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

FROM: Jeff May
Deputy Assistant Secretary
for Import Administration, Group I

SUBJECT: Issues and Decision Memorandum for the Investigation of Polyethylene Retail Carrier Bags from the People's Republic of China

Summary

We have analyzed the case and rebuttal briefs of interested parties in the investigation on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC). The period of investigation covers October 1, 2002, through March 31, 2003. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments and rebuttal comments by parties:

1. Scope Comments

2. Surrogate Financial Ratios

3. Market-Economy Inputs

4. Adjusting Indian Import Statistics

    A. Excluding Countries That Receive Export Subsidies

    B. Excluding Aberrational Data When Using the Indian Import Statistics

    C. Excluding U.S. Data From Indian Import Statistics

5. Surrogate Value for Ink

6. Surrogate Value for Varnish

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    D. Currency Conversion of U.S. Sales in Hong Kong Dollars

    E. Currency Conversion of Domestic Inland Freight

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A. Certain "Market-Economy" Purchases by United Wah

B. Ministerial-Error Allegation

13. Nantong Issues

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B. Use of Adverse Facts Available for Inadequate Reporting of FOP Information

14. Rally Plastics Issues

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B. Use of Facts Available for Marine Insurance

C. Use of Facts Available for International Freight

15. Glopack Issue

Classification of Sales as EP or CEP

16. Zhongshan Issues

A. Use of Adverse Facts Available for Sales Through Reliable Plastic Bags Manufacturing Ltd.

B. Ministerial-Error Allegations

C. Use of HTS Subheading 5607.90.02 to Value Cotton Rope/String

D. Valuing Cardboard Inserts Using HTS Subheadings

E. Surrogate Value for Rubber Rope

F. Surrogate Value for Clip (Loop) Handles

G. Whether the Department Should Adjust for Bank Fees

Background

The Department published its preliminary determination on January 26, 2004. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 3544 (Preliminary Determination). On February 20, 2004, the Department published an amended preliminary determination. See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 7908 (Amended Preliminary Determination). We invited parties to comment on our preliminary determination. We received comments from the Polyethylene Retail Carrier Bag Committee and its individual members (collectively, petitioners) and from the following respondents: Hang Lung, United Wah, Nantong, Rally Plastics, Glopack, Ming Pak, Nan Sing, Dongguan Zhongqiao, Zhongshan, Guangdong Esquel, and Duralok, Inc. On March 22, 2004, parties submitted additional surrogate-value information.

Discussion of the Issues

1. Scope Comments

Comment 1: On April 7, 2004, Duralok, Inc. (Duralok), an importer of PRCBs, submitted comments in which it requests that door-knob bags be excluded from the scope of the investigation. Duralok argues that these bags should be excluded because each bag contains a hang hole with a diameter of one-and-a-half inches which are not handles and because the bags are used by businesses to disseminate promotional papers and are not provided by retail establishments. Duralok submitted entry documentation from U.S. Customs and Border Protection (CBP) to show that CBP had required

the posting of cash deposits or bonds on one of its imports of door-knob bags on the basis that a die-cut hang hole was the same as a die-cut handle.

On April 26, 2004, PDI Saneck, MHI Inc., Elkay Plastics, and Crestpoly Packaging Corp., importers of PRCBs, submitted comments in which they request that the Department provide clarification of the scope or, alternatively, detailed instructions to CBP that would exclude seventeen types of polyethylene bags from the investigation. The importers resubmitted their argument a day later in a case brief also submitted on behalf of Glopack, Ming Pak, Rally Plastics, Hang Lung, Nan Sing, and Dongguan Maruman Plastic Packaging Company, Ltd. (formerly Dongguan Zhongqiao; see Issue 10 below). The importers and respondents assert that each of the seventeen types of bags are outside the express terms of the scope language as proposed by the petitioners and adopted by the Department. They assert that, contrary to the definition of the subject merchandise set forth in the scope language, these bags do not have handles and/or are sealable. They argue that the types of bags in question, which may be provided by retail establishments to wrap or package goods, are excluded from the investigation because, without handles, these bags are not provided to a customer to carry purchases out of an establishment.

The importers and respondents identify fifteen types of bags (newspaper bags, door-knob newspaper bags, flip-top deli bags, bread bags, produce bags, frozen food bags, pickle bags, hot food bags, meat/poultry bags, wicket bags, plain ice bags, light-weight trash bags, air-sickness bags, bedside bags, and umbrella bags) as bags without handles and two types (drawstring ice bags and double-drawstring bags) as bags with handles that are not used to carry goods from a retail store. The importers provided photographs of many of the bag types in their April 26, 2004, comments and provided samples of all of the bag types to the Department.

As stated by the importers and respondents, many of the types of bags identified as bags without handles are attached by perforation to a header that will have drilled or cut holes or are encased in a cardboard or plastic holder that will have drilled or cut holes or will have some type of handle or holder. They add that the holes, handles, or holders are not part of the individual bags and are present to hang the bags on a dispenser. With respect to the drawstring bags, the importers and respondents state that the drawstring of the drawstring ice bags is not used as a handle but as a means of sealing the ice in the bag and the drawstrings of the double-drawstring bags are used solely to seal and secure owner or instruction manuals or loose hardware in bags placed inside boxes containing consumer durable or non-durable goods.

The petitioners respond that the comments of the importers and the respondents do not provide an appropriate basis for clarification of the scope or instructions to CBP. They argue that, if the Department were to clarify the scope by stating that the seventeen types of bags were excluded, the Department would create an obvious and major risk of circumvention of an antidumping order. The petitioners state that the importers and respondents make no effort to provide physical specifications of the bag types and describe them only in terms of their use. The petitioners add that the fact that some bag types are not used for retail use does not exclude them from the scope and, in support, cite the current scope language which states that PRCBs are "typically" – not exclusively – used to carry merchandise from a retail establishment. Similarly, they argue that types of bags cannot be excluded on the basis that they never have handles because, occasionally, some of the types, such as produce bags, do have handles and because the drawstrings on the drawstring bags serve as

handles in part. The petitioners acknowledge the concern of the importers and respondents that CBP would deem door-knob newspaper bags and bags with headers or holders as subject merchandise. The petitioners suggest that they be allowed to provide the Department with specific language which could be used to clarify the scope. The petitioners conclude that, in the absence of such proposed language, the Department should make no changes to the scope language in the final determination.

Department's Position: Having reviewed the comments requesting changes for the various bag types, we have found neither proposed specific language to exclude certain bag types nor a basis for proposing changes to exclude certain bag types. Excluding a bag type by its use would not assist CBP in the enforcement of an antidumping order because it is not practicable to base determinations on product use and because such a practice would create a major risk of circumvention. Even if the importers and respondents had provided detailed physical specifications for each of the seventeen bag types, we are unable to envision how such specifications could be reflected in the scope without raising a risk of circumvention.

Currently, the scope limits subject merchandise to "non-sealable sacks and bags with handles (including drawstrings)." The importers and respondents identified fifteen of the bag types as not possessing handles, hang holes, or drawstrings. They expressed their concern that, in the future, CBP may misconstrue the drilled or cut holes sometimes present in these bag types to hang the bags on a dispenser as a handle and, consequently, impose antidumping duties on the merchandise. At that future date, an importer will be able to request a scope ruling from the Department on the product. We find no reason at this time to modify the scope language to exclude bags without handles because

we are not aware of CBP imposing duties on any of the fifteen bag types not possessing handles and because these bag types do occasionally have handles and, thus, would not be excluded from the scope.

As stated above Duralok submitted entry documentation which shows that CBP has imposed duties on door-knob bags on the basis that a die-cut hang hole was the same as a die-cut handle. Duralok stated that the diameter of the hang hole on the bags it imported was as small as one-and-a-half inches. Although it seems logical to assume that the manufacturer did not intend a hole of this size to be used as a handle, it is not practicable to develop scope language or instructions to CBP that would enable it to differentiate between a hang hole and a handle. Nor is it clear that these bags could not be used interchangeably with bags with handles. Any language or instructions containing specifications of a hang hole would create an obvious and major risk of circumvention. Thus, we have not modified the scope language to exclude bags with hang holes. Rather, we will make any determinations that this type of bag is outside the scope of an antidumping duty order on a model-specific basis as specifically requested by an interested party.

Similarly, it is not practicable to change the scope language to differentiate between drawstring bags for which drawstrings are used as a handle and drawstring ice bags and double-drawstring bags. Consistent with our approach to scope rulings in general, any determination of whether a drawstring bag may be outside the scope of an order will have to be made on a model-specific basis.

2. Surrogate Financial Ratios

Comment 2: The petitioners argue that the Department should calculate surrogate financial ratios for fixed overhead expenses (FOH), selling, general and administrative expenses (SG&A), and profit on the basis of the financial statements of Smitabh Intercon Ltd. (Smitabh), Bhavesh Poly Plast Pvt. Ltd. (Bhavesh), Nova Plast Industries Pvt. Ltd. (Nova), Tims Polymers Pvt. Ltd. (Tims), and Vallabh Poly Plast International Ltd. (Vallabh). The petitioners assert that the use of the financial statements of each of these companies is appropriate because the periods covered by the financial statements are contemporaneous with the period of investigation (POI) and all of these companies produce merchandise identical to the subject merchandise.

Citing Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002) (Rhodia), as well as other cases, the petitioners assert that it is the Department's practice to calculate surrogate financial ratios on the performance of multiple producers of comparable merchandise. Therefore, the petitioners argue, the Department should calculate the surrogate financial ratios based on the simple average of the ratios it calculates for each of Smitabh, Bhavesh, Nova, Tims, and Vallabh.

Finally, the petitioners contend that it is the Department's practice to ignore zero and negative profit ratios for companies that suffered losses while using the FOH and SG&A information for such companies. The petitioners cite Rhodia at 1253-1255 as well as other cases in support of its contention. Therefore, the petitioners argue, the Department should exclude any zero and negative profit ratios it may calculate for Smitabh, Bhavesh, Nova, Tims, and Vallabh in calculating the simple-average profit rate.

Nantong argues that the Department should calculate surrogate financial ratios for FOH, SG&A, and profit on the basis of the financial statements of Diamond Polyplast Private Limited (Diamond), Kuloday Technopack Private Limited (Kudolay), Sangeeta Poly Pack Private Limited (Sangeeta), and Synthetic Packers Private Limted (Synthetic Packers). Nantong asserts that the use of the financial statements of each of these companies is appropriate because the periods covered by the financial statements are contemporaneous with the POI, all of these companies produce merchandise identical to the subject merchandise, and each of the financial statements is sufficiently detailed to make adjustments to correspond with factors-of-production (FOP) data reported by respondents.

United Wah argues that the Department should calculate surrogate financial ratios for FOH, SG&A, and profit on the basis of the financial statement of Bhagwan Packaging Industries Pvt. Ltd. (Bhagwan). United Wah asserts that the use of Bhagwan's financial statements is appropriate because the period covered by the financial statement is contemporaneous with the POI and Bhagwan produces merchandise identical to the subject merchandise.

The petitioners argue that the financial statements of Diamond, Kuloday, Sangeeta, and Synthetic Packers are all inappropriate because none of them are contemporaneous with the POI. The petitioners contend further that Diamond, Kudolay, Sangeeta, and Synthetic Packers only produce small quantities of merchandise that is similar to the subject merchandise and are therefore inappropriate for use.

The petitioners argue that the financial statement of Bhagwan is inappropriate because Bhagwan is not a significant producer of comparable merchandise and extraordinary events during the 2002-03 fiscal year distort Bhagwan's financial results. According to the petitioners, evidence on the record demonstrates that at least 87 percent of Bhagwan's business is the production of merchandise other than polyethylene bags. The petitioners also contend that evidence on the record shows that Bhagwan made a substantial increase in its capital assets and that it did not record any depreciation for its factory in Daman during the 2002-03 fiscal year. Citing Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 6712 (February 10, 2003) (Persulfates), and the accompanying Issues and Decision Memorandum at comment 10, the petitioners contend that the Department declines to rely on the financial statements of surrogate producers that have made significant increases in capital expenditure. Furthermore, the petitioners assert, because Bhagwan did not record the depreciation for the land and building of which it took possession during the fiscal year, its factory overhead expense is necessarily understated. Therefore, the petitioners argue, Bhagwan's financial ratios for 2002-03 are not reflective of its operations in a normal year and, thus, are not appropriate sources for surrogate financial ratios in this investigation.

United Wah states that it put a letter from Bhagwan on the record in which Bhagwan claims that it only manufactured polyethylene bags and in which Bhagwan claims that the figures from the website cited by the petitioners are outdated. United Wah also contends that the directors' report for Bhagwan's financial statements and Bhagwan's tax audit report state that the company is engaged in manufacturing plastic bags.

United Wah asserts that Bhagwan's financial statement does capture depreciation for the Daman factory. United Wah argues further that the petitioners have not demonstrated that there is any distortion as a result of Bhagwan's increase in capital assets during the fiscal year. United Wah maintains that the petitioners' reliance on Persulfates is misplaced because the Department used the financial statement in question absent evidence that the surrogate company's costs were not an accurate reflection of the company's actual production experience. United Wah concludes that, because Bhagwan's financial ratios are not distorted, the Department should use them in calculating surrogate financial ratios for the final determination.

United Wah argues further that the financial statements of Bhavesh, Nova, Tims, and Vallabh are all inappropriate for calculating surrogate financial ratios. United Wah contends that the financial statements for Bhavesh, Nova, and Tims are all incomplete, that Bhavesh closed during the POI, that Tims had an increase in assets that exceeded 175 percent during the fiscal year and is missing the director's report, and, finally, that Vallabh's financial statement indicates that it is a "sick" company.

Department's Position: We have examined the various financial statements parties have submitted and find that the use of three such statements is consistent with our practice. We have used the financial statements of Smitabh because this company produces merchandise that is similar to the subject merchandise, its financial statement is contemporaneous with the POI, and its financial statement has a level of specificity that allows us to make adjustments to value FOH, SG&A, and profit exclusive of packing expenses. No party has argued that we should not continue to use Smitabh's financial statements and we are not aware of any reason not to use Smitabh's financial

statement.

We have also used the Bhagwan financial statement in our calculation of surrogate financial ratios because this company produced merchandise that is similar to the subject merchandise, its financial statement is contemporaneous with the POI, and its financial statement has a level of specificity that allows us to make adjustments to value FOH, SG&A, and profit exclusive of packing expenses. A letter prepared by the director of Bhagwan that is on the record shows that Bhagwan manufactures only polyethylene bags. See United Wah's December 29, 2003, submission at Exhibit 4. That letter also states that the website which suggested that polyethylene bags accounted for only a relatively small portion of Bhagwan's production was over a year out of date. Based on this record evidence, we conclude that Bhagwan is a producer of merchandise that is comparable to the subject merchandise.

The Department's non-market-economy (NME) practice reflects a preference for selecting surrogate-value sources that are producers of identical merchandise, provided the surrogate data is not distorted or otherwise unreliable. See Persulfates, 68 FR 6712, and the accompanying Issues and Decision Memorandum at Comment 10. Although Bhagwan did record a very large increase in its plant and machinery assets during the fiscal year, it is not clear that this increase distorts the financial ratios we would calculate using Bhagwan's financial statement. In addition, although it is true that Bhagwan stated that it did not report depreciation on certain land and buildings of which it took possession during the fiscal year due to "technical formalities," this practice is evidently in accordance with Indian accounting standards because the auditor's report states that the financial statements

"comply with the Accounting Standards issues by the Institute of Chartered Accountants of India." See United Wah's January 5, 2004, submission at sole attachment. Because there is no evidence that the financial statement is actually distortive and because the financial statement is in accordance with Indian accounting standards, we have also used Bhagwan's financial statement to calculate surrogate financial ratios.

Finally, we have used the Tims financial statement in our calculation of surrogate financial ratios because this company produces merchandise that is similar to the subject merchandise, its financial statement is contemporaneous with the POI, and its financial statement has a level of specificity that allows us to make adjustments to value FOH, SG&A, and profit exclusive of packing expenses. As a preliminary matter, although Tims also had a very large increase in its plant and machinery assets during the fiscal year, the amount of the addition was 12,001,364 rupees, which represents an increase of close to 90 percent (as opposed to the 176 percent that United Wah claimed). As with the Bhagwan financial statement, it is not clear that this increase results in a distortion of the financial ratios we would calculate using Tims' financial statement. In addition, although it is true that we do not have the director's report for the Tims financial statement, the auditor's report states that the financial statement was "prepared in compliance of the applicable Accounting Standards." See the petitioners' March 22, 2004, submission at Exhibit 4. Thus, as with Bhagwan, because there is no evidence that the financial statement is actually distortive and because the financial statement is in accordance with Indian accounting standards, we have also used Tims' financial statement to calculate surrogate financial ratios.

We have not used the financial statements of Diamond, Kuloday, Sangeeta, and Synthetic Packers because the periods covered by each of these financial statements is April 1, 2001, through March 31, 2002. See Nantong's March 22, 2004, submission at Exhibits 1 through 4. The period of investigation is October 1, 2002, through March 31, 2003. Thus, none of these companies' financial statements are contemporaneous with the POI. Because there is at least one appropriate financial statement on the record that is contemporaneous with the POI, we find it is not appropriate to use these companies' financial statements to calculate surrogate financial ratios.

We have not used the Bhavesh financial statement because its information reflects very clearly that Bhavesh is in distress. Note 11 of the Bhavesh financial statement states that the "accounts of the company for the year has {sic} been prepared on the basis that the company is a going concern in spite of the fact that the net worth of the company is completely eroded and the accumulated losses exceeds the paid-up capital of the company. The company is planning to turn around in three to four years and is expected to make a profit." See the petitioners' March 22, 2004, submission at Exhibit 2. Note 12 states that "the management has declared closer {sic} of the factory with effect from 31st December 2002." Id. These notes make it clear that Bhavesh is under extraordinary circumstances, that it is not really "a going concern," and that the factory was closed as of December 31, 2002 (although it may have since reopened). For this reason we find that it would be inappropriate to base surrogate financial ratios on the Bhavesh financial statement.

Unlike the Smitabh financial statement, the Nova financial statement did not segregate packing expenses from other expenses. As a result, we were unable to calculate financial ratios for

Nova with packing expenses excluded, which means that the Nova financial ratios would be distorted relative to the other financial statements. Therefore, we did not use the Nova financial statements as a basis for surrogate financial ratios for the final determination.

We have not used the Vallabh financial statement because Vallabh applied to register itself as a "sick industrial undertaking" pursuant to India's Sick Industrial Companies Act. See the petitioners' March 22, 2004, submission at page 3 of Exhibit 5. It is the Department's practice to exclude the data of "sick" companies from its calculation of surrogate financial ratios. See, e.g., 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) (CTVs), and the accompanying Issues and Decision Memorandum at comment 14.

Thus, we used the Smitabh, the Bhagwan, and the Tims financial statements to calculate surrogate financial ratios for this final determination. We did this by calculating the FOH, SG&A, and profit ratios for each financial statement and then calculating the simple average of the ratios we calculated for the three financial statements. See Surrogate-Country Selection and Factors Valuation Memorandum for the Final Determination, dated June 9, 2004.

Comment 3: The petitioners assert that the Department must make adjustments to two expense items in Smitabh's financial statement. First, the petitioners assert that a note in the financial statement indicates that "consumption of packing materials" includes stores as well as packing materials. The petitioners contend that stores are a part of FOH and that the Department should

allocate the consumption of packing materials equally between stores and packing materials.

Second, the petitioners assert that, because a note in the financial statement indicates that Smitabh's raw materials were purchased on a CIF basis while its sales were reported on a FOB basis, Smitabh's freight expenses must have been incurred on sales rather than on material purchases. The petitioners argue that the Department should exclude such freight expenses from the calculation of financial ratios.

United Wah argues that the Department should not attempt to include an arbitrary amount for stores when calculating financial ratios based on Smitabh's financial statement. United Wah also asserts that the petitioners' proposed segregation is speculative because there is no evidence on the record to support such a segregation. Citing CTVs, 69 FR 20594, and the accompanying Issues and Decision Memorandum at comment 16, United Wah asserts that the Department has defined "stores" as "items that are added directly to products but whose cost is so small that the effort of tracing that cost to individual products would be greater than the benefit of accuracy." Therefore, United Wah claims, stores cannot possibly be as great as packing materials.

With regard to freight expenses, United Wah agrees that the freight expenses appear to have been incurred on sales and that the Department did exclude such expenses from the calculation of financial ratios properly.

United Wah also argues that, if the Department uses Smitabh's financial statement, it should make an adjustment in accordance with the auditors' findings. According to United Wah, the auditors of Smitabh's financial statement found that profit was overstated by almost nine percent

because it did not account for its provision for leave and gratuity for employees. Therefore, United Wah contends, the Department must adjust the profit figure if it uses Smitabh's financial statement for the final determination.

The petitioners contend that no adjustment to Smitabh's profit is necessary because the auditors found that Smitabh's practice was in accordance with applicable law and that Smitabh explained in its financial statement that it would account for its provision for employees when they are paid.

Department's Position: Although we stated in CTVs, 69 FR 20594, and the accompanying Issues and Decision Memorandum at comment 15 that "it is the Department's general practice to treat stores and spares as factory overhead expenses," that practice assumes that the stores in question are related to production and/or maintenance of production facilities. The definition of stores is "a stock or supply reserved for future use." See http://dictionary.reference.com/search?q=store. Thus, stores may refer to materials used in nonproduction activities such as packing. Because the stores in question were accumulated with packing materials, it is possible that the stores in question relate to packing materials. If this were the case, it would be inappropriate to include them in fixed overhead expenses. While it is not clear that this is the case, it is not appropriate to assume that the stores were necessarily fixed-overhead expenses because there is no evidence that they are related to production. Furthermore, the segregation suggested by the petitioners (a 50-50 split) is arbitrary and not supported by record evidence. Therefore, we have made no adjustment for these stores.

With regard to freight expenses, we excluded such expenses from our calculation of the

financial ratios. See the Surrogate Country Selection and Factor Valuation Memorandum dated January 16, 2004, at Exhibit 4.

With regard to profit, the auditor's report on Smitabh's financial statement does indicate that Smitabh did not make a provision for "leave encashment and gratuity to employees" and that its profit would be reduced if such a provision were made. See the petitioners' December 15, 2003, submission at Exhibit 2, auditor's report, paragraph 2. Furthermore, the auditor's report states that Smitabh's financial statement was prepared in compliance with applicable law "except for those referred to in ... and para no. A-9 of Schedule - 20." Ibid at paragraph iii. Paragraph A-9 of Schedule 20 states that "leave encashment and gratuity to employees will be accounted for in the year of payment." Thus, although Smitabh "explained" its plans for such expenses, the auditor found that this practice was not in accordance with applicable law. Therefore, we have recalculated the surrogate profit ratio based on Smitabh's financial statement by deducting the amount of the provision indicated in the auditor's report from the profit recorded in Smitabh's financial statement.

3. Market-Economy Inputs

Comment 4: The petitioners argue that the Department's use of prices paid by the respondents for inputs produced in the PRC is not only contrary to law and the Department's long-standing practice, but it is also inconsistent with the Department's mandate to ensure that prices used to value factors of production are not distorted or unreliable. Citing Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997), the petitioners contend that the preamble to the Department's regulations which states "purchased from a market-economy

supplier" is interpreted by the Department to mean that the inputs must originate in a market-economy country.

The petitioners state that the statute provides for an alternative methodology to use in calculating normal value for subject merchandise exported from a NME country because the pricing and costing structures in a NME country result in sales of merchandise that do not reflect a fair-market value. Consequently, the petitioners state, if the Department were to use the prices paid by a NME producer for material inputs produced in a NME country that never leave the stream of commerce of the NME country prior to consumption, the Department would be using prices of goods that have benefited from NME labor costs, NME subsidies, and other distortions resulting from the non-market pricing and cost structures inherent in the economy. In addition, they state that using a NME producer's purchase price for inputs that were sourced from a NME country would establish a dangerous precedent that would allow for NME producers to manipulate the Department's factors-valuation methodology easily by simply routing input purchases through a market-economy trading company where the resulting transaction would be a market-economy transaction "on paper" only.

Citing Oscillation Fans and Ceiling Fans From the People's Republic of China, 56 FR 55271, 55277 (October 25, 1991), the petitioners argue that the Department rejected an argument that the purchase of an input in a market-economy currency through a market-economy trading company somehow "launders" an otherwise NME transaction. Also citing Sulfanilic Acid From the People's Republic of China, 61 FR 53711, 53716 (October 15, 1996), the petitioners state that the

Department should use the respondents' actual purchase prices only if the inputs were produced in a market-economy country and paid for in a market-economy currency.

The petitioners state that the record establishes that Zhongshan's ink and snap handles and Glopack's ink and color-concentrate material inputs were sourced in the PRC, not in a market-economy country. They contend that the only nexus that these transactions had with a market economy was that the paperwork was issued from Hong Kong in Hong Kong dollars. The petitioners also argue that the preamble to the Department's regulations explains that, for the Department to use the price paid for the input sourced from the market economy to value the portion of the factor that is sourced from a NME country, the portion of the factor purchased from the market economy must be "meaningful" and not "insignificant." The petitioners state that the record evidence demonstrates that all of the ink and snap handles purchased by Zhongshan were sourced from the PRC. For Glopack, according to petitioners, all of the ink inputs and all of the color-concentrate inputs were sourced from the PRC, except for a portion of the white color concentrate that was sourced from Malaysia. Thus, they contend that the prices paid for these NME inputs cannot be used to calculate normal value for the final determination.

The petitioners argue that use of surrogate-country prices in this situation is consistent with the Department's long-standing practice and policy. They cite Ferrovanadium and Nitrided Vanadium From the Russian Federation, 60 FR 27957, 27962 (May 26, 1995), in which the Department stated that, to satisfy a deviation from the Department's normal practice of using prices in a surrogate country to value material inputs, the good or service must be "sourced" from a market-economy

country rather than just purchased in one. Citing Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China, 60 FR 54472, 54474 (October 24, 1995), the petitioners state that the Department rejected prices paid by a respondent to a Hong Kong distributor because it could not be shown that the inputs were manufactured by a market-economy entity. The petitioners also cite Solid Fertilizer Grade Ammonium Nitrate From Russian Federation, 65 FR 42669, and the accompanying Issues and Decision Memorandum at Comment 5 (July 11, 2000), in which the Department stated that "Department policy is to disallow expenses paid in market-economy currencies to companies incorporated in a market economy in circumstances in which the NME service provider does no more than contract with NME entities to perform the actual service."

The petitioners argue that, although the Department appears to have departed from this long-standing practice in two cases (Certain Preserved Mushrooms from the People's Republic of China, 66 FR 31204 (June 11, 2001) (Mushrooms), and CTVs, 69 FR 20594 (April 16, 2004)), the facts of those cases are distinguishable from the present case. In support of their position, the petitioners offer the following case comments. In Mushrooms, although the Department stated that under 19 CFR § 351.408(c)(1) a respondent is not required to "establish in which particular country the factor of production was produced, only that it was obtained from a market economy supplier," in the same paragraph the Department also stated that it "found no evidence at verification to indicate that the cans were not actually produced in a market economy." In CTVs the Department stated that it "should not reject prices of goods purchased in Hong Kong based on the country of origin of the goods," but the determination did not indicate whether the inputs purchased from the Hong Kong

suppliers ever left China. In the present case, the petitioners argue that the inputs were produced, transported, and consumed without ever leaving China.

The petitioners also contend that CTVs cannot be interpreted to mean that the Department finds the country of origin of inputs to be irrelevant when determining whether to use the prices of those inputs for factor-valuation purposes because in CTVs the Department declined to use the respondent's market-economy purchases from Indonesia, Korea, and Thailand to value material inputs. In CTVs, the petitioners assert, the Department stated that its practice is to exclude "market-economy purchases from Indonesia, Korea, and Thailand from {its} analysis because of known, generally available non-industry specific export subsidy programs in those countries." In addition, the Department stated that it has "found that the existence of these subsidies provides sufficient reason to believe or suspect that export prices from these countries are distorted." Citing page 3 of the Surrogate-Country Selection and Factors Valuation Memorandum in this investigation (dated January 16, 2004) (Factors Valuation Memo), the petitioners argue that the Department stated that for surrogate values based on Indian import statistics it "excluded import statistics from any country the Department has determined to be a NME…." The petitioners contend that the rationale for excluding NME-pricing data from market-economy import statistics is the same as for precluding the use of prices paid for NME-produced factor inputs in the calculation of normal value in that the factor input valuation in NME countries is distorted and, therefore, unreliable. Finally, the petitioners argue that the country of origin is not irrelevant when deciding whether to use the actual prices paid by NME respondents for purposes of valuing factors of production because the Department's standard

Section D questionnaire asks respondents to identify both the market-economy country from which the respondent purchased the inputs and the source country of the inputs.

Zhongshan, United Wah, and Glopack argue that the Department should apply their respective market-economy values for all inputs purchased from market-economy suppliers as it did in the Preliminary Determination. Zhongshan and Glopack state that the Department was able to verify that these inputs were all purchased from market-economy suppliers and paid for in market-economy currencies. Citing 19 CFR § 351.408(c)(1) and Lasko Metal Products v. United States, 43 F.3d 1442, 1445-1446 (Fed. Cir. 1994), the respondents state that the Department's regulations direct the Department to use the price paid to a market-economy supplier for a factor of production where that factor is purchased from a market-economy supplier and paid for in a market-economy currency without regard to the country of origin. Citing the Issues and Decision Memorandum for CTVs at Comment 8, Glopack contends that the Department clarified its policy regarding market-economy inputs, stating that it "should not reject prices of goods purchased in Hong Kong based on the country of origin." Citing Mushrooms at Comment 7, Zhongshan and Glopack argue that the Department stated that "{t}he regulation does not require that the nonmarket-economy respondent establish in which particular country the factor of production was produced, only that it was obtained from a market-economy supplier." Citing Shakeproof Assembly Components Division of Illinois Tools Works, Inc. v. United States, 268 F.3d 1376, 1382 (Fed. Cir. 2001), Glopack states that the Court of Appeals for the Federal Circuit has since determined that, "{w}here we can determine that a NME producer's input prices are market determined, accuracy, fairness and predictability are enhanced by using those prices." Glopack argues further that the Department stated in Mushrooms

that "Section 351.525(c) of the Department's regulations addresses circumstances where the producer of subject merchandise and the trading company that exports the merchandise are located in the same country which is subject to a CVD investigation." Zhongshan argues similarly that the Department will use this price normally absent evidence that it is unreliable (e.g., subsidized by the government). It contends that there is no evidence to suggest that the prices paid in Hong Kong are unreliable. Therefore, for purposes of the final determination, the respondents argue that the Department should continue to treat inputs purchased through Hong Kong trading companies as market-economy purchases, regardless of the country of manufacture.

Department's Position: The Department's regulations at 19 CFR 351.408 state that, "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier." Our normal practice is to use the market-economy price of such inputs. We have followed this practice in this case. See, e.g., the Rally Plastics preliminary determination analysis memorandum dated January 16, 2004, at page 2.

The preamble to our regulations states, however, that, "where the NME producer purchases inputs from a market economy producer and these inputs are paid for in a market economy currency, we would use the price paid by the NME producer to value that input." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997) (emphasis added). We interpret the preamble to indicate that the regulation is applicable to those inputs which were produced in a market economy. Given this, the regulation does not apply to inputs that were produced in a NME, as is the situation here.

Unlike in CTVs, in this case we have been presented with arguments as to why we should not use market-economy prices for inputs produced in a NME country. Based upon our review of those comments, we have determined that prices of products that originate in a NME country should not be used because of the inherent distortions involved in an economy that is not controlled by market forces. As the petitioners have observed, the statute provides for an alternative methodology to use in calculating normal value for subject merchandise exported from a NME country because the price and cost structures in a NME country result in sales of merchandise that do not reflect a fair-market value. Similarly, where a NME producer purchases an input from a trading company that sources from a non-market economy, we believe that the same type of concern exists about the transaction because the trading company's costs and ultimate prices are, in turn, influenced by its NME supplier's prices and costs.

In addition, we have strong concerns that, were we to use the prices of inputs that were produced in a NME country, our methodology for valuing the factors of production would become easily open to manipulation. This is particularly worrisome in cases where, as here, the inputs may never have left the stream of the NME commerce. It would not be difficult for a firm to open a paper company in Hong Kong (or other market-economy countries) and route "sales" through this company in order to take advantage of our market-economy-input methodology. For these reasons, our practice is not to use the prices of inputs that originated in a NME country even if the input is sourced from a market-economy supplier.

Contrary to the respondents' assertions, Mushrooms is not apposite to this case. In that case, "{w}e found no evidence at verification to indicate that the cans were not actually produced in

a market economy." Mushrooms at Comment 7. The implication is, of course, that if we had found such evidence, as we have in this investigation, we would have ignored the price reported by the respondent and would have used a surrogate value instead.

Therefore, we have disregarded the prices reported by the respondents for those inputs that were produced in the PRC and have used surrogate-value information to value such inputs.

4. Adjusting Indian Import Statistics

A. Excluding Countries Which Receive Export Subsidies

Comment 5: Glopack argues that, in the Preliminary Determination, the Department excluded reported market-economy inputs from Indonesia, Korea, and Thailand improperly on the basis that exports from those countries benefitted from unspecified export subsidies. Glopack argues that, while the Department has the authority to exclude prices distorted by export subsidies, such exclusions must be based on "particular, specific and objective evidence." Glopack cites Fuyao Glass Industry Group Co. v. United States, CIT Slip Op. 03-169 (December 18, 2003) (Fuyao) (determining that evidence of a non-specific export subsidy is insufficient for the Department to have "reason to believe or suspect" that the material input was in fact subsidized), and China National Machinery Import & Export Corporation v. United States, CIT Slip Op. 03-133 at 10 (October 15, 2003) (affirming the Department's finding that the market-economy prices were distorted because the Department had determined that the producer of the imported product benefitted from a specific export subsidy). Accordingly, Glopack argues that the Department must cite "substantial, specific and objective evidence" that the raw-material inputs from Indonesia, Korea, and Thailand benefited from a specific finding of subsidization.

The petitioners assert that the Department's standard practice is to exclude export prices from Korea, Thailand, and Indonesia, whether they are market-economy purchases or import statistics, from surrogate-value calculations because of generally available, non-industry-specific export-subsidy programs. The petitioners cite Honey from the People's Republic of China, 68 FR 62053, and the accompanying Issues and Decision Memorandum at Comment 6 (October 31, 2003), and Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China, 68 FR 53347, and the accompanying Issues and Decision Memorandum at Comment 2 (September 10, 2003). The petitioners argue that the Department's subsidy-suspicion policy is in accordance with congressional intent, citing H.R. Conf. Rep. No. 100-576, at 590 (1988). Further, the petitioners argue that in Fuyao the court affirmed the Department's subsidy-suspicion policy regarding these countries and rejected the Department's exclusion of Korean, Thai, and Indonesian import data on the narrow grounds that the Department did not provide sufficient evidence to reject the subsidized prices. Finally, the petitioners argue that the Department has continued to find that imports from these countries are subsidized and has responded to the additional evidence requirement by placing a list of specific generally available subsidy programs in these countries on the record. The petitioners cite CTVs, 69 FR 20594, and the accompanying Issues and Decision Memorandum at Comment 7 (April 16, 2004).

Department's Position: The Department excludes market-economy purchases from Indonesia, Korea, and Thailand from its analysis because of known, generally available, non-industry-specific export-subsidy programs in those countries. The legislative history indicates that Congress intended the Department to exclude prices that the Department believes or suspects may be

subsidized. See H.R. Conf. Rep. No. 100-576, at 590 (1988). In February 2002, the Department articulated this policy in a memorandum entitled "NME investigations: procedures for disregarding subsidized factor input prices." Specifically, the memorandum states:

> The Office of Policy advises that for all non-market economy investigations, factor input prices from Korea, Thailand and Indonesia should be disregarded, whether they are market economy purchases or import statistics into the surrogate country. Each of these countries maintain broadly available, non-industry specific export subsidies. In prior decisions, we have found that the existence of these subsidies provide sufficient reason to believe or suspect that export prices from these countries are distorted.

See the June 9, 2004, memorandum from Kristin Case to the file entitled, "Placing February 2002 Office of Policy Memorandum on the Record of the Investigation of Polyethylene Retail Carrier Bags from the People's Republic of China."

The Department has applied this policy in numerous recent cases, including, among others, the following determinations: 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, and the accompanying Issues and Decision Memorandum at Comment 2 (September 10, 2003); Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 68 FR 62053, and the accompanying Issues and Decision Memorandum at Comment 6 (October 31, 2003); Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part, 69 FR 12119, and the accompanying Issues and Decision Memorandum at Comment 2 (March 15, 2004); 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, and the accompanying Issues and Decision Memorandum at Comment 7 (April 16, 2004).

In Fuyao, the court did not reject the Department's application of its policy but rather required the Department to provide additional evidence to sustain the Department's rejection of potentially subsidized prices. In fact, the court stated that "in light of Commerce's broad discretion in selecting surrogate values for factors of production...the Court finds that Commerce's decision to avoid subsidized prices is reasonable and, accordingly, deferred to it." See Fuyao at pages 15-16. Furthermore, in the Department's recent remand redetermination in that case, the Department continued to find that market-economy purchases from Indonesia, Korea, and Thailand may be subsidized and disregarded such purchase prices in its calculations. See Final Results of Redetermination Pursuant to Court Remand: Fuyao Glass Industry Co. Ltd., et al. v. United States Slip Op. 03-169 (CIT December 18, 2003), March 17, 2004 (Fuyao Glass Remand Redetermination) at page 38.

In Fuyao Glass Remand Redetermination at pages 29-32, the Department provided a list of the specific generally available subsidy programs in Indonesia, Korea, and Thailand as further support of its policy in this area. Because this list applies equally to this investigation, we have placed it on the record. See the June 9, 2004, memorandum from Kristin Case to the file entitled, "Placing Information on the Record Regarding Subsidy Programs in the Investigation of Polyethylene Retail Carrier Bags from the People's Republic of China."

Therefore, the Department excludes market-economy purchases from Indonesia, Korea, and

Thailand from its analysis because of known, generally available, non-industry-specific export-subsidy programs in those countries.

Comment 6: United Wah argues that, when using the Indian Import Statistics, the Department should exclude aberrational data from all harmonized tariff schedule (HTS) categories. United Wah argues that, for example, because the average unit price for colored ink from Switzerland is eleven times higher than the average unit price from other countries, the price is aberrational. Further, United Wah argues that the Department should also exclude color ink prices from Hong Kong, Finland, South Africa, and Israel. Additionally, United Wah argues that the following aberrational data should be excluded: black ink (HTS 3215.11.09) from the United States, South Africa, Switzerland, and Belgium; color concentrate (HTS 3206.49.09) from Japan and France; polypropylene ("PP") rope and string (HTS 5607.49.00) from Germany; double-sided tape (HTS 3919.90.09) from Turkey and the United Arab Emirates; labels (HTS 4821.00.00) from Israel, Grenada, Poland, Romania, and Jordan; pallets (HTS 44152000) from the United States, Italy, and Australia.

The petitioners argue that United Wah has provided no standard for determining whether a value is "aberrational" and that the Department should not make arbitrary decisions about which values are "too high" or "too low." The petitioners assert that official Indian import statistics provide for a range of prices for merchandise from many suppliers in many countries. Finally, the petitioners argue that using the weighted-average of the range of publicly available import values is preferable to a price quotation or self-selected invoice because it is more likely to reflect the true market value and provides greater transparency and predictability to the Department's calculations.

Department's Position: Upon further review of the information in the Indian import statistics, we find that some of the import data reflects aberrationally high prices. We have excluded data that is aberrationally low. Although we have excluded data that we find to be obviously aberrational, we disagree with United Wah as to which data reflects aberrational prices. As a general practice, we do not find prices to be aberrationally high or low simply because the price is very low or very high. If a price occurs over sales that are made in large quantities, we cannot consider it to be aberrational. For example, we have not excluded color ink inputs from Switzerland because, although the price is very high, it appears that the imports from Switzerland were made in large quantities and, therefore, we cannot conclude that they are aberrational. Similarly, we have not excluded color ink inputs from Israel because the price is not as high as the price from Switzerland which we found not to be aberrational. Although it does not appear that inputs from Israel were made in large quantities, this fact alone does not demonstrate that the inputs were made at aberrational prices. In this case, because we found the price from Switzerland to be non-aberrational, we have found that the price from Israel is not aberrational.

Based on our analysis of the data, we excluded the following countries from the valuation of certain inputs on the grounds that the import prices from these countries were so much higher than the average and the imports were in small quantities such that we concluded that the import prices were aberrational. See Surrogate-Country Selection and Factors Valuation Memorandum for the Final Determination, dated June 9, 2004. For color concentrate, we excluded imports from France and Spain. For PP rope, we excluded imports from Germany. For double-sided tape, we excluded imports from Turkey. For labels, we excluded imports from the Czech Republic, Portugal, Poland,

Israel, Grenada, Romania, and Jordan. For black ink, we excluded imports from South Africa, Israel, Switzerland, Italy, and Belgium. For solvent, we excluded imports from the United Arab Emirates, Hong Kong, South Africa, Austria, Canada, and Sweden. For pallets, we excluded imports from Italy, Japan, and Australia.

Comment 7: United Wah argues that the Department should exclude data concerning imports from the United States from the Indian import statistics because the World Trade Organization has ruled that the Foreign Sales Corporation/Extraterritorial Income (FSC/ETI) provisions of the United States tax code provide prohibited non-industry-specific export subsidies. United Wah states that the Department has excluded data from Thailand, Indonesia and South Korea consistently based on the Department's conclusion that there is a "reason to believe or suspect" that the countries confer non-industry specific export subsidies so that the export prices are distorted, citing Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China, 67 FR 6482 (Feb. 12, 2002) (Windshields). United Wah argues that, because the Department maintains that the law does not require an "investigation" into the level of subsidization, no further examination of the FSC program's potential distortion on U.S. export prices is required. Finally, United Wah argues that, if the Department excludes imports from South Korea, Thailand, and Indonesia which has the effect of raising normal value, it should be consistent and also exclude imports from the United States.

The petitioners argue that United Wah has mis-characterized the Department's subsidy-suspicion policy. The petitioners argues that, contrary to United Wah's assertion, the Department does not have a policy of excluding all surrogate-country import prices for factors of production that

are exported by countries with generally available subsidies, citing Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China, 68 FR 53347, at Comment 2 (Sept. 10, 2003). Rather, the petitioners argue that the Department only rejects prices which it has reason to believe or suspect are distorted by subsidies. Accordingly, the petitioners argues that, before the Department excludes prices, it must determine that the prices are distorted by subsidies and that the record must support this determination. The petitioners argue that the Department relies generally upon third-country or U.S. countervailing duty determinations generally to form a reason to believe or suspect that export prices are distorted, citing Barium Carbonate from the People's Republic of China, 68 FR 46577, at Comment 1A (Aug. 6, 2003). Indeed, the petitioners argue that it has not found a case where the Department relied exclusively on a WTO report. See Certain Automotive Replacement Glass Windshields From the People's Republic of China, 67 FR 6482, at Comment 1 (Feb. 12, 2002) (relying on a WTO report for the purposes of corroboration). The petitioners argue that, although the Department must "demonstrate a clear nexus between subsidies in a particular country and the factor of production in question," United Wah has not provided sufficient evidence upon which the Department can conclude that it has a reason to believe or suspect the U.S. prices are distorted by subsidies. The petitioners cite Certain Helical Spring Lock Washers from the People's Republic of China, 69 FR 12119, at Comment 2 (Mar. 15, 2004), to support their view. Accordingly, the petitioners argue that the Department should not exclude U.S. import data from the Indian import statistics.

Department Position: The exclusion of U.S. prices from the Indian import statistics would result in an insignificant adjustment as defined in section 351.413 of the Department's regulations.

See Memorandum to File entitled "Analysis for the Final Determination of Polyethylene Retail Carrier Bags from the People's Republic of China (PRC): Dongguan Huang Jiang United Wah Plastic Bag Factory," dated June 9, 2004. Therefore, consistent with section 777A(a)(2) of the Act and case precedent, it is not necessary to address the substance of United Wah's claim. See, e.g., 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), and accompanying Issues and Decision Memorandum at Comment 2.

5. Surrogate Value for Ink

Comment 8: Guangdong Esquel argues that the Department should use the United Nations import statistics that it submitted on March 22, 2004, as the surrogate value for ink for the final determination. Guangdong Esquel asserts that the import data published by the United Nations demonstrates that the Indian import values for black and colored ink are exceptionally higher than both the average worldwide import price and the value of imports into Indonesia, a country found by the Department to be economically comparable to China.

Citing the Final Determination in the Antidumping Duty Investigation of Concrete Reinforcing Bars from the People's Republic of China, 66 FR 33522 and the accompanying Issues and Decision Memorandum at Comment 5 (June 22, 2001), Guangdong Esquel argues that the Department has disregarded Indian import values in other cases when the Department has found the values to be exceptionally higher or distorted when compared to other import prices.

Guangdong Esquel asserts that the relatively small volume of ink imports into India may

explain the aberrational level of the Indian average import unit value. Guangdong Esquel contends that the Indian import values for colored ink may be distorted further because the values are categorized in a basket category of the HTS. For these reasons, Guangdong Esquel argues that for the final determination the Department should reject the Indian import unit values for black and colored ink in favor of the United Nations data because the latter presents a broader data pool and reflects more accurate unit values for ink.

The petitioners respond that there is a major flaw with the United Nations data with regard to Mexican imports of ink and that, as a result, the data is unreliable. Specifically, the petitioners contend that, according to the United Nations data, Mexico imported approximately 35 percent of all black ink in the entire world and nearly half of all the colored ink. The petitioners argue that the World Trade Atlas import data shows that Mexico actually imported a significantly lower amount of black and colored ink than what the United Nations data indicates. The petitioners argue that neither the Department nor the petitioners should have to go through the United Nations import data for each country to determine whether there are other distortions with the import data. The petitioners argue further that the fact that one major error in the United Nations data has been uncovered is sufficient grounds for the Department to find Guangdong Esquel's data unusable.

Guangdong Esquel responds that the petitioners' allegation that the United Nations import data is unreliable because of a discrepancy between the quantity of Mexican import values reported in the United Nations data and the quantity reported in the World Trade Atlas does not render the United Nations data unusable. Guangdong Esquel contends that, with the exception of the Mexican import data, the Indian values in the United Nations data and in the World Trade Atlas are consistent.

According to Guangdong Esquel, even without the Mexican data and/or with the petitioners' rebuttal data concerning Mexico's imports, the United Nations data demonstrates that the Indian values are still unusually high.

The petitioners assert that the United Nations import data serves to corroborate that the Indian import statistics data are not aberrational. Specifically, with regard to black ink, according to the petitioners, there are ten countries which imported more ink and had a higher unit value than India. The petitioners also claim that the United Nations import data indicates that there were seventeen countries with lower volumes than India with a higher unit price. With regard to color ink, the petitioners argue that the United Nations import data indicates that nine countries had unit values higher than India.

The petitioners argue that Guangdong Esquel has not cited a single case where the Department has relied on average worldwide prices for surrogate values. According to the petitioners, accepting such a value is entirely contrary with the statute's mandate to select surrogate values from a country that is economically comparable to China. For these reasons, the petitioners urge the Department to reject the United Nations data both as a surrogate value and as a benchmark to judge Indian import values.

Department's Position: We find that the United Nations data supports our decision to use the Indian import data. For example, with regard to black ink, the United Nations data shows that there are numerous countries that imported more ink which had a higher unit value than India. In addition, when we compare the import statistics from the United Nations data with the World Trade Atlas Indian import statistics, we find that the United Nations data is comparable to the World Trade Atlas

Indian import data. For example, in our Preliminary Determination, we used a surrogate value of US $7.63 per kilogram to value black ink. See Factors Valuation Memo. The United Nations data indicates import statistics for India is US $7.29 per kilogram. Therefore, with regard to black ink, we find no evidence that the Indian import statistics are aberrational as Guangdong Esquel contends.

With regard to color ink, the United Nations data indicates that there are also numerous countries with a higher unit value for their imports than India. In addition, when we compare the import statistics from the United Nations data with the World Trade Atlas Indian import statistics, we find that the United Nations data is also comparable to the World Trade Atlas Indian import data. For example, in our Preliminary Determination, we used a surrogate value of US $12.47 per kilogram to value color ink. See Factors Valuation Memo. The United Nations data indicates import statistics for India are US $11.20 per kilogram. Therefore, with regard to color ink, we also find no evidence that the Indian import statistics are aberrational.

While the import data published by the United Nations demonstrates that the Indian import values for black and colored ink are exceptionally higher than the average worldwide import price, we find that, in accordance with section 773(c)(4) of the Act, input factors are to be valued using prices or costs from market-economy countries that are at a level of economic development comparable to the NME country. Use of average worldwide import price does not reflect use of a surrogate country at a similar level of economic development as China. Therefore, we find Guangdong Esquel's argument unpersuasive and have applied our standard NME methodology of valuing all factors in a single surrogate country. See 19 CFR 351.408(c)(2). Therefore, we have continued to value black and color ink using Indian import values for the final determination.

Comment 9: Glopack, Ming Pak, Rally Plastics, Hang Lung, and United Wah (collectively, Zhongshan, et al) argue that the basket tariff provisions upon which the Department relied in the Preliminary Determination are overly broad and include all types of specialty and computer inks which are valued many times higher than the inexpensive gravure and flexographic inks that the respondents used to print polyethylene bags. As a result, according to Zhongshan, et al, the basket tariff provisions do not provide an accurate basis for the valuation of the flexographic and gravure printing inks they actually used in the manufacture of plastic bags. They argue that the average price data compiled by Hindustan Inks and Resins (Hindustan) provide more accurate surrogate values which reflect actual commercial values for the price of the inks used in the production of polyethylene bags in India.

Zhongshan, et al, assert that the domestic price list from Hindustan, the largest Indian producer of printing inks, is specific to flexographic and gravure printing inks actually used in the manufacture of plastic bags. They argue that surrogate prices obtained from Hindustan are not "price quote," as characterized by the Department in the Preliminary Determination. According to these respondents, the color-specific prices from Hindustan represent the weighted-average prices of flexographic and gravure printing inks paid by its customers during the period April 1 through September 30, 2003. Further, they contend that the Hindustan values are also country-wide prices because they represent the company's sales prices to all of its customers in India and that, consistent with the Department's established methodology and legal precedent, the Department should use the more specific surrogate values from Hindustan to value color and black ink instead of the Indian import values.

Zhongshan, et al, assert that the Department has an obligation to calculate dumping margins as accurately as possible. They state that, by using color-specific surrogate prices, the Department will calculate more accurate dumping margins, particularly because the respondents have reported ink consumption by color.

Zhongshan, et al, assert further that the information they included as Attachment 4 of their March 22, 2004, submission supports their claim that the Indian import values are aberrational. Specifically, they argue that the price list issued by Coatings, Adhesives, Inks (CAI) of Georgetown, Massachusetts, for gravure and flexographic printing inks for use in printing polyethylene bags confirm that the average prices reported by Hindustan represent more accurate commercial prices. With regard to color-specific flexographic and gravure inks, they argue that, of the available surrogate information on the record applicable to printing inks, only the average-price information obtained from Hindustan is provided on a color-specific basis. They contend that the information on the administrative record indicates that a significant price differential exists on the basis of color. They also claim that certain colored inks are significantly more expensive inks whereas black and white inks are the least expensive. They contend further that the difference in Hindustan's prices between black ink and purple inks is 117.40 percent. Zhongshan, et al, assert that a significant difference in prices among different ink colors is also evident in the two U.S. ink price lists and in the Malaysian price list they submitted on March 22, 2004. They also assert that the average unit values for the Indian basket tariff provisions for other printing inks show that the average unit value of colored printing inks is 63.43 percent greater than the average unit value of black printing inks. They argue that, based on these findings, the Department should follow its normal administrative practice and use surrogate

values that reflect the different color ink inputs used in the production of the subject merchandise. According to these respondents, the use of a single surrogate value for all colored ink would not reflect the actual production costs of polyethylene-bag manufacturers that use colored inks in their production processes.

Zhongshan, et al, argue further that the U.S. HTS import data places flexographic and gravure printing inks (for black and colored) in four distinct tariff classifications. According to them, these classifications are in contrast to the Indian tariff system that includes flexographic and gravure printing inks in two broad basket classifications. They assert that the Indian basket tariff classification does not provide an accurate basis for the valuation of the flexographic and gravure printing inks which they actually use in the manufacture of plastic bags.

Zhongshan, et al, also claim that the U.S. import prices are much closer to Hindustan's reported average prices than they are to the average unit prices for the basket-category tariff provisions in the Indian import statistics and provide several examples of dramatic differences between the prices contained in the two sources of information. Citing Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part, 69 FR 12119, and the accompanying Issue and Decision Memorandum at Comment 5 (March 15, 2004), they argue that the Department has used U.S. prices as a benchmark to test the reliability of a particular surrogate value. According to these respondents, the U.S. import statistics establish that Hindustan's average prices for flexographic and gravure inks (black and colored) are many times closer to U.S.

average unit import prices for flexographic and gravure inks than are the average unit prices for the basket Indian tariff provisions encompassing all types of other printing inks.

Zhongshan, et al, argue that, if the Department decides to value color ink using import data, it should consider using the Indian Infodrive database because the information describes ink imported into India in a greater level of detail. Citing CTVs, and the accompanying Issue and Decision Memorandum at Comment 9 (April 16, 2004), they argue that the Department has relied on surrogate prices from Infodrive data in other cases because it was more product-specific than the multi-product price in the Indian import statistics. They assert that, in contrast to the surrogate prices based solely on the Indian HTS category, the values for color and black ink from Infodrive allow the Department to fine-tune import data to include only values for ink used for printing plastic bags.

Citing Issues and Decision Memorandum for the Final Results of the First Antidumping Duty Administrative Review of Non-Frozen Apple Juice Concentrate from the People's Republic of China, and the accompanying Issue and Decision Memorandum at Comment 1 (November 6, 2002), Zhongshan, et al, argue that the Department rejected the Indian import statistics in favor of domestic prices because the Department found the domestic prices to be more specific to the input than the import prices. They contend that the Department faces exactly the same issue in this investigation, namely, whether to use domestic, product-specific prices or import prices to value ink. They assert that, because expensive specialty printing inks and computer printing inks fall within the same Indian basket tariff provision as the inexpensive flexographic and gravure printing inks used to print polyethylene bags, the average unit prices of the Indian tariff provisions are distorted and grossly overstate Indian commercial prices of gravure and flexographic printing inks that are used to print

polyethylene bags.

Zhongshan, et al, contend that the wealth of new prices for ink on the record indicates that the Indian HTS import values for color and black ink are aberrationally high and bear no reflection to the business realities of plastic companies in India, the United States, or anywhere else. In addition, they argue that the petitioners have not provided any other corroborating data that supports the aberrationally high prices the Department used in the Preliminary Determination to value black and color ink. For these reasons, they argue that the Department should not use the Indian import statistics to value color ink for printing plastic bags.

The petitioners rebut Zhongshan, et al,'s arguments by arguing that, when assessing the "best information available" to value surrogate values, the Department prefers surrogate values that are 1) non-export average values, 2) most contemporaneous with the POI, 3) product-specific, and 4) tax-exclusive. The petitioners argue that the Hindustan data is not contemporaneous with the POI. They assert that the Indian import statistics information is a more appropriate surrogate because it is a contemporaneous, non-export, tax-exclusive price that is specific to colored and black inks. According to the petitioners, the Hindustan data only purports to provide greater product specificity and may include export prices. The petitioners argue that when compared to U.S. import statistics, the Hindustan data appears markedly low. The petitioners contend that, based on the affidavit provided in Zhongshan, et al,'s November 20, 2003, surrogate-value submission, Hindustan officials followed a complex, multi-step process that allegedly included several steps: 1) identifying flexographic and gravure ink sales from among all of the firm's sales; 2) identifying which of these products was sold for purposes of printing on polyethylene bags; 3) separating the prices on a color-

specific basis; 4) calculating color-specific average prices based on this data, 5) calculating a total weighted-average price. According to the petitioners, many of these steps required Hindustan to make assumptions and to process data, an effort that is subject to both manipulation and human error. Citing 19 CFR 351.307(b)(1), the petitioners argue that, because the Department has not had an opportunity to verify this data, it cannot rely on it.

With respect to the U.S. import data submitted by Zhongshan, et al, the petitioners state that Zhongshan, et al, inexplicably excluded imports from Japan in its calculation of black ink. According to the petitioners, when imports from Japan are included, the recalculated weighted-average value is nearly identical to the value for the somewhat broader official Indian import statistics category for ink. The petitioners argue that, contrary to Zhongshan, et al,'s assertion, the U.S. import statistics for the HTS categories corroborate the official Indian import statistics data and demonstrate that the other proffered benchmarks are aberrational. The petitioners argue further that the Department should reject this comparative analysis because the U.S. import data is not fully contemporaneous with the POI.

The petitioners argue that the Department should also reject the undated price quote purportedly from a Malaysian ink supplier to a bags producer of PRCBs in Vietnam obtained by Zhongshan, et al. Specifically, the petitioners contend that the Department should reject this data because of the following reasons: 1) the quote was self-selected by Zhongshan, et al; 2) the price quote is between two countries that are not on the Department's list of potential surrogate countries and thus are not sufficiently economically comparable to China; 3) the invoice itself does not actually indicate that the buyer is a producer of bags; 4) the quote is for a time period nearly a year after the

end of the POI; 5) the product description is unclear and, therefore, the Department cannot identify the type of product being offered for sale; 6) the price quote does not provide a full spectrum of prices for all colors; 7) it only offers a small glimpse of possible prices.

The petitioners assert that, for similar reasons, the Department should reject the CAI price list submitted by Zhongshan, et al, as a possible benchmark. The petitioners claim that the CAI price list was sent to an affiliate of one of the respondents and, therefore, this information is self-serving.

Finally, with regard to the Infodrive data submitted by Zhongshan, et al, the petitioners argue that the data is flawed and should not be used in this investigation. Specifically, the petitioners contend that, without a thorough explanation of how Infodrive gathers its data, what it represents, and why it differs from the Indian import statistics, the Department cannot accept this information. According to the petitioners, Zhongshan, et al, did not provide any information describing the methodology used to download the Infodrive data, including its search criteria. Further, the petitioners contend that Zhongshan, et al, did not explain what the data represents and how they decided which entries should be considered in its average values and which should not. The petitioners contend that, without such an explanation, there is no way for the Department to judge whether entries have been excluded properly. Therefore, according to the petitioners, the Infodrive data does not provide a more accurate measure of the surrogate values for ink. In addition, the petitioners assert that the Infodrive data covers January 2002 through March 2003, a period substantially different from the POI. For these reasons, the petitioners request that the Department reject Zhongshan, et al,'s arguments regarding the use of the Hindustan price quotes, the CAI price quotes, and the Infodrive information.

Department's Position: In valuing FOP information, section 773(c)(1) of the Act directs the Department to use "the best available information" from the appropriate market-economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the data. See Issues and Decision Memorandum for the Final Results of the New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China, 68 FR 62053, and the accompanying Issues and Decision Memorandum at Comment 2 (October 31, 2003) (Honey). As explained in Honey, the Department prefers, whenever possible, to use countrywide data and only to resort to company-specific information when countrywide data is not available. In addition, the Department prefers to rely on publicly available data. See Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634, and the accompanying Issues and Decision Memorandum at Comment 2 (April 24, 2001).

Generally, when considering "price quotes" the Department prefers to use a publicly available price that reflects numerous transactions between many buyers and sellers because the experience of a single producer is less representative of the cost of an input in a surrogate country. See Steel Concrete Reinforcing Bars from the People's Republic of China: Final Determination of Sales at Less than Fair Value, 66 FR 33522, and the accompanying Issues and Decision Memorandum at Comment 5 (June 22, 2001).

In the Preliminary Determination, we valued black and color inks using Indian import statistics. In the final determination of this investigation, we have valued black and color inks using the

Indian import statistics because we find that the Indian import statistics present the best available surrogate value because it is publicly available, product-specific, tax-exclusive, contemporaneous, and representative of prices of black and color inks.

We find that the values offered by Zhongshan, et al, do not provide more accurate or more representative alternatives than the Indian import statistics. As stated above, the Department considers the quality, specificity, and contemporaneity of the data in selecting the most appropriate surrogate value. While we recognize that Hindustan's pricing data is more specific to black and color inks, the data is less preferable in terms of the other factors we considered because the data is not contemporaneous, the pricing data is based on an experience by a single Indian producer of ink and, therefore, not completely representative of the cost of this input, and the pricing data has little or no supporting documentation.

With regard to the Malaysian price quote submitted by Zhongshan, et al (price list from a Malaysian ink supplier to a bags producer of PRCBs in Vietnam), we agree with the petitioners that the data is not contemporaneous with the POI, is self-selected by Zhongshan, et al, and has little or no supporting documentation. Furthermore, the importing country is a NME and is not economically comparable to China. In addition, because this information is based on the experience of a single producer, it does not follow the Department's preference for publicly available data. Therefore, we find that this data is not suitable to use in our analysis of the appropriate value for black and color inks in this investigation. For similar reasons, we find that the CAI price list submitted by Zhongshan, et al, is also not suitable for use in our analysis. As such we have concerns as to the reliability and quality of all the pricing data which Zhongshan, et al, submitted.

With regard to Zhongshan, et al,'s argument that the Indian import statistics provide distorted results because a contrast exists between the basket classifications and the ink-specific (flexographic and gravure) classifications, we find no evidence that this is the case. Using U.S. import statistics of printing inks as an example, when we compare the U.S. average unit values for flexographic and gravure black inks with that of the U.S. basket category for black ink, we find that the average unit values are comparable. For example, the average unit value of U.S. imports for the POI of the basket category of printing black ink is US $7.00 per kilogram and the average unit values of U.S. imports for the POI for flexographic and gravure black inks are US $7.61 and US $4.64 per kilogram, respectively. With regard to color printing inks, we found similar results. For example, the average unit value of U.S. imports for the POI of the basket category of printing color ink is US $4.92 dollars per kilogram and the average unit values of U.S. imports for the POI for flexographic and gravure color inks are US $4.03 and US $4.62 dollars per kilogram, respectively. Therefore, we find that the Indian import statistics do not necessarily provide distorted results because the import data is not separated into ink-specific classifications.

While we have used U.S. imports as a benchmark in past cases to test the reliability of a particular surrogate value, we find that the burden is on the respondents to demonstrate that the Indian import statistics are in fact aberrational. The respondents have not met that burden. As we have demonstrated above, the fact that the Indian import statistics do not segregate ink by specific types does not indicate that the values are necessarily distorted. In addition, as we indicated in response to Comment 9, when we compare the import statistics from the United Nations data with the World Trade Atlas Indian import statistics, we find that the United Nations data is also

comparable to the World Trade Atlas Indian import data with regard to both black and color ink. Thus, we have no reason to believe that the Indian import data are aberrational. Although we recognize that the U.S. imports may be a useful tool to test the reliability of a particular surrogate value, if we relied on it as an absolute benchmark, essentially we would be relying on U.S. import data rather than on data from a country at a similar level of economic development.

With regard to the Infodrive price data submitted by Zhongshan, et al, we find that, because it is not clear how the data was gathered, the methodology for deriving the prices, and the fact that this information is not fully contemporaneous with the POI, we have concerns as to the reliability and quality of the Infodrive price data. Therefore, we find that the Infodrive information is not more representative of ink prices than the Indian import values we used in our Preliminary Determination.

Therefore, for all the reasons stated above, we have continued to value black and color ink using Indian import values for the final determination.

6. Surrogate Value for Varnish

Comment 10: United Wah argues that the Department should not use the surrogate value for colored ink to value its factor for varnish. United Wah argues that the Department should value varnish using either the input-specific prices from American Paints or HTS number 3814.00.00 covering solvents, varnishes, and paint removers.

The petitioners argue that United Wah did not include varnish in either its October 6, 2003, questionnaire response or its November 20, 2003, surrogate-value submission. The petitioners also argue that United Wah identified the following material inputs in the revised NME-purchase table included in its December 8, 2003, supplemental questionnaire response: resin, masterbatch, color

ink, color ink additive, desolvant, eyelet, handles, and cardboard. The petitioners claim that the Department did not list varnish as one of the factors reported by the respondents in the Factors Valuation Memo.

The petitioners argue that, because United Wah did not inform the Department prior to or during the verification that its color ink additive was varnish, the Department relied properly on United Wah's description of the input as color ink additive. The petitioners argue that, although 19 CFR 351.301(c)(3)(i) allows parties to submit "information to value factors" subsequent to the deadline for new information, the provision should not be construed to allow a respondent to provide further information about the actual input. Finally, the petitioners assert that United Wah's proposed HTS heading does not apply to varnish because it is entitled "Organic Composite Solvents and Thinners, Not Elsewhere Specified or Included; Prepared Paint or Varnish Removers."

Department's Position: In its revised December 8, 2003, NME-purchase table, United Wah reported the input as varnish, not varnish remover. Specifically, within the list of NME color-ink-additive purchases, United Wah distinguished varnish from other additives. Additionally, in its January 9, 2004, response to the Department's fourth supplemental questionnaire, United Wah identified the input as varnish and explained its use and composition. For the Preliminary Determination, the Department valued United Wah's varnish factor with the surrogate value for colored ink because United Wah included it in the color-ink-additive purchases and reported the tariff heading for ink. As discussed in response to Comment 11, the Department has used Indian import statistics, as opposed to price quotations, to calculate surrogate values. Because United Wah reported the use and composition of the varnish, the Department has revised its surrogate values to

include varnish and has included a surrogate value for varnish based on the HTS number 3209.00.00 applicable to varnishes entitled "Paints and Varnishes (Including Enamels and Lacquers) Based on Synthetic Polymers or Chemically Modified Natural Polymers, Dispersed or Dissolved in a Aqueous Medium" for the final determination.

7. Surrogate Value for Other Materials

Comment 11: The petitioners argue that the Department should reject price quotations and invoices and, instead, rely on Indian import statistics to value solvent/thinner, PP rope, cotton rope/string, rubber rope, corrugated cartons/boxes, and cardboard inserts. Referring to the Department's regulations at 19 CFR 351.408(c)(1), the petitioners argue that it is the Department's preference to use publicly available information to value material inputs. Citing 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), and the accompanying Issues and Decision Memorandum, the petitioners contend that the Department has reiterated this policy many times in other cases. Further, citing Automotive Replacement Glass Windshields from the People's Republic of China: Final Determination of Sales at Less than Fair Value, 67 FR 6482, and the accompanying Issues and Decision Memorandum at Comment 6 (February 12, 2002), the petitioners argue that it is the Department's practice to reject invoices that are proffered as evidence of surrogate values. Finally, citing Saccharin at Comment 1, the petitioners argue that price quotes and invoices are necessarily self-selected by the submitting party and, therefore, the Department should reject price quotes and invoices to value material inputs and continue to use Indian import statistics to value material inputs in the final determination.

In rebuttal, Glopack, Ming Pak, Rally Plastics, Hang Lung, Zhongshan, and United Wah (collectively, Zhongshan, et al) argue that the Department should reject the petitioners' comments and apply surrogate values to solvent/thinner, PP rope, cotton rope/string, rubber rope, corrugated cartons/boxes, and cardboard inserts that are more product-specific, qualitative, and contemporaneous based on invoice-specific information provided by Zhongshan in its March 22, 2004, submission, and Glopack, Ming Pak, Rally Plastics, Hang Lung (collectively, Hang Lung, et al) in their March 22, 2004, and November 20, 2003, submissions.

These respondents maintain that the Department's use of surrogate values based on average Indian import values for merchandise imported under HTS headings yield aberrational results that are higher than the actual value at which the product was sold during the POI, grossly overstating the respondent's normal value. Citing Certain Cased Pencils from the People's Republic of China, 59 FR 55625, 55630 (1994), Zhongshan states that aberrational surrogate input values should be disregarded.

Zhongshan, et al, contend that the HTS categories are overly broad basket categories that are unreliable. Citing Tetrahydrofurfuryl Alcohol from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, 69 FR 3887, 3892 (January 27, 2004), Hang Lung, et al, argue that, in numerous cases, the Department has recognized that import statistics based on a basket tariff category are not appropriate surrogates if a more representative alternate surrogate is available.

United Wah argues that all input-specific data on the record constitute the best available information, as they are specific to the inputs the Department seeks to value. Zhongshan contends

that 19 CFR 351.408(c)(1) embraces the practice of using invoice-specific prices as surrogate values for factors of production. Citing Shakeproof Assembly Components Division of Illinois Tool Works, Inc. V. United States, 268 F.3d 1376, 1381 (Fed. Cir. 2001), Zhongshan claims that the Indian invoice prices which it submitted on March 22, 2004, are the best information available to value FOPs, particularly when, as here, the published, aggregate Indian pricing information is unreliable. Citing Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69503, 69506 (December 13, 1999), Hang Lung, et al, argue that the Department relies on price quotes rather than import statistics when the price-quote information reflects more closely the type of product actually used by the respondents to produce the subject merchandise. Finally, United Wah argues that the petitioners have not provided any other prices to corroborate the Indian import statistics.

Zhongshan, et al, argue that the Department's use of surrogate values based on average Indian import values for merchandise imported under HTS headings for solvent/thinner, PP rope, cotton rope/string, corrugated cartons/boxes, and cardboard inserts yield aberrational results that are higher than the actual value at which the product sold for during the POI, overstating the respondents' normal value significantly.

Zhongshan, et al, contend that the HTS subheadings are overly broad basket categories and, therefore, are unreliable. Citing United Wah's April 1, 2003, Surrogate Value Submission as an example, United Wah and Zhongshan state that the two HTS categories which the Department used to value corrugated cartons/boxes are distorted by air-freight charges and cover-specialty boxes and other products.

Citing the Department's January 16, 2004, Surrogate-Country Selection and Factors Valuation Memorandum, Zhongshan states that the price quotes it submitted on March 22, 2004, are actual prices paid in India and, thus, should dispel the Department's concerns which it expressed in the Preliminary Determination about using price quotes. Hang Lung, et al, contend that the Department should rely upon a product-specific price quote if the data from the Indian import statistics is not satisfactory. Citing Sulfanilic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 48597 (September 16, 1997), Hang Lung, et al, assert that the Department does not have a preference for Indian import statistics when price quotes for the type of product actually used by the respondents to produce subject merchandise are present in the administrative record. In addition, citing Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085, 3087 (January 21, 1998), United Wah contends that the Department has stated a preference for using domestic prices from the surrogate country rather than import values.

United Wah argues that the Department has ignored domestic surrogate prices which it provided in its November 20, 2003, Surrogate Value Submission. In addition, citing its November 20, 2003, Surrogate Value Submission, United Wah argues that, if the Department continues to use Indian import statistics to value solvents, it should exclude aberrational data concerning imports from Canada, United Arab Emirate, South Africa, Hong Kong, Austria, and Sweden to be consistent with its established policy.

Zhongshan, et al, claim that the Department should not use average Indian import values for material inputs for purposes of surrogate valuation. Rather, Zhongshan, et al, assert that the

Department should apply surrogate values that are more product-specific, qualitative, and contemporaneous based on invoice-specific information Zhongshan provided in its March 22, 2004, submission and Hang Lung, et al,'s November 20, 2003, and March 22, 2004, submissions.

The petitioners argue that Zhongshan has not explained how its price quotes and invoices are representative of India-wide prices for all varieties of solvent/thinner, PP rope, cotton rope/string, rubber rope, corrugated cartons/boxes, and cardboard inserts used to produce PRCBs during the POI. Citing CTVs, 69 FR 20594, and the accompanying Issues and Decision Memorandum at Comment 1, the petitioners state that the Department uses publicly available average non-export values as surrogate values where possible.

The petitioners argue that the Department should reject Hang Lung, et al,'s argument that price quotations and not official import statistics should be used for valuing solvent because there are several problems with the price quotes: 1) they are not representative of a broad range of prices for the entire range of solvents used by PRCB producers; 2) they are not contemporaneous; 3) they are not export prices; 4) they were self-selected by the respondents; 5) it is not clear whether they include taxes; 6) they are not from the selected surrogate country or even an acceptable surrogate country. Also, the petitioners assert that Hang Lung, et al, have not provided any information that actually indicates that the official Indian Import Statistics are somehow distorted by the inclusion of other similar items such as solvents, paint, and varnish removers.

The petitioners argue that the invoices Zhongshan provided in its March 22, 2004, submission do not indicate a sale of PP rope but rather "plastic rope." The petitioners claim that the invoices

provided for PP rope/string reflect neither a domestic Indian price nor a price for the specific input in question.

The petitioners contend that Zhongshan's assertion that it used toluene in its production of subject merchandise is not supported by the record and, therefore, should be treated as new factual information. Also, the petitioners assert that Zhongshan has not demonstrated that "Thinner 026" shown on invoices provided in its March 22, 2004, submission is the same type of thinner it actually used.

The petitioners assert that Zhongshan's characterization of solvent/thinner, PP rope, cotton rope/string, corrugated cartons/boxes, and cardboard inserts as valuations of FOPs in its March 22, 2004, submission and its April 27, 2004, Case Brief is incorrect, and the Department should treat the submission as new factual information, and the Department should reject it as untimely. Citing 19 CFR 351.301(b)(1), the petitioners contend that the Department closes the record to new factual information one week prior to the start of the first verification unless the Department requests new information. The petitioners argue that Zhongshan had ample opportunity and an obligation to the Department to describe its inputs with specificity in its initial and supplemental responses. The petitioners argue that, although 19 CFR 351.301(c)(3)(i) allows parties to submit "information to value factors" subsequent to the general deadline for new information, the provision cannot be construed to allow a respondent to provide additional information about the actual input used rather than about the valuation of that input, especially when such a submission comes after verification.

Department's Position: In valuing the factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market-economy country. As indicated by the parties to this investigation, the Department considers several factors when choosing the most appropriate surrogate values, including the quality, specificity, and contemporaneity of the data. See Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634, and the accompanying Issues and Decision Memorandum at Comment 2 (April 24, 2001).

Generally, it is the Department's preference to use a publicly available price that reflects numerous transactions between many buyers and sellers because the experience of a single producer is less representative of the cost of an input in a surrogate country. See Steel Concrete Reinforcing Bars from the People's Republic of China: Final Determination of Sales at Less than Fair Value, 66 FR 33522, and the accompanying Issues and Decision Memorandum at Comment 5 (June 22, 2001).

While Zhongshan, et al, claim that we have used price quotes or invoices in the past when the pricing data is more representative of the inputs' actual cost, price quotes are less preferable in terms of the other factors we considered for the following reasons: 1) price quotes do not represent actual completed transactions; 2) the data is not from public sources; 3) price quotes are self-selected by the respondents. See Saccharin from the People's Republic of China: Final Determination of Sales at Less than Fair Value, 68 FR 27530, and the accompanying Issues and Decision Memorandum at Comment 1 (May 20, 2003).

Moreover, we have not used the pricing data Zhongshan provided in its March 22, 2004, submission. Some of the prices it recommended are export prices. It is the Department's preference not to use export prices where other data is available which more reliably reflects the price of that input in the surrogate country. See Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review, 66 FR 8383, and the accompanying Issues and Decision Memorandum at Comment 1 (January 31, 2001).

Importantly, when faced with a choice between unsubstantiated pricing data selected by the respondents or publicly available data, the Department prefers to rely on publicly available data for use as surrogate values. Therefore, for the final determination, the Department has used information in the Indian import statistics to value solvent/thinner, PP rope, cotton rope/string, rubber rope, corrugated cartons/boxes, and cardboard inserts.

8. Surrogate Value for Labor

Comment 12: The petitioners assert that, because the hourly labor wage rate for China as published on the Import Administration website was updated, the Department should use the updated rate.

Department's Position: It is our practice to use the most current data available in our calculations. See CTVs, 69 FR 20594, and the accompanying Issues and Decision Memorandum at Comment 4. Because we have updated the labor rate since the preliminary determination, we have amended our calculations for the final determination to use this updated labor rate (i.e., $0.90 per hour).

9. Surrogate Value for Electricity

Comment 13: The petitioners assert that the Department did not adjust for inflation in using the surrogate-value rate for electricity of $0.0801 per kilowatt hour from Exhibit 5 of the petitioners' November 20, 2003, surrogate-value submission. The petitioners claim that the inflation-adjusted rate is $0.088 per kilowatt hour.

Department's Position: As we stated in the Amended Preliminary Determination, 69 FR 7908, we neglected to adjust for inflation and that the correct surrogate-value inflation-adjusted rate for electricity is $0.088 per kilowatt hour.

10. Change in Name of Section A Respondent

Comment 14: Dongguan Maruman Plastic Packaging Company, Ltd. ("Dongguan Maruman"), formerly known as Dongguan Zhongqaio Combine Plastic Bag Factory ("Dongguan Zhongqaio"), requests that, when notifying CBP of the Department's final determination and the final cash-deposit instructions, the Department identify Dongguan Maruman and not Dongguan Zhongqaio as the company entitled to the weighted-average rate applied to section A respondents. Dongguan Maruman claims that it informed the Department of its intent to change its name in its section A response and that Dongguan Zhongqaio operates at the same facility, employs the same staff, and uses the same exporter. Dongguan Maruman indicates that the only change from its statement in the section A response is the fact that Mr. Ruan Xijuan wholly owned Dongguan Zhongqaio, whereas, following its name change, Mr. Ruan Xijuan and his wife own Dongguan Maruman jointly.

Department's Position: In multiple proceedings, the Department has examined changes in the management, production facilities, suppliers, and customer base in order to make a successorship determination. See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France, 68 FR 47049 (August 7, 2003); Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992); Steel Wire Strand for Prestressed Concrete from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, 55 FR 28796 (July 13, 1990); Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review, 59 FR 6944 (February 14, 1994).

The Department finds that Dongguan Maruman informed the Department in its September 11, 2003, section A response of its intent to change its name. The Department also finds that Dongguan Maruman informed the Department in its February 2, 2004, submission of the name change and the details of the company's restructuring. Based on these submissions, the Department finds that the operations of the company have remained the same in terms of management, production facilities, suppliers, and customer base and that Dongguan Maruman is essentially the same company as Dongguan Zhongqaio. Therefore, Dongguan Maruman is entitled to the same treatment as Dongguan Zhongqaio, and we have changed the name of Dongguan Zhongqaio to its new name of Dongguan Maruman for the final determination, and we will reflect this finding in our subsequent instructions to CBP.

11. Hang Lung Issues

A. Affiliated U.S. Customer

Comment 15: The petitioners allege that Hang Lung and a certain U.S. customer are affiliated. The affiliation between Hang Lung and the customer, the petitioners argue, is based upon the customer's control of Hang Lung and the close supplier relationship that exists between Hang Lung and the customer which accounted for a majority of Hang Lung's U.S. sales. Citing Concrete Reinforcing Bars From Latvia, 66 FR 33530, and the accompanying Issues and Decision Memorandum at Comment 1 (June 22, 2001), the petitioners argue that the Department cited visits of top managers of a trading company to the respondent's facilities in the U.S. customer's company as evidence of the sharing of customer information and, therefore, a factor in finding that the trading company was "in a position to exercise direction or restraint upon the respondent." The petitioners also contend that the Department has recognized in Certain Welded Stainless Steel Pipe From Taiwan, 62 FR 37543, 37550 (July 14, 1997), that affiliation resulting from a close supplier relationship may occur when a majority of a supplier's sales are made to one customer. They state further that, although evidence on the record establishes that a majority of Hang Lung's sales were made to the "affiliated" customer, Hang Lung officials nonetheless told the Department's verifiers that the customer's purchases do not account for a majority of Hang Lung's sales according to the Department's Hang Lung Verification Report, dated, March 11, 2004, at page 3. Therefore, the petitioners contend, Hang Lung has misrepresented its close supplier affiliation and, pursuant to section 776(b) of the Act, the Department should apply adverse facts available (AFA) to Hang Lung.

Hang Lung contends that it is not owned or controlled by any of its customers. In fact, it argues, the evidence at verification established that there are intense price negotiations between Hang

Lung and its customers. Hang Lung states that, although the petitioners argue that this "affiliated" customer accounts for a majority of its sales, it sells its products to other countries as well as non-subject merchandise and, therefore, this customer does not account for a majority of its sales. The respondent states that the petitioners' allegation should be rejected as it is based upon speculation and hearsay and is not supported by verified information on the administrative record.

Department's Position: We have found that Hang Lung and the U.S. customer are unaffiliated. At verification Department officials went into great detail and investigated various items to determine whether Hang Lung reported all affiliations. We did not find any evidence that Hang Lung was affiliated with the customer in question and, in fact, found evidence of intense price negotiations. See the Department's Hang Lung Verification Report dated March 11, 2004, at pages 2-4. The petitioners' claim that this customer accounts for a majority of Hang Lung's sales is correct only for Hang Lung's U.S. sales. At verification we found that this customer did not account for a majority of Hang Lung's sales when considering its sales in the home market and third-country markets. Ibid. Therefore, we have treated the reported sales to this customer as unaffiliated sales for our final determination.

B. Adverse Facts Available for Electricity

Comment 16: The petitioners argue that, because the Department was unable to verify Hang Lung's reported electricity-usage factors and because the information necessary to correct the unverified data is not available, the Department should use, as partial AFA for Hang Lung's electricity usage, the highest electricity-usage rate reported by any respondent in this investigation for the final

determination. If the Department declines to apply AFA by selecting the highest electricity-usage rate reported by any respondent, the petitioners argue that it should at the very least apply neutral facts available by selecting a rate no lower than Hang Lung's highest reported electricity-usage rate.

Hang Lung argues that at verification the Department verified its total electricity consumption. It asserts that the Department could not verify Hang Lung's allocation of electricity to the many types of bags produced during the POI. The respondent argues that the Department should understand that allocating the total electricity consumption is particularly difficult in this case because there are so many different types of bags. It contends that the difficulty becomes even more apparent because Hang Lung had to sum the electricity elements for each process performed on each model manually and multiply the sum of the elements by the total resin input for each model in order to derive total electricity consumption for that model. Hang Lung states that there are up to five such elements, each has four digits, and each would bring about one to four percentage points of relative uncertainty by rounding to two significant digits. It claims that the combined relative uncertainty could be up to six percent. Hang Lung argues further that the fluctuation of actual consumption is almost negligible and that the Department found at verification that electricity consumption was over-reported in some cases.

Department's Position: Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in

reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

We were unable to verify Hang Lung's reported electricity-usage rates. See the Department's Hang Lung Verification Report dated March 11, 2004, at pages 7-8. As explained in the verification report, we were able to verify the usage amounts that were listed on model-specific usage worksheets for the individual models that we examined, but the per-unit amounts we verified did not appear in Hang Lung's FOP database for most of the models we examined. Contrary to its claims, Hang Lung could have reported electricity usage properly by transcribing the amount from the worksheets, which we verified, to its database correctly. Because it did not do so nor did it attempt to correct the record at any time, we find that Hang Lung did not act to the best of its ability.

Because we were unable to verify Hang Lung's reported electricity-usage rates, it is appropriate to use the facts available to restate these usage rates. Moreover, because Hang Lung did not act to the best of its ability in reporting these usage rates, it is appropriate to use adverse inferences in restating these usage rates in accordance with section 776(b) of the Act. We were able to verify the total electricity used by Hang Lung during the POI for subject merchandise as well as for other purposes. Therefore, it would be inappropriate to use as facts available, adverse or otherwise, total usage greater than the usage we verified. Therefore, as AFA, we have allocated Hang Lung's total electricity usage that we verified to its reported U.S. sales. See the Hang Lung Final Determination Analysis Memorandum dated June 9, 2004, for a description of our allocation methodology.

C. Adjustment of Market-Economy Purchases to Account for Unpaid Foreign Customs Duties

Comment 17: The petitioners contend that, at the verification of Hang Lung, the Department discovered a significant discrepancy between the weights of finished products reflected on Hang Lung's packing lists for export shipments and the weights Hang Lung reported to Chinese Customs for purposes of duty drawback. Although the petitioners cite the Department's report which explained that Hang Lung claimed at verification that the weight reported to Chinese Customs is correct and that the weight appearing on its packing list and bill of lading is understated, they argue that it is more likely, given the duty savings gained by obtaining full drawback or exemption of duties on imported resin, that Hang Lung overstated the weight of exports to Chinese Customs. Therefore, the petitioners contend, Hang Lung was able to report to the Department a lower price for imported

polyethylene resin than it would have paid had it reported accurate information to Chinese Customs. The petitioners argue that, based on these findings, the Department should make an upward adjustment to Hang Lung's reported market-economy prices for resin to account for the customs duties that Hang Lung would have paid had it reported the accurate quantity of exported resin to Chinese Customs.

The respondent contends that the petitioners are suggesting that the Department become an arm of the Chinese government and adjust reported market-economy prices upward to account for additional Chinese customs duties on resin imports that Hang Lung should have paid upon importation. Hang Lung states that the Department should consider the actual market prices it paid for imported resin. Hang Lung contends that it is not clear that it owes more customs duties to the Chinese government and that it is an issue between Hang Lung and the Chinese customs authorities. Hang Lung argues that the Department should reject the petitioners' attempt to inflate its costs artificially.

Department's Position: We have not adjusted Hang Lung's costs to account for possibly unpaid duties to Chinese customs authorities. At 19 CFR 351.408(c)(1), we state that, "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier." We do not have an accurate way of calculating the possibly unpaid duties, and it is not in our authority to adjust market-economy prices to account for possible circumvention of another country's customs regulations. Therefore, we have used the market-economy prices reported by Hang Lung in our final determination.

D. Currency Conversion of U.S. Sales in Hong Kong Dollars

Comment 18: The petitioners state that Hang Lung's sales to one customer were expressed in Hong Kong dollars, not in U.S. dollars, and that the Department must correct the currency conversion for these sales to correct the overstatement of the U.S. price and understatement of the margin for this customer in the Preliminary Determination.

The respondent concurs.

Department's Position: We agree and have corrected the currency conversion for these sales for the final determination.

E. Currency Conversion of Domestic Inland Freight

Comment 19: The petitioners state that Hang Lung expressed its domestic inland freight in Hong Kong dollars and requests that the Department convert this factor to U.S. dollars for the final determination.

The respondent concurs.

Department's Position: We agree and have converted this factor to U.S. dollars for the final determination.

12. United Wah Issues

A. Certain "Market-Economy" Purchases by United Wah

Comment 20: United Wah argues that the Department has recognized that a Chinese-produced input can be "cleansed" of non-market distortions by a sale through a market-economy

third-country company in a convertible currency. It cites CTVs, 69 FR 20594, and the accompanying Issues and Decision Memorandum at Comment 8 (April 16, 2004) (stating that the Department "should not reject prices of goods purchased in Hong Kong based on the country of origin of the goods"). United Wah asserts that it purchased some Chinese-made inputs from Hong Kong resellers and paid for the purchases in Hong Kong dollars. United Wah asserts that, in its October 6, 2003, FOP response, it submitted an invoice for ink purchased from a Hong Kong company, which it paid in Hong Kong dollars, showing prices for black and several colored inks. United Wah argues that, if the Department accords "market-input" status to Chinese-produced inks sold through Hong Kong companies and paid for in Hong Kong dollars for some mandatory respondents, it should use United Wah's actual ink costs from its sample invoice rather than surrogate values.

The petitioners argue that, because United Wah has neither established that its Chinese-produced inputs were supplied by market-economy companies nor provided enough information to calculate a weighted-average value factor, the Department should continue to value United Wah=s Chinese-produced inputs using Indian surrogate values. Citing the Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People=s Republic of China, 56 FR 55271, at Comment 1 (October 25, 1991), the petitioners assert that the Department uses an NME producer=s actual purchase price to value a factor input only when the input is purchased from a market-economy supplier and paid for in a market-economy currency. The petitioners state that United Wah reported the purchases as NME input purchases. The petitioners argue that, although United Wah reported that it paid for NME ink purchases in Hong Kong dollars, United Wah did not

establish that it purchased the ink from a market-economy seller. Further, the petitioners argue, United Wah listed the name of the Chinese producer under the "supplier name" field. Accordingly, the petitioners argue that United Wah has not established that it purchased the inputs from a market-economy reseller.

The petitioners also argue that United Wah's sample invoices cannot be tied to any specific purchases listed on United Wah=s input table and represent only a small portion of total purchases. Finally, the petitioners argue that, because United Wah did not report all of its purchase prices for the Chinese-produced inputs for which it now claims market-economy status, there is no way to determine if the prices represent an appropriate weighted-average factor value. Accordingly, the petitioners asserts that the Department should use Indian surrogate values to value United Wah=s inputs for the final determination.

Department's Position: As discussed above in response to Comment 4, the Department has decided not to use market-economy prices for NME-produced inputs. Accordingly, the Department has used Indian surrogate information to value United Wah's factors of production.

B. Ministerial-Error Allegation

Comment 21: United Wah argues that the Department made a ministerial error in its calculation of the weighted-average values for low-density resin. Specifically, United Wah argues that the Department did not include all of United Wah's January 2003 purchases in its calculation. United Wah asserts that this resulted in a slight overstatement of the weighted-average value.

Department's Position: We have reviewed the record and find that we did not make a

ministerial error in our calculation of the identified weighted-average values. Due to the proprietary nature of our analysis, for an explanation of our analysis, see Memorandum To File entitled "Analysis for the Final Determination of Polyethylene Retail Carrier Bags from the People's Republic of China (PRC): Dongguan Huang Jiang United Wah Plastic Bag Factory (United Wah)," dated June 9, 2004. Accordingly, the Department has not changed its calculation for the final determination.

13. Nantong Issues

A. Market-Economy Purchases of Raw Materials from Purchaser of PRCBs

Comment 22: Nantong argues that the Department should use its reported market-economy purchase prices for the final determination. Specifically, Nantong asserts that the Department verified that it purchased resin, pigment, and cartons from a market-economy supplier based in Hong Kong and that it paid for these purchases in U.S. dollars. Nantong contends that, because it purchased these material inputs from a market-economy supplier in Hong Kong and paid for these material inputs in a market-economy currency, the Department should use these purchase prices to value linear low-density polyethylene, high-density polyethylene resin, pigment, and cartons for the final determination.

The petitioners argue that the Department should reject Nantong=s reported market-economy inputs. Specifically, the petitioners allege that Nantong=s relationship with its market-economy supplier undermines the validity of Nantong=s purchase prices for market-economy material inputs. The petitioners assert that the prices Nantong paid for its material inputs are not comparable to the reliable price indices and the prices paid by other respondents in this investigation.

The petitioners argue that the fact that Nantong sold PRCBs to its market-economy supplier prior to the POI raises concerns of whether the prices charged for these inputs (resin, pigment, and cartons) were at arm's length. The petitioners contend that further evidence of a non-arm=s-length nature of Nantong=s relationship with its market-economy supplier is apparent in the decrease in prices for Nantong=s purchases of material inputs during the POI. Specifically, the petitioners contend that Nantong=s purchase prices decreased at precisely the period corresponding to the start of the POI and increased precisely after the end of the POI. The petitioners assert that the timing of the changes in prices paid is suspicious, given the parties= relationship and the obvious impact on Nantong=s dumping margin.

The petitioners assert that the Department does not have all the necessary details of the relationship between Nantong and its market-economy supplier because Nantong ignored the Department=s request for information in the original questionnaire. The petitioners assert that Nantong did not cooperate by not acting to the best of its ability and, because Nantong did not disclose to the Department its relationship with its market-economy supplier and the nature of its apparent affiliation, the Department should disregard the alleged market-economy prices reported by Nantong for its inputs and apply surrogate values for valuing the cost of these factors.

Department=s Position: We find no evidence on the record to support the petitioners' contention that Nantong did not cooperate with our investigation by not acting to the best of its ability. We also find no evidence on the record to support the petitioners= assertion that Nantong is affiliated or was affiliated with its market-economy supplier. Finally, the petitioners do not point to any

evidence on the record to support their claim that Nantong did not disclose to the Department its relationship with its market-economy supplier and the nature of its apparent affiliation.

Under 19 CFR 351.408(c)(1), "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier." The regulation does not require that the NME respondent establish that the prices it paid for market-economy inputs are comparable to what other respondents paid in the investigation. In addition, assuming arguendo that the prices Nantong paid are low, we do not agree that this is a basis for rejecting the prices paid. These prices paid by Nantong are to an unaffiliated market-economy supplier through an unaffiliated market-economy trading company (i.e., an arm=s-length price), and the petitioners have provided no information that causes us to question the reliability of the data.

In our verification of Nantong, we examined whether Nantong purchased its market-economy inputs from a market-economy source, whether these purchases were made in U.S. currency, whether an affiliation exists between Nantong and its market-economy supplier, and whether Nantong honored its contract with its market-economy supplier. See the Department's April 15, 2004, Verification Report of Nantong, at pages 7-8. As stated in the verification report, we found no discrepancies in our examination of Nantong=s market-economy purchases. Therefore, we are satisfied that Nantong demonstrated that the material inputs were obtained from a Hong Kong supplier and that Nantong paid for the material inputs in U.S. dollars. Thus, we have continued to use Nantong's prices for market-economy inputs for the final determination.

B. Use of Adverse Facts Available for Inadequate Reporting of FOP Information

In the Preliminary Determination, we indicated that we were unable to calculate a margin for Nantong because we preliminarily found its factor information to be distorted with respect to the amount of raw material inputs used in the production of the various reported products. Prior to the Preliminary Determination, Nantong clarified that its usual business practices did not permit it to allocate its use of inputs on the basis requested and that it could only provide factor information on a more generalized basis. As such, we also indicated that we would explore this issue further at verification and, pending our findings at verification, we would make a decision on whether to use Nantong's factors information for the final determination. The petitioners argue that the Department should apply total AFA to establish Nantong's dumping margin because Nantong has not cooperated with the Department to the best of its ability. Nantong argues that the Department should calculate Nantong's dumping margin based on its reported factors information because the Department verified the accuracy and reliability of the data. We have summarized relevant comments and responses below.

Comment 23: The petitioners allege that, since submitting its first FOP response, Nantong has only provided nonsensical FOP information. The petitioners assert that, when compared to other respondents in this investigation, Nantong's FOP information illustrates that Nantong has not been cooperative with the Department's request for information. The petitioners contend that Nantong's claim that it cannot provide a more detailed level of FOP information is not credible.

For example, the petitioners assert, Nantong's FOP information does not make sense when ink consumption is examined. Specifically, the petitioners argue that Nantong applied the same ink-

usage factor to all printed PRCBs regardless of the dimensions (size, thickness, length, and width) of the bag and regardless of whether the bag included one, two, or three colors. According to the petitioners, Nantong's broad allocation methodology is distorted because it does not reflect an actual ink usage per bag. The petitioners argue that Nantong's justifications for reporting imprecise and distorted FOP information should not provide a basis for accepting flawed data.

The petitioners argue that the Department verified that Nantong maintains production order slips which report specific resin consumption for each bag produced. According to the petitioners, Nantong's explanation that, although the production order slip has a specific resin percentage, in reality, it does not follow the production order consumption amount exactly because it needs to take into account recycled scrap in its mixture of resin so the claim is not credible and conflicts with record evidence. Specifically, the petitioners allege that, because Nantong has not reported purchases of scrap or recycled resin during the POI, it simply is not possible for Nantong to have 10 to 20 percent recycled resin in all of its bags. According to the petitioners, Nantong would not have had enough scrap to produce the quantity of recycled resin needed for those consumption levels (between 10 to 20 percent). The petitioners argue that, unless Nantong did not report purchases of recycled resin or scrap, Nantong simply did not have enough recycled resin on hand to produce bags with 10 to 20 percent recycled resin.

The petitioners argue that the Department should apply total AFA to establish Nantong's dumping margin because Nantong has not cooperated with the investigation by acting to the best of its ability to respond to the Department's requests for information. The petitioners assert that,

because Nantong did not provide specific FOP information, the Department has no usable information with which to calculate an accurate dumping margin for Nantong.

Nantong asserts that it has submitted all the necessary FOP information in accordance with the Department's requests and that the Department verified the data and found no major discrepancies or distortions. Therefore, according to Nantong, the Department should not continue to apply facts available to its factors information for the final determination.

Nantong argues that the petitioners' argument is overly simplistic and assumes unreasonably that Nantong must produce PRCBs in the same manner as all other respondents. Nantong argues that in an antidumping proceeding there is no requirement that all respondents must produce similar varieties of products or use roughly the same number of material inputs in production. Nantong argues further that the record illustrates that most other respondents in the investigation produce a wider range of products and higher-end subject merchandise than it does. Nantong asserts that, because it only produces t-shirt bags, it only reported the five raw material inputs (i.e., HD and LLD resin, pigment, benzene, and in some cases, ink) it needed to produce t-shirt bags.

Nantong argues that the petitioners are incorrect when they state that Nantong maintains production order slips which report specific resin consumption per each bag produced. Nantong contends that at verification the Department found that Nantong's production order slips include resin-percentage instructions for each model ordered and total raw-material inputs required to produce the order, whether new or recycled. Nantong argues that, contrary to the petitioners' claim, the production order does not report specific resin consumption for each bag produced. Nantong argues further that the production order slips are only an initial guideline and do not necessarily reflect

the actual percentages mixed together on any given production run. Thus, according to Nantong, the production orders provide only an approximate base that is tailored in the mixing room to match the customer's sample.

Nantong argues that it should not be penalized for manufacturing a narrower range of subject merchandise and having a less complex accounting system that reflects its narrower product range. Nantong asserts that it has no practical need to record resin consumption or to capture costs on a batch-by-batch basis because the consumption will always be roughly similar within either of the two general bag types. Therefore, according to Nantong, tracking resin consumption on a monthly basis is sufficiently accurate for it to track cost and, therefore, it has no need to use a more complex cost-accounting system.

Nantong contends that it explained the rationale behind its allocation methodology to the Department during verification and explained further that it was the most reasonable and accurate available method it could use to allocate overall consumption based on its records kept in the normal course of business.

With regard to ink consumption, Nantong argues that it demonstrated that its ink allocation is reasonable. Nantong asserts that the Department examined numerous samples of subject merchandise produced by Nantong during the POI and that the Department examined instances where the size of the design, and thus the amount of ink consumption, on a smaller bag was larger than the size of the design on a larger bag and vice versa. According to Nantong, the Department also examined instances where the amount of ink on a two-sided bag was less than the amount of ink on a one-sided bag, and vice versa. Nantong contends that it demonstrated the lack of any

correlation between bag size and the number of printed sides on the one hand and ink consumption on the other. Nantong contends further that the Department verified ink consumption and found no discrepancies.

Citing section 776(a) of the Act, Nantong argues that determinations on the basis of facts available are appropriate only if necessary information 1) is not on the record, 2) a party fails to provide information as requested by the Department, 3) impedes a proceeding, or 4) provides information that cannot be verified. Citing Peer Bearing Company v. United States, 182 F. Supp. 2d 1285 (CIT October 25, 2001), Nantong argues that the Department cannot penalize a respondent for not providing information that does not exist.

Nantong contends that the record also establishes that its treatment of scrap is reasonable and accurate as well. Nantong contends further that the scrap by-product it generated from the handle cut-outs and defective bags is recycled into resin pellets and then re-introduced into late production runs as a raw material. Further, Nantong asserts, it does not keep detailed records of scrap consumption or the precise HD or LLD content of recycled scrap. Nantong contends that the Department verified the validity of its claim and found no discrepancies.

Nantong asserts that, although it produced different models as defined by the Department's control-number characteristics, all of these models are slight variations of the same basic t-shirt bag it produces in two basic variations of resin content (HD and LLD). According to Nantong, the vast majority of Nantong's customers provide samples as a way of illustrating their requirements and do not provide a desired specification with regard to resin content. With respect to those customers

which do specify the desired relative HD- and LLD-resin content, Nantong claims that it provides a rough estimate of resin content which the customer does not test scientifically.

In conclusion, Nantong asserts that it has complied with the Department's instructions and has provided the data necessary for calculating an accurate margin. More importantly, according to Nantong, the information has been verified by the Department with no discrepancies. Nantong asserts that, therefore, the Department lacks a valid basis to issue a final determination for Nantong based on facts available pursuant to section 776(a) of the Act. For these reasons, Nantong requests that the Department calculate a dumping margin for Nantong's final determination based on its reported FOP data.

Department's Position: Prior to the Preliminary Determination, Nantong indicated that, because it does not keep any production or accounting records which track costs on a model-specific basis, it could only provide factor information on a more generalized basis. Specifically, in this investigation, Nantong allocated raw material inputs per kilogram of finished product on an observation-by-observation basis from two total amounts (total POI consumption of raw materials and total POI production of finished goods). See Nantong's November 26, 2003, submission. As such, in the Preliminary Determination, we were concerned about the reliability and quality of the information submitted by Nantong. After examining Nantong's claims thoroughly during verification, we find no evidence that Nantong did not act to the best of its ability in providing the necessary information to calculate a dumping margin. Specifically, during verification, with regard to resin content for Nantong's t-shirt bags, we verified Nantong's claim that the HD-resin content for bags ranges between 70 percent and 75 percent and that the LLD percentage ranges between 96 percent

and 99 percent. See Verification Report of Nantong dated April 15, 2004, at pages 6 and 7. Thus, since we verified that these percentage ranges are the minimum and maximum for each type of t-shirt bag, we find Nantong's allocation methodology to be reasonable. Although we would prefer specific resin content per-type of t-shirt bag, we find that this allocation methodology does not necessarily hinder our ability to calculate an accurate dumping margin, given the records Nantong keeps in the normal course of business.

With regard to ink consumption, we are not convinced that there is a correlation between bag size, the number of printed sides, and ink consumption. As Nantong observes, we reviewed numerous different types of t-shirt bags during verification and found that the size of the bag and the number of colors are not necessarily an accurate indicator of ink consumption. In addition, we verified Nantong's total ink consumption for the POI and total production for the POI and found no discrepancies. See Verification Report of Nantong, dated April 15, 2004, at page 9. Thus, we find Nantong's allocation methodology to be reasonable, given the information it keeps in its normal course of business.

With regard to scrap, we disagree with the petitioners' assertion that Nantong has 10 to 20 percent recycled scrap in all of its t-shirt bags. As we indicated in our verification report at page 7, company officials stated during verification that "{t}he percent of scrap used in a mixture can vary between 10 to 20 percent and can go as high as 50 percent in certain instances." This statement does not indicate necessarily that Nantong always has 10 to 20 percent recycled scrap in its production of t-shirt bags. Rather, it means simply that, for those bags which include recycled scrap, the percentage will be roughly between 10 to 20 percent. Therefore, we are not persuaded by the

petitioners' argument with respect to scrap. In addition, we verified Nantong's scrap consumption and found no discrepancies. See Verification Report of Nantong, dated April 15, 2004.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that the information is submitted by the established deadline, the information can be verified, the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, the interested party has demonstrated that it acted to the best of its ability, and the information can be used without undue difficulties.

Although Nantong was unable to submit factor information on a more-specific basis, we find that Nantong's submissions were timely, verifiable, and not so incomplete that we cannot calculate an accurate dumping margin using Nantong's information. Therefore, for the reasons stated above, we have used Nantong's FOP information for the final determination.

14. Rally Plastics Issues

A. Use of Facts Available for Direct Labor, Indirect Labor, and Electricity

Comment 24: The petitioners argue that the Department should use facts available to value Rally's direct labor, indirect labor, and electricity usage. The petitioners assert that the Department was unable to verify the usages Rally reported for these items. The petitioners assert further that, because Rally did not provide verifiable data when it was within its power to do so, it did not act to the best of its ability in responding to the Department's requests for information. Therefore, the petitioners assert, an adverse inference is warranted when the Department selects facts available.

The petitioners suggest that, as AFA, the Department should value Rally's direct labor, indirect labor, and electricity usage on the basis of the highest verified usage rates for any model reported by any respondent in this investigation.

Rally argues that the Department should not apply the highest rate reported for any respondent for electricity and labor because, although the Department was unable to verify the per-unit usage rates, the Department was able to verify the total electricity and labor consumption experienced by Rally during the POI. Rally contends that the Department's allocation of Rally's labor and electricity should not result in total usages that are higher than the total usages which the Department verified.

Department's Position: Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that the information is submitted by the established deadline, the information can be verified, the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, the interested party has demonstrated that it acted to the best of its ability, and the information can be used without undue difficulties.

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

We were unable to verify Rally's reported direct labor, indirect labor, and electricity usage rates. See the Department's verification report for Rally dated March 10, 2004, at pages 8 and 9. As is explained in the verification report, we were able to verify the usage amounts that were listed on model-specific usage worksheets for the individual models that we examined but the per-unit amounts we verified did not appear in Rally's FOP database for most of the models we examined. Rally claimed that this was due to a transcription error. Id.

We attempted to verify the FOP database Rally submitted in its December 1, 2003, supplemental questionnaire response. At no time did Rally alert us to the fact that it had made transcription errors until we asked at verification why the figures in the database did not match the figures Rally presented to us at verification. Contrast this to the behavior of Zhongshan, which, when it discovered errors in its response, notified us immediately of the errors and resubmitted a corrected response as quickly as it could. See Comment 28 below. Therefore, we find that Rally did not act to the best of its ability in reporting direct labor, indirect labor, and electricity usage rates in response to our questionnaire.

Because we were unable to verify Rally's reported direct labor, indirect labor, and electricity

usage rates, it is appropriate to use the facts available to restate these usage rates. Moreover, because Rally did not act to the best of its ability in reporting these usage rates, it is appropriate to use adverse inferences in restating these usage rates in accordance with section 776(b) of the Act. We were able to verify the total direct labor, indirect labor, and electricity Rally used during the POI. Therefore, it would be inappropriate to use facts available, adverse or otherwise, that resulted in a total usage greater than the actual usage which we verified. Therefore, as AFA, we have allocated the total direct labor, indirect labor, and electricity that we verified to Rally's reported sales. See the Rally final determination analysis memorandum dated June 9, 2004, for a description of our allocation methodology.

B. Use of Facts Available for Marine Insurance

Comment 25: The petitioners contend that Rally did not report marine insurance expenses and that Rally claimed in its October 1, 2003, response that marine insurance was included in ocean freight. The petitioners assert, however, that the Department found at verification that Rally did incur separate marine insurance expenses which it did not report. The petitioners argue that, because Rally did not report the marine insurance expenses it incurred, the Department should value these expenses on the basis of AFA. The petitioners suggest that the Department use, as AFA, the highest marine insurance expense placed on the record by any respondent to value Rally's marine insurance expenses.

Rally argues that the Department should not apply partial facts available because it has verified marine-insurance expenses on the record. According to Rally, the Department took the actual marine-insurance expenses incurred by Rally and placed them on the record. Rally contends

that the Department should use these expenses to calculate Rally's marine-insurance expenses.

Department's Position: Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

We found at verification that Rally did not report its marine-insurance expenses. See the verification report for Rally dated March 10, 2004, at page 5. Because Rally's transaction-specific marine-insurance expenses are not on the record, we must value such expenses based on the facts available. Furthermore, because Rally did not report such expenses or provide any explanation for not reporting such expenses in response to a specific request in our original questionnaire, we find that Rally did not act to the best of its ability to comply with our request for information. Therefore, in accordance with section 776(b) of the Act, the use of an adverse inference is warranted.

In this case, while we do not have the transaction-specific marine insurance expenses on the record of this investigation, we do have the total expense for each month of the POI. These total expenses can be found in Exhibit 6 of the Rally verification report dated March 10, 2004. Because we do not know the universe of sales to which these expenses apply, we have assumed, as an adverse inference, that all of Rally's marine insurance expenses apply to the CIF sales it reported in its U.S. sales database. Therefore, as AFA, we have allocated Rally's total marine insurance

expenses to the CIF sales it reported in its U.S. sales database and deducted these expenses in the determination of U.S. price.

C. Use of Facts Available for International Freight

Comment 26: The petitioners assert that Rally understated its international freight expenses. According to the petitioners, the Department found at verification that Rally used the weight from the packing list, which is a theoretical weight, to allocate international freight. The petitioners also contend that the Department found at verification that the weight on the packing list was greater than the actual weight. Therefore, the petitioners assert, because Rally allocated international freight using the higher theoretical weight, it understated its international freight expenses. The petitioners argue that, because the degree of understatement for most of the transactions cannot be known, the Department should adjust Rally's reported international freight expenses using as facts available the actual difference for the sales trace the Department placed on the record as an exhibit to its verification report.

Rally argues that the Department should not increase Rally's freight costs because it has verified the total freight costs. Rally contends that the Department was able to verify both its total freight costs and its allocation methodology. Rally also contends that its allocation methodology is not distortive. According to Rally, because the theoretical weight is within a range of 10 percent of actual weight, the allocation methodology should yield similar results whether the Department uses theoretical weight or actual weight.

Department's Position: We do not find that Rally understated its international freight expenses. Exhibit 5 of the Department's verification report dated March 10, 2004, makes it clear

that Rally calculated an international-freight factor for each container by dividing the expense by the total container weight from the packing list. Rally then calculated the transaction-specific expense by multiplying the international-freight factor by the transaction-specific weight from the packing list. In other words, Rally divided the expense by the total packing-list weight and then multiplied the quotient by the packing-list weight for the transaction. Because the total packing-list weight is simply the sum of the transaction-specific packing-list weights, Rally has not understated its international freight expenses. In fact, the petitioners' concern would only be warranted if Rally had divided the total expense by total theoretical weight and then multiplied the quotient by the transaction-specific actual weight. In addition, although the use of theoretical weight instead of actual weight might result in some distortion, we find that any such possible distortion is likely to be small because there is never more than a 10 percent difference between theoretical weight and actual weight. In fact, the Department's verification report dated March 10, 2004, at page 5 demonstrates that the actual differences experienced by Rally were usually less than 10 percent. Therefore, we have not adjusted Rally's reported international-freight expenses for the final determination.

15. Glopack Issues

A. Classification of Sales as EP or CEP

Comment 27: The petitioners contend that the Department should apply partial AFA to certain sales by Glopack because they were classified improperly and intentionally as export-price (EP) sales instead of as CEP sales. Specifically, the petitioners assert that the role played by Glopack's U.S. affiliate, Glopack Inc., in its business dealings with two unaffiliated customers in the United States was not divulged until the Department's verification of Glopack's response. During

the verification, the petitioners also assert, the Department learned that Glopack Inc. facilitates the transaction, negotiates the terms of sale, and clears the payments with respect to these customers. Citing Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, 68 FR 68341, 68342 (December 8, 2003), and Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, 69 FR 2566, and the accompanying Issues and Decision Memorandum at Comment 1 (January 16, 2004), the petitioners assert that typically the Department examines issues of the importer's identity, the sales agreements, and the chain of title in order to determine whether sales should be classified properly as EP or CEP sales. The petitioners argue that, because Glopack did not provide an adequate opportunity for the Department to determine whether such sales were reported properly as EP sales and precluded the Department from assessing the level of economic activity undertaken in the United States to facilitate these transactions, the Department should apply partial AFA to Glopack's sales to these customers in the United States.

Glopack argues that the sales in question were characterized properly as EP sales. Specifically, Glopack contends that Glopack Inc.'s role in certain transactions with the two customers is limited to only taking orders. Glopack asserts that the Department's verification report makes clear that Glopack Inc. does not have the ultimate authority to set prices and sales terms because Glopack Inc.'s actions are subject to final pricing approval by Glopack. Glopack explains further that Glopack Inc.'s involvement was necessary with respect to the sales in question because of the English-language barriers prevalent in communications with Glopack and because of money-wiring difficulties experienced by one customer in the United States. Glopack contends that the sales in question were characterized properly as EP sales because Glopack issued invoices to these

unaffiliated customers in the United States, the merchandise of these sales never entered Glopack Inc.'s inventory, and Glopack Inc. did not incur any movement or selling expenses or earn profit on these transactions. Further, citing section 772(a) of the Act and AK Steel Corporation v. United States, 226 F.3d 1361, 1369-70 (Fed. Cir. 2000) (AK Steel), Glopack argues that the designation of sales in question was correct because these sales were made by Glopack prior to the date of importation and were made directly to unaffiliated customers in the United States.

Department's Position: We have examined the record and find that the sales in question should have been classified as CEP transactions. We do not find, however, that use of partial AFA is warranted. Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d)."

During the POI Glopack sold subject merchandise to two customers in question through its affiliate in the United States, Glopack Inc. Glopack reported some of these transactions as CEP transactions and the remainder of its U.S. sales of subject merchandise as EP transactions. After reviewing the evidence on the record of this investigation, we have determined that all of Glopack's reported EP transactions should be classified as CEP sales because these sales were made in the

United States by a company affiliated with Glopack.

Such a determination is consistent with section 772(b) of the Act and the U.S. Court of Appeals in AK Steel. In that case, the court noted that "the plain meaning of the language enacted by Congress in 1994 focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making two factors dispositive of the choice between the two classifications." AK Steel at 1369.

With respect to the first factor, where the sale takes place, the court stressed the presence of an important modifier ("in the United States") in the definition of CEP and the presence of different modifier ("outside the United States") in the definition of EP. AK Steel at 1369, citing section 772(b) of the Act. Thus, the court concluded that "the critical differences between EP and CEP sales are whether the sales or transaction take place inside or outside the United States." The court explained further that "{a} sales contract executed in the United States between two entities domiciled in the United States cannot generate a sale 'outside the United States'… for an EP classification to be proper." AK Steel at 1370.

With respect to the second factor, whether the foreign producer or exporter and the U.S. importer are affiliated, the court stated that "the statute also distinguishes the categories based on the participation of an affiliate as the seller." AK Steel at 1370. The court explained that "{t}he definition of CEP includes sales made by either the producer/exporter or 'by a seller affiliated with the producer or exporter'" whereas EP sales "can only be made by the producer or exporter of the merchandise." AK Steel at 1370-1371, citing section 772(a) of the Act. Accordingly, the court concluded that, "while a sale made by a producer or exporter could be either EP or CEP, one made

by a U.S. affiliate can only be CEP." The court continued that "{l}imiting affiliate sales to CEP flows logically from the geographical restriction of the EP definition, as a sale executed in the United States by a U.S. affiliate of the producer or exporter to a U.S. purchaser could not be a sale 'outside the United States.'" AK Steel at 1371. Referring to the words "seller" and "sold" in the 1994 CEP definition, the court in AK Steel mentioned that the word "seller" is defined in Black's Law Dictionary as "one who has contracted to sell property" and that the word "sold" was defined in NSK Ltd. v. United States, 115 F. 3d 965, 973 (Fed. Cir. 1997) as to require both a "transfer of ownership to an unrelated party and consideration." AK Steel at 1371.

The evidence on the record of this investigation supports our determination to classify Glopack's reported EP sales to two customers as CEP sales. Specifically, the information on the record suggests that Glopack Inc. acted as the "seller" because the material terms of sale, such as price, quantity, terms of payment, and terms of delivery were negotiated directly between Glopack Inc. and customers in the United States. See Memorandum to File From Dmitry Vladimirov, entitled "Verification of the Responses of Shanghai Glopack, Inc. (Glopack), Sea Lake Polyethylene Enterprise Ltd. (Sea Lake), and Glopack Inc. in the Antidumping Duty Investigation on Polyethylene Retail Carrier Bags (PRCBs) from the People's Republic of China (PRC)", dated April 14, 2004, at page 12. In addition, contrary to Glopack's assertion that Glopack Inc.'s pricing decisions are subject to approval by Glopack, the information on the record indicates otherwise. Based on sample sales documents provided by Glopack in its various submissions during this proceeding as well as at verification, we observed that Glopack Inc. actually dictates the purchase price to Glopack as reflected in its purchase orders. Further, there is no indication that Glopack challenges

the prices quoted by Glopack Inc., as the prices in Glopack's invoices issued to Glopack Inc. or to customers in question matched those quoted by Glopack Inc. in its purchase orders. The information on the record also shows other elements of the sale occurred in the United States. Specifically, the information on the record shows clearly that Glopack Inc. paid in the United States for various services incidental to delivering the product from the port of exit to the customers' location (e.g., ocean freight, U.S. customs duties, etc.) on behalf of Glopack and that Glopack Inc. was paid in full in the United States by customers for the product and all relevant expenses incurred by Glopack Inc.

Our general knowledge suggests that, to afford itself the collateral for payment owed for the provision of ocean-freight services, the titleholder releases the title to goods to the consignee of the merchandise or the ultimate customer, and the merchandise itself will be released by the freight forwarder to the consignee or the ultimate customer only at the time when the freight amount owed is collected in full. Because the information on the record indicates that Glopack Inc. paid the freight due in the United States, the transfer of title to goods in the United States could not have been possible without the direct involvement of Glopack Inc.

Glopack also emphasizes Glopack Inc.'s minimum involvement with sales to the customers in question and stresses the fact that the product of sales in question never entered Glopack Inc.'s inventory. Prior to the court's ruling in AK Steel, the Department used a three-part test (PQ Test) to determine whether sales made by U.S. affiliates could be classified properly as EP sales. Specifically, in AK Steel the court observed that to warrant EP classification under the Department's methodology the following three criteria of the PQ Test must be met: "1) the subject merchandise

has to be shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent; 2) direct shipment from the manufacturer to the unrelated buyer was the customary channel for sale of this merchandise between the parties involved; and 3) the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer." AK Steel at 1365. In AK Steel, however, the court stated that "the test developed by Commerce…actually does not directly examine the legal relationship between the producer and the importer, but rather seeks to determine the role played by the importer in the transaction." AK Steel at 1369. Further, the court explained that, "if Congress had intended the EP versus CEP distinction to be made based on…the relative importance of each party's role, it would not have written the statute to distinguish between the two categories based on the location where the sale was made and the affiliation of the party that made the sale." AK Steel at 1372. As such, the court in AK Steel concluded that the Department's use of the PQ Test is invalid because "Congress opted for what can be seen as a structural approach to defining EP and CEP sales, not the function-driven approach of the PQ Test." Thus, Glopack's emphasis on Glopack Inc.'s involvement with sales in question is unfounded.

Accordingly, we find that, with respect to the customers in question, the product was "sold, or agreed to be sold" by Glopack Inc. in the United States because the "transfer of ownership" occurred in the United States between the customers in question and Glopack's U.S. affiliate. As such, CEP classification is warranted with respect to these transactions.

Second, we do not find the use of partial AFA is warranted. The information on the record does not support conclusively the petitioners' allegation that the sales in question were misclassified

intentionally as EP sales. Because the sales in question constitute a minuscule portion of all reported sales, Glopack would not have obtained a significant benefit from the misclassification. For those transactions which we have determined should be characterized properly as CEP sales, we calculated U.S. price in accordance to section 772(b) of the Act. We based CEP on the packed, delivered, duty-paid prices to unaffiliated purchasers in the United States. Based on the information available on the record with respect to the other reported CEP transactions to the same customers, we calculated deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. customs duties, U.S. brokerage and handling expenses, U.S. inland freight, U.S. warehousing expenses, and U.S. container-stripping expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit expenses), inventory carrying costs, and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

16. Zhongshan Issues

A. Use of Adverse Facts Available for Sales Through Reliable Plastic Bags Manufacturing Ltd.

For purposes of the Preliminary Determination, the Department applied AFA to sales Zhongshan made through Reliable Plastic Bags Manufactory Ltd. As explained in the Preliminary Determination, the Department did not use the U.S. sales data submitted by Zhongshan on January 12, 2004, because the information was submitted four days before the due date of the preliminary

determination. The Department verified the January 12, 2004, U.S. sales data following the Preliminary Determination.

Comment 28: The petitioners argue that the Department should reject Zhongshan's January 12, 2004, submission, determine that Zhongshan did not cooperate by acting to the best of its ability in the investigation, and calculate Zhongshan's dumping margin based on partial facts available, in accordance with section 776 of the Act. The petitioners claim that Zhongshan's January 12, 2004, submission is an unsolicited questionnaire response constituting a substantial revision to the information Zhongshan submitted previously. Citing Nippon Steel Corp. V. United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003), the petitioners assert that, because Zhongshan did not report this critical information to the Department in a timely manner, it did not act to the best of its ability and was uncooperative. The petitioners contend that by accepting a substantially new submission immediately before the Preliminary Determination raises questions as to the integrity of the deadlines established in this and future investigations and threatens the petitioners' right to comment on factual submissions.

Zhongshan argues that the petitioners' allegations and characterizations of its January 12, 2004, submission are unfounded. Zhongshan asserts that its submission was a supplemental submission that corrected errors in the original questionnaire response submitted in good faith, was on a timely basis, and was not an "unsolicited questionnaire response" as characterized by the petitioners. Zhongshan argues that the Department has analyzed the information, issued a supplemental questionnaire, and verified the data. In addition, Zhongshan argues that it has acted to the best of its ability and has cooperated fully with the Department by providing complete and

accurate responses to the Department's questionnaires. Citing the Preliminary Determination at 66 FR 3548, Zhongshan claims that the circumstances stated by the Department to support its decision to use partial AFA in the preliminary determination no longer exist and that the petitioners have not presented any new justifications that would allow the Department to apply partial AFA for the final determination. Zhongshan contends that, given the accuracy of the information submitted on the record and the lack of prejudice to any interested parties from its use, the Department should use the U.S. sales data submitted on January 12, 2004, for the final determination.

Department's Position: The circumstances to support our decision to use partial AFA in our determination of Zhongshan's preliminary margin no longer exist because we have verified the information contained in Zhongshan's January 12, 2004, submission. The petitioners have not presented any new justifications that would necessitate the use of partial AFA for the final determination. Therefore, given that we have analyzed and verified the sales made by Reliable Plastic Bags Manufacturing Ltd. to the United States, we have used those sales in the final determination.

B. Ministerial-Error Allegations

Comment 29: The petitioners claim that the Department made certain ministerial errors in the preliminary determination and request that the Department correct these ministerial errors. The petitioners argue that, because the Department has not requested that Zhongshan resubmit its databases after verification, the Department should include the petitioners' suggested SAS programming language to bring the databases into conformity with Zhongshan's Pre-Verification Corrections, as well as other findings mentioned in the Department's verification report. To account

for the changes Zhongshan included in the reported values for market-economy inputs in its "Pre-Verification Corrections," the petitioners suggest additional SAS programming language. Finally, the petitioners argue that the Department should correct certain ministerial errors with respect to Zhongshan's indirect labor and scrap by incorporating their suggested SAS programming language.

Zhongshan responds that the Department should reject the petitioners' request to correct so-called ministerial errors the petitioners have provided no evidence to support their assertion that the items in question are ministerial errors.

Zhongshan argues that the Department should correct certain ministerial errors identified by Zhongshan at the preliminary determination. Zhongshan contends that the Department agreed with Zhongshan's allegations in the Amended Preliminary Determination and that the Department should correct these errors for the final determination.

Department's Position: We have corrected certain ministerial errors for the final determination. In addition, we have made corrections to Zhongshan's data as a result of our findings at verification. See Zhongshan Final Analysis Memorandum, dated June 9, 2004.

C. Use of HTS Subheading 5607.90.02 to Value Cotton Rope/String

Comment 30: Zhongshan argues that the Department's use of HTS subheading 5607.90.02 in its calculation of a surrogate value for cotton rope/string yields an aberrational result because the subheading did not exist in 2002-2003. Zhongshan contends that the data is flawed and unreliable because it reflects imports misclassified under the old tariff nomenclature (1996 HTS). Zhongshan cites World Customs Organization, Harmonized System Explanatory Notes, vol. 1, 2d. ed. (1996), at 856-857, stating that the former HTS subheading 5607.90.02 is a basket category that covered

"cordage, cable ropes and twine of cotton" whether or not impregnated, coated, covered, or sheathed with rubber or plastics. Zhongshan asserts that it does not use cotton rope impregnated, coated, or covered with any additional materials; therefore, it contends, it would be inappropriate to value cotton rope/string using an average that incorporates values for more expensive products.

In rebuttal, the petitioners assert that Zhongshan's argument that import data under Indian HTS subheading 5607.90.02 is flawed and unreliable is not credible. The petitioners contend that up to and including March 2003, the end of the POI, Indian HTS 5607.90.02 was described as "cordage, cable, ropes, and twine, of cotton" and that starting in April 2003, after the POI, subclassification 5607.90.02 became 5607.90.20. The petitioners state that the same description applies to both categories. The petitioners argue that, given Zhongshan's description of cotton rope in its questionnaire responses, the appropriate classification is 5607.90.02.

Zhongshan argues that the Department should reject the petitioners' comments and apply surrogate values to material inputs that are more product-specific, qualitative, and contemporaneous based on invoice-specific information Zhongshan provided in its March 22, 2004, submission.

Department's Position: We find that Indian HTS subheading 5607.90.02 is the appropriate classification to use when calculating a surrogate value for cotton rope/string. Further, we examined monthly data for 5607.90 from the World Trade Atlas and confirmed that 5607.90.02 existed through March 2003, the end of the POI, and was only replaced by 5607.90.20 after the POI. Further, as explained in response to Comment 11, the Department prefers to use import statistics instead of invoices which may reflect a self-selecting bias. Therefore, the Indian import values for merchandise imported under HTS 5607.90.02 represent the best available information on which to

base the surrogate value for cotton rope/string.

D. Valuing Cardboard Inserts using HTS Subheadings

For purposes of the preliminary determination, the Department applied a surrogate value for cardboard inserts using the weighted-average POI unit value of merchandise imported into India under HTS subheadings 4810.29.00 and 4805.29.01.

Comment 31: The petitioners argue that the Department's preliminary tariff classification of cardboard inserts are not supported by the record and understate the surrogate value of cardboard inserts. The petitioners assert that, even though Hang Lung, et al, advocated the Department's use of tariff classifications for cardboard inserts, each respondent has not specified on the record of the investigation the type of cardboard insert (treated or untreated) it used in the production of subject merchandise. Therefore, the petitioners claim, Hang Lung, et al, have not provided the specificity necessary to determine the most appropriate classification of the input. The petitioners claim that the Department should apply instead a surrogate value for treated cardboard inserts using Indian import statistics under HTS subheading 4810.39.09. For untreated cardboard inserts, the petitioners claim, the Department should apply an average of the per-unit values for HTS categories 4805.70.09 and 4805.80.09, as provided in the petitioners' December 15, 2003, submission.

United Wah argues that, since it reported market purchases for carton inserts, the Department should continue to use those market-economy prices for United Wah. Zhongshan cites the World Customs Organization, Harmonized System Explanatory Notes, 3d ed. (2002), arguing that, because HTS subheading 4805.29.01 was deleted from the Indian tariff schedule as of January 1, 2002, as part of a restructuring and updating of Chapter 48, the trade data it captures is

unreliable. Zhongshan contends that a review of the relevant excerpt from India's tariff schedule shows that the subheading was in fact deleted.

In addition, Zhongshan requests that the Department reconsider its decision to reject Zhongshan's March 23, 2004, submission containing invoice-specific surrogate-value information for cardboard inserts. Zhongshan contends that it was prevented from submitting this information by the March 22, 2004, deadline because the vendor for the cardboard inserts did not relent from its refusal to allow Zhongshan to place its invoice prices on the record until March 23, 2004. Citing NTN Bearing Corp. V. United States, 74 F.3d 1204, 1208 (Fed. Cir. 1995), Zhongshan asserts that "it is the duty of ITA to determine dumping margins as accurately as possible." Zhongshan cites Bowe-Passat, et al., v. United States, 17 CIT 335, 338 (1993), asserting that the Department "routinely accepts and rejects untimely filed submissions depending on the circumstances of each case."

Finally, Zhongshan states that "it is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it," citing American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 539 (1970). In the interest of justice and the Department's legal obligation to calculate Zhongshan's antidumping duty margin as accurately as possible, Zhongshan requests that the Department permit Zhongshan to resubmit the invoice-specific price data in question.

The petitioners agree that the World Customs Organization restructured HTS Chapter 48 in 2002. The petitioners argue that data on the record, however, indicate that these changes were not

implemented in India until April 2003.

In addition, the petitioners argue that the Department should not reconsider its rejection of Zhongshan's March 23, 2004, submission. The petitioners maintain that the Department has acted in accordance with its regulations. The petitioners contend that Zhongshan's explanation, that a vendor refused to allow Zhongshan to place invoice prices on the record in time to meet the March 22, 2004, deadline, is not credible. The petitioners assert that Zhongshan placed invoice prices from the same vendor on the record in its timely filed March 22, 2004, submission. Finally, the petitioners argue that Zhongshan's explanation regarding its March 23 submission is misleading and, therefore, the Department should not reconsider its rejection of Zhongshan's March 23 submission.

Department's Position: We find that HTS subheadings 4805.70.09 and 4805.80.09 are more appropriate for use as surrogate values for untreated cardboard inserts because they provide for specific weights whereas the import statistics for HTS subheadings 4805.29.01 do not provide weight information. Therefore, for the final determination, we have used HTS subheadings 4805.80.09 and 4805.70.09 for untreated cardboard inserts instead of HTS subheading 4805.29.01.

We have not set aside HTS subheading 4810.29.00 in favor of HTS subheading 4810.39.09 as the petitioners urge. The petitioners have not demonstrated that the use of HTS subheading 4810.29.00 is inappropriate or that the use of HTS subheading 4810.39.09 is more appropriate for use as the basis of calculating a surrogate value for treated cardboard inserts. The Hang Lung, et al, parties submitted their assertion on November 20, 2003. Although we did not specifically examine this particular representation at verification, the representation was subject to

verification. Furthermore, the petitioners have provided no evidence or argument to support their claim that the representation by Hang Lung, et al, of the type of treated cardboard inserts they use is "illogical." Therefore, we have continued to use HTS subheading 4810.29.00 in our calculation of the surrogate value for treated cardboard inserts.

Because none of the respondents specified the type of cardboard insert (treated or untreated) it used in the production of subject merchandise, we have applied our methodology from the Preliminary Determination (i.e., we valued cardboard inserts using the weighted-average of the surrogate values for treated and untreated cardboard inserts). For most respondents, we used the weighted average of the values we found for HTS subheadings 4810.29.00, 4805.70.09, and 4805.80.09. With respect to Rally Plastics, however, we observed at verification that the company used a cardboard insert in excess of 400 grams. See the Department's verification report for Rally, March 10, 2004, at 7. Therefore, we based the surrogate value for Rally's cardboard inserts on the weighted-average of the values we found for HTS subheadings 4810.29.00 and 4805.80.09 (which applies to cardboard weighing 225 or more grams per square meter).

Although we have reviewed Zhongshan's request that we reconsider our decision to reject Zhongshan's March 23, 2004, surrogate-value submission, for the reasons outlined in our April 14, 2004, letter rejecting the untimely submission, we have not reversed that decision.

E. Surrogate Value for Rubber Rope

Comment 32: Zhongshan argues that the Department should not use the Indian import statistics under HTS subheading 5604.10.00 in its calculation of a surrogate value for rubber rope because the subheading provides for textile-covered rubber thread and cord. Zhongshan argues that

it does not use rubber rope covered in textile material in its production of subject merchandise. Citing its March 22, 2004, submission, Zhongshan claims that HTS subheading 4007.00.00 is a more appropriate subheading for the Department to use when applying a surrogate value for rubber rope for the final determination.

In rebuttal, the petitioners state that Zhongshan's November 20, 2003, submission contains a table of surrogate values in which Zhongshan identifies a certain material input as "rubber rope" and classified it under HTS subheading 5604.10, the tariff category for "rubber thread and cord, textile covered." The petitioners argue that nowhere in the submission did Zhongshan elaborate further on its description of rubber rope or indicate that it was not "textile covered."

The petitioners argue that Zhongshan's characterization of rubber rope in its March 22, 2004, submission and April 27, 2004, case brief is incorrect and should be treated by the Department as new factual information and rejected as untimely. The petitioners argue that, although Zhongshan purports to offer a new HTS classification for rubber rope, the clear purpose of its March 22, 2004, and April 27, 2004, submissions is to correct the Department's previous understanding as to the physical characteristics of the input. The petitioners contend that such information is factual in nature and cannot be verified if submitted after verification. The petitioners claim that, because Zhongshan's submission was made after the Department conducted its verification, it should be treated as untimely new factual information and should not be considered by the Department for the final determination.

In addition, the petitioners claim that, even if the Department were to consider valuing Zhongshan's rubber rope input using HTS item number 4007.00.00, the Department should use the

petitioners' unit value of $1.92/kg as set forth in its November 20, 2003, surrogate-value submission.

Department's Position: The record does not support Zhongshan's March 22, 2004, assertions that the type of rubber rope Zhongshan used for subject merchandise is not textile covered and should be classified under HTS subheading 4007.00.00. In addition, because Zhongshan's characterization of rubber rope as reported in its March 22, 2004, submission occurred after our verification, we are unable to determine with certainty that the type of rubber rope characterized by Zhongshan in its March 22, 2004, submission is in fact the type of rubber rope Zhongshan used in its production of subject merchandise. Therefore, it is not appropriate to use HTS item number 4007.00.00 as suggested by Zhongshan in its case brief. Instead, we have used HTS item number 5604.10.00 when applying a surrogate value for rubber rope.

F. Surrogate Value for Clip (Loop) Handles

In the Preliminary Determination, the Department applied a surrogate value for clip (loop) handles using the weighted-average POI unit value of merchandise imported into India under HTS subheading 3926.90.09.

Comment 33: Zhongshan argues that the Department should reject its use of HTS subheading 3926.90.09 in its calculation of a surrogate value for clip (loop) handles because the subheading covers articles of plastic much more advanced in nature and is not intended to cover articles of plastic as simple as the plastic clip (loop) handles Zhongshan used for subject merchandise. Zhongshan argues that the Department should value clip (loop) handles using HTS subheading 3917.29.09 which covers "all other handles" made of plastic tubes, pipes, or hoses.

In rebuttal, the petitioners argue that the Department has valued Zhongshan's clip (loop) handles correctly using HTS item number 3926.90.09. The petitioners contend that Zhongshan's clip (loop) handles are clearly classifiable under this subheading because they are similar in their level of processing, manufacture, and finish to many of the specifically enumerated articles that appear under heading 3926. The petitioners argue that the tariff classification asserted by Zhongshan does not apply to finished handles because the entire heading (3917) applies to relatively unfinished plastic products such as tubes, pipes, hoses, and fittings. The petitioners contend that nothing suggests that finished handles for plastic carrying bags fits into the tariff category 3917. The petitioners argue further that, even if Zhongshan's clip handles fell under the classification of tubes, pipes, and hoses, they still would be classified under heading 3926 by virtue of the application of Rule 3(c) of the general rules of interpretation to the Indian HTS.

Department's Position: Zhongshan has not demonstrated that HTS subheading 3917.29.09 is more appropriate to use as the basis of calculating a surrogate value for clip (loop) handles than 3926.90.09, considering that items classified under heading 3917 include tubes, pipes, hoses, and fittings of plastics (e.g., flexible tubes, pipes and hoses, having a minimum burst pressure of 27.6 Mpa.). Because heading 3926 is more similar, we have continued to use HTS subheading 3926.90.09 in our calculation of the surrogate value for clip (loop) handles.

G. Whether the Department Should Deduct Bank Fees

Comment 34: Zhongshan argues that the Department should not deduct bank fees associated with payments to Reliable or Prosperity Plastic Bags Manufacturing Company by their customers. Zhongshan contends that it did not report such fees as a direct selling expense because

the fees are covered in a separate account typically under SG&A. Zhongshan argues that an item for bank charges was included in the SG&A rate calculated for the surrogate producer selected by the Department for the Preliminary Determination. Zhongshan argues that an additional deduction for bank fees in conjunction with customer payments would result in a double deduction.

Department's Position: We did not make the deduction as claimed in either the preliminary or final determination. The Department's practice is to treat incurred bank fees as a selling expense because it is an expense incurred incidental to selling the merchandise to the customer. It our practice not to make adjustments for circumstance-of-sale expenses in NME cases. See Final Results of the Administrative Review of Cut-to-Length Carbon Steel Plate from Romania, 66 FR 2879 (January 12, 2001) and accompanying Issues and Decision Memorandum at Comment 7b. Therefore, for the final determination, we have not made a deduction for bank fees.

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 determination of the investigation and the final dumping margins for this case in the Federal Register.

Agree _____ Disagree _____

_____

James J. Jochum
Assistant Secretary
for Import Administration

_____

(Date)