioner argues, when a respondent has more than one supplier for an input, the cost of transport cannot be its only concern. Petitioner contends that the fact that a respondent is purchasing from a number of suppliers means it is self-evident that prices charged by the various suppliers differed. Petitioner asserts that there are more variables involved in a respondent's decision-making process than transport cost or a respondent would have only purchased from one supplier. Petitioner contends that *Sigma*'s rationale is mooted in multiple supplier scenarios. Petitioner argues that the Department should not use the methodology that is supported by neither judiciary precedent nor by facts on the record. It further maintains that applying the *Sigma* cap after the weight averaging of the supplier distances resolves these issues by acknowledging that respondents choose suppliers for a variety of reasons. Petitioner urges the Department not to perpetuate the "flawed assumption" outlined in the *Hand Tools Redetermination*.[39]

Additionally, Petitioner argues that if the Department continues to use Indian domestic purchase prices from *Indian Printer and Publisher* ("*IPP*"), it should not apply the *Sigma* cap to the supplier distances valued with *IPP* surrogate values. Petitioner notes that in the *Preliminary Determination* the *Sigma* cap was applied to all inputs. However, Petitioner points out, the Department's practice has been to apply *Sigma* to import values only and not to cap distances for surrogate values based on domestic prices.[40] Petitioner argues that, in order to do this for the Watanabe Group, the Department should use the freight distances reported in the original FOP databases (*i.e.*, lqfop01, shfop01, and szfop01).

Lian Li states that Petitioner acknowledges that the Department's application of the *Sigma* cap is consistent with decisions by the CIT and that the *Preliminary Determination* methodology is

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[37] *See Final Results of Redetermination Pursuant to Court Remand*, *Shangdong Huarong Mach Co. v. United States*, CIT 03-00676 (November 30, 2005) ("*Hand Tools Redetermination*"), available at http://ia.ita.doc.gov/remands/05-54.pdf.

[38] *See* Petitioner Case Brief at 46 -47.

[39] *See* Petitioner Case Brief at 48.

[40] *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) ("*Saccharin Investigation Final*"), at accompanying Issues and Decision memorandum at Comment 4. Petitioner asserts that the *Saccharin Investigation Final* clearly states that *Sigma* applies to import values.

consistent with its current practice.[41] Lian Li contends Petitioner is seeking a legislative change because the Department's practice does not comport with Petitioner's wishes. However, Lian Li points out that the Department is being consistent with its established practice and court rulings. Lian Li maintains that as long as the current statute is in place the Department should follow its *Sigma* cap methodology from the *Preliminary Determination.*

The Watanabe Group argues that the *Sigma* cap should be applied regardless of whether a surrogate value is based on domestic or import prices. It asserts that the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") stated in *Sigma* that "a rational manufacturer will minimize material and freight costs" and that "where the cost of the imported and domestic product are presumed to be the same, the manufacturer is further presumed to acquire the product from the nearest source in order to minimize freight costs."[42] The Watanabe Group maintains that this rationale contradicts Petitioner's argument and demonstrates that the *Sigma* cap should be applied to both domestic and import values because, under this rule, not only are the two presumed to be the same but it is assumed that the producer would buy from the source closest to it.

Additionally, the Watanabe Group declares that pending legislation is not grounds for the Department to stop following the *Sigma* rule. The Watanabe Group also contends that the rationale does not change based on the number of suppliers and that the Department should continue to apply the *Sigma* cap to each supplier, that is, prior to weight-averaging. The Watanabe Group points out that Petitioner acknowledges this as the current standard practice.

Department's Position:

We do not agree with Petitioner that the Department should proactively change its practice to conform with the proposed legislation before Congress to amend section 773(c)(3) of the Act and base transportation cost on "actual freight distance." The Department makes decisions consistent with the current statute and its current regulations, not with potential prospective changes to the law. Therefore, the Department will continue to follow the methodology it used in the *Preliminary Determination*, that is, to cap the distance for each supplier before calculating the weighted-average freight distance. This is consistent with the Department's *Hand Tools Redetermination* and with other recent cases such as *Diamond Sawblades Inv. Final* at Comment 8.

As explained in the *Diamond Sawblades Inv. Final*, we reject the argument that the logic applied in the *Hand Tools Redetermination* was flawed. In the *Hand Tools Redetermination*, we explained that the non-market economy ("NME") methodology attempts to construct production

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[41] *See* Lian Li Rebuttal Brief at 13.

[42] *See Sigma* at 1408 and to *Shangdong Huarong Mach Co. v. United States*, Slip Op 2005-54;27 ITR (BNA) 1713 (CIT May 2005).

costs that would have been incurred if the producer had been located in a market economy, where companies are assumed to behave in a manner that minimizes expenses and maximizes profits. *See Hand Tools Redetermination* at 4-8. According to the Federal Circuit's reasoning, a rational company located in a market economy would purchase identically priced inputs only from those suppliers that are closer to its factory than the nearest port. In the NME methodology, all suppliers are assumed to charge the same price for their input and the use of surrogate values applies this assumption in practice. When an NME company reports two or more input suppliers, where one supplier is farther from the nearest port than the other, the application of a single price means that a market-economy firm would not purchase inputs from the farther supplier, because purchasing from the farther supplier would not be rational under these conditions, due to the higher freight cost. As a consequence, applying the *Sigma* cap before calculating the weighted-average freight distance will result in a more accurate surrogate freight cost. It is reasonable and appropriate to assume that all suppliers in an NME country charge the same price for the input. Petitioner's conclusion that the fact that there are multiple suppliers suggest prices are different is not necessarily accurate. The need to source from multiple suppliers may be due to a number of other of factors unrelated to price. For example, the producer may require a greater volume of an input than can be supplied by a single suppler. Moreover, in NME cases the Department does not analyze the price charged by suppliers, but rather relies on surrogate values and applies the same surrogate to the same input regardless of the NME supplier. Therefore, for the final determination, the Department has continued to cap the distance for each supplier before calculating the weighted-average freight distance.

Additionally, Petitioner argues that if the Department continues to use Indian domestic purchase prices from *IPP,* it should not apply the *Sigma* cap to the supplier distances valued with *IPP* surrogate values. While Petitioner has raised this issue only in reference to the Watanabe Group we find that it pertains to Lian Li as well. The Department has applied its *Sigma* cap in this manner inconsistently in the past. However, the Department's current practice is to apply the *Sigma* cap only to import prices because in *Sigma* the Department stated it would apply the distance cap to import statistics. *See, e.g.*, *Saccharin Investigation Final* at Comment 4*, Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800, 66807-08 (November 28, 2003), and *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China* 70 FR 77121, 77132 (December 29, 2005) unchanged at *Diamond Sawblades Inv. Final*. Therefore, we will not apply the *Sigma* cap to inputs valued with domestic purchase prices for either the Watanabe Group or Lian Li.

Comment 3: Text Paper Surrogate Value

Both the Watanabe Group and Lian Li argue that the surrogate value of 36.06 Rupees ("Rs")/kilogram ("kg") from *IPP* used in the *Preliminary Determination* to value text paper[43] should not be used in the final determination because it overvalues the cost of text paper. Both parties assert that companies such as themselves, who buy in large volumes, would be able to negotiate a purchase price that is below the list price and they propose alternative surrogate values for valuing text paper.

According to the Watanabe Group, the Department should use data it has derived and placed on the record from the financial statements of four Indian companies, which consist of three paper converters and one producer of paper feedstock.[44] The Watanabe Group states that the resulting calculation suggests the average cost of text paper in India is 32.5 Rs/kg and points out that this figure is very close to the public information in the companion Indian investigation, which shows an average cost of 32.53 Rs/kg.[45] The Watanabe Group maintains that it disagrees with Petitioner's earlier statements that the public information of the Indian case should not be used. However, the Watanabe Group feels the public information in the Indian financial statements for a text paper value negates this issue. Furthermore, the Watanabe Group contends that not only are these public Indian financial statements' text paper values reliable, but the data reflect actual negotiated prices instead of list prices and, as such, are a better indicator of the actual text paper cost than the *IPP* creamwove data. The Watanabe Group asserts that the amount of data pointing to an average text paper cost of 32.5 Rs/kg shows that it is the best available information and that the value of 36.06 Rs/kg, although only 4 Rs/kg higher, is a substantial cost inflation that "unreasonably inflates the normal value calculation."[46]

Lian Li also asserts that actual negotiated prices are better than list prices. It proposes the use of creamwove "transaction" prices published by the Indian government's procurement authority, the Director General of Supplies and Disposals ("Indian Director General") submitted in Lian Li June SVs. Lian Li argues that these prices represent actual prices paid for purchases of creamwove and claims that they are significantly lower than the *IPP* list prices. Moreover, Lian Li maintains that the *IPP* prices are the seller's opening offer and reflect neither negotiation between buyer and seller nor any volume or trade discounts normally given for large quantity transactions. Lian Li argues that, since text paper is its largest input, paper converters buy large

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[43] The Watanabe Group refers to its main paper input as "text paper" while Lian Li refers to its main paper input as "mixed pulp paper." Petitioner Case Brief refers to the main paper input as "web paper." For ease of reference in this memorandum, we have referred to the main paper input for both companies as "text paper."

[44] *See* Watanabe Group June SVs at Exhibit SSV-6. The four companies the Watanabe Group uses are paper converters Shiva Ganga, Sundaram, and Navneet, as well as paper producer Kanoi.

[45] *See* the Watanabe Group's March 26, 2006 submission at Exhibit SV-2.

[46] *See* Watanabe Group Case Brief at 9.

quantities of it and, therefore, cannot be expected to pay list price. Furthermore, Lian Li maintains that no evidence on the record indicates that list prices represent actual transaction prices. It also claims the Indian Director General "obviously" has trade and volume discounts available to it, and purchases in very large volumes, so these data do not represent one transaction, and its prices represent purchases from many suppliers throughout India during fiscal year 2004. Therefore, Lian Li states, it is the best information on the record for valuing text paper.

Petitioner also argues that the Department should not use the *IPP* creamwove prices as a surrogate with which to value text paper in the final determiniation. Instead, Petitioner contends that the Department should use the Indian harmonized tariff schedule ("HTS") category 4802.55.90 as it did in the initiation. Petitioner also asserts that the Department has a longstanding reliance on published and publicly available Indian import statistics and that by using *IPP* data the Department strayed from prior practice in this case.

Petitioner notes that the Watanabe Group argued in its February 21, 2006, surrogate value submission ("Watanabe Feb SVs") that Infodrive India ("Infodrive") data supports the Watanabe Group's contention that Indian HTS 4802.55.90 should not be used to value text paper because it is a basket category which includes items like specialized paper, which are very different from text paper. Petitioner counters this by asserting that Infodrive is unrelated to official import data that the Indian government disseminate through sources like the World Trade Atlas and *Monthly Statistics of the Foreign Trade of India***.** Petitioner cites to many examples of differences between the official Indian import data for HTS 4802.55.90 and corresponding Infodrive data.[47] Petitioner argues that while the Watanabe Group may have disregarded these inconsistences in its March 24, 2005, surrogate value submission, the Department has rejected using Infodrive many times and these past precedents moot the Watanabe Group's arguments. Petitioner cites to the *Diamond Sawblades Inv. Final* at Comment 11, where the Department stated that it "prefers not to use Infodrive data to derive surrogate values or to use as a benchmark to evaluate other potential surrogate values because it does not account for all of the imports which fall under a particular HTS subheading."[48] Petitioner argues that in the *Diamond Sawblades Inv. Final*, the Department faulted Infodrive further for having inconsistent units of measure and for claiming entries that do not match their purported HTS number. Petitioner claims that these same issues arise with regard to the Infodrive data gathered by the Watanabe Group. Specifically, Petitioner states that the Infodrive data: 1) omit known imports under HTS 4802.55.90; 2) show entries of items other than text paper in rolls; and 3) use inconsistent units of measure. Therefore, Petitioner maintains, the Department should use import statistics over Infodrive, follow its precedents, and value text paper with HTS 4802.55.90.

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[47] *See* Petitioner Case Brief at 51.

[48] *See* Petitioner Case Brief at 52.

Additionally, Petitioner argues that the text paper surrogate value should not have been used to value 80 grams per square meter ("GSM") paper and 120 GSM paper. Petitioner asserts that these two papers are further manufactured and printed and, therefore are not like text paper. In its arguments regarding paperboard, Petitioner argues that these two inputs should be valued with the paperboard surrogate value. *See* Comment 4, below.

Lian Li and the Watanabe Group both argue that the text paper value proposed by Petitioner should not be used because it is a broad basket category. Further, Lian Li contends that it is not specific to the text paper used in scope merchandise. The Watanabe Group asserts that, other than the fact that HTS 4802.55.90 was used at initiation, Petitioner makes unsupported arguments regarding the use of the *IPP* data, which it characterized as being of "dubious value." According to the Watanabe Group, it does not understand why Petitioner attacks the Infodrive data[49] and maintains it placed the Indodrive data on the record to demonstrate that the Indian import statistics reflect a basket category inclusive of items unrelated to text paper. The Watanabe Group maintains it never suggested using Infodrive for valuing text paper. The Watanabe Group declares that by using "better, more product-specific" publicly available information, the Department will meet the statutory requirement to use the best available information.[50]

In rebuttal, Petitioner argues against both Lian Li and the Watanabe Group's proposed surrogate values for text paper and also reiterates that the Department should not use *IPP* creamwove prices to value text paper. With regard to the Watanabe Group's proposed surrogate, Petitioner asserts that the sources of the data (the financial statements) contain flaws. Specifically, Petitioner contends that it has established that both Shiv Ganga and Navneet produce a large range of products including many non-scope products, such as stationary, multiple types of forms, and books.[51] Then, Petitioner alleges that all these use different kinds of paper that may vary in grade, size, color, and format. It submits that Shiv Ganga maintains its inventories and purchases and Navneet maintains its raw materials consumed and trading purchases[52] on a consolidated basis, such that the average values include all paper types. Therefore, Petitioner concludes, it is "all but certain" these line items include papers that are unique (*e.g.*, printed paper, narrow sheets, colored paper, board, text paper) and, therefore, priced differently from text paper and from each other. Petitioner further contends these papers are purchased both in rolls

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[49] *See* Watanabe Rebuttal Brief at 10.

[50] *See* Watanabe Rebuttal Brief at 11.

[51] *See* Petitioner's letter regarding surrogate values (March 15, 2006) ("Petitioner March 15 SVs") at Exhibit 3 and its letter rebutting the June 13 surrogate values submissions (June 23, 2006) (" Petitioner June SV Rebuttal") at Exhibit 23 (although Petitioner cites to exhibit 23, the Department assumes Petitioner means exhibits 2 and 3, as this submission does not have an Exhibit 23).

[52] The Watanabe Group based its text paper calculation for Shiv Ganga and Navneet on these line items.

(like text paper) and in cut sheets.[53] Petitioner also declares that paper used by Navneet contains no wood pulp and, therefore, its bagasse[54] content makes it incompatible for comparison to the Watanabe Group's text paper.[55] According to Petitioner, using "cut sheet" eliminates the cost of cutting the paper from rolls, which is a major cost factor for notebook producers; therefore, these companies' paper is "overbroad and inappropriate for surrogate purposes."[56] Furthermore, Petitioner asserts that the Watanabe Group's calculation of text paper from Shiv Ganga and Navneet does not incorporate adjustments needed for accounting variances. Specifically, Petitioner alleges that Shiv Ganga's depreciation affects paper inventory values, that there is potential damage to inventoried goods which also has a downward pricing effect, and that some of its inventory was from pre-POI purchases. Petitioner also speculates that Navneet's trading purchases might represent trades between either unaffiliated and/or affiliated parties and may not represent open market purchases.

Addressing the third financial statement proposed by the Watanabe Group, Petitioner asserts that Kanoi appears to be a paper producer, and alleges it is unclear exactly what types of paper (grade, brightness, color, *etc.*) it is producing. Therefore, Petitioner contends, the Department should not use data extracted from Kanoi's financial statements because it cannot be credibly argued that the use of these data is more accurate than import statistics which are limited to unfinished rolls of paper of certain weights and color. Additionally, Petitioner argues that the valuation of closing stock that the Watanabe Group cites to were valued from an accounting standpoint rather than the commercial value of actual traded or sold goods and, therefore, the closing stock valuation may be unrelated to the commercial value.

Finally, with respect to the fourth financial statements, Petitioner argues that Sundaram produces diverse items different from scope merchandise.[57] Pointing to some specific product examples, Petitioner contends that these are products different from text paper in rolls. Moreover, Petitioner asserts that Sundaram's financial statements show that the "raw material and packing material consumed" line item seems to contain every material input used in Sundaram's production, including paper, glue, tape and packing materials. According to Petitioner, this category, which includes all inputs for scope and non-scope merchandise, is unsuitable for valuing text paper.

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[53] *See* Petitioner Rebuttal Brief at 7-8.

[54] Bagasse is plant residue left after a product (like juice) has been extracted.

[55] *See* Petitioner March 15 SVs at Exhibit 4.

[56] *See* Petitioner Rebuttal Brief at 8-9.

[57] *See* Petitioner June SV Rebuttal.

Additionally, Petitioner argues that the Watanabe Group's corroboration sources are unreliable. It points out that both Navneet and Aero Exports[58] had total AFA applied to them in the final determination of the companion Indian investigation.[59] Therefore, maintains Petitioner, their information cannot be relied upon. With regard to the third Indian respondent, Kejriwal Paper Limited ("Kejriwal"), Petitioner contends that in the past the Department declined to use data ranged in accordance with 19 CFR 351.304(c) to value a major input when there was no indication how the data were ranged, and thus it may be substantially different from the actual data.[60] Petitioner points out that in the *Shrimp Inv. Final*, the Department noted that it had used ranged data from public versions in the past, but only to value minor inputs or where the data did not significantly change the dumping margin. Petitioner also claims that, in that case, the Department was wary of using ranged cost data prepared for a dumping response. Petitioner notes that Kejriwal's ranged data were produced in response to the Department's dumping questionnaire and that it is universally accepted that text paper is by far the largest input in this case. According to Petitioner, the Department should follow the *Shrimp Inv. Final* in this case and refuse to use publicly ranged data from Kejriwal either for corroboration purposes or as a surrogate value for text paper.

Next, Petitioner argues that Lian Li's list prices from the Indian Director General suffer from multiple problems. First, Petitioner contends that there is insufficient information as to the specifications of the paper. It also points out that there are no specifications regarding the brightness, size, and make-up of the paper. Petitioner claims it is especially critical to know if the paper contains greater or less than 10 percent mechanical or chemi-mechanical fibers. According to Petitioner, the existence of these fibers in the paper yields a material ineligible for use in production of in-scope merchandise. Second, Petitioner points out that the price list does not indicate the form in which the paper is sold (rolls or cut sheet). Third, Petitioner notes that the price list indicates that the paper sold is watermarked; however, neither Lian Li nor the Watanabe Group has reported watermarking as a text paper characteristic. Fourth, Petitioner contends that it is not clear if the Indian Director General list prices are actually transaction prices or if they are only initial proffers that may lead to future transactions. Moreover, Petitioner states "that validity of the pricing is for October 31, 2005, while the list dates are over a year before-October 2004."[61] Lastly, Petitioner argues that the Indian Director General, as one

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[58] Navneet, Aero Exports, and Kejriwal Paper Limited ("Kejriwal") are the three mandatory respondents in *CLPP from India*.

[59] *See* the Department's Fact Sheet re: "Commerce Finds Unfair Dumping and Subsidies on Lined Paper Products from India" (August 1, 2006) at http://is.ita.doc.gov/download/factsheets/factsheet-india-lined-paper-products-ad-cvd-final-080106.pdf.

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

[61] *See* Petitioner Rebuttal Brief at 16.

of the biggest paper consumers in India (and possibly the world), is able to obtain prices and discounts at levels that, in the normal course of business, a company could not obtain.

Petitioner argues against using creamwove to value text paper. According to Petitioner, creamwove is exclusive to India and is made from wheat stalk. Petitioner postulates that the Indian home market, unlike the U.S. market, has a much lower paper quality and very low cost is the primary concern. To support this argument, Petitioner points out that one of Lian Li's customers of scope merchandise requested 100 percent wood-pulp paper[62] and one of the Watanabe Group customers requested paper that is a mix of wood and agro-product.[63] Petitioner claims that creamwove is wood-free and, therefore, is not used by Lian Li or the Watanabe Group.

Finally, Petitioner asserts that both of these respondents admit to using agro/wood mixed text paper.[64] Petitioner then summarizes what it says is the process of making agro/wood mixed paper.[65] This process, according to Petitioner, creates a paper which runs well for drawing and printing, will not easily tear, has the smooth finish of notebook and filler paper, and has its brightness maximized by the wood. Then, Petitioner summarizes what it says may be the process of making woodfree paper in India.[66] Petitioner asserts that the resulting papers like creamwove are "often" rougher and darker (less bright) than text paper produced wholly or partially from wood.[67] According to Petitioner, creamwove is at the lower end of the paper grades and standard creamwove is substandard in grade to the paper sold in the U.S. market.[68] Petitioner acknowledges that creamwove can be used for the U.S. market but only if the pulp undergoes significant bleaching and processing" to get it to acceptable brightness and sheen levels. However, Petitioner claims that this further processing adds cost and is the reason that brightened creamwove is not normally sold in India. Petitioner also postulates that the *IPP* prices are likely for domestic sales and therefore the creamwove is probably of low strength and brightness. It

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[62] *See* Lian Li Case Brief at 9-10.

[63] *See* Petitioner's March 24, 2006, surrogate value submission ("Petitioner March 24 SVs") at Exhibit 2.

[64] *See* Lian Li's February 2, 2006, sections C and D questionnaire responses.

[65] *See* Petitioner Rebuttal Brief at 18.

[66] *See* Petitioner Rebuttal Brief at 19.

[67] *See* Petitioner Rebuttal Brief at 19.

[68] *See* Petitioner March 15 SVs at Exhibit 8 and Petitioner March 24 SVs at Exhibit 2.

further speculates that, with India, when a higher grade paper is needed it "may" include wood fiber for which the Indian producer will either pay more or will import the text paper.[69]

Finally, Petitioner argues that the Department should find that using a "dissimilar material input," such as the creamwove paper to value agro/wood mixed or wood text paper used by the Watanabe Group and Lian Li would be inconsistent with "the Department's policy of utilizing surrogate values that 'most accurately reflect{} {the respondent's} production.'"[70] Petitioner states that in the *Ball Bearing Inv. Final,* the Department decided that using cold-rolled steel was a more accurate surrogate than hot-rolled steel even though the two steels are "relatively interchangeable."[71] Petitioner maintains that in this investigation the respondents have asserted that they use an agro-wood mixed text paper (as opposed to a wood free-text paper) and that the record contains not only surrogate information for agro-wood mixed text paper, but that creamwove is an inferior paper unsuitable for the respondents' use. Therefore, Petitioner concludes that Indian HTS 4802.55.90, not creamwove, should be used to value text paper.

Department's Position:

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market-economy country. The Department's criteria for selecting surrogate value information is to use publicly available information and it considers several factors when choosing the most appropriate information, including the quality, specificity, and contemporaneity of the data. *See, e.g. Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China* 69 FR 34125 (June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 9, and *Notice of 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 Comments 3 and 4. Therefore, we must determine what the best available information for valuing text paper is in this case.

We find the list prices from the Indian Director General unusable for the purposes of valuing text paper. The source documentation does not show the basis on which the sales are made (*e.g.*, Rs per kg, Rs per ream, Rs per carton). *See* Lian Li June SVs at Comment 3. Lian Li has submitted a price in Rs per kg based on this price list, but there is no evidence establishing that the items are sold on a per-kilogram basis. Without this essential information, it is impossible to use the list prices from the Indian Director General as a surrogate value source.

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[69] *See* Petitioner Rebuttal Brief at 20.

[70] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 68 FR 10685 (March 6, 2003) ("*Ball Bearing Inv. Final*"), and accompanying Issues and Decision Memorandum at Comment 43.

[71] *See* Petitioner Rebuttal Brief at 21.

We also find the Watanabe Group's proposal to use the "text paper" value from an average of four Indian financial statements to be problematic. First, we cannot use Navneet's financial statements in this proceeding because the Department found Navneet's data to be unreliable and we applied total AFA to Navneet in the companion investigation on CLPP from India. *See CLPP India*. As such, we have also found Navneet's financial statements unusable for the surrogate financial expense ratios. *See* Comment 1. With regards to Navneet and Aero Exports, we find that the application of total AFA to these companies in the final determination of the Indian investigation of CLPP[72] renders their publicly ranged data unusable as either a potential surrogate source or as a benchmark against which to measure other potential sources. Additionally, as Petitioner points out, Shiv Ganga produces a myriad of paper products and the inventory/purchases line item in its financial statements seem to represents a broad basket of paper used for its diverse product lines. *See* Petitioner June SV Rebuttal at Exhibit 2. However, Petitioner is incorrect that the Sundaram information used by the Watanabe Group contains non-paper material inputs and packing materials. The Watanabe Group's surrogate value submission shows that, while Sundaram's financials reflect raw material and packing material consumed, the Watanabe Group only utilized the "paper" line item in its calculation. *See* Watanabe Group June SVs shows at Exhibits 1 and 6. However, the financial statements of one or even two parties is not necessarily representative of the range of prices paid throughout an industry such as this one. The Preamble to the Department's regulations states that, "when compared to a publicly available price that reflects numerous transactions between many buyers and sellers, a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997). The same can be said of the purchases of a single producer compared to an industry-wide average price.

We also find that it is not appropriate to use Kejriwal's publicly ranged data as a surrogate value. As stated above, our preference and practice is to use publicly available industry-wide prices, which this is not. Furthermore, as Petitioner points out, in the *Shrimp Inv. Final*, we have declined to use publicly ranged data to value the major input where the record does not indicate how the data are ranged.

Petitioner is correct that HTS number 4802.55.90 was used in the initiation. However, while we believe that the import of text paper is most likely contained within this basket category, there is no eight-digit sub-category that is reasonably specific to the type of text paper used by Lian Li and the Watanabe Group. Contrary to Petitioner's assertions, this HTS category is not specific to the category of rolled text paper used by the participating respondents in this proceeding. Therefore, it is not as specific to the input we are valuing as other potential sources on the record of this proceeding, such as the *IPP* creamwove paper. Moreover, contrary to Petitioner's assertion, the use of this HTS category in the initiation does not create a "past precedent" from

[72] *See CLPP India*.

which we would be reluctant to move away. At the initiation, this HTS category was the only information on the record with which to value text paper. Currently, as evident by the discussion herein, we have many other options available for consideration.

Further, the Department is not persuaded by Petitioner's arguments against using creamwove to value text paper. First, neither of the documents Petitioner uses to argue creamwove is substandard[73] defines exactly what the criteria for standard versus substandard are nor what type of GSM and brightness constitute a lesser grade of paper. Moreover, contrary to Petitioner's claims, there is also evidence on the record that creamwove is a "medium brightness paper." *See* Watanabe Feb. SVs at Exhibit SV-4B. Second, although the term "creamwove" is unique to India, this does not mean that the physical paper itself is unique to India or that creamwove paper prices are not a viable surrogate for text paper. Evidence on the record shows that creamwove can be of a GSM category suitable for valuing text paper. For example, Lian Li June SVs contains a price list from the Indian Director General. While we have determined that this cannot be used to value text paper, it does show that creamwove is produced in GSM ranging from 60-75. *See also* Petitioner March 15 SVs at Exhibit 5 showing an Indian Government "Schedule To Tender Enquiry" listing Paper Creamwove in sheets and reels with GSMs ranging from 60 to 75 and Watanabe Feb. SVs at Exhibit SV-4C, "Director of Stationary and Printing, Pondicherry Tender Schedule" showing a creamwove GSM of 60. These creamwove papers are a higher GSM than what the Watanabe Group used in producing subject merchandise.[74] Some of the text paper used by Lian Li also fits within the range GSM of creamwove sold by the Indian Director General.[75] With respect to Petitioner's claims that the *IPP* prices are for the domestic market, that type of price (*i.e.* the prices Indian producers would pay) is precisely what we are seeking in a surrogate value.

Petitioner states that, in the *Ball Bearing Inv. Final,* the Department decided that using cold-rolled steel was a more accurate surrogate for hot-rolled steel even though the two steels are "relatively interchangeable." We find this to be a misinterpretation of the *Ball Bearing Inv. Final*. In that investigation, at Comment 43, the respondent argued that after the preliminary determination it clarified that it used cold-rolled steel bar and tube to make its inner and outer rings and, therefore, for the final determiniation cold-rolled steel should be used to value these inputs. At the preliminary determination, hot-rolled steel was used to value its inner and outer rings. While agreeing that the respondent used cold-rolled steel bars and tube for these inputs,

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[73] *See* Petitioner March 15 SVs at Exhibit 8 regarding the credit rating of "Hindustan Paper Corporation Ltd. ("HPC") which states that "HPC mainly produces and sells the creamwove grade of paper which is at the lower spectrum of the paper grades"; *see also* Petitioner's March 27, 2006, at Exhibit 2 which contains an affidavit stating creamwove is a "lesser grades of paper."

[74] The Watanabe Group reported using 56 GSM text paper which the Department verified. *See, e.g.,* Watanabe Linqing Verification Report at 11-12.

[75] *See* Lian Li March Supp D at Appendix S1-D-4A.

for the final determination the Department continued to apply the surrogate value for hot-rolled bar for the inner rings because respondent did not provide an appropriate HTS category for cold-rolled bar. The Department, however, used cold-rolled steel tube as the surrogate for the outer rings. *See Ball Bearing Inv. Final* at Comment 43.

Petitioner has placed on the record an affidavit that supports its argument that the *IPP* creamwove is not sold in rolls while text paper is purchased in rolls. *See* Petitioner's June 13, 2006, surrogate value submission ("Petitioner June SVs") at Exhibit 6. Regardless, the prices are quoted in *IPP* on a kilogram basis and, therefore, are usable as a surrogate to value the usage rates reported by Lian Li and the Watanabe Group. *See, e.g.*, Watanabe Feb. SVs at Exhibit SV-8. Petitioner argues that creamwove is wood-free paper which differed from the agro/wood mixed paper used by the Watanabe Group and Lian Li. The Department does not find that there is enough evidence on the record to determine whether creamwove is always a wood-free paper or not. However, as the *Ball Bearing Inv. Final* shows, when surrogate information to exactly match an input is not available, the Department has used a similar and interchangeable material to value that input. The record clearly supports that creamwove is used to make notebooks and for writing paper. *See, e.g.,* Watanabe Feb. SVs at Exhibit SV-4B and Petitioner March 15 SVs at Exhibit 6. The record also supports that creamwove is made of a GSM level suitable for valuing the text paper used by Lian Li and the Watanabe Group. Based on evidence on the record and past precedent, we find that creamwove is not only similar enough to text paper for the purposes of valuing text paper, it represents the option most specific to the respondents paper input. Therefore, we find that the *IPP* creamwove prices are the best available surrogate for text paper on the record because they best fulfill the criteria of quality, specificity, and contemporaneity while also meeting the goal of being publicly available, industry-wide prices.

Comment 4: Paperboard and Insert Paper Inputs

Petitioner argues that the Department undervalued the paperboard inputs in the *Preliminary Determination*. By paperboard inputs, Petitioner means Lian Li's grey/white paperboard, white/white paperboard, and white paperboard, and the Watanabe Group's 230/250, 250, and 450 GSM paperboard inputs as well as its 80 GSM and 120 GSM text papers.

Petitioner outlines some of the specifications of Lian Li's paperboard inputs, stating that both grey/white and white/white paperboard are coated with inorganic substances or kaolin and that less than 10 percent of the fibers come from a mechanical or chemi-mechanical process. Petitioner declares that Lian Li claims its white paperboard has a minimum of 10 percent of fibers from a mechanical or chemi-mechanical process but is coated the same as the other two boards.

Citing to Petitioner June 13 SVs, Petitioner asserts that these paperboard inputs are modified by decoration, coating, and printing. Petitioner argues that its affidavit in Petitioner March 24 SVs demonstrates that, depending on the complexity of the art, finishing the paperboard increases paperboard costs by 50 to 100 percent. Petitioner also states that paperboard is thicker than 50 or

60 GSM web paper. Petitioner contends that paperboard surrogate values used in the *Preliminary Determination* are less than for unprinted text paper. Petitioner claims that the Department significantly undervalued these paperboard inputs by using Indian HTS 4810.19.90 for the *Preliminary Determination*. According to Petitioner, Indian HTS 4810.19.90 is defined as "other paperboard" and encompasses coated sheets with minimum dimensions of 435 millimeters ("mm") by 297 mm. To accurately capture the cost of printed paperboard inputs, Petitioner states that the Department should use Indian HTS 4810.29.00.[76]

Petitioner also argues that Lian Li's "light-weight coated paper" or insert paper should be categorized under HTS 4810.29.00. It asserts that the HTS at Chapter 48 subheading note 7 states that Indian HTS 4810.22, which was used for the *Preliminary Determination,* is for light weight coated paper with a total weight less than 72 GSM.[77] Petitioner points out that based on Lian Li's reported insert paper weights, this input should not be valued with Indian HTS 4810.22.[78] Therefore, claims Petitioner, the Department should value Lian Li's insert papers with Indian HTS 4810.29 for the final determination because it appropriately covers papers of these weights.

Both the Watanabe Group and Lian Li argue against the use of Indian HTS 4810.29.00, with one exception. The Watanabe Group asserts that, for paperboard and textpaper, *IPP* provides the best available data and Petitioner incorrectly argues that this does not sufficiently account for the value of printing. The Watanabe Group maintains that the subheadings of "4810" covers both paper and paperboard "whether or not . . . surface-decorated or printed. . . ."[79] Furthermore, the Watanabe Group points out that the average unit values for *IPP* paperboard are higher than the 4810.19 values. According to Lian Li, 4810.19.90 is the correct Indian HTS category for white/white and grey/white because it generally covers white/white and grey/white paperboards it uses, specifically those "coated with {k}aolin on one or both sides that is made with less than 10 {percent} wood pulp" and not classified elsewhere under 4810.19.[80] However, Lian Li acknowledges that 4810.29 covers kaolin-coated paperboard with more than 10 percent wood pulp and, therefore, is appropriate to value its white paperboard.

Additionally, the Watanabe Group asserts that there is no basis for Petitioner's statement that "the simple printed covers and inserts" it uses increased the cost of paperboard or paper by 50 to

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[76] *See* Petitioner Case Brief at 53-55.

[77] *See* Petitioner June SVs at Exhibit 1.

[78] *See* Petitioner Case Brief at 56 for further proprietary details of this argument.

[79] *See* Watanabe Rebuttal Brief at 11.

[80] *See* Lian Li Rebuttal Brief at 15.

100 percent.[81] Finally, the Watanabe Group counters Petitioner by pointing out that, not only is Indian import data less product specific than the *IPP* data, list prices are typically higher than prices negotiated by large converters such as itself. The Watanabe Group contends that that means the *IPP* data are a conservative estimate and reasonable to use as the best available information to value the inputs in question.[82]

Department's Position:

Petitioner stated that the Department used lower surrogate values for printed paperboard than for unprinted web paper even though printing substantially adds to the cost of the printed paperboard. We note that this was not the case for the Watanabe Group because in the in the *Preliminary Determination* its paperboard surrogate values were higher than the text paper surrogate value. For the final determination this is not be the case for either company. Regardless, the Department does not base its decision for choosing a surrogate value on price. Rather, as stated above at Comment 3, in valuing the FOP, the Department uses "the best available information" from the appropriate market-economy country and examines several factors, including quality, specificity, and contemporaneity, to determine what the best available information is. *See e.g.*, *Honey 03-04 Final* at Comment 1.

In this case, all the data are equally contemporaneous and of equal quality. Therefore, specificity of the surrogate to the input in question is the Department's main concern for the paperboard and insert paper inputs. Additionally, although both Lian Li and the Watanabe Group used printed paperboard inputs, none of the potential sources available on the record of this proceeding that can reasonably be considered as surrogates for these inputs appears to contain printed paperboard. Both Indian HTS numbers 4810.19.90 and 4810.29.00 are for "paper or paperboard of a kind *used for* writing, printing, or other graphic purposes"[83] (emphasis added) implying that the imports are unprinted. It is also reasonable to assume that the *IPP* prices are for unprinted paperboard since prices are from paper suppliers and do not specify that the boards are printed. Therefore, the Department must determine which surrogates are the best available information based on specifications other than "printed."

Both Petitioner and Lian Li agree that Indian HTS 4810.29.00 is the correct surrogate value for Lian Li's white paperboard. The record shows that Lian Li's white paperboard is described as having fiber content of more than 10 percent[84] and the Indian HTS 4810.29.00 matches this

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[81] *See* Watanabe Rebuttal Brief at 11.

[82] *See* Watanabe Rebuttal Brief at 12.

[83] *See* http://www.cbec.gov.in/cae/customs/cs-tariff/cus-tariff-2005/chapters-2k5/chap-48.pdf.

[84] *See* Lian Li March Supp D at Appendix S1-D-4A.

description.[85] Therefore, we agree that Indian HTS 4810.29.00 is the correct category with which to value Lian Li's white paperboard for the final determination. However, Indian HTS 4810.29.00 is not the most specific match for the other paperboard inputs of both respondents or for Lian Li's insert paper because the paper or paperboard in that category contains more than 10 percent fiber. In the case of Lian Li, the remaining inputs either specify that they contain "fibers not more than 10 percent"[86] or, in the case of insert paper, do not specifies a fiber content. None of the Watanabe Group paperboard inputs in question specify a fiber content but they do specify a GSM weight. Moreover, we have information on the record that is more specific to the descriptions of these inputs.

For the *Preliminary Determination,* we valued Lian Li's white/white paperboard and grey/white paperboard with Indian HTS 4810.19.90 because, based on the information on the record, it was the best available information at the time. On March 30, 2006, we received Lian Li's Supplemental D (Part II) Response. While we did not have sufficient time to consider this information for the *Preliminary Determination*, we have considered it for the final determination. Lian Li's Supplemental D (Part II) Response at Appendix S1-D-4A shows that both white/white and grey/white usage rates comprise the consumption of varying weights of paperboard. In order to capture the range of paperboard weights used by Lian Li, the Department has concluded that *IPP* serves as the most specific information on the record because it provides specific prices for different weights (in GSM) for both "WB" (whiteboard) and "GB" (greyboard). For Lian Li's white/white paperboard, we will calculate a simple-average of the available *IPP* prices which cover the same GSM weights as the white/white paperboard Lian Li purchases. Lian Li's grey/white board is paperboard that is half whiteboard and half greyboard. For this input, for the final determination, the surrogate value will be a simple average of the available *IPP* prices covering as many of the GSMs as possible for both whiteboard and greyboard.

In the *Preliminary Determination,* the Department valued the Watanabe Group's 230/250, 250, and 450 GSM paperboard inputs using *IPP* whiteboard price quotes for the appropriate GSM size. The Watanabe Group did not specify a fiber content for its paperboard; therefore, it is not possible to determine whether it falls under Indian HTS 4810.29.00. The *IPP* price quotes are the best available information to value the 230/250, 250, and 450 GSM paperboard inputs because they are specific to the GSM size used by the Watanabe Group. Therefore, we have made no change to the surrogate value for these inputs for the final determination.

Additionally, the Watanabe Group did not specify a fiber content for its 80 GSM and 120 GSM text papers; therefore, it is not possible to determine whether they fall under Indian HTS 4810.29.00 or 4810.19.90. With regard to insert paper, Lian Li did not specify a fiber content;

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[85] Indian HTS 4810.29.00 is defined as other paper and paperboard of which "more than 10% by weight of the total fiber content consists of fibers obtained by mechanical or chemi-mechanical process." *See* http://www.cbec.gov.in/cae/customs/cs-tariff/cus-tariff-2005/chapters-2k5/chap-48.pdf.

[86] *See* Lian Li March Supp D at Appendix S1-D-4A.

therefore, it is not possible determine whether they fall under Indian HTS 4810.29.00. Lian Li does describe this input as light-weight coated paper. *See* Lian Li's February 2, 2006, questionnaire response at Attachment D-1-2. For the *Preliminary Determination* we used Indian HTS 4810.22.00 "light-weight coated paper"[87] to value this input; however, note 7 of the Indian HTS states that category 4810.22 is for paper whose total weight does not exceed 72 GSM.[88] Since Lian Li's insert paper does not meet this criteria, Indian HTS 4810.22.00 does not represent the appropriate surrogate value for the final determination. Both Lian Li's insert paper and the Watanabe Group's 80 GSM and 120 GSM text papers includes consumption of multiple GSM weight paper whose GSM is lower than any listed in the *IPP*. *See* Memorandum to Wendy J Frankel Re: Preliminary Determination of the Investigation of Certain Lined Paper Products from the People's Republic of China: Factors-of-Production Valuation for Preliminary Determination (April 7, 2006) at Attachment 9. Moreover, the Watanabe Group has stated that these two inputs were a form of text paper, not paperboard, and they serve as paper dividers and cover sheets for scope merchandise. *See, e.g.*, Watanabe Linqing's Section D questionnaire response (February 2, 2006) at Exhibit 4. Therefore, the best available information on the record to value Lian Li's insert paper and the Watanabe Group's 80 GSM and 120 GSM text papers is the *IPP* creamwove data.

Comment 5: Recycled Paper

Lian Li argues that the Department used an aberrational surrogate value for recycled paper in the *Preliminary Determination*. According to Lian Li, this surrogate value, Indian HTS 4805.25[89] is "plainly aberrational" because, at 258.51 Rs/kg, it is seven times greater than the creamwove surrogate value used for text paper.[90] Furthermore, Lian Li purports to have purchased recycled paper as a cost-saving measure to replace text paper. It asserts that, in lieu of reliable surrogate values for this input, recycled paper should be valued with the text paper value so that the

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[87] *See* http://www.cbec.gov.in/cae/customs/cs-tariff/cus-tariff-2005/chapters-2k5/chap-48.pdf.

[88] *See* http://www.cbec.gov.in/cae/customs/cs-tariff/cus-tariff-2005/chapters-2k5/chap-48.pdf.

[89] In its case brief at 27, Lian Li argues that in the *Preliminary Determination*, we used HTS 4805.24, which represents weights greater than 250 GSM. However, the Department used Indian HTS 4805.25 in the *Preliminary Determination*. It also argues that the correct Indian HTS category is 4805.25 (which represents recycled test liner paper at 150 GSM or less). *See* Lian Li Case Brief at 27-29. However, 4805.24 represents recycled testliner paper at 150 GSM or less while 4805.25 includes testliner paper weighing more than 150 GSM. For this summary, we have made the assumption that Lian Li, when referring to the HTS category used in the *Preliminary Determination,* is actually referring to 4805.25 and when referring to recycled testliner paper at 150 GSM or less, it means 4805.24, and we have corrected Lian Li's argument accordingly. Both Lian Li and Petitioner argue that Indian HTS 4805.25 is for greater than 250 GSM, however, according to the Indian HTS Chapter 48, this category is for recycled testliner paper that weights more than 150 GSM. *See* http://www.cbec.gov.in/cae/customs/cs-tariff/cus-tariff-2005/chapters-2k5/chap-48.pdf

[90] *See* Lian Li Case Brief at 27.

recycled paper is "only slightly overvalued."[91] Lian Li also contends that Indian HTS 4805.25 represents recycled testliner paper which is greater than 250 GSM and is a type of paperboard as opposed to recycled paper. It points out that its input text papers are all 60 GSM or less and, therefore, do not fit this HTS category.

Citing to Lian Li June SVs, Lian Li claims that the correct Indian HTS category for recycled paper is 4805.24 which covers recycled testliner less than 150 GSM and has an average unit value ("AUV") of 167.69 Rs/kg. However, Lian Li maintains that even this value is aberrationally high and should not be used to value recycled paper. Lian Li notes that the AUV for Indian HTS 4805.24 is four times greater than the text paper surrogate value. According to Lian Li, the import quantities for 4805.24 and 4805.25 are small (99 and 45 metric tons respectively) and, therefore, these categories are not representative of Indian-wide pricing and both are susceptible to distortion. Lian Li states that, according to the CIT, the Department can only use Indian import statistics for surrogate values after it has established that they are based on commercially and statistically viable quantities.[92] Lian Li argues that the quantities here are less than 100 metric tons and, therefore, "cannot possibly be representative."

Lian Li further argues that U.S. import statistics from ITC dataweb serve as a benchmark for these HTS categories and show that the Indian import prices are aberrational. Lian Li claims that the courts have upheld the use of U.S. import statistics as a benchmark in *Timken Company v. United States*, 23 CIT 509, 59 F. Supp 1371 (CIT 1999). Lian Li, citing to Lian Li June SVs at Attachment 5, contends that U.S. HTS 4805.24.90 ("uncoated recycled testliner weighing over 30 {GSM} but not over 150{GSM}") shows commercial quantities and a POI price of 0.5152 USD/kg, which it converts to 24 Rs/kg.[93] This, Lian Li concludes, establishes that *Preliminary Determination* recycled paper surrogate value is aberrational. Lian Li concludes by stating that the text paper surrogate value from the *Preliminary Determination* or its proposed text paper surrogate value for the final determination "more accurately reflect commercial prices" of recycled paper.[94]

Petitioner agrees that Indian HTS 4805.25.00 is for paper with a weight of 250 GSM or more. However, it disagrees with Lian Li's argument and underlying rationale that recycled paper should be valued with the same surrogate as text paper. First, Petitioner contradicts Lian Li's assertions that recycled paper is a substitute for "standard virgin pulp paper."[95] Petitioner claims

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[91] *See* Lian Li Case Brief at 27.

[92] *See Shanghai Forgein Trade Enterprises Co. Ltd. v. United States,* 28 CIT 318 F. Supp 1339 (CIT 2004) ("*SFT v. United States*").

[93] *See* Lian Li Case Brief at 29.

[94] *See* Lian Li Case Brief at 29.

[95] *See* Petitioner Rebuttal Brief at 22.

that it has demonstrated that recycled paper is more expensive than "standard virgin pulp paper" because of additional processing costs.[96] Then, Petitioner asserts that Lian Li's own data counter its claim that the AUVs for this HTS category are aberrational due to small quantities.[97] Petitioner goes on to contend that as "it is quite possible for commercial shipments to have been made in smaller quantities" by the respondent itself, category 4804.24's data should not be disregarded by the Department.[98] Next, Petitioner argues that Lian Li's reliance on *SFT v. United States* is misplaced because this case actually supports the use of Indian import statistics. Petitioner states that the CIT "did not explicitly rule the holding {(of a low volume)} invalid" but requested only that the Department explain its rationale for finding that the surrogate's value and volume were reasonable and supportable.[99] Petitioner also notes that a redetermination was not issued in *SFT v. United States* because the plaintiff withdrew its appeal. Petitioner concludes that, based on Lian Li's producers' purchasing practices, the Department should find that the record supports using Indian HTS 4804.24 to value recycled paper.

Department's Position:

We agree with both Lian Li and Petitioner that HTS number 4805.25 is not the appropriate HTS category with which to value recycled paper. However, we do not find that Lian Li's analysis of whether HTS category 4805.24 is aberrational has been conducted in a way that is valid for the Department's use. While there are many ways to test the reliability of the surrogate values alleged to be aberrational, there are certain criteria which the Department applies in making its decision. First, while small quantities of imports may be distortive, they are not inherently so. Second, while in the past the Department has used U.S. prices to benchmark surrogate values, the Department's current practice has been to benchmark surrogate values against imports from the list of potential surrogate countries for a given case. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005) ("*Romania Hot-Rolled 02-03 Final*"), and accompanying Issues and Decision Memorandum at Comment 2. In this case, our potential surrogate countries are Egypt, Indonesia, Sri Lanka, and the Philippines. *See* Memorandum From Ron Lorentzen To Wendy Frankel Re: Request for a List of Surrogate Countries (December 20, 2005). Third, the Department strongly prefers, when conducting an aberrational analysis, to compare statistics from the same source. *See, e.g., Romania Hot-Rolled 02-03 Final* at Comment 2. Lian Li is comparing U.S. import data from ITC dataweb to Indian import data obtained from the World Trade Atlas ("WTA"). Additionally, having one number as a benchmark to test the reliability of

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[96] *See* Petitioner March 15 SVs at 14.

[97] *See* Petitioner Rebuttal Brief at 23, giving specific BPI examples to support this statement and citing to Lian Li's March 30, 2006 supplemental D questionnaire response at S1-D1-4B.

[98] *See* Petitioner Rebuttal Brief at 23.

[99] *See* Petitioner Rebuttal Brief at 23-24.

the surrogate values alleged to be aberrational is not sufficient because there is nothing to support which of the two numbers, if either, is accurate. In such a vacuum, argument could be made in either direction as to which number is aberrational.

That said, while Petitioner may have a credible argument regarding how expensive recycled paper is compared to "standard virgin pulp paper," the record does show that Lian Li produces filler paper that uses recycled paper instead of text paper. *See* Lian Li's Section C and D questionnaire response (February 2, 2006) at D1-9. Therefore, in the production of filler paper this recycled paper serves the same purpose as text paper. We valued the text paper input at 36.06 Rs/kg (or 0.78 USD/kg).[100] The U.S. import information for HTS 4805.24.90, which is a more specific sub-category to the recycled paper, is approximately 24 Rs/kg (or 0.52 USD/kg). The fact that the Indian HTS 4805.24 is, by our calculation, 147.34 Rs/kg (or 3.17 USD/kg)[101] or almost four times the value of the text paper surrogate value, raises concerns that the Indian HTS in question may be aberrational.

Since Lian Li provided the U.S. import information for HTS 4805.24.90 in Lian Li June SVs we had sufficient time to analyze the imports of HTS category 4805.24 from the other potential surrogate countries for this case. The WTA does not contain import statistics for Egypt while Indonesia and the Philippines do not have an HTS category 4805.24. The WTA contains Sri Lanka import statistics but the Department only has access to the yearly data for this country. We calculated an AUV for Sri Lankan HTS 4805.24 of 0.36 USD/kg.[102] The Sri Lanka data is substantially lower than the POI Indian HTS 4805.24 AUV. While this alone cannot act as a benchmark, the Sri Lanka AUV in combination with the fact that the POI U.S. HTS 4805.24.90 AUV is also substantially lower than the Indian HTS 4805.24 of 3.17 USD/kg call into question the reliability of the Indian HTS 4805.24 import statistics for the POI. Therefore, for the final determination, we have valued recycled paper with the same surrogate value used to value text paper which we deem to be the best available information on the record of this proceeding for this FOP.

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[100] This Rs to USD conversion was based on the August 29, 2006, exchange rate of 0.0215. *See* http://www.xe.com/ucc/convert.cgi.

[101] Data for this calculation was extracted from the WTA. We found that the total quantity and value, excluding NME countries and countries with generally available export subsidies, are 123,266 kg and 18,162,000 Rs. We used the August 29, 2006 exchange rate of 0.0215 to convert this from Rs to USD. *See* http://www.xe.com/ucc/convert.cgi.

[102] We found that the total quantity and value, excluding NME countries and countries with generally available export subsidies, are 20,691,348 kg and 7,464,032 Rs. The Sri Lankan statistics are expressed in a USD value so it was not necessary to convert these values.

Comment 6: Wire Coated With Zinc

Petitioner argues that Lian Li's initial description of the wire it uses appears to be contradictory and, therefore, the Indian HTS number used to value this input should be changed. Specifically, Petitioner maintains that Lian Li originally claimed its wire was plain zinc coated, which it then coiled and matted. Petitioner notes that one of Lian Li's producers describes "iron bound" as "the amount of iron spiral bound used to produce one piece of lined paper," which is a similar description to the PVC plastic bindings.[103] Then Petitioner asserts that, in its March 30, 2006, submission, Lian Li placed on the record two supplier invoices which indicate that one of its producers, Sentian, is purchasing finished iron spirals instead of iron wire. Moreover, Petitioner argues, it appears that another producer for Lian Li, MPF, is buying painted wire based on purchased wire invoices. Petitioner asserts that, due to the fact that Lian Li is using multiple types of wire, the Department should value wire using either Indian HTS 7217.90.99 (other wire) or do a simple average of the values for this HTS number with the Indian HTS number used at the *Preliminary Determination* (7217.20).

No other parties commented on this issue.

Department's Position:

Lian Li reported its "iron bound" (or iron wire) as "coated with zinc." *See* Lian Li's Supplemental Section D questionnaire response ("Lian Li March Supp D") (March 23, 2006) at Appendix S1-D-4A. The verification report does not discuss this specifically. *See* Memorandum to the File from Frances M. Veith and Eugene Degnan Re: Verification of the Sales and Factors Response of Shanghai Lian Li Paper Products Co., Ltd. in the Antidumping Investigation of Certain Lined Paper Products from the People's Republic of China ("Lian Li Verification Report") (July 19, 2006) at 28 and 41. The Department finds insubstantial evidence on the record to support the assertion that Lian Li is using wires other than zinc coated. Petitioner cites to one invoice which does not conclusively show that this wire was painted and thus does not support its argument. None of the other invoices for "iron bound" submitted in the Lian Li March Supp D at Appendix S1-D-4B indicate any sort of coloration or painting in its description. Additionally, the fact that some of the iron wire is purchased in spiral does not mean it is appropriate to use Indian HTS 7217.90.99 (other wire) since this pre-spiral wire is still zinc-plated wire. Indian HTS 7217.90.99 (other wire), which does not include zinc wire, is less specific to the wire used in Lian Li's scope merchandise. Therefore, for the final determination, the Department has continued to use Indian HTS number 7217.20 as the best available information for valuing Lian Li's wire usage.

[103] *See* Lian Li's Section D questionnaire response (February 2, 2006) at D2-10.

Comment 7: Rubber Band

Petitioner contends that the surrogate value category (HTS 4007) that the Department used for rubber bands in the *Preliminary Determination* is inappropriate for this input. Petitioner argues that the item in question is a special type of elastic such as rubber coated in fabric or woven elastic more like a bungee cord and purchased as a thread and, as such, is quite dissimilar to a standard continuous rubber band. Furthermore, Petitioner asserts, normal rubber bands if used in subject merchandise would break after a short time. It claims it has provided evidence of this in its March 15, 2006, submission and that Lian Li's supplemental questionnaire response confirms this.[104] Petitioner claims that it is "clear" this item is not a rubber band because rubber bands are sold in continuous bands. Petitioner contends that to value "elastic threads" for the final determination the Department should use Indian HTS 5609.00.90, "other twine, cordage, rope or cables."

No other parties commented on this issue.

Department's Position:

Petitioner's assertion that the input in question is actually a "special type of elastic such as rubber coated in fabric or woven elastic more like a bungee cord" is unsupported by the facts on the record. Contrary to Petitioner's claim, its March 15, 2006, submission at pages 19 and 20 does not include evidence that Lian Li's producers use elastic cord other than offering the same argument regarding rubber bands as was later made in its case brief. The evidence proffered by Petitioner is the picture of a Mead "Bungee" notebook. While this picture shows that Mead produces a notebook that uses bungee cords and is branded as such, it is not evidence that Lian Li, a wholly different producer, made a product during the POI that used bungee cords. Moreover, none of the invoices provided in the Lian Li March Supp D at Appendix S1-D-4B indicate purchases of anything other than "rubber band." Therefore, despite Petitioner's claims to the contrary, the invoice does not contradict Lian Li's narrative description. Furthermore, Lian Li has described this input as "vulcanized rubber thread and cord," (*See* Lian Li March Supp D at Appendix S1-D-4A) and not a "standard continuous rubber band" as Petitioner implies in its arguments. Nothing on the record contradicts this description. Moreover, Indian HTS number 4007 covers "vulcanized rubber thread and cord." Therefore, based upon the record, for the final determination we have continued to value rubber bands with Indian HTS number 4007.

[104] *See* Lian Li's Section D supplemental questionnaire response (February. 2, 2006) at Appendix S1-D-4B.

II. ISSUES SPECIFIC TO THE WATANABE GROUP

Comment 8: Unreported U.S. Transactions

Petitioner argues that the Department should apply AFA to the unreported U.S. sales of in-scope merchandise found at Watanabe Linqing's verification. Petitioner asserts that the failure to report these sales is a "serious, fundamental error that taints the entire U.S. sales database."[105] Petitioner asserts that this failure is particularly egregious in comparison to the volume of another respondent's sales. According to Petitioner, Watanabe Linqing had ample opportunity to report these U.S. sales but failed to mention them, even at the onset of verification. Petitioner maintains that this omission by the Watanabe Group, its understanding of the Department's U.S. sales reporting requirements, and the fact that these sales were discovered at verification, means that Watanabe Linqing did not act to the best of its ability pursuant to section 776(b) the Act. According to Petitioner, the CIT has stated that "the capture of all U.S. sales at the actual prices is at the heart of the Department's investigation."[106] Citing multiple cases, Petitioner points out the Department has found the failure to report U.S. sales constitutes a party's failure to cooperate to the best of its ability and is grounds for the application of AFA pursuant to section 776(a)(2) of the Act.[107] Therefore, Petitioner argues, the Department should apply to these unreported sales as AFA either the petition rate or the highest calculated unit margin.

The Watanabe Group disagrees that the U.S. transactions in question qualify as sales and asserts that, nevertheless, they have "no material impact on the Department's analysis."[108] Pointing to the verification report, the Watanabe Group maintains that these transactions are repayment in goods made pursuant to a loan and, therefore, are not sales.[109] Also citing to the Watanabe

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[105] *See* Petitioner Case Brief at 8.

[106] *See Florex v. United States*, 705 F. Supp. 582, 588 (CIT 1988).

[107] *See Saccharin Inv. Final; Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731 (November 19, 1997); *Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part*, 65 FR 47960 (August 4, 2000); and *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany,* 64 FR 30710 (June 8, 1999). Petitioner also cites to *Carbon and Certain Alloy Steel Wire Rod from Germany,* 67 FR 55802 (August 30, 2002), and accompanying Issues and Decision memorandum at Comment 2; however, as this is a notice for the countervailing duty investigation, we presume Petitioner indented to cite to *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792 (August 30, 2002), and accompanying Issues and Decision memorandum at Comment 2

[108] *See* Watanabe Rebuttal Brief at 1.

[109] *See* Memorandum to the File from Marin Weaver and Matthew Renkey Re: Verification of the Sales and Factors Response to Watanabe Paper Product (Linqing) Co., Ltd. ("Watanabe Linqing Verification Report") (July 21, 2006) at 15 and Exhibit 9B.

Linqing Verification Report for support, the Watanabe Group argues that the loan was paid pursuant to its terms and that the loan documentation shows that neither the lender nor Watanabe Linqing considered these transaction to be sales in the companies books and records.[110] Furthermore, the Watanabe Group notes, Watanabe Linqing did not deal with these transactions *vis a vis* its normal sales process and the Department verified that these transactions were not recorded as sales revenue.[111] The Watanabe Group postulates that shipping goods does not signify that a sale was made. The Watanabe Group claims Watanabe Linqing did not gain income from the transactions in question, stating that loan proceeds are booked on the balance sheets and not the income statement. Therefore, maintains the Watanabe Group, these transactions were properly excluded from its reported sales and the company did not fail to cooperate to the best of its ability.

Not withstanding these assertions, the Watanabe Group argues that if the Department determines that these shipments constitute sales, AFA should not be used to calculate a margin for multiple reasons. First, the Watanabe Group maintains these transactions were legitimately treated as loans in Watanabe Linqing's books and records; thus, excluding them from its response is not a failure to cooperate to the best of its ability and AFA cannot be applied if a company has acted to the best of its ability. The Watanabe Group declares that Watanabe Linqing was fully cooperative and provided all requested information throughout the investigation, inclusive of verification. Citing to the Watanabe Linqing Verification Report, the Watanabe Group states that, rather than impede the Department, upon discovery of these invoices, all requested loan documentation was provided and fully explained to the Department officials.[112]

Next, the Watanabe Group states that, per the Statement of Administrative Action[113] ("SAA"), in assigning an adverse inference the Department will assess how much benefit a party might achieve through non-cooperation. Watanabe Linqing would, according to the Watanabe Group, derive no benefit from excluding these transactions from its U.S. sales database. The Watanabe Group asserts that the prices on the unreported U.S. transactions were consistent with those of Watanabe Linqing's sales prices of scope merchandise. As such, the Watanabe Group contends that inclusion of these transactions in the U.S. sales database would have no effect because the Department calculates a weighted-average export price.

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[110] *See* Memorandum to the File from Marin Weaver and Matthew Renkey Re: Verification of the Sales and Factors Response to Watanabe Paper Product (Linqing) Co., Ltd. ("Watanabe Linqing Verification Report") (July 21, 2006) at 15 and Exhibit 9B.

[111] *See* Watanabe Linqing Verification Report at 15.

[112] *See* Watanabe Linqing Verification Report at 15.

[113] Uruguay Round Agreements Act, Statement of Administrative Action, reprinted in H.R. Rep No. 103-316, at 870 (1994)

Finally, the Watanabe Group argues that Petitioner has presented a distorted view of the effects of the unreported transactions by comparing them to the U.S. sales of a different respondent in order to make their volume appear quite large when, in fact, it is small. According to the Watanabe Group, this comparison is "illogical and contrary to law."[114] The Watanabe Group maintains that Watanabe Linqing's information can only be "assessed in relationship to {its} operations."[115] Therefore, the Watanabe Group concludes, if the Department determines to treat the transactions in question as sales, as neutral facts available ("FA") it should calculate a margin on them using the weighted average of Watanabe Linqing's reported sales prices to the same U.S. customer.

Department's Position:

After careful analysis we have determined that the transactions in question constitute unreported U.S. sales and we have applied AFA to them. The Department acknowledges that these unreported transactions were not booked in the same manner as Watanabe Linqing's reported sales, in the company's books and records. Despite the Watanabe Group's claims to the contrary, however, the record demonstrates that Watanabe Linqing did gain income from these U.S. transactions. *See* Watanabe Linqing Verification Report at 15; *see also* Memorandum to the File Re: Calculation of Final Margin for Watanabe Paper Product (Shanghai) Co., Ltd., Hotrock Stationery (Shenzhen) Co., Ltd., and Watanabe Paper Product (Linqing) Co., Ltd. ("Watanabe Group Calc Memo") (August 30, 2006) at Comment 8 for further details. It simply realized the income prior to the production and shipment of the goods in question rather than afterwards. As long as there is evidence that the income was received, it is irrelevant where the income from these sales was recorded in the company's books. These unreported U.S. transactions are essentially pre-paid sales and, as they were not included in Watanabe Linqing's U.S. sales database, they constitute unreported U.S. sales.

We further disagree with the Watanabe Group's assertion that the prices for its unreported pre-paid U.S. sales are the same as those in the U.S. sales database and, therefore, would have no effect on the respondents overall margin calculation. However, due to the proprietary nature of the information under discussion, we can not fully explain the Department's position here; therefore, s*ee* Watanabe Group Calc Memo at Comment 8 for further details. We find that Petitioner's comparison of the volume of Watanabe Linqing's unreported sales to another respondent's sales is irrelevant.

Section 776(a)(1) and (2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information

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[114] *See* Watanabe Rebuttal Brief at 4.

[115] *See* Watanabe Rebuttal Brief at 4.

within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. The antidumping duty questionnaire requires that a respondent report its U.S. sales. *See* questionnaire issued to the Watanabe Group on December 13, 2005, at, *e.g.*, Section C. II. ("prepare a separate computer data file containing each sale made during the POI of the merchandise under consideration, including sales of further manufactured merchandise"). By not reporting its pre-paid U.S. sales and, therefore, not reporting all of its U.S. sales as asked, Watanabe Linqing withheld requested information and failed to provide information within the deadlines established. Therefore, pursuant to section 776(a)(2)(A)-(B) of the Act, we find the partial application of facts otherwise available appropriate in this case.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties. In this instance, the Department was unaware of the existence of unreported pre-paid U.S. sales until it discovered them at verification. Verification is a time to confirm that the information reported by a respondent is accurate and complete. It is not an opportunity for the respondent to submit new factual information. *See Shandong Huarong General Group Corp. v. United States*, No. 01-00858, 2003 WL 22757937 at 12 (CIT Oct. 22, 2003) ("verification is not an opportunity to submit new answers to previously posed questions, but is more like an audit of information previously submitted."). Therefore, it was not practicable or appropriate to provide Watanabe Linqing the opportunity to remedy or explain the newly discovered information at the verification.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. In this instance, we find that the application of an adverse inference to the transactions in question is appropriate, pursuant to section 776(b) of the Act. This information was clearly in the control of the respondent at the time that it submitted its questionnaire responses to the Department. The U.S. Court of Appeals for the Federal Circuit has held that the "best of its ability" standard "requires the respondent to do the maximum it is able to do." *See Nippon Steel Corp. v. United*

States, 337 F.3d 1373, 1382 (Fed Cir. 2003) *(Nippon Steel)*. Despite claims to the contrary, by failing to submit a complete U.S. sales database, Watanabe Linqing has not acted to the best of its ability. Watanabe Linqing's provision of all requested information *after* these unreported pre-paid U.S. sales were found by the Department verification team does not mitigate the fact that it failed to report the transactions in the first place. Therefore, an adverse inference is warranted under section 776(b) of the Act. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Brazil*, 67 FR 62134 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 1. Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected FA are the best alternative information. *Id*. at 869. For these unreported pre-paid U.S. sales we have assigned as AFA the initiation rate of 258.21 percent. *See* Import Administration AD Investigation Initiation Checklist Subject: Certain Lined Paper Products from the People's Republic of China ("Initiation") (September 29, 2005) at Attachment V. Pursuant to Section 776(c) of the Act, we have corroborated this information for the final determination. *See* Memorandum To The File Through Charles Riggle From Marin Weaver Re: Corroboration of the PRC-Wide Facts Available Rate for the Final Determination in the Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China (August 30, 2006).

Comment 9: Watanabe Linqing Labor

Petitioner claims that Watanabe Linqing's methodology for reporting direct labor hours is incorrect and, as a result, AFA should be applied to its direct labor hours. Petitioner points out that Watanabe Linqing allocated its direct labor hours over total production on the basis of the text paper area of the products. According to Petitioner, this is an oversimplified method that fails to take into account the different processing times of different products (*e.g.*, notebooks versus filler paper) and, therefore, misstates Watanabe Linqing's direct labor costs. Petitioner contends that the facts of the production process[116] mean different items require different amounts of labor.

[116] Due to the proprietary nature of the production process , the details of this argument cannot be summarized here. *See* Petitioner Case Brief at 11 for further details.

Additionally, Petitioner points out that, in a pre-verification supplemental questionnaire, the Department requested that the Watanabe Group explain why its direct labor allocation did not appear to take into account differences in processing time.[117] Petitioner declares that the Watanabe Group's response did not explain how actual direct labor was captured accurately by its methodology. Furthermore, Petitioner argues, at verification Watanabe Linqing officials not only could not justify this allocation methodology, but they "deferred" to their counsel who claimed that "there was not a better way to allocate labor."[118]

Petitioner states that, according to section 776 of the Act, the Department may use FA if a party has impeded a proceeding and may apply an adverse inference when a party is uncooperative because it has not acted to the best of its ability. Petitioner maintains that Watanabe Linqing meets these criteria in this instance because it failed either to justify its methodology or to reallocate its direct labor in a "meaningful manner."[119] Additionally, Petitioner asserts that accepting Watanabe Linqing's methodology rewards the use of the simplest methodology over accuracy. Petitioner suggests that, as AFA, the Department use the highest direct labor usage rate on the record from the other two Watanabe Group companies.

The Watanabe Group alleges that Petitioner's argument is "illogical and contrary to the law" and that there are no grounds for applying AFA to Watanabe Linqing's labor usage rates.[120] It argues that Petitioner seeks a labor allocation for Watanabe Linqing based on non-existent data. The Watanabe Group maintains that Petitioner erroneously claims Watanabe Linqing failed to explain its labor allocations and cites Watanabe Linqing's explanation in a response as evidence.[121] It contends that Petitioner's opinion that there is a better allocation methodology and Petitioner's dislike of Watanabe Linqing's explanation does not mean Watanabe Linqing either failed to cooperate to the best of its ability or used an unreasonable methodology. The issue, the Watanabe Group declares, is whether a reasonable methodology was used. The Watanabe Group asserts that Watanabe Linqing has not only cooperated fully in this investigation but, based on the manner in which it keeps its labor records, has used the "most reasonable" labor allocation methodology available.[122]

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[117] *See* the Watanabe Group's second supplemental D questionnaire (May 4, 2006) at 2 question 8.

[118] *See* Petitioner Case Brief at 12.

[119] *See* Petitioner Case Brief at 12.

[120] *See* Watanabe Rebuttal Brief at 4.

[121] *See* Watanabe Linqinq's February 2, 2006, section D questionnaire response at D11 and Exhibit D-8.

[122] *See* Watanabe Rebuttal Brief at 5.

Department's Position:

The Department's longstanding practice is to accept allocation methodologies that are reasonable and are based on the respondent's underlying books and records.[123] We agree that an allocation methodology taking into account different processing times (if the processing times were verifiable) would more accurately assign labor hours to each product type. However, the Department confirmed at verification that Watanabe Linqing does not track its labor by product and that all labor hours for producing scope merchandise have been accounted for. *See* Watanabe Linqing Verification Report at 27-28. The Watanabe Group also stated in its May 22, 2006, second section D questionnaire response that the processing times were based on an "estimated-average." *See* page S2D-5. We confirmed this at verification. *See* Watanabe Linqing Verification Report at 12 ("information was consistent with that previously placed on the record"). Since the processing time was based on an estimate, using it in the direct labor usage calculation would not necessarily yield a more accurate labor usage rate than that derived from Watanabe Linqing's allocation methodology. Therefore, we feel that Watanabe Linqing's methodology of allocating labor over paper volume is a reasonable methodology for its direct labor allocation in light of the record information. As such, we do not find partial application of FA to be warranted for this item and we will make no adjustments to Watanabe Linqing's reported direct labor hours for the final determination.

Comment 10: Watanabe Shenzhen Labor

Petitioner argues that the Department discovered fundamental reporting problems in Watanabe Shenzhen's direct labor usage rates. Petitioner contends this is because the reported hours worked did not match the actual hours worked. Petitioner points out that there seemed to be inconsistences in the different company officials' explanations of the "rules" governing the shifts and that there were "no justifications in the reductions" to time worked.[124] It further asserts that "the arbitrary revisions could not be verified."[125]

Petitioner outlines what it considers to be the crucial failures in Watanabe Shenzhen's direct labor. First, it asserts Watanabe Shenzhen did not report hours worked as they were recorded on the employee time cards. Petitioner argues that the hours worked by an employee are those listed on his time card and there is no rationale for adjusting these. Second, Petitioner contends

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[123] *See e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands,* 70 FR 28275, (May 17, 2005) and accompanying Issues and Decision Memorandum at Comment 4; *Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 20216, (May 6, 1996) and accompanying Issues and Decision Memorandum at Comment 1.

[124] *See* Petitioner Case Brief at 13-14.

[125] *See* Petitioner Case Brief at 14.

Watanabe Shenzhen made unverifiable adjustments, for meals and breaks, to time worked which, in light of company officials' different explanations of the "rules" (*e.g.*, lengths of shifts and time of adjustments), were arbitrary estimates. Petitioner maintains that the conflicting explanations render the adjustments meaningless. Lastly, Petitioner claims that, even if accepted, the explanations given do not justify the difference between reported and recalculated labor. It cites specifically to the 11 recalculated time cards as discussed in the Watanabe Shenzhen Verification Report at 31-33.

Petitioner maintains that labor hours are important in all cases and in this case particularly because the scope merchandise is predominantly made by hand and, therefore, labor represents a substantial portion of the cost of finished goods. It asserts that at verification the Department discovered, based on its sample of time cards, that labor hours were inexplicably under-reported. This trend, Petitioner argues, can be assumed to exist for other months of the POI, possibly to a greater degree. Therefore, Petitioner states, the Department should either increase all reported direct labor hours by the highest variance or by some other observed variance, such as the average variance as measured between reported labor hours and labor hours observed at verification.

The Watanabe Group disagrees that an adjustment to Watanabe Shenzhen's reported labor hours is warranted. It asserts that the simple fact is Watanabe Shenzhen's employees work in shifts that have official start and end times and are paid according to these official hours. According to the Watanabe Group, it is reasonable that most employees' time cards will show times before and after, respectively, the official start and end times since "hundreds of employees" have to stamp in and out at the same time. It stresses that employees are also given breaks during their shifts which are more than likely not shown on their time cards because meals/breaks are not recorded on the time card.

Thus, the Watanabe Group argues, the labor hours listed in the time cards "could be significantly different from the official time for which employees get paid."[126] It states that Watanabe Shenzhen employees are paid for work credited to them, which is their official shift time plus any approved overtime. The Watanabe Group claims that "slightly" different statements by Watanabe Shenzhen employees about the amount of time for meals and breaks does not mean breaks were not given, especially considering that the company has a standard policy regarding breaks which was provided at verification to the Department. Therefore, it asserts, there are no grounds not to allow Watanabe Shenzhen to factor breaks and meals into its labor calculation. The Watanabe Group contends that the inclusion of any additional labor hours in the normal value calculation would result in an overstatement of actual labor hours used to produce scope merchandise.

[126] *See* Watanabe Rebuttal Brief at 6.

The Watanabe Group asserts that, based on these facts, Watanabe Shenzhen calculated its direct labor hours based on actual time worked for which the employees were compensated. Additionally, it contends that Petitioner ignored the facts and wrongly presumed that the stamped times on the time cards represented actual labor hours. The Watanabe Group states that Petitioner, failing to realize its starting point was overstated, incorrectly compared its overestimated presumed labor hours to the reported direct labor hours and assumed underreporting of direct labor. The Watanabe Group continually stresses that examining the time cards shows its responses have actually overstated the actual labor hours used to make scope merchandise and maintains it correctly reported its direct labor hours.

Department's Position:

We do not find grounds for applying AFA to or adjusting Watanabe Shenzhen's reported labor hours for the final determiniation. At verification Watanabe Shenzhen presented the Department with a memorandum announcing the change in the company's shift times and outlining the new times of the shifts (*a.k.a.* the "Shift Memorandum"). *See* Watanabe Shenzhen Verification Report at Exhibit 33 A. Although there were differing explanations given by different Watanabe Shenzhen employees regarding meals and break times, it appears that the meal and break times used in the labor hour recalculations performed at verification at the Department's request are consistent with those stated in the Shift Memorandum. *See* Watanabe Group Calc Memo at Comment 10; *see also* Watanabe Shenzhen Verification Report at Exhibit 33 A, 33 B, and 33C. Furthermore, it is reasonable to expect that some employees will stamp in to work before these official shift times and out of work after their official shift times given the large number of employees working any given shift. Therefore, we find it is not appropriate to rely on a labor calculation based on "stamp in" and "stamp out" time or what was termed in the Watanabe Shenzhen Verification Report as "Hours Observed By Analysts Per Punch-Card Times." *See* Watanabe Shenzhen Verification Report at 32-33. At verification, the recalculation of labor hours based on rounding to shift start and stop times (what was termed in the Watanabe Shenzhen Verification Report as "Hours Per Company's Recalculation") shows a less than 1 percent difference in reported labor hours and time card labor hours. *See* Watanabe Shenzhen Verification Report at 32-33. As the Watanabe Group noted, its reported labor hours were slightly overstated based on this comparison. Therefore, we find Watanabe Shenzhen's methodology of relying on the labor hours, as calculated by its human resources department in the normal course of business, reasonable. The Department does not find that any adjustment to Watanabe Shenzhen's direct labor usage rate is warranted.

Comment 11: By-Product Offset

Petitioner asserts that the Department should disallow a by-product offset for the sale of waste paper for all Watanabe Group companies. Petitioner argues that at verification the Department found that Watanabe Linqing and Watanabe Shenzhen did not book any income of the sale of waste paper. Due to the proprietary nature of this argument, further details regarding the by-product offset cannot be summarized here. *See* Watanabe Group Calc Memo at Comment 11 for

further summarization of this issue. Since neither company realized revenue from these sales, Petitioner asserts that they should not receive a by-product offset. With regard to Watanabe Shanghai, Petitioner argues that it did not provide documentation showing actual receipt of payment for the sale of waste paper. Petitioner contends that based on this and, as Watanabe Shanghai was not verified, based on the verification experience of the other two Watanabe Group companies, Watanabe Shanghai should not receive a by-product offset either.

The Watanabe Group disagrees with Petitioner, arguing that record evidence proves it sold the waste paper and, therefore, it is entitled to an offset. It cites to the verification reports to demonstrate that the waste paper was sold.[127] The Watanabe Group also argues that the verification reports prove that the waste paper receipts were booked into Watanabe Shenzhen's and Watanabe Linqing's cash and income sub-ledgers, respectively.[128] It contends that Petitioner's arguments are a matter of "form over substance" and certain of its arguments are irrelevant. *See* the Watanabe Group Calc Memo at Comment 11. It maintains that the Department verified the scrap sales receipts and that the funds are eventually booked into the companies' accounting systems. The Watanabe Group argues it should be granted its claimed by-product offset because it demonstrated that the waste paper was sold.

Department's Position:

The Department grants by-product offsets in order to ensure that the calculated normal value reflects the actual production cost of scope merchandise to the company. When a by-product is sold and income realized from it, that income is considered to offset the value of the cost of producing scope merchandise. However, if the income for the by-product is not realized by the company then it cannot be considered an offset to the production costs. Evidence of waste paper sales are not sufficient evidence that a by-product offset is warranted. There must be evidence that the company has also received the revenue from these sales. *See Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 68 FR 7765 (February 10, 2003), and accompanying Issues and Decision Memorandum at comment 3. We find that for both Watanabe Linqing and Watanabe Shenzhen there was not enough documentary evidence at verification to successfully demonstrate that these two companies actually received the income from their waste paper sales. We also find that record evidence indicates Watanabe Shanghai did not receive revenue from its by-product sales. Therefore, for the final determination we have not granted the Watanabe Group a by-product offset for such sales. Due to the proprietary nature of this argument, the details leading to this conclusion are discussed in the Watanabe Group Calc Memo at Comment 11.

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[127] *See* Watanabe Linqing Verification Report at 29 and the Watanabe Shenzhen Verification Report at 36.

[128] *See* Watanabe Linqing Verification Report at 30 and the Watanabe Shenzhen Verification Report at 36.

Comment 12: Product Weights

Petitioner asserts that the Department should increase the product weight ("WEIGHTU") and the packed product weight ("WEIGHT2U") for the Watanabe Group. Petitioner points out that at the Watanabe Linqing and Watanabe Shenzhen verifications the majority of weights (both WEIGHTU and WEIGHT2U) of the sales observations examined were underreported.[129] Petitioner contends that the fact pattern should also be assumed to exist for the unverified Watanabe Shanghai. Petitioner argues that given the pervasiveness of this underreporting of weight the Department should adjust WEIGHTU and WEIGHT2U upward by the highest weight variance for each. Alternatively, Petitioner proposes that the Department multiply the chosen weight variance by the ratio of transactions it found to be underreported and increase all weights by this modified amount.

The Watanabe Group asserts that the WEIGHTU and WEIGHT2U fields reflect average weights and, while actual weights will be close to the average, it is not likely that any individual item weight would necessarily match the average. According to the Watanabe Group, this is normal and understanding the methodology means there is no reason to adjust the weights in question.

Department's Position:

Both Watanabe Shenzhen's and Watanabe Linqing's March 13, 2006, section C supplemental responses at pages SC-4 state that its weight values are reported on an average basis. Therefore, the fact that the actual weights varied slightly from the reported weight is, as the Watanabe Group points out, expected. We did not find a consistent pattern of underreported weights to make us suspect that the averages reported by either Watanabe Shenzhen or Watanabe Linqing were distortive. *See* Watanabe Shenzhen Verification Report at 18-20; *see also* Watanabe Linqing Verification Report at 18-20. Therefore, for the final determination we have made no adjustments to the Watanabe Group's WEIGHTU or WEIGHT2U.

III. ISSUES SPECIFIC TO LIAN LI

Comment 13: Whether Total Adverse Facts Available is Warranted for Lian Li

Petitioner alleges that the information Lian Li provided in its questionnaire responses is unverifiable, cannot be used without great difficulty, and is so incomplete that it cannot serve as a reliable basis for purposes of the final determination. Furthermore, Petitioner claims that Lian Li, through Lansheng, has failed to allow for the verification of vital questionnaire information and greatly impeded the Department's ability to clarify such information.

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[129] *See* Petitioner Case Brief at 17-18 for the exact number of unreported observations and the percent weight variances.

Citing *Artist Canvas*[130] as precedent, Petitioner claims that for the reasons stated above and the reasons addressed below, the Department should refuse to assign a separate rate to Lian Li, and instead apply total AFA. To support its argument SAA at 870 Petitioner cites *Artist Canvas*, sections 776(a)(2), 782(e), and 776(b) of the Act.

1. Sentian and MPF understated the usage rate for mixed-pulp paper. *See* Comment 18.

2. MPF understated its electricity usage rates. *See* Comment 21.

3. Sentian and MPF disclosed for the first time at verification the fact that they used outside processors. *See* Comment 20.

4. Lian Li understated the finished weight of its in-scope merchandise. *See* Comment 19.

5. Lian Li's labor usage rates are underreported. *See* Comment 22.

6. Lian Li's verified producers' claimed scrap offset valuation is unsupported. *See* Comment 23.

7. Lian Li reported no material consumption for polyester thread. *See* Comment 24.

8. Sentian's freight carriage (*i.e.*, mode of transport) is unsupported (citing the Lian Li Verification Report[131] at 32).

9. Lian Li's reported usage rate for material input electroformed aluminum varies from that found in the consolidated FOP worksheets (citing the Lian Li Verification Report at 19).

Lian Li argues that total AFA is not warranted for its sales based on its reasons as articulated in comments 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23.

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[130] *See, e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) ("*Artist Canvas*").

[131] *See* Memorandum re: Verification of the Sales and Factors Response of Shanghai Lian Li Paper Products Co., Ltd in the Antidumping Investigation of Certain Lined Paper Products from the People's Republic of China from Frances Veith through Charles Riggle and Wendy Frankel to the File, dated July 19, 2006 ("Lian Li Verification Report").

Department's Position:

Section 776(a)(2) of the Act, provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

The Department has determined that the application of total AFA is not warranted in this case because Lian Li provided requested information by the deadlines established by the Department. Although we were unable to verify certain information,[132] we were able to isolate such information and apply partial FA or partial AFA as appropriate. *See* Comments 15, 17, 18 and 23. Moreover, we conclude that, after disregarding the unverifiable information, the remaining information is sufficient to serve as a reliable basis for determining dumping margins for Lian Li in this investigation, within the meaning of section 782(e). Therefore, pursuant to section 782(e) of the Act, the Department will not apply total AFA to determine the final margin for Lian Li in this investigation.

For a further discussion on Petitioner's items 1 through 7, noted above, see referenced comment numbers at each item. The Department will not be repeating these comments in this discussion.

Regarding item 8 above, we disagree with Petitioner that Sentian's freight is unsupported. In the Lian Li Verification Report, the Department noted no discrepancies in its review of Sentian's freight.[133] Therefore, we will continue to rely on the reported and verified freight values in our final determination

Regarding item 9 above, we disagree Petitioner that Lian Li's reported material input electroformed aluminum usage varies from that found in the consolidated FOP worksheets. In the Lian Li Verification Report, the Department reviewed the process Lian Li used to consolidate its seven producers' FOP databases and was satisfied that the consolidating procedure led to a result that was consistent with the submitted responses.[134] Therefore, we have continued to rely on the reported and verified electroformed aluminum values in our final determination.

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[132] *See* Lian Li Verification Report at 2-3.

[133] *See* Lian Li Verification Report at 32.

[134] *See* Lian Li Verification Report at 19-20.

Comment 14: Unverified Payment - JECO International Co. Ltd.

Lian Li asserts that at verification, when the Department requested the financial records of JECO International Co. Ltd. ("JECO"), company officials explained that JECO has no books and records, and that pursuant to British Virgin Islands' law, JECO is not required to keep books and records or financial statements. Lian Li adds that it further explained that JECO is a "mailbox" company that does not maintain an office in the British Virgin Islands. In fact, Lian Li claims that it disclosed to the Department JECO's bank account, the only financial record JECO has.

Accordingly, Lian Li takes issue with the verification report statement (at 11) that "{t}he company official stated that financial reporting for JECO is not required and declined to give us the information." Lian Li argues that this mischaracterizes what happened at verification, and that at no time did Lian Li ever refuse to open its books and records to the Department. Lian Li states that it could not provide the Department with books and records that do not exist.

Petitioner argues that the inability to tie transfers of funds to either JECO's general ledger or its financial statements is support for Petitioner's larger argument that the Department should apply AFA to sales involving Lansheng.

Department's Position:

The Lian Li Verification Report states (at 11): "We asked to see the transaction recorded in JECO's internal accounting documents. The company official stated that financial reporting for JECO is not required and declined to give us the information." While we recognize that JECO is not required to maintain financial statements under British Virgin Islands law, Lian Li offered no further explanation as to whether such records actually do exist. Having considered the matter, the Department construes Lian Li's explanation that JECO is not required to maintain financial statements to mean that no such statements exist. Nevertheless, irrespective of the issue of JECO's financial records, for reasons explained elsewhere (*see* Comment 15), the Department has applied AFA to sales involving Lansheng. Therefore, whether or not JECO maintains financial records has no impact on the final determination.

Comment 15: Application of Adverse Facts Available to All Sales Involving Lansheng

Petitioner notes that Lian Li's responses indicate it employed the services of Lansheng for certain aspects of a portion of its U.S. sales transactions (hereafter referred to as Lian Li's agency sales). However, Petitioner argues that the Department was unable to verify certain components of Lian Li's sales questionnaire response, because Lansheng withdrew from verification and thus prevented the verification of sections of Lian Li's questionnaire responses. Petitioner notes that the Department scheduled a separate-rate verification with Lansheng; however, just prior to the start of verification, Lansheng notified the Department that it was withdrawing from the verification. Petitioner argues that, as a result of Lansheng's withdrawal from verification, the

Department was unable to perform a quantity and value reconciliation which involved a review of all of Lian Li's agency sales. To support its argument, Petitioner cites *Softwood Lumber from Canada*.[135]

Petitioner contends that, consistent with Department practice where suppliers or agents refuse to cooperate or where errors are discovered at verification, the Department should resort to FA in this case. Petitioner argues that since the Department considers the verification to be an integral component of an investigative proceeding, and that a fundamental tenet of verification is the Department's ability to test factual statements made by a respondent during the course of an administrative proceeding, when a respondent, its agents, its affiliates, or an unaffiliated supplier to the respondent either fails to cooperate with the Department by refusing to participate in parts or all of verification, or where information is "unverifiable," the Department may disregard the information submitted by a respondent party, and may instead base its determination on facts otherwise available. To support its argument, Petitioner cites *Fish Fillets.*[136]

Petitioner also points out that in *Hand Tools 00-01 Final,*[137] the Department found that the utilization of FA is warranted for the respondent itself, even where an unaffiliated supplier is not directly controlled by the respondent and either misleads the Department or fails to participate in a scheduled verification. Petitioner contends that because Lansheng was involved in a significant percentage of Lian Li's U.S. sales, the Department must base its determination on FA.

Lian Li argues that it cooperated to the best of its ability in responding to the Department's requests for information. Therefore, it should not be penalized for Lansheng's withdrawal from its verification. Moreover, Lian Li argues that the agency sales in its U.S. sales database are traceable to its books and records, specifically to an invoice numbering log book it maintains. Lian Li also argues that even though its agent, Lansheng, refused to cooperate with the Department, all of Lian Li's agency sale transactions and charges (*i.e.*, sales made by its agent, Lansheng, and expenses incurred by Lansheng) could be tied to Lian Li's books and records, and it contends that the Department was verifying Lian Li's sales, not Lansheng's sales. Lian Li also argues that Lansheng's refusal to cooperate in verification is not relevant to tying the sales

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[135] *See Final Results of Countervailing Duty Admintrative Review and Rescission of Certain Company-Specific Reviews,* 69 FR 75917 (December 20, 2004) ("*Softwood Lumber from Canada*"), and the accompanying Issues and Decision Memorandum at Comment 33.

[136] *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006) ("*Fish Fillets*").

[137] *See Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part* , 67 FR 57789 (September 12, 2002) ("*Hand Tools 00-01 Final*") and the accompanying Issues and Decision Memorandum at comment 22.,

transactions to Lian Li's corporate owner's[138] general ledger or its financial statements because the customer's payment made to Lansheng could be traced to Lansheng's bank receipts, a copy of which is maintained by Lian Li.[139]

Department's Position

Based on the record evidence, the Department has determined that Lian Li provided unverifiable information as it pertains to its agency sales and did not cooperate to the best of its ability in complying with the Department's requests for information. Therefore, we are applying FA with an adverse inference to Lian Li's agency sales.

Lian Li submitted a copy of its agency agreement with Lansheng that covered sales made during the POI. Under this agreement, Lian Li's agent, Lansheng, invoiced and accepted payment from the customer for certain sales during the POI. However, Lian Li negotiated the sale, prepared all of the shipping documents associated with the sale, held title to the merchandise until the sale to the customer, assumed full liability for the merchandise until receipt by the customer, bore all liability for disputes on quantity and quality of merchandise subsequent to receipt by the customer, reimbursed Lansheng for all extra costs associated with the delivery of the merchandise to the customer, reimbursed Lansheng for all damages for late deliveries to the customer, secured trademark licensing and valid certification on the merchandise, and instructed Lansheng on where to deposit the proceeds.[140]

We agree with Petitioner that the purpose of verification is to "confirm" and "clarify" record evidence. *See Softwood Lumber from Canada* at Comment 33. The fact that Lian Li failed to provide the Department with an adequate reconciliation of its U.S. sales database at verification impeded the Department's ability to confirm and clarify all of the information Lian Li reported regarding its U.S. sales. *See* Lian Li Verification Report at 12. Also, the sales quantity and value reconciliation is required of respondents to determine whether they have reported all appropriate sales of the subject merchandise. Such a reconciliation serves as a "starting point" for the Department at verification. *See Wooden Bedroom Furniture* and *see also, Carbon Steel Plate from Mexico*.[141] Absent a verifiable starting point, the Department has no basis upon which to find that a company's questionnaire responses are accurate and complete, and the Department

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[138] Lian Li's corporate owner, JECO International Co., Ltd., owns 75 percent of Shanghai Lian Li Paper Products Co., Ltd.

[139] *See* Lian Li Verification Report at 11.

[140] *See* Lian Li's section A response dated January 17, 2006, and *see also*, Lian Li's Reconciliation Response dated February 21, 2006, at 1 and Appendix V-1.

[141] See *Wooden Bedroom Furniture Inv. Final* at Comment 4. *See also, Certain Cut-to-Length Carbon Steel Plate from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 78 (January 4, 1999) ("*Carbon Steel Plate from Mexico*").

must, therefore, conclude that those responses are unverified.

The verification difficulties stemmed from the fact that Lian Li failed to provide the necessary supporting information for its agency sales involving Lansheng, such that the Department was not able to verify Lian Li's questionnaire responses. The Department's conclusion that Lian Li did not act to the best of its ability with respect to the sales made under the agency agreement is not based upon Lansheng's withdrawal from verification, but instead, upon Lian Li's failures at verification as discussed below. Lian Li has consistently reported the agency sales as its own throughout this verification.

- purchase of the merchandise for these sales from Lian Li's suppliers;
- sales invoices for these sales;
- remittance of any relevant value-added taxes for these sales to the PRC government;
- freight forwarders expense for these sales;
- customer payment for these sales;
- Lansheng's fee for these sales; and
- Lansheng's payment of the profit to Lian Li for these sales.

While we were able to successfully verify such information for the remainder of Lian Li's sales we were unable to do so for any of Lian Li's agency sales.

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. The information Lian Li provided cannot serve as a reliable basis for reaching a determination because the Department's inability to verify that Lian Li's agency sales reconcile to its books and records translates into an inability to verify the reported U.S. prices related to such sales to the United States.

Section 776(b) of the Act provides that, upon having determined to apply FA pursuant to the statutory requirements, the Department may use adverse inferences in selecting among the facts otherwise available if the Department determines that the respondent failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department.

In *Nippon Steel* the Court set out two requirements for drawing an adverse inference under section 776(b) of the Act. First, the Department "must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations." *See Nippon Steel* at 1382. Next the Department must "make a subjective showing that the respondent . . . has failed to promptly produce the requested information" and that "failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep

and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records." *See Id.* The Court clarifies further that "{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made." See *Id.* at 1383.

Therefore, we are applying FA with an adverse inference to Lian Li's agency sales. Both Petitioner and Lian Li raised additional issues with respect to the calculation of a margin for the agency sales. These issues focus just on Lian Li. However, as the Department has determined to apply AFA to these transactions in their entirety, there is no need to address these other issues for the final determination of this investigation.

Comment 16: Whether Lian Li Uses 100 Percent Wood Pulp

Lian Li cites to the verification report statement (at 10) that the customer purchase contract examined at verification directed Lian Li to use "100% Wood Pulp Paper." Lian Li argues that, notwithstanding this contract, officials at both Lian Li and Sentian explained during verification that none of the lined paper products sold by Lian Li to the United States is made of 100 percent wood pulp paper. According to Lian Li, because of an abundance of wood pulp paper in the United States, this is a U.S. standard. However, due to the scarcity of wood pulp resources in China, Lian Li maintains that virtually all of the pulp in China is mixed pulp.

Furthermore, Lian Li points out that it plainly stated for the record of this investigation that the specifications of the paper used by Lian Li are "straw and mix pulp paper" containing "fibres {*sic*} more than 10%, in rolls."[142] Therefore, although the purchase order called for 100 percent wood pulp paper, Lian Li argues that record evidence demonstrates that the actual paper supplied to the U.S. customer was straw mixed pulp paper. Lian Li notes that the International Trade Commision Prehearing Public Staff Report (at 119) mentions that lined paper products produced in China are not produced from 100 percent wood pulp.

In the context of its argument that the Department should not use creamwove paper as the basis for mixed pulp surrogate values (*see* Comment 3, above), Petitioner states that "one of Lian Li's customers explicitly required the use of 100 percent, pure wood-pulp paper in its subject merchandise."[143]

Department's Position:

Record evidence supports Lian Li's contention that it does not use 100 percent wood pulp paper in the production of scope merchandise. As the question of what type of paper is used to produce

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[142] *See* Lian Li's March 29, 2006, submission at Appendix S1-D-4A.

[143] *See* Petitioner Rebuttal Brief at 17.

scope merchandise ultimately relates to the Department's choice of the appropriate surrogate with which to value this input, please see 3 above.

Comment 17: Unreported Factors of Production - - Metal Covers and Backs

Comment 17 A: How to Treat Metal Covers and Backs

Lian Li avers that it properly did not report FOP for the metal covers and backs used by one of its suppliers in the production of certain scope merchandise. According to Lian Li, because the metal covers and backs were not purchased by Lian Li (or its producer) but, rather, were supplied free of charge by its U.S. customer for inclusion in these particular notebooks, they do not constitute part of Lian Li's or its supplier's costs. Citing the Lian Li Verification Report at page 12, Lian Li contends that the Department verified the accuracy of this statement. Furthermore, Lian Li argues that the sales price to the U.S. customer is exclusive of the metal backs and covers. Lian Li argues that including a value for the metal backs and covers would improperly inflate the normal value of these products for a cost the company did not incur.

Department's Position:

We agree with Lian Li in part. At verification, the Department was able to determine that the metal backs and covers in question were in fact supplied to Lian Li at no cost by its U.S. customer who purchased the items from an unaffiliated Chinese producer. Nevertheless, section 773(c)(1) of the Act requires that we calculate normal value on the basis of the FOP used to produce the merchandise. The FOP include raw materials, the cost of which must be included in the cost of manufacturing. Therefore, for those products that have a metal cover and back, we have included in the normal value of these products a value for the metal covers and backs. However, because Lian Li has demonstrated that its reported U.S. price for these products did not include the value of the metal backs and covers, we also added to the U.S. price the same value for metal backs and covers, consistent with the Department's practice.[144]

Comment 17 B: Surrogate Value for Metal Covers and Backs

First, Lian Li points out that all the HTS numbers on which the Department requested comments are basket categories, with many items dissimilar to metal covers and backs entering under these categories. Then, Lian Li asserts that HTS 8310.00 is the best surrogate information available because, among the proposed surrogates, it seems most likely to contain the input in question. Specifically, Lian Li argues that, according to the Indian Department of Commerce, Indian HTS 8310.00 contains the following items excluded from heading number 9405; name plates, sign

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[144] *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) and the accompanying Issues and Decision memorandum at Comment 13. *See*, *also*, *Chlorinated Isocyanurates Inv. Final* and the accompanying Issues and Decision Memorandum at Comment 10.

plates, address plates, as well as similar plates, numbers, letters and symbols of base metal, According to Lian Li, while these items are probably too heavy for use as metal covers for notebooks, they do share the general sheet-like form as the metal notebook cover and backs.

Next, Lian Li contends that the description of the other suggested HTS categories (*i.e.,* HTS 8306.30 and 7326.90) preclude their consideration as a possible surrogate value for the input in question. With regard to HTS 8306.30, Lian Li maintains, this category covers photo frames and mirrors, which are unlike metal covers and backs. Lian Li, also contends that HTS 7326.90 appear to cover heavy industrial pieces, such as parts of ships, citing to three of its subcategories, Specifically, Lian Li claims that HTS category 7326.90.80 is for parts of ships, HTS category 7326.90.30 is for drainage covers, and HTS category 7326.90.40 excludes metal signboards, which would be similar to the flat metal notebook covers and backs.

Petitioner begins by stating that the Department should apply AFA to Lian Li and, therefore, it is unnecessary to address the valuation of metal covers and backs. However, according to Petitioner, if the Department does decide to calculate a margin for Lian Li, it should decline to utilize any HTS numbers which fall under Chapter 73 because this chapter covers iron and steel items. Petitioner asserts that there is no evidence that the covers are made exclusively of iron or steel and that it is unlikely that the covers are made of steel, considering the weight of finished steel, even thin steel. Further, Petitioner contends that HTS Chapter 73 exclusively covers "fabricated steel products" with only minor alterations and provides some examples.[145] Then, Petitioner states that "the steel or iron content is the vast majority of the material in these products – if not the only material – and represents steel that has been fabricated or further worked."[146] Petitioner maintains that Lian Li's covers include decorations like sequins, beads, plastic games and letters, and that nothing under HTS Chapter 73 has that level of modification. Next, Petitioner asserts that HTS 7326.90.99 is for boat and ship rudders and steering equipment which is obviously not like a sequined notebook cover or back.

Additionally, Petitioner claims HTS Chapter 83 encompasses a broader array of metallic products, like steel and tin, that may include non-metallic items. According to Petitioner, a variety of items like metal statues, gongs, and picture frames may include non-metal parts like wood, glass, stone and plastic. Then, Petitioner states that it is unlikely there is an exact match for the input in question because the covers and backs are a hybrid product, but that HTS 8306.30.00 represents a "closer approximation" to the material input.[147]

Petitioner argues that the Department should use HTS chapter 95 to value metal covers and backs. Specifically, Petitioner proposes the use of the U.S. HTS 9503.70.0030 claiming that

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[145] *See* Petitioner's August 11, 2006, submission at 2.

[146] *See* Petitioner's August 11, 2006, submission at 3.

[147] *See* Petitioner's August 11, 2006, submission at 3.

metal metallic boards with attachable letters fall within this category. However, Petitioner notes that this U.S. HTS category is unique to the United States and, therefore, argues that the Department should use one of its equivalent Indian HTS categories. According to Petitioner, the options are Indian HTS 9503.70.10, "plastic toys, put up in sets or outfits," or Indian HTS 9503.70.90, "other toys, put up in sets or outfits."[148] Citing to Lian Li's February 2, 2006, response (at C-11), Petitioner states that the covers and backs in question include metal covers with magnet letters, games, and beads. Petitioner argues that both these Indian HTS categories cover toys with some metal parts, like "metal backings and metallic material used in the letter" as well as plastic toys and games.[149]

Department Position:

As stated in Comment 3, in valuing the FOP, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market-economy country. The Department's criteria for selecting surrogate value information is to use publicly available information and it considers several factors when choosing the most appropriate information, including the quality, specificity, and contemporaneity of the data.

We requested comments on HTS category 7326.90.99, which covers "other" articles of iron and steel as well as on HTS 8306.30.00, which covers photographs, picture, or similar frames, mirrors and HTS 8310.00, which covers sign plates, name plates, address plates, and similar plates, numbers, letters and symbols of base metal, excluded from of heading no. 9405. All the HTS numbers under discussion are equally contemporaneous and of equal quality. The question we must resolve is which HTS category is the most specific to Lian Li's metal covers and backs.

After considering the parties' arguments, we find that Indian HTS 8310.00 is the best available information with which to value metal covers and backs. As Lian Li pointed out, this Indian HTS category specifically covers name plates, sign plates, address plates, & similar plates, numbers, letters & symbols of base metal, excluded from heading number 9405. We find that the flat metal items contained in this HTS category are most similar to the flat metal covers and backs used to produce the metal-covered notebooks and constitute the best available information in terms of the quality, specificity, and contemporaneity of the data with which to value the metal covers and backs utilized by Lian Li's supplier.

Comment 18: Lian Li's Reported Mixed-Pulp Paper Consumption

Petitioner argues that the Department should determine that Lian Li's mixed-pulp paper consumption values are not verified because the Department could not verify Lian Li's paper consumption submitted in its responses. Moreover, Petitioner points out that a very important

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[148] *See* Petitioner's August 11, 2006, submission at 4.

[149] *See* Petitioner's August 11, 2006, submission at 4.

component of verification is tracing reported amounts to source documents. Furthermore, Petitioner argues that the Department's verification findings showed a consistent pattern of underreporting of paper consumption at both Sentian and MPF. Specifically, with respect to Sentian, Petitioner points out that, contrary to the producer's claim that actual paper weight may vary, a consistent paper weight was utilized for all of Sentian's production codes.[150]

Petitioner also argues that, should the Department rely on FA in calculating a margin because the Department could not verify the questionnaire responses as they pertain to mixed-pulp paper consumption, the Department should utilize adverse inferences and base Lian Li's margin on the highest rate found in this investigation because Petitioner states that Lian Li impeded the investigation. Notwithstanding the above argument, Petitioner argues that at a minimum, the Department should apply facts otherwise available and increase all of Lian Li's reported mixed-pulp paper consumption by the weighted-average underreporting for MPF and cites *Malleable Iron Pipe Fittings*[151] to support its argument.

Lian Li argues that the Department verified that the actual weight of the raw material is less than the labeled weight for both Sentian and MPF, specifically citing the Lian Li Verification Report, at 26- 28 and 38-41. Furthermore, Lian Li maintains that since the Department was able to tie internal movement documents to Lian Li's books and records and to the FOP database, its actual mixed paper consumption is verified.

Department's Position:

Based on the record evidence, the Department has determined that two of Lian Li's producers, Sentian and MPF, provided unverifiable information with respect to their reported mixed-pulp paper consumption ("paper consumption") and the resulting reported paper consumption ratio, and did not cooperate to the best of their ability in complying with the Department's requests for information. Therefore, we are applying FA with an adverse inference to these producers' paper consumption rates.

The verification difficulties discussed by Petitioner stemmed from the fact that Sentian and MPF did not provide the necessary supporting information for their reported paper consumption. As a result, the Department was not able to verify Lian Li's questionnaire responses with respect to paper consumption at Sentian and MPF. Coincidently, the majority owner at Sentian is also the majority owner at MPF, hereafter known as company official.[152] Moreover, both companies

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[150] *See* Lian Li Verification Report at 28.

[151] *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003) ("*Malleable Iron Pipe Fittings*"), and the accompanying Issues and Decision Memorandum at Comment 1.

[152] See Lian Li's supplemental Separate Rates and Section A response dated March 29, 2006, at 19.

shared the same senior accountant. As described in the Lian Li Verification Report, the Department found that both Sentian and MPF underreported their paper consumption in their consumption ratio calculations.[153] Specifically, while at both producers' FOP verifications, the Department discussed with the company official the process used to issue raw material to the factory floor, where the production of scope merchandise takes place. At Sentian, the company official explained that he first calculates the quantity of paper required to fulfill a production order. He then adjusts the paper consumption needed to fulfill the production order by paper that is already on the production floor.[154] At both verifications the company official presented a raw material consumption worksheet that he purported contained the companies' raw material consumption calculations, which formed the basis for their reported consumption usage rates.[155]

At Sentian's verification, the Department observed that calculations had been provided for all of the main material inputs on the raw materials consumption worksheet, except for paper consumption.[156] Furthermore, using the company-provided formulae for all of the material inputs, except for paper, the Department was able to confirm consumption and tie it to Sentian's books and records and Lian Li's reported consumption. Upon request from the Department at verification, Sentian's company official provided a mathematical formula for paper similar to one already on the worksheet that was used to calculate the company's paperboard consumption.[157] However, when the company official attempted to demonstrate the calculation, he was unable to arrive at the calculated paper consumption on the worksheet, nor was he able to tie the calculated consumption to the reported paper consumption in Lian Li's submissions. The company official then explained that the difference is attributeble to the vendor paper weight (*i.e.*, GSM of the paper), a variable in the calculation.[158] However, at both Sentian's and MPF's verification, even after several attempts at plugging different paper weights into his calculation, the company official could not demonstrate what product weight was used for the companies' own internal reporting, nor was he able to tie his calculation to the reported consumption in Lian Li's submissions.[159] Moreover, the Department was unable to verify that any of the information in Lian Li's responses as it pertains to these producers' paper consumption corresponded to either Sentian's or MPF's books and records. The only portion of Sentian's and MPF's reported paper consumption that could be tied to the companies' books and records was the quantity withdrawn

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[153] *See* Lian Li Verification Report at 2 and 3.

[154] *See* Lian Li Verification Report at 26-27

[155] *See* Lian Li Verification Report at Sentian Exhibit 5 and, *See also*, Lian Li Verification Report at MPF Exhibit 5.

[156] *See* Lian Li Verification Report at 27.

[157] *Id.* at 27-28 and 39-41.

[158] *Id.*

[159] *Id.*

from inventory. As explained by the company official, to fulfill production orders, Sentian and MPF withdrew raw materials from inventory only as needed to supplement raw materials already in the factory.[160] According to the company official, the reported values were supposed to reflect these inventory withdrawals; thus, they did not reflect actual consumption. Further, at verification, there was no way to track either the reported values or a production order's actual quantity of raw materials consumed to Sentian's and MPF's books and records. Thus, we were not able to tie their total paper consumption to products produced during the POI.

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. The information Lian Li provided cannot serve as a reliable basis for reaching a determination because the Department's inability to verify that Sentian's and MPF's paper consumption ties to their books and records translates into an inability to verify the reported consumption.

We agree with Petitioner that the purpose of verification is to "confirm" and "clarify" record evidence.[161] As discussed above, pursuant to section776(a)(2)(D) of the Act, Lian Li meets the criteria for the application of FA. Furthermore, by failing at verification to provide the Department with adequate support for their consumption, Lian Li's producers, impeded the Department's ability to confirm and clarify these producers' paper consumption.[162] Also, the consumption reconciliation, required of Lian Li's producers determines whether they have reported all consumption for the POI. Such a reconciliation serves as a "starting point" for the Department at verification.[163] Absent a verifiable starting point, the Department has no basis upon which to find that a company's questionnaire responses are accurate and complete, and the Department must therefore, conclude that those responses are unverified.

Section 776(b) of the Act provides that, upon having determined to apply FA pursuant to the statutory requirements, the Department may use adverse inferences in selecting among the facts otherwise available if the Department determines that the respondent failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Additionally, in *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003)

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[160] *See* Lian Li Verification Report at 26.

[161] *See Softwood Lumber* at Comment 3.

[162] *See* Lian Li Verification Report at 26-28 and 38-41.

[163] See *Certain Cut-to-Length Carbon Steel Plate from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 78 (January 4, 1999) (" *Carbon Steel Plate from Mexico* ").

("*Nippon Steel*"), the Court set out two requirements for drawing an adverse inference under section 776(b) of the Act. First, the Department "must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations."[164] Next the Department must "make a subjective showing that the respondent . . . has failed to promptly produce the requested information" and that "failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records."[165] The Court clarifies further that "{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made." See *Nippon Steel*, at 1383.

Thus, Lian Li, as well as its producers, are responsible for demonstrating the reliability of their own data in this investigation. Their failure to do so led to the Department's conclusion that Lian Li's producers, Sentian and MPF, did not act to the best of their ability to cooperate with respect to this data. Specifically, both producers clearly had the appropriate and relevant level of detail in their books and records to substantiate the preponderance of Lian Li's other FOPs. It, therefore, stands to reason that the company would, in the normal course of business, maintain the same level of information and quality of data with respect to paper, its most significant input into its merchandise. Nevertheless, the company remained unable to substantiate its reported consumption for this particular FOP. Therefore, we are applying FA with an adverse inference to Lian Li's paper consumption for these producers. As AFA, we will apply to Sentian's and MPF's paper consumption rate the highest paper consumption rate for any single matching control number ("CONNUM") from Lian Li's remaining five producers.

Comment 19: Finished Weight of Merchandise

Notwithstanding Petitioner's prior argument that the Department should apply total AFA to Lian Li, Petitioner argues in the alternative that if the Department does calculate a margin for Lian Li, the Department must determine that none of Lian Li's reported weight values for its subject merchandise could be verified and base its determination on facts otherwise available, consistent with section 776(a)(2)(D) of the Act and *Malleable Iron Pipe Fittings*.[166] As FA, Petitioner argues the Department should apply the highest rate of variance between the reported and the verified values for each producer's respective merchandise.

Lian Li argues that it did not intentionally underreport its product weight at Sentian or MPF.

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[164] *Nippon Steel*, 1382.

[165] *Id*.

[166] *See Malleable Iron Pipe Fittings.*

Lian Li claims that weight variations could be caused by factors such as different batches of raw materials and errors from manual processing, which could contribute to the weight differences in lined paper products and can vary even within the same product code. Additionally, for the questionnaire response, Lian Li claims it weighed sample products in its own stock, one piece per product code, and on the day of verification a different sample of the same product was weighed, again, only one piece per product code. Furthermore, on the day the products were weighed it was raining and Lian Li claims that moisture can add more weight to the finished product.

Department's Position:

With respect to Petitioner's argument that the Department should apply total AFA to Lian Li, please see the Department's position to comment 13 above. Further, we disagree with Petitioners that, pertaining to finished product weight, Lian Li has failed to cooperate by not acting to the best of its ability.

In making its argument, Petitioner cites to the fact that Lian Li's product weight is unverified because at verification, the Department discovered minor differences between the reported net weight of the merchandise (*i.e.*, WEIGHTU) and the weight as viewed on a scale at verification. *See* Lian Li Verification Report at pages 24-25 and page 37 for those products affected by the minor differences. We found no pattern that would indicate that the variances were all in one direction.

However, with respect to a product such as those subject to the scope of this investigation, we find it to be perfectly plausible to expect slight differences in the weights of different physical samples of the same product. Furthermore, we found no pattern of underreporting of the weights. On the contrary, we found some samples weighed at verification to be slightly heavier than the reported weights, others to be slightly lighter, and still others, coincidently, weighed the same as the reported weight. *See* Lian Li Verification Report at 24-25, 37. Therefore, for purposes of this final determination, we find that Lian Li's submissions in this investigation provided the Department sufficient information regarding Lian Li's finished product weight.

Comment 20: Sentian and MPF's Use of Outside Processors

Petitioner alleges that in its questionnaire responses, Lian Li failed to disclose two of its producers' use of an outside processor for various stages in the production of certain notebook backs and covers. Citing the Lian Li Verification Report, Petitioner argues that at verification, these two producers were unable to quantify the backs and covers that were fully self-produced from those that were processed by the outside processors.[167] Additionally, citing the Lian Li Verification Report, Petitioner contends that information discovered at verification contradicts information reported by Lian Li in its questionnaire responses. Specifically, Petitioner points to

[167] See Lian Li Verification Report at page 29.

Lian Li's statements in its questionnaire responses that it purchased white/white paperboard from unaffiliated parties in comparison to MPF's statements at verification that the "raw material (*i.e.*, cardboard) is purchased by Sentian."[168]

Examining past Department practice, Petitioner contends that in an AD investigation, the Department will "either value the {FOP} reported by the toll producer or will value a surrogate for the material based upon the finished product produced by the processor."[169] In *Diamond Sawblades Inv. Prelim*, Petitioner argues, the Department obtained the FOP from respondents who had provided materials to a toll processor for finishing. By not informing the Department of the existence of its tolling arrangement for backs and covers, Petitioner argues that Lian Li avoided reporting relevant FOPs, such as labor, inks and glossing agents necessary to the production of these backs and covers, as incurred by the toll processors. Petitioner argues that this lack of disclosure constitutes a verification failure and a "willful" attempt not to submit to the record information clearly within Lian Li's possession. Citing several past cases, Petitioner concludes that this fact pattern warrants a determination based on AFA, suggesting that to do otherwise would reward Lian Li for its lack of cooperation in this proceeding.[170]

Lian Li takes issue with Petitioner's allegation that it disclosed its use of outside processors for the first time at verification, citing its statement in its May 1, 2006, submission (at page 10) that it had "attempted but failed to obtain the processing factors from its suppliers." Further, Lian Li addresses statements in the Lian Li Verification Report regarding its inability to differentiate or quantify the backs or covers processed in-house from those processed by the outside processors. Lian Li contends that its inability to distinguish these items is inconsequential as the surrogate that the Department has chosen to value these books and covers includes the printing costs associated with the outside processing. Thus, according to Lian Li, to add the costs of the processing (coating, painting or printing) done by the outside processors to NV would in fact result in double counting those costs, a practice Lian Li avers the courts have clearly ruled against.[171] Finally, Lian Li concludes that the Department successfully verified the total quantity

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[168] *See* Lian Li Verification Report at page 42 and Lian Li Supplemental Section D Response at Appendix S1-D-4B (MPF).

[169] *See Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China ("Diamond Sawblandes Inv. Prelim")*, 70 FR 77121, 77131 (December 29, 2005).

[170] *See, e.g., Diamond Sawblades Inv. Final* and accompanying Issues and Decision Memorandum at Comment 36; *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation*, 68 FR 6885 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 12, and *Honey 04-05 Final* (applying partial adverse facts available for two FOPs discovered at verification).

[171] *See Sinopec Sichuan Vinylon Works v. United States*, Slip Op. 06-78, May 25, 2006 (CIT) at page 17, quoting from *Holmes Prods. Corp. v. United States*, 16 CIT 628, 632, 795 F. Supp 1205, 1208 (1992).

of the covers and backs used in its notebook production, regardless of where the final processing of the backs and covers occurred.

Department's Position:

We agree with Lian Li that verification was not the first time the respondent identified the use of outside processors with respect to painting or printing certain backs and covers. In fact, as Lian Li pointed out, it informed the Department in its May 1, 2006, submission that it had attempted to obtain these factors from its outside processors but was unable to do so. Therefore, Petitioner's cites to past cases warranting an AFA finding are inapposite to this discussion. We further agree that the surrogate selected by the Department to value such books and covers is a value for the coated painted and printed products and, therefore, adequately accounts for the value associated with such processing.

Comment 21: Electricity

Lian Li expresses concern with the statement in the Lian Li Verification Report that one of its producers, MPF, underreported its electricity consumption during the POI. Lian Li notes that MPF reported its electricity consumption based on the bills corresponding to each month of the POI, each of which reflects actual electricity consumption for the preceding month. When comparing the total consumption based on the January through June bills (reflecting consumption of December through May) to the consumption based on the February through July bills (which reflects actual POI consumption), Lian Li concedes that it appears that the company underreported its electricity consumption. Lian Li avers that this does not reflect any intentional mis-reporting, but concedes that the Department should use the corrected values for the final determination.

Department's Position:

We agree with Lian Li and we have used the corrected electricity consumption values for the final determination.

Comment 22: Lian Li's Labor Allocation

Petitioner argues that the Department should reject Lian Li's labor allocation methodology. According to Petitioner, Lian Li merely applied a company-wide labor rate to all subject merchandise regardless of the complexity of the product or the size of the product. Petitioner states that Lian Li has claimed that a 150-sheet package of filler paper incurs the same amount of labor as a five-subject notebook, despite the fact that, based on the manufacturing steps involved in the production of these products, production of a notebook is clearly more advanced and complex than that of filler paper. As a result, Petitioner submits that the notebook would require additional labor. Petitioner maintains that the differences are even more apparent with respect to composition books, where the books are sewn by laborers using sewing machines.

Petitioner argues that Lian Li's allocation methodologies are clearly distortive and not reflective of actual production experiences of either the respondents or domestic producers. Petitioner adds that this is especially problematic given that one of the fundamental cost aspects of PRC production of scope merchandise is the inherent advantage of China's large labor pool, which sacrifices labor efficiency for low labor costs. Furthermore, according to Petitioner, Lian Li has made no attempt to demonstrate that its chosen methodology is not distortive, nor has Lian Li justified why it used identical labor rates for different products which, Petitioner argues, based on its own experience, would require different labor amounts based on the relative complexity of the product. Petitioner claims that it is the Department's practice to disregard allocation methodologies that are unreasonable and cannot be justified.[172] Accordingly, Petitioner argues that the Department should reject Lian Li's allocation methodology and use, as FA, Lian Li's highest reported labor rate for all of its products.

Lian Li claims that at verification both Sentian and MPF explained that their accounting systems do not account for labor for individual products and, as a result, the companies had to allocate labor by piece. Lian Li submits that at verification, the Department was able to tie the total number of persons, including hours worked and payroll, through the companies' books and records to their respective financial statements, without discrepancies. Furthermore, according to Lian Li, the company explained to the Department at verification that wire-bound notebooks and composition books require approximately the same amount of labor.

In addition, Lian Li maintains that its chosen allocation methodology necessarily allocates more labor hours to some products, *e.g.*, filler paper, and fewer labor hours to others, such as notebooks and composition books. However, Lian Li claims, applying more labor hours to filler paper, (a lower-priced product) is contrary to Lian Li's interests. Lian Li also contends that allocating labor on the basis of paper consumption, as it believes Petitioner proposes, would underestimate the labor consumption for the majority of products. Instead, Lian Li argues, given the lack of detail in the companies' accounting records, its methodology of allocating on a per-piece basis was justified.

Department's Position:

We find no basis for rejecting the labor allocation methodology used by Sentian and MPF. It is the Department's well-established practice to accept allocation methodologies that are shown to be reasonable.[173] Furthermore, the Department's regulations provide general rules whereby the Department will accept allocation methodologies as deemed appropriate. For example, pursuant

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[172] Petitioner cites *Hand Tools 01-02 Final* accompanying Issues and Decision Memorandum at Comment 8, and *Chlorinated Isocyanurates Inv. Final* accompanying Issues and Decision Memorandum at Comment 2.

[173] *See*, *e.g.*, *Brake Rotors From the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 65 FR 64664 (October 30, 2000), and accompanying Issues and Decision Memorandum at Comment 5.

to 19 CFR 351.401(g)(1), the Department "may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible" provided that the Department determines "that the allocation method used does not cause inaccuracies or distortions." This principle applies to Sentian's and MPF's allocation of labor, where we determined that product-specific reporting was not feasible. In determining the feasibility of product-specific reporting on the part of both Sentian and MPF, we are guided by 19 CFR 351.401(g)(3), which states that the Department "will take into account the records maintained by the party in question in the ordinary course of its business, as well as such factors as the normal accounting practices in the country and industry in question. . . ."

First, we examined the level of detail contained in the company's books and records in the normal course of business to determine if the relevant documentation would support more specific reporting. We agree with Lian Li that the companies' accounting systems do not allow them to allocate labor by product.

Second, we thoroughly examined the allocation methodologies applied by Sentian and MPF at verification and determined that the allocation methodology was reasonable. Specifically, we examined the methodology used to allocate the labor amounts, the source documents that support Sentian's and MPF's allocation methodology and their reported consumption amounts, and the records of payment showing the amounts paid for labor. *See* Lian Li verification report at 30 - 31 and Sentian verification exhibit 9 and Lian Li verification report at 44 and MPF verification exhibit 7. Finally, we determined that the allocation methodologies do not cause distortions because there is no pattern of underreporting of labor hours across products.

Comment 23: Lian Li's Scrap Offset

Petitioner asserts that the Department should deny Lian Li's scrap offset. Petitioner claims that during verification, both Sentian and MPF stated they do not track their scrap by-product in any way other than to "add up how much is sold."[174] Petitioner adds that neither Sentian nor MPF could provide any information to tie their scrap paper to the production of scope versus non-scope merchandise, the production of a particular CONNUM, a particular product, or even to the production in a particular month. According to Petitioner, the only affirmative evidence either company could provide to the Department was that some scrap paper was sold, and that receipt of payment for the scrap sales could be traced through the respective companies' non-operational income accounts to their general ledgers.

Petitioner submits that the situation in the instant investigation is analogous to a situation addressed by the Department in a prior proceeding, where the respondent could not provide any

[174] *See* Lian Li Verification Report at 33-46.

information concerning scrap accumulation between subject and non-subject merchandise.[175] In that case, Petitioner notes the Department concluded that a "list of scrap sales is not useable in calculating a scrap offset for subject" merchandise.

Petitioner states that while both Sentian and MPF produce both scope and non-scope merchandise, neither company has disclosed how much of its production was attributable to scope merchandise, and neither company could begin to approximate the relative scrap rates for broad categories of merchandise. According to Petitioner, while Sentian and MPF provided information regarding the sales of scrap, they provided no demonstrable evidence to show that the sales accurately reflect the claimed scrap recovery rate. Petitioner claims that because the companies have not provided information concerning their non-scope production, there is no way to assess whether the claimed scrap rate is reliable, and as a consequence, the Department must reject Sentian's and MPF's claimed scrap offsets.

Lian Li counters that the verification report indicates that the Department was able to successfully tie Sentian's and MPF's sales of scrap through their general ledgers to the companies' financial statements. According to Lian Li, because both companies sold scrap during the POI, they are entitled to a scrap offset. Furthermore, according to Lian Li, Exhibit S1-D-3A of the March 30, 2006, response to the first supplemental questionnaire showed the quantity of paper scrap produced and sold each month and demonstrated the allocation methodology. Lian Li asserts that the Department will accept an allocation methodology that is shown to be reasonable, and Lian Li maintains that it was very reasonable to allocate total scrap generated over total production, including both scope and non-scope merchandise, as was done by Sentian and MPF. Lian Li explains that it calculated a ratio of scrap sold to total paper consumption, then multiplied that ratio by the paper consumption of each product to obtain the scrap allocation for the particular product. According to Lian Li, this method has been used by the Department in many past antidumping cases.

Department's Position:

We do not agree with Lian Li. Lian Li made no attempt to allocate scrap between the production of scope merchandise and the production of non-scope merchandise. Instead, Lian Li merely calculated a ratio of scrap sold to total reported paper consumption and multiplied the resulting ratio by the paper consumption of each product value, which could not be supported by either company at verification. *See* Comment 18. While Sentian's and MPF's accounting records do not allow them to trace scrap sales according to whether the scrap was generated from the production of scope merchandise or non-scope merchandise, their accounting records do track total production, by product. However, the companies made no attempt to allocate their scrap sales to the production of scope merchandise, let alone on a product-specific basis. The mere fact that a company demonstrates that it sold scrap has been rejected by the Department in the

[175] *See Hand Tools 01-02 Final* and accompanying Issues and Decision Memorandum at Comment 14.

past as a justification for allowing a scrap offset. *See Hand Tools '01-'02 Final*, where the Department explained that without knowing the percentage of steel consumed to produce non-subject products, the Department was unable to allocate the quantity of scrap sold between subject products and non-subject merchandise.[176]

Further, in order to be able to grant an offset for scrap, it is the Department's practice to require that respondents provide sufficient documentation of the actual scrap produced and the amount of the scrap reintroduced into the production process. *See*, *e.g.*, *Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 37051 (July 29, 2006), and the accompanying Issues and Decision Memorandum at Comment 4; *Hontex Enterp., Inc. d/b/a Louisiana Packing Co. v. United States*, 248 F. Supp. 1323 (CIT Feb. 13, 2003) (denying the degree of offset requested by plaintiff because it did not demonstrate its entitlement); and *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 the accompanying Issues and Decision Memorandum at Comment 5c (denying a respondent's by-product offset because it was unable to demonstrate its entitlement). Therefore, we continue to find it is not appropriate to grant a by-product offset for Sentian or MPF.

Comment 24: Unreported Material Input - Thread

Petitioner argues that, for a particular product, Lian Li failed to report stitching thread as an FOP despite CONNUM-specific characteristics that indicate usage of this factor.[177] Specifically, Petitioner states that the narrative response from Changshu Changjiang Paper Products Co. Ltd. ("Changjiang"), the producer of the product in question, as well as its production process diagram, confirm the usage of stitching thread. To correct this problem, Petitioner suggests that the Department revise Lian Li's FOP database by inserting, for all products using stitching thread, where no consumption was reported, the highest consumption rate reported by Lian Li for this factor. Petitioner points out that in its original section D FOP database, Lian Li did report consumption of stitching thread for another CONNUM.

Lian Li claims that Sentian and MPF treated thread as factory overhead and did not report it in the FOP database because the consumption was so small and the cost is "less than a cent."

Department's Position:

A review of Lian Li's FOP spreadsheet indicates that it did report consumption for thread. In the preliminary determination, the Department inadvertently truncated the reported numbers, which had the effect of setting the values to zero. For the final determination, for those products using

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[176] *See Hand Tools 01-02 Final* Issues and Decision Memorandum at Comment 14.

[177] Petitioner Case Brief treated the name of this input as business proprietary information . However, because the Lian Li Rebuttal Brief revealed the name publicly in, we have treated it as public information.

this material input, we have corrected the Department's error and have included Lian Li's reported consumption value for thread. Lian Li's statement that it did not report consumption of thread in its FOP database is incorrect.

Comment 25: Packing Input - Polyethylene Film

Petitioner argues that Lian Li's polyethylene film is a material input and should not be valued as a component of packing. While Petitioner acknowledges that in some instances it would be proper to categorize polyethylene film as a packing material, here it is not. According to Petitioner, it has long been the Department's practice to treat as direct material inputs containers or packaging that hold a quantity of subject merchandise for sale to the downstream customers where, without the container, the merchandise cannot be sold at the retail or wholesale levels. Petitioner states that in other cases the Department has made clear that packaging and conveyance materials that are incorporated into the ultimate end product sold to the consumer constitute material inputs and not packing materials.[178]

Petitioner argues that in the instant investigation, the polyethylene film is an essential component of certain products, where it is "inescapably purchased" with the product itself. For purposes of the final determination, Petitioner asserts that the Department should follow its prior precedent with respect to conveyance materials and should value polyethylene film as a direct material input.

Specifically, Petitioner notes that in the verification report, the Department found that certain subject notebooks are "shrink-wrapped together."[179] Petitioner maintains that, as this practice is common with products shipped as multi-packs to be sold to the customer in the identical form, the Department should find that the packaging for such multi-pack products is an essential component of the merchandise. Petitioner proposes that for all of Lian Li's CONNUMs the Department treat polyethylene film as a direct material rather than as a packing material.

Lian Li states that certain subject notebooks are indeed shrink-wrapped together. For example, Lian Li states that six notebooks may be contained in one shrink-wrap package and shipped in this manner to the importer or retailer. However, Lian Li claims that it has no knowledge whether the ultimate customer will purchase the merchandise in a shrink-wrapped package of six or the notebooks will be purchased individually because, according to Lian Li, these notebooks

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[178] Petitioner cites *Chlorinated Isocyanurates Inv. Final* and accompanying Issues and Decision Memorandum at Comment 11; and *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review*, 70 FR 10965 (March 7, 2005) ("*Mushrooms* 03-04 *Prelim*"), where the Department described the valuation of cans and jars as a direct material input as opposed to a packing material.

[179] *See* Lian Li verification report at 32.

are sold both separately and in packs. Therefore, Lian Li argues, the polyethylene film should not be treated as a direct input.

Department's Position:

We agree with Petitioner that polyethylene film used as shrink wrap for multi-packs of notebooks or for filler paper should be treated as a direct material rather than packing material. As explained in *Mushrooms 03-04 Prelim*, we included the value of cans (or tin plate used to produce cans) among the direct material inputs because these are raw materials included in the FOP utilized to produce the merchandise. *See* 70 FR 10965, 10975. The Department's questionnaire (at D-4) instructs respondents to "{i}nclude every factor used in the production of this merchandise, and in packing the merchandise for shipment to the United States." It is the Department's practice to include in the cost of manufacture all FOP used to produce the product sold to the first unaffiliated customer. We are not persuaded by Lian Li's claims that it has no knowledge whether the ultimate customer will purchase the merchandise in a shrink-wrapped package of six or individually. It is not relevant to this investigation how the products are sold to the ultimate customer. Rather, this investigation is concerned with Lian Li's sales to its U.S. customer. As a result, for the final determination, where Lian Li sold multi-pack notebooks bound by polyethylene film, or filler paper bound in the same way, we have treated the polyethylene film as a direct material input.

IV. ISSUES RELATED TO SEPARATE-RATE APPLICANTS

Comment 26: Wenbao Critical Circumstances Determination

Wenbao states that the Department based its preliminary critical circumstances determination for Wenbao Paper and Paperline on AFA because Wenbao reported monthly shipment information on a consolidated basis and the Department was unable to conduct separate analyses for Wenbao Paper and Paperline. Wenbao argues that because it responded on June 29, 2006, to the Department's June 28, 2006, request for unconsolidated monthly shipment information for Wenbao Paper and Paperline, the Department now has no basis to resort to an adverse inference for critical circumstances.

Wenbao states that the Department's application of adverse inferences in the preliminary determination implies that the Department's intent is to perform the critical circumstances calculation on an exporter-specific basis, even when, as here, two exporters are affiliated. Wenbao agrees with the Department that a separate critical circumstances finding for each company would be appropriate and consistent with the statute.

Wenbao states that it has reported both Wenbao Paper's and Paperline's own "direct" exports as well as "indirect" exports made by other exporters, where Wenbao Paper/Paperline had knowledge that the goods were destined for the United States. Wenbao points out that the "indirect" sales were denominated in RMB to other exporters located in the PRC and are not

Wenbao Paper's or Paperline's exports under the dumping statute. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999); and *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from China*, 58 FR 48833 (September 20, 1993). Further, Wenbao argues that the Department specifically did not consider Wenbao Paper's and Paperline's "indirect" shipments when ranking the respondents for purposes of respondent selection and, therefore Wenbao, asserts that to determine if Wenbao Paper's and Paperline's exports are "massive," the Department should perform the calculation for "direct" exports only.

Wenbao contends that the critical circumstances statute was designed to serve as a deterrent to "exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by {the Department}." *See* H.R. Rep. No. 96-317, 96th Cong., 1st Sess. at 63 (1979). Wenbao reaffirms that Wenbao Paper's and Paperline's "indirect" shipments are not the exports of either company, but rather the exports of unaffiliated Chinese trading companies. Further, Wenbao argues that including the "indirect" exports in the critical circumstances analysis would double-count the same shipments, which were reported by trading company exporters in their respective quantity and value responses. Thus, Wenbao maintains that Wenbao Paper's and Paperline's "indirect" shipments would fall under linkages in the Department's customs instructions that address the trading companies that were the actual exporters of the goods to the United States. Wenbao submits that including "indirect" shipments in the critical circumstances analysis would create a mismatch between the calculation underlying the Department's finding and the manner in which U.S. Customs and Border Protection ("CBP") implements the finding.

Wenbao states that the Department should include the monthly shipment data for March and April 2006 that it requested and correspondingly expand the base and comparison periods by two months each. Wenbao notes that expanding the base and comparison periods has been the Department's past practice and states that "the Department's practice is to rely upon the longest period for which information is available from the month that the petition was filed through the date of the preliminary determination." *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the United Kingdom*, 58 FR 37215, 37216 (July 9, 1993); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9746 (March 4, 1997), and accompanying Issues and Decision Memorandum at Comment 10. Wenbao cited numerous other Department cases to argue that the Department should expand both the base and comparison periods by two months to incorporate the additional months into its consideration of seasonality.

Petitioner argues that the Department already analyzed evidence and determined that critical circumstances exist in the preliminary determination. Petitioner points out that it would be consistent with the Department's methodology to compare Wenbao Paper's and Paperline's

percentage increase in imports from October 2004 through February 2005 to October 2005 through February 2006. Petitioner asserts that imports will be massive whether Wenbao Paper's and Paperline's imports are analyzed together or separately and even if indirect sales are not included. However, Petitioner asserts that the Department's methodology in the *Preliminary Determination*, comparing the rate of change in a previous base and comparison period to the current base and comparison period, is overly complicated and inconsistent with the Department's past practice.

Petitioner argues that only sales through February 2006 should be analyzed because the preliminary determination was originally scheduled for February 16, 2006, but was extended to April 7, 2006, on February 10, 2006. Petitioner points out that Wenbao Paper's and Paperline's imports of subject merchandise increased in December, January, and February. Petitioner alleges that respondents had little notice of the extension of the preliminary determination and would have planned the greatest surge in imports prior to the February preliminary determination. Therefore, Petitioner asserts that it would be inappropriate to extend the comparison beyond February. Petitioner states that even if March information is included, Wenbao Paper and Paperline would still have massive imports. Petitioner reaffirms that it does not make sense to include April information in the critical circumstances analysis because the Department has previously determined it is only appropriate to extend the comparison period up to the effective date of the preliminary determination. Since the preliminary determination was April 7, 2006, it is not appropriate to include the month of April in the comparison period.

Department's Position:

The Department applied AFA to Wenbao Paper and Paperline in the *Preliminary Determination* because Wenbao submitted consolidated monthly shipment information and, as a result, the Department was unable to conduct its critical circumstances analysis on an exporter-specific basis for Wenbao Paper and Paperline separately. However, Wenbao has answered the Department's information requests in a timely manner and has provided separate monthly shipment information through April 2006 for both entities. Therefore, we have conducted individual critical circumstances analyses for both Wenbao Paper and Paperline. Furthermore, the Department disagrees with Petitioner's argument that to compare the increase in imports the appropriate methodology is to compare October 2005 through February 2006 imports to October 2004 through February 2005 imports. This methodology does not account for seasonal trends as prescribed under 19 CRF 351.206 (h). The Department also disagrees with Wenbao and will not expand its critical circumstances analysis beyond February 2006 monthly shipment data. For the final determination, the Department has adjusted the comparison period to include September, the month in which the petition was filed. We have also determined it is not appropriate to expand the comparison period to include March 2006. Because of the methodology employed to test for seasonal trends, to include March 2006 in the comparison period would mean that March 2005 would fall in both the corresponding comparison period as well as the base period covering the six months prior to the filing of the petition. Therefore, for the final determination, the Department has used a base period of March 2005 through August 2005 and a comparison period

of September 2005 through February 2006. To account for seasonal trends, the Department has used a corresponding base period of March 2004 through August 2004 and a corresponding comparison period of September 2004 through February 2005. Furthermore, the Department has concluded company-specific analyses of Wenbao Paper and Paperline using only the "direct" sales for each company. Based on this analysis, the Department finds that no critical circumstances exist for either Wenbao Paper or Paperline. *See* Memorandum to Stephen Claeys from Ryan Radford through Charles Riggle and Wendy Frankel: Lined Paper Products from the People's Republic of China: Final Determination of Critical Circumstances, dated August 30, 2006.

Comment 27: Excel: Submission of Supplemental Separate-Rate Information

Excel Sheen argues that it submitted a Separate-Rate Application ("SRA") on a timely basis and that on March 22, 2006, it submitted a complete response to a supplemental questionnaire issued by the Department. Excel Sheen cites to the *Preliminary Determination*, where the Department denied Excel Sheen separate-rate status due to deficiencies in its SRA, but argues that the Department did not notify Excel Sheen of these deficiencies until March 15, 2006. Further, Excel Sheen cites the Department's statement in the *Preliminary Determination* that it would issue a post-preliminary supplemental questionnaire. On May 1, 2006, Excel Sheen submitted, on its own accord, supplemental separate-rate information. Excel Sheen argues that the supplemental information it submitted on May 1, 2006, and the previously submitted information, confirm that Excel Sheen is free from any government control and, thus, is entitled to separate-rate status. Excel Sheen states that the Department should grant Excel Sheen a separate rate for the final determination.

Department's Position:

The Department finds that Excel Sheen timely submitted the necessary separate-rate information that was deficient at the time of the *Preliminary Determination* and, thus, agrees with Excel Sheen that it is entitled to separate-rate status. For the final determination, we have granted Excel Sheen separate-rate status. *See* Final Separate-Rates Memo.[180]

Comment 28: MGA Chain Rates for Wholly Owned Producers

MGA argues that the Department should include the names of two Chinese manufacturers that were omitted from the *Preliminary Determination* for the purpose of applying a separate rate to imports of subject merchandise from MGA. MGA claims that on December 5, 2005, it timely filed a SRA with the Department, which included the names of three suppliers/producers of subject merchandise: Kon Dai (Far East) Packing Co., Ltd. ("Kon Dai"), Dong Guan Huang

[180] Memorandum to Wendy Frankel, Director, through Charles Riggle, Program Manager, from Ryan Douglas, Analyst: Certain Lined Paper Products from the People's Republic of China: Separate-Rates Memorandum Final Determination, dated August 30, 2006 ("Final Separate-Rates Memo").

Giang Rong Da Printing Factory ("DGHG"), and Dong Guan Guang Da Printing Company Limited ("DGGD"). MGA claims that the Department only identified Kon Dai as a producer in the *Preliminary Determination* and not the other two producers, (*i.e.*, DGHG and DGGD). MGA argues that Kon Dai is a Hong Kong-based sales company and the sole owner of the two additional producers. MGA claims that it did not raise the issue concerning combination rates for DGHG and DGGD because MGA believed that the identification of Kon Dai as the supplier and MGA as the exporter would be sufficient. MGA claims that CBP has questioned three MGA entries with regards to the country of origin where listing itself (*i.e.*, a Hong Kong-based company) as the exporter, China as the country of origin, and Kon Dai as the supplier. MGA argues that CBP does not recognize Kon Dai as the supplier/producer and instead sees DGHG and DGGD as the manufacturers and, thus, has not applied the separate rate for these entries. For the final determination, MGA is requesting that the Department include DGHG and DGGD as producers, along with Kon Dai, for the purpose of the combination rate to ensure that the appropriate antidumping duty rate is applied to its entries at the border.

Department's Position:

The Department has confirmed that MGA originally submitted in its December 5, 2005, SRA the names of Kon Dai, DGHG, and DGGD. The Department notes that in MGA's SRA, it clearly states that DGHG and DGGD are wholly owned by Kon Dai.[181] Further, MGA provided a certification from Kon Dai that certifies that it wholly owns DGHG and DGGD. Thus, for the final determination the Department has included combination chain rates for MGA/DGHG and MGA/DGGD, in addition to the combination chain rate it provided for MGA/Kon Dai in the *Preliminary Determination.*

Comment 29: Te Gao Te's Chain Rate for Self-Produced and Exported Subject Merchandise

Te Gao Te argues that the Department should correct the suspension of liquidation instructions sent to CBP so as to properly reflect the producer/exporter combination,[182] where it is both the producer and exporter of subject merchandise. Moreover, Te Gao Te argues that it fully described in its November 8, 2005, SRA, that it was both a producer of subject merchandise for other exporters, an exporter of subject merchandise from other producers, and an exporter of self-produced subject merchandise. Te Gao Te argues that on June 16, 2006, in the Department's suspension of liquidation instructions to CBP, the Department recognized Te Gao Te as a producer in one combination rate and an exporter in two other combination rates, but failed to recognize Te Gao Te as both the producer and the exporter. Te Gao Te argues that some of its shipments have not received the separate rate to which they were entitled due to erroneous CBP

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[181] Separate-Rates Application of MGA: Certain Lined Paper Products from The People's Republic of China, at 5.

[182] In its case brief Te Gao Te erroneously referred to the suspension of liquidation instructions as "liquidation instructions."

instructions and, thus, requests that the Department add Te Gao Te as an exporter of self-produced subject merchandise for the final determination.

Department's Position:

The Department agrees with Te Gao Te that it did not include a combination chain rate for the circumstances where Te Gao Te is exporting self-produced goods. However, the Department does not agree that this correction should be made retroactive to the *Preliminary Determination*. Te Gao Te had the ability to obtain earlier relief from this significant ministerial error pursuant to the Department's regulations for submitting allegations regarding significant ministerial errors in the *Preliminary Determination*, *see* 19 CFR 351.224(e). We note that the Department amended its preliminary denial of separate-rate status to You-You Paper Products (Suzhou) Co., Ltd, (You-You) and granted separate-rate status to You-You in its Amended Preliminary Determination after You-You filed a timely significant ministerial error allegation. *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China*, 71 FR 31159, 31161 (June 1, 2006). Unlike You-You, Te Gao Te did not file a timely significant ministerial error allegation. Section 351.224(c)(2) of the Department's regulations provide that a party to the proceeding must file comments concerning ministerial errors within five days after the earlier of the date on which the Department releases disclosure documents to the party or the date on which the Department holds a disclosure meeting with that party. The Department disclosed the results to Te Gao Te on April 13, 2006. However, Te Gao Te did not raise this issue with the Department until it filed its case brief on July 31, 2006. Therefore, for the final determination, the Department will add to its suspension of liquidation instructions the combination chain rate that specifically lists Te Gao Te as both the producer and the exporter prospectively.

Comment 30: Maxleaf: Corrected Separate-Rate Application and Clarification on Bank Statement

Maxleaf claims that it timely provided the Department with ample clarifications concerning deficiencies in its SRA. Maxleaf claims that on December 6, 2005, it submitted a corrected SRA which included an accurate 7501 Summary, but that the Department inadvertently overlooked this submission and, therefore, denied Maxleaf a separate rate in the *Preliminary Determination*. Maxleaf states that the Department agreed that it overlooked Maxleaf's December 6, 2005, correction to the SRA, but continued to deny Maxleaf a separate rate in the *Amended Preliminary Determination*.[183]

Maxleaf also argues that the Department continued to deny Maxleaf a separate rate on the basis

[183] Memorandum From Charles Riggle To Wendy J. Frankel re: Allegations of Ministerial Errors (May 9, 2006) at Comment 5.

of "inconsistencies with respect to the payment documents."[184] Maxleaf argues that the use of different bank branches for international transactions is a common business reality and should be self-evident to the Department. Maxleaf claims that payment was made to the Bank of China and that it listed this in Exhibit 11 of its December 5, 2005, SRA. Maxleaf further explains that foreign currency payments are received at the provincial level of the Bank of China and then the funds are transferred to the bank's local branch. Maxleaf claims that the local branch does not have the authority to receive direct foreign currency payments and that is why the provincial branch is used. *See* Maxleaf's SRA at Exhibit 1 for a copy of the Bank of China's website where it lists certain branches that have the authority to handle international transactions. Maxleaf states that upon receipt of payment, the provincial branch will transfer the funds into Maxleaf's local branch account. Maxleaf states that it does not have either a bank account or a bank account number at the provincial branch, as this branch only acts as an intermediary for international currency. Maxleaf claims that it is not the practice of the Bank of China to note the bank account number on the notice of receipt of payment as evidenced by its submission in its SRA at Exhibit 3e. Maxleaf argues, however, that this payment can be traced back to its commercial invoice.

Further, Maxleaf argues that the use of multiple branches has nothing to do with the company's separateness from government control and that it provided in its April 18, 2006, submission of Ministerial Error Allegations: Certain Lined Paper Products from The People's Republic of China ("Ministerial Error Allegation"), a clarification of its banking and payment information to dispel the Department's preconceived inconsistencies. Moreover, Maxleaf argues that this was not new information on the record, but a further explanation of its international banking transactions. Maxleaf argues that a similar clarification was provided in the *Wooden Bedroom Furniture Inv. Prelim*[185] where the Department originally denied separate-rate status in the preliminary determination, but granted separate-rate status in the final determination.

Maxleaf argues that it is unaware of the Department ever stating as a criterion for establishing separateness the identification of a specific bank account number or identification of a specific bank branch. Further, Maxleaf argues that the Department's SRA is a relatively new procedure,[186] and that the Department cannot arbitrarily create *ad hoc* criteria such as the one used to deny Maxleaf a separate rate (*i.e.*, perceived bank inconsistencies relating to usage of different bank branches). Maxleaf cites *Decca Hospitality Furnishings LLC v. United States*, 391 F. Supp.2d 1298 (CIT 2005) ("*Decca*"), where the court observed that, "an agency's rules of procedure must be reasonable, an agency must follow its stated rules of procedure, and must

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[184] *Id.*

[185] *Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 47417 (August 5, 2004).

[186] *See Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996 (April 28, 2005).

provide sufficient notice of its rules of procedure." Maxleaf goes on to cite *Decca* where the CIT noted:

> Commerce has failed to comply with (or publish) notice of its rules in the *Federal Register*. In weighing who should bear the liability as between an agency or an interested party in such a situation, Congress has determined that the agency must bear liability. *CF. Morton v. Ruiz*, 415 U.S. 199,232,94 S.Ct. 1055,39 L. Ed. 2d 270 (1974).[187]

Maxleaf also cites *NTN Bearing Corp., v. United States*, 74 F.3d 1204, 1208 (Fed Cir. 1995), to support its claim that while parties must exercise care in their submissions, it is unreasonable to require perfection. In a footnote, Maxleaf explains that it filed its SRA on day 60 rather than day 30 but that this should not provide justification for denying it a separate rate. Maxleaf claims that the Department's silence on something it claims to be "easily explained" calls into question the inherent reasonableness of the Department's various SRA deadlines. Maxleaf again cites to *Decca* and argues that the Department "may not exercise its authority in an arbitrary or capricious manner."[188] Maxleaf further contends that compared to the completeness of its submission, the perceived inconsistencies are inconsequential relative to the totality of Maxleaf's evidence on the record. Maxleaf claims it has overcome through this record evidence the rebuttable presumption of state control, and in fairness the Department should grant Maxleaf a separate rate.[189] Finally, Maxleaf argues that WTO considerations demand that the Department adhere to relevant criteria that establishe separateness to maintain transparency and consistency in the administration of the antidumping laws, including the SRA process, and goes on to argue that the Department has yet to clearly articulate the specific criteria that must be met for purposes of the SRA.

Petitioner argues that Maxleaf failed to file a complete and satisfactory application by the required deadline. Petitioner argues that since Maxleaf filed at the 60-day mark instead of the 30-day mark, it assumed the risk that its application would be deficient and rejected by the Department as outlined in the Department's rules for SRAs. Petitioner goes on to argue that Maxleaf cannot stand on its due process rights where it made no attempt to protect them. Petitioner points to the Department's rules where it states, "information contained in these documents must be consistent" and that "discrepancies must be clearly identified and explained."[190] Further, Petitioner claims that Maxleaf provided inconsistent information, which

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[187] *See Decca*., at 1305

[188] *See Decca*, at 1311.

[189] *See Decca*, at 1307.

[190] *See Separate Rate Application of Maxleaf Stationary: Certain Lined Paper Products from the People's Republic of China*, dated December 5, 2005, at 5.

it did not identify and explain in its application. Moreover, Petitioner states that the inconsistencies in Maxleaf's payment documentation are such that the Department cannot be sure whether payment is being made to Maxleaf or some other entity. Despite the fact that Maxleaf states that it is not the practice of the Bank of China to note bank account numbers on the notice of Receipt of Payment, Petitioner argues that Maxleaf provides no support for this assertion. In addition, Petitioner claims that the Chinese documentation submitted by the company in this regard is partly illegible, making it difficult, if not impossible, to match the documentation with the English translation provided. Finally, Petitioner argues that Maxleaf failed to provide a responsive answer to Question 3(a) of the SRA, which asked for the full name and contact information of the business license authority which issued Maxleaf's export certificate.

Department's Position:

The Department agrees with Maxleaf that it inadvertently overlooked Maxleaf's December 6, 2005, correction to its SRA and, thu,s has considered the corrected 7501 Summary for the final determination. As stated in the *Amended Preliminary Determination*, the Department continued to deny Maxleaf a separate rate because of the inconsistencies with regard to Maxleaf's banking and payment documents. Upon further analysis and explanation of these inconsistencies, the Department has determined that Maxleaf has demonstrated its eligibility for separate rate status and the Department has granted Maxleaf a separate rate for the final determination.[191]

Further, the Department disagrees with Petitioner that Maxleaf failed to file a complete and satisfactory SRA by the required deadline. Maxleaf filed its SRA on December 5, 2005, and then the following day filed a minor correction to its SRA that addressed the deficiencies in its 7501 Summary. However, the Department inadvertently overlooked this corrected SRA in its analysis of Maxleaf's evidence on the record. Further, the deadline for new factual information for this proceeding was May 1, 2006, and Maxleaf provided the Department notice of this new information a second time in its April 18, 2006, Ministerial Error Allegation. Though the Department continued to deny Maxleaf a separate-rate in the *Amended Preliminary Determination*, it was not due to Maxleaf's corrected 7501 Summary, but instead due to perceived inconsistences in Maxleaf's banking and payment information.

With regard to Maxleaf's banking and payment information, the Department disagrees with Petitioner's argument that Maxleaf provided inconsistent information, which it did not identify and explain in its application. Maxleaf provided the required information as directed by the SRA and upon further analysis of the information contained within Maxleaf's SRA, the Department has determined that Maxleaf's banking and payment information was supported by the evidence on the record. Specifically, Maxleaf provided the Department with evidence that only certain provincial level branches of the Bank of China can accept international transactions and after converting these funds from USD to RMB, the provincial branch transferred these funds to the

[191] *See* Final Separate-Rates Memo.

local branch where Maxleaf holds a bank account.[192] Maxleaf's commercial invoice matches the payment amount received by the provincial branch of the Bank of China.[193] In its April 18, 2006, Ministerial Error Allegation, Maxleaf further clarified the perceived inconsistencies between the provincial branch and local branch where Maxleaf holds a bank account. While the Department denied Maxleaf a separate rate in the *Amended Preliminary Determination*, because this ministerial error allegation did not meet the definition of a ministerial error as defined by 19 CFR 351.224(f), the information and argument was timely submitted by Maxleaf for the purpose of this final determination.

The Department disagrees with Petitioner's argument that the Chinese documentation submitted by Maxleaf with regard to its Receipt of Payment is partly illegible, thus making "it difficult, if not impossible, to match the documentation with the English translation provided."[194] The Department finds that the copy provided in Maxleaf's SRA is difficult to read, but it does not find it impossible to match the information from the original Chinese version to the submitted English translated version.

The Department agrees with Petitioner's argument that Maxleaf did not provide the address, telephone, fax, or email address of the business license authority which issued the export certificate of approval. However, Maxleaf provided copies of the original certification that clearly states the official licensing bureau complete with the official stamp from that bureau.[195] Further, Maxleaf provided a stamped copy of its Application for Custom Declaration Registration Certificate that indicates Maxleaf's legal rights to export goods.[196] The Department has determined that both the official stamped copy of the original certification and the official stamped copy of the registration certification are sufficient to determine that Maxleaf has the legal authority to export subject merchandise to the United States and is able to do so absent the *de jure* control of the PRC government. Thus, for the reasons stated above, the Department has granted Maxleaf a separate rate for the final determination.

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[192] *Id*., at Exhibit 3e.

[193] *Id*., at Exhibit 3c.

[194] *Id*., at Exhibit 3e.

[195] *Id*., at Exhibit 4a

[196] *Id*., at Exhibit 4c.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this investigation and the final dumping margins for the Watanabe Group and Lian Li in the *Federal Register*.

_____ _____
Agree Disagree

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date