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MEMORANDUM TO: Jeffrey A. May
Acting Assistant Secretary
for Import Administration

FROM: Laurie Parkhill
Acting Deputy Assistant Secretary, Group I
Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Color Television Receivers from the People's Republic of China

Summary

We have analyzed the comments of the interested parties in the antidumping duty investigation of certain color television receivers (CTVs) from the People's Republic of China (PRC). As a result of our analysis of the comments received from interested parties, we have made changes in the rate assigned to the four participating respondents in this case, Konka Group Company, Ltd. (Konka); Sichuan Changhong Electric Co., Ltd. (Changhong); TCL Holding Company Ltd. (TCL); and Xiamen Overseas Chinese Electronic Co., Ltd. (XOCECO). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from parties.

General Issues

1. Market-Oriented Industry (MOI) Claim
2. Respondent Selection
3. Critical Circumstances
4. Updating the PRC Labor Rate
5. Indian Imports of Small Quantities
6. Surrogate Value for Electricity
7. Market Economy Purchases from Indonesia, Korea, and Thailand
8. Market-Economy Purchases from Hong Kong Trading Companies
9. Surrogate Value Data Obtained from www.infodriveindia.com
10. Using Market-Economy Purchases Made by one PRC Respondent to Value the Factors of Production for Other PRC Respondents

11. Surrogate Value for 25-Inch Curved CPTs
12. Surrogate Value for 29-inch CPTs
13. Surrogate Value for Speakers
14. Selection of the Appropriate Surrogate Financial Statements
15. Adjustments to the Surrogate Financial Ratios to Account for Freight, Price Adjustments, Non-Applicable Selling Expenses, Packing, and Taxes
16. Adjustments to the Surrogate Factory Overhead Ratios
17. Additional Adjustments to the Surrogate Financial Ratios for BPL, Onida Saka, and Videocon
18. Additional Adjustments to the Surrogate Financial Ratios for Calcom, Kalyani and Matsushita
19. Additional Adjustment to the Surrogate Financial Ratios to Account for Selling, General, and Administrative (SG&A) Labor
20. Treatment of Finished Goods in the Surrogate Financial Ratio Calculations
21. Weighted- vs. Simple-Average Surrogate Financial Ratios
22. Clerical Errors in the Preliminary Determination
23. Corrections Arising from Verification

Company-Specific Issues

24. New Factual Information in Changhong's Surrogate Value Submission
25. Changhong Market-Economy Purchases
26. Date of Sale for Konka
27. TCL's Unreported U.S. Sales
28. TCL's Brokerage and Handling Expenses
29. Surrogate Value for TCL's Magnetic Circle Inductors
30. Surrogate Value for TCL's Aluminum and Iron Heat Sinks and Heating Plates
31. Distance from TCL's Factory to TCL Hong Kong
32. TCL's Energy Consumption
33. Use of TCL's "Actual" SG&A Rate
34. Use of Total Adverse Facts Available for XOCECO
35. Screen Type Code for XOCECO
36. XOCECO's U.S. Warranty Expenses
37. XOCECO's U.S. Warehousing and Other Transportation Expenses
38. XOCECO's Supplier Distances and Supplier Modes of Transportation
39. Reclassification of Certain of XOCECO's Components as "Miscellaneous"
40. XOCECO's Packed Weights
41. Offset for Sales of Tin Scrap Generated During XOCECO's Production Process
42. Labor Hours for XOCECO's Printed Circuit Board (PCB) Factory
43. XOCECO's Projection Factory Weights
44. XOCECO's Electricity Consumption

Background

On November 28, 2003, the Department of Commerce (the Department) published the preliminary determination in the less-than-fair-value investigation of CTVs from the PRC. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 68 FR 66800 (Nov. 28, 2003) (Preliminary Determination). The products covered by this investigation are CTVs. Changhong, Konka, and TCL requested a hearing, which was held at the Department on March 3, 2004. The period of investigation (POI) is October 1, 2002, through March 31, 2003.

We invited parties to comment on the preliminary determination. We received comments from the petitioners (i.e., Five Rivers Electronic Innovations, LLC, the International Brotherhood of Electrical Workers, and the Industrial Division of the Communications Workers of America), each of the four participating respondents (i.e., Changhong, Konka, TCL, and XOCECO), one additional PRC exporter of subject merchandise (i.e., Philips Consumer Electronics of Suzhou Ltd. (Philips)), three U.S. importers of subject merchandise (i.e., Apex Digital Inc. (Apex); Sears, Roebuck & Co. (Sears); and Wal-Mart Stores, Inc. (Wal-Mart)), and the China Chamber of Commerce for Imports and Exports of Machinery and Electronic Products (CCME). Based on our analysis of the comments received, as well as our findings at verification, we have changed the weighted-average margins from those presented in the preliminary determination.

Margin Calculations

We calculated export price (EP), constructed export price (CEP), and normal value (NV) using the same methodology stated in the preliminary determination, except as follows:

- We revised the data contained in the respondents' U.S. sales listings and factors of production databases, based on our findings at verification. See Comment 23;

- We used the 2001 PRC labor rate (i.e., $0.90 per hour) in our calculations for the final determination. We note that this is the most contemporaneous rate published on the Department's website as of the date of the final determination. See Comment 4;

- We revised our calculation of the average surrogate values for certain components derived from Indian import data to exclude aberrational data. See Comment 5;

- Regarding purchases of inputs from Hong Kong, we have accepted the prices paid by Changhong and XOCECO for purposes of the final determination because such purchases were made from market-economy suppliers in market-economy currencies. Further, for Konka and TCL, we have relied on the transfer prices between these companies and their

affiliated suppliers located in Hong Kong, only where these prices are set in market economy currencies and we are satisfied that they are at arm's length prices. In cases where we found that the prices are not at arm's length, we adjusted them to an arm's-length basis by adding an amount for the affiliate's general and administrative expenses. See Comment 8;

- We relied on Changhong's market-economy purchases, instead of a surrogate value, to value 29-inch curved CPTs in our calculations for this company. See Comment 12;

- We adjusted our calculations of the surrogate values for 29-inch curved and 29-inch flat CPTs to reclassify two CPTs originally included in the curved CPT data as flat CPTs, based on information obtained at the verification of TCL. See Comment 12;

- We revised the surrogate value for speakers to base it on data from Infodriveindia placed on the record by the Department on March 17, 2004. See Comment 13;

- We relied on the financial statements of two additional surrogate producers (i.e., Kalyani Sharp Indian Limited (Kalyani) and Matsushita Television and Audio Limited (Matshushita)) to determine the surrogate financial ratios in this case. Further, we made specific adjustments to our calculations which are detailed in the April 12, 2004, memorandum from the Team to the file entitled, "Final Factors of Production Memorandum." See Comment 14 through Comment 21;

- We corrected certain clerical errors contained in the preliminary margin programs for Konka and TCL. See Comment 22;

- We revised the date of sale for certain of Konka's U.S. transactions to be invoice date based on our findings at verification. Accordingly, because all of the invoice dates in question are outside the POI, we have disregarded these sales for the final determination. See Comment 26;

- We assigned a margin to TCL's unreported sales using adverse facts available (AFA). See Comment 27;

- We revised the surrogate values used in our calculations for TCL for magnetic circle inductors, choke coils, aluminum and iron heat sinks and heating places, based on our verification findings. See Comment 29 and Comment 30;

- We revised the distance from TCL's factory to the port based on our findings at verification. See Comment 31;

- We relied on XOCECO's U.S. warehousing and other transportation expenses because we find that we now have accurate information on the record with respect to these expenses. See Comment 37;

- In the preliminary determination, we found that XOCECO failed to include in its factors of production database the distances and modes of transportation from non-market economy (NME) suppliers, and as a result we based this information on AFA. Because XOCECO supplied certain additional information after the preliminary determination, we have used this additional information in our calculations for the final determination. Where this information was not provided, or was not provided in a useable manner, we have continued to base the distances and modes of transportation on AFA. See Comment 38;

- In the preliminary determination, we valued certain inputs reported by XOCECO using a "miscellaneous" harmonized tariff schedule (HTS) category. Because XOCECO has now provided better descriptions of these items, we have valued them using more appropriate surrogate values for purposes of the final determination. See Comment 39;

- We granted XOCECO a by-product offset for its sales of tin scrap generated during the production process. See Comment 41;

- We adjusted the per-piece labor amount reported for each part in the projection factory by the average of the percentage differences noted at verification, as facts available. See Comment 43; and

- We based XOCECO's electricity consumption on AFA because XOCECO was unable to substantiate its allocation methodology at verification. As AFA, we applied the highest reported CONNUM-specific electricity consumption rate to each of the remaining CONNUMs. See Comment 44.

Discussion of the Issues

I. General Issues

Comment 1: *Market-Oriented Industry (MOI) Claim*

In July 2003, Changhong requested that the Department make a determination that the CTV industry in the PRC is an MOI, and it provided data on its selling and pricing practices with respect to CTVs. After analyzing this claim, we notified Changhong that it must be made on behalf of the CTV industry as a whole, rather than on behalf of a specific exporter. Based on this guidance, in August and September 2003, Changhong, Konka, TCL, and XOCECO, as well as three additional PRC exporters of subject merchandise (i.e., Haier Electric Appliances International Co. (Haier), Philips, and Shenzhen

Chaungwei-RGB Electronics Co., Ltd. (Skyworth)) submitted additional information to show that the CTVs industry in the PRC is market-oriented. Again, we analyzed this claim and found that it did not sufficiently address the three prongs of the Department's MOI test (see below). As a consequence, we notified the respondents that we were unable to conclude that the experiences of the firms making the claim are representative of the CTV industry in the PRC.

In December 2003, XOCECO submitted non-public information purportedly delineating the ownership, and production levels, of the top ten television producers in the PRC. XOCECO did not include in this submission, however, any certifications from the companies from whom this information was obtained, nor did it submit the majority of the reports on which it relied in making its arguments. Based on a request from the Department, XOCECO resubmitted this document on behalf of the CCME on March 17, 2004. In this revised submission, XOCECO and the CCME provided the reports on which its arguments were based, including English-language translations.

In February 2004, the CCME filed a case brief in which it argued that the information submitted by the respondents in this case is sufficient for the Department to find that the CTV industry in the PRC is market-oriented. Specifically, the CCME argues that the data on the record meets the Department's requirement that the claim cover "virtually all" of the industry in question because it covers an "overwhelming majority" of the CTV industry. Moreover, the CME contends that this data demonstrates that each of the three prongs of the MOI test is met in this case.

Regarding the first prong (i.e., government control over prices or production), the CCME contends that there is virtually no government or state control over setting pricing or production amounts within the PRC CTV industry. Specifically, the CCME maintains that the government's role is limited to a similar level of regulation found in other countries (including the United States). As support for this contention, the CCME asserts that the PRC government not only issued a directive in 1992 which ordered the deregulation of the consumer electronics industry, but it also enacted the Company Law of the PRC, which permits companies to operate independently from the PRC government. Against this backdrop, the CCME asserts that CTV producers: 1) retain sole discretion in making decisions regarding products, prices, and quantities; 2) have complete independence over the selection of suppliers; 3) have the right to enter into binding contracts for the sale of CTVs; and 4) can negotiate financing and use profits free of government oversight. According to the CCME, this freedom from governmental control is reflected in the most recent report by the United States Trade Representative concerning the PRC's compliance with its obligations to the World Trade Organization (WTO); specifically, the CCME notes that, although this report lists products on which the PRC government maintains price controls, CTVs are not included. Finally, the CCME asserts that the PRC government does not control individual CTV producers any more than it does the CTV industry as a whole, given that no PRC government official serves on the board of directors of any CTV company. As evidence of the government's lack of involvement in the industry, the CCME offers the fact that the CTV industry in the PRC is characterized not only by a rapid growth in output, but also by intense brand competition which has led to a skewed depression of prices and ultimately bankruptcy of the less efficient CTV producers. Indeed, the

CCME asserts that the ability of the CTV industry to react to market forces is vital in order for it to remain viable in today's global marketplace, in light of the fact that the CTV market is highly elastic.

Regarding the second prong (i.e., private or collective ownership), the CCME argues that the CTV industry in the PRC is characterized by private ownership, with only an insignificant portion of the industry either collectively-owned or owned by government-controlled holding companies. Indeed, the CCME asserts that foreign investment is prevalent in both the CTV industry and the industry producing cathode ray tubes (CRTs) (i.e., the major input into CTVs), which is relevant because foreign entities are less likely to invest in industries that are extensively controlled by the government. In any event, the CCME contends that the central inquiry in an MOI determination should not simply be whether the holding companies are state-owned, but rather whether they behave in a manner that is consistent with rational actors in an environment of market forces. Thus, the CCME argues that a government-controlled holding company should be considered a private entity if it conducts itself (as it does here) in a manner that is consistent with similarly-situated CTV producers in a market economy.

Regarding the final prong (i.e., market-determined prices for inputs), the CCME contends that the government has no role in the setting of prices or production levels for suppliers of the components used to produce CTVs because: 1) CTV producers are free to purchase components from any source; 2) many of the inputs are purchased from market-economy suppliers or from PRC-based subsidiaries of market-economy suppliers and prices are generally set in market-economy currencies; 3) of those components sourced from within the PRC, prices are negotiated freely between the producer and supplier; and 4) given the large number of components used and the sheer number of models sold by a given CTV supplier, it is simply impossible for the government to regulate the price and production of every single component and model. Indeed, the CCME asserts that the component industry in general, and the CRT industry in particular, are characterized by intense competition, as evidenced by the high level of import penetration in the PRC for these components. Moreover, the CCME asserts that the CTV industry also pays market-determined prices for selling expenses, given that the CTV industry is characterized by "perpetual advertising" performed through media outlets which, while admittedly-government owned, set prices through standard rates. Finally, the CCME argues that the Department should not consider the remaining inputs (e.g., labor, overhead) because they represent an insignificant portion of the total product costs, as measured by CTV producers both within and outside of the PRC. Nonetheless, the CCME asserts that the CTV industry also pays market-determined prices for these inputs. According to the CCME, the government's role in setting wages is limited to the establishment of minimum wage and overtime laws, and workers are able to move freely among jobs and geographic areas. Furthermore, the CCME asserts that, although energy prices are regulated by the PRC government, they are to some extent also determined by market forces, and the respondents pay the same prices as all other similarly-situated businesses located in their respective geographic areas. Regarding depreciation costs on equipment, the CCME asserts that these costs are also market-based, as: 1) the majority of equipment used by PRC companies is imported from market economies; and 2) the remainder is obtained in the same way as any other domestically-sourced component. Finally, the

CCME asserts that the price at which CTV producers obtain both land and capital is determined by the market.

In any event, the CCME argues that the Department's affirmative separate rates test in this investigation warrants an affirmative MOI determination. According to the CCME, the factors examined under this test are identical to those of the MOI test. Specifically, the CCME asserts that both the *de jure* and *de facto* components of the separate rates test are dispositive as to the level of government control over a company's ability to set its own prices and production. The CCME claims that the *de jure* test not only serves as a persuasive guide to the government-involvement prong of the MOI test, but it is also indicative of a given company's payment of market-determined prices for significant inputs because such a requirement is reflective of an environment in which a company is legally free from the "clutches" of government manipulation. Similarly, the CCME asserts that the *de facto* test focuses on the government's ability to control export prices, as well as the authority of a company to negotiate the terms of a contract and select its own management. According to the CCME, the latter two inquiries are material to: 1) the question of whether market-determined prices are paid for significant inputs because such transactions are made on a contractual basis; and 2) the question of whether a company is privately- or collectively-owned because companies that select their own management must be owned by non-governmental entities. The CCME concedes that the separate rates test is specific to individual companies, whereas the MOI test addresses an entire industry. However, according to the CCME, this difference is not relevant in cases where, as here, an overwhelming amount of companies within an industry are accorded separate rates treatment.

Finally, the CCME asserts that, because the "overwhelming majority" of the CTV industry in the PRC has received separate rates in this case (including seven out of the top ten CTV producers), it is reasonable to assume the experience of these companies is representative of the entire industry. The CCME claims that this conclusion is grounded in the economic forces that operate within an industry such as the PRC CTV industry in that, once an overwhelming majority adopts practices that are free from government control, the rest of the industry must follow. The CCME further claims that this conclusion is valid from a statistical standpoint, because the characteristics of the industry majority can be reasonably presumed to exist within the industry minority. Indeed, the CCME contends that the Department itself has employed statistical sampling techniques to make determinations regarding an entire industry. To support this assertion, the CCME cites Final Determination of Sales at Less Than Fair Value; Fall-Harvested Round White Potatoes From Canada, 48 FR 51669 (Nov. 10, 1983) and Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Colombia, 52 FR 6842 (Mar. 5, 1987). The CCME maintains that such an action would be even more valid here, where the CTV industry is composed of a few dominant companies and a host of small companies, and there is intense competition.

The petitioners contend that the Department should continue to find that the CTV industry in the PRC is not an MOI because neither XOCECO's December 1, 2003, submission nor the CCME's arguments provide any new evidence of market orientation. According to the petitioners, the CCME's arguments

are fundamentally flawed because: 1) they do not cover the entire CTV industry; and 2) they either are not supported by adequate evidence or are contradicted by public pronouncements by the PRC government.

Regarding their first point (i.e., industry coverage), the petitioners assert that the CCME's claim that its submission represents "virtually all" of the industry is misleading because its coverage percentage is derived from multiple interpolations of data, rather than on quantitative data from the producers themselves. Specifically, the petitioners note that the CCME derived its figure from production data "obtained by the MII Report and broken down according to individual company statistics provided by respondent Changhong." According to the petitioners, complete and accurate data is available for only three out of the four mandatory respondents, rather than for all of the allegedly top ten producers, as claimed by the CCME. Moreover, the petitioners assert that even the CCME's total production volume is suspect, given that the volume offered for the production output of the ten largest producers ranges from 23 to 291 million in the space of four years. The petitioners assert that this change in magnitude is highly questionable at best.

Regarding their second point (i.e., inadequate support), the petitioners contend that the CCME has not provided data that shows that producers pay market-determined prices for all major, and all but an insignificant portion of minor, inputs from any companies but the top ten CTV producers. Furthermore, the petitioners assert that, even for those respondents who have provided data, the payment of market-determined prices for all major inputs has not been made. According to the petitioners, the Department should reject the CCME's argument that the Department should treat inputs purchased from joint ventures of multinational companies as market-economy goods because this argument ignores the fact that those inputs themselves are reliant on non-market materials, labor, and energy. The petitioners contend that the most one can conclude from the CCME data is that for a few of the PRC CTV producers, namely the most export-oriented firms, there is some movement in certain aspects of input sourcing from market economies.

Moreover, the petitioners assert that the PRC government not only has a history of providing preferential treatment to CTV producers over foreign producers, but it also has a critical role in protecting and fostering the CTV industry. In support of this latter assertion, the petitioners assert that the CCME itself concedes that the involvement of foreign subsidiaries in the PRC CTV industry was in large part due to their need to avoid import duties on CTVs. The petitioners claim that this protection, combined with the abundance of state-owned electronic component firms and non-market-valued labor, resulted in the industry's becoming the largest in the world. The petitioners assert that industry development was also fueled by direct government support, in particular through high-tech initiatives to convert military-industrial assets into consumer electronic production.

More importantly, the petitioners claim that the PRC government is directly involved in CTV pricing via regulation. Specifically, the petitioners contend that a 1999 government decree regarding television and CRT pricing is still posted on the government's official website, despite the CCME's claims that this

decree is no longer enforced. The petitioners similarly dismiss the CCME's claims with respect to the free movement of labor, citing the "evidence" provided in a rebuttal submission on August 21, 2003, which addresses the lack of freedom of association and group representation shown by the repression of the labor movement.[1] In addition, the petitioners assert that the CCME's conclusion that labor is insignificant rests on pure tautology, given that the absence of free labor drastically undervalues the measure of labor input cost to produce both CTVs and all of the attendant inputs produced in the PRC.

Finally, the petitioners disagree with the CCME that the Department's finding of separate rates warrants a finding of an MOI in the CTV industry. The petitioners note that the separate rates test is fundamentally different from the MOI test, given that the separate rates test only examines whether each exporter acts as a separate entity with respect to its ability to set its own export prices. The petitioners point out that the separate rates test does not examine the issues concerning the supply of free-market inputs, nor does it address the proper calculation of normal value, as does the MOI test.

Department's Position:

In order to consider an MOI claim, the Department requires information on each of the three prongs of the MOI test regarding the situation and experience of the PRC CTV industry as a whole. Specifically, the MOI test requires that: 1) there be virtually no government involvement in production or prices for the industry; 2) the industry is marked by private or collective ownership that behaves in a manner consistent with market considerations; and 3) producers pay market-determined prices for all major inputs, and for all but an insignificant proportion of minor inputs. Additionally, an MOI allegation must cover all (or virtually all) of the producers in the industry in question. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo From the People's Republic of China, 64 FR 69723, 69725 (Dec. 14, 1999). See also Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China, 62 FR 41347, 41353 (Aug. 1, 1997).

As a threshold matter, we note that the industry coverage of respondents' claims remains uncertain and, in any case, inadequate. The respondents' March 17 submission contains inconsistent statistics with respect to the production volume of the largest CTV producers and the share of total industry output that it represents. Although the respondents' claim industry coverage (by volume) as high as 85.7 percent, the company output numbers that make up the numerator of the respondents' calculation are

[1] In their August 21 submission at Attachment 2, the petitioners provided information from a March 31, 2003, State Department report entitled, "Country Reports on Human Rights Practices - 2002 Released by the Bureau of Democracy, Human Rights and Labor: China (includes Tibet, Hong Kong, and Macau)." The petitioners argue that this report shows there is no real freedom for labor in the PRC because, although the constitution of the PRC provides for freedom of association, the PRC government has restricted this right in practice.

not supported or otherwise substantiated. There also is no reasonable certainty with respect to total industry output. As a result, according to our calculations, the respondents' industry coverage appears to be lower than 80 percent.[2] Moreover, the respondents are large, export-oriented firms that might operate on a basis significantly different from that for non-export oriented firms. However, despite a request from the Department for clarification, the respondents have not explained why their operational experience as export-oriented firms is representative of non-export oriented firms in the industry. For these reasons, there is no basis to conclude that the industry coverage of the respondents' claim is that of all, or virtually all, of the producers in the CTV industry.

Even if the respondents' claim had been sufficient with respect to industry coverage, their request contains a number of other deficiencies. Most notably, the respondents failed to provide data or information on the second prong of the MOI test that would give the Department a basis for moving forward with an MOI inquiry. In fact, data in the respondents' March 17 submission strongly suggests that the CTV industry does not satisfy the second prong of the MOI test. Page 5 of that submission reads:

> Significantly, manufacturers with zero or minority government ownership occupy about 50.07 % of total production output and 61.75% of production for the top ten Chinese CTV companies.

See the March 17 submission at page 5. This statement taken at face value implies that majority state-owned CTV producers account for almost half, 49.93 percent, of total CTV industry production. However, the second prong of the MOI test states:

> There may be state ownership in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry.

Finding that separate rates are warranted for exporters examined does not warrant finding an MOI. The criteria for separate rates are limited to matters concerning the export activities of the exporter. They do not address domestic production or pricing or input costs, which are pertinent to the calculation of normal value and are addressed by the MOI test. Further, the separate rates test has only been applied to certain exporters, not the CTVs industry as a whole.

Thus, for the reasons described above, the respondents' MOI claims were not sufficient and therefore did not provide an adequate basis for initiating a MOI inquiry.

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[2] Specifically, using data from the charts on pages 4 and 5 of the March 17 submission, we calculated that these companies accounted for 79.6 percent of CTVs production in 2002 (i.e., 41,407,800 units/52,000,000 units).

Comment 2: *Respondent Selection*

At the outset of this investigation, the Department designated the PRC government as the mandatory respondent in this case and issued the questionnaire to it for distribution to appropriate parties. In July 2003, we received responses to section A of the questionnaire from 12 CTV exporters in the PRC, each of which provided information demonstrating entitlement to a separate rate. After considering the administrative resources available to conduct this investigation, we determined that we did not have sufficient resources to investigate all of these exporters. Therefore, in accordance with our practice, we selected the largest number of additional mandatory respondents that we could reasonably examine, which in this case was four, and notified the remaining parties that we would only accept voluntary responses if one of these four companies failed to participate.

Two of the 12 exporters, Haier Electric Appliances International Co. (Haier) and Philips, requested to participate in the investigation as voluntary respondents, and they submitted responses to the remaining sections of the questionnaire. We did not analyze Haier's and Philips' data, however, because we received complete responses from each of the four selected mandatory respondents. Accordingly, in the preliminary determination, we assigned the weighted average of the calculated margins for these mandatory respondents to Haier and Philips (as well as to each of the other non-investigated companies submitting complete and timely section A responses) because we determined that they qualified for separate rates based on the information presented in their section A responses.

Philips contends that the Department acted contrary to law and its practice when it selected only four mandatory respondents and did not accept any voluntary responses in this investigation. Philips argues that, although the Department has the discretion to limit the number of respondents where it finds that the total universe of producers is too large to examine, selecting only four mandatory respondents in this case was not reasonable. As support for its position, Philips cites various cases in which the Department selected large numbers of respondents (e.g., 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, 3546 (Jan. 26, 2004) (where the Department selected nine mandatory respondents); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 68 FR 39055 (July 1, 2003) (where the Department initiated the review and listed hundreds of companies to be reviewed); Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews, 68 FR 44534, (July 29, 2003) (where the Department initiated a review for 52 companies); and Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 68 FR 50751 (Aug. 22, 2003) (where the Department initiated a review with respect to 15 companies)). Furthermore, Philips asserts that while it may be the Department's practice to select a small number of respondents under exceptional circumstances (for example, in situations involving simultaneous investigations of a product from many countries, like in the 2002 investigations of cold-rolled steel from 20 countries), such is not the case here because there is only one companion case from Malaysia involving a single producer of CTVs.

Philips contends that section 782(a) of the Tariff Act of 1930, as amended (the Act), requires the Department to accept voluntary responses and calculate individual margins based on those responses, as long as they are timely submitted. Philips argues that the only exception to this rule is when the number of voluntary responses is so large that individual examination of such responses would be unduly burdensome, which was not the case in this investigation since only two companies submitted voluntary responses on a timely basis. Philips cites the respondent selection memo, which lists the same reasons for rejecting voluntary respondents as those for limiting the number of mandatory respondents; Philips argues that this decision constituted a legal error, considering that the legal standard for voluntary respondents is considerably more stringent than that of mandatory respondents. Philips contends that the Department failed to demonstrate that reviewing the two voluntary responses would have been "unduly burdensome," especially considering that the Department made this determination before receiving the responses in question. In addition, Philips argues that the Department could have reviewed its responses to the questionnaire without significant additional burden because it filed these responses before the mandatory respondents' deadlines.[3]

Moreover, Philips notes that the Department's respondent selection memorandum in this case focuses on the administrative burdens of Office 2 specifically, rather than on Import Administration as a whole. Philips contends that the statute instructs the Department to calculate a weighted-average margin for each known exporter and producer of the subject merchandise unless it would not be practicable for the Department to do so, rather than instructing the Department to consider whether it would be impracticable for a particular office within Import Administration to calculate a margin for all respondents. Philips acknowledges that the Department has discretion to limit the number of mandatory respondents where the Department as a whole has insufficient resources, but argues that it should not be penalized because a particular office did not properly plan to staff the investigation.

Finally, Philips argues that the Department's decision to not accept voluntary respondent violates the WTO Antidumping Agreement. According to Philips, section 782 of the Act was intended to implement Article 6.10.2 of the WTO Antidumping Agreement, which requires that "voluntary responses shall not be discouraged." Philips interprets this article to require calculation of individual margins for voluntary respondents except in narrow circumstances. According to Philips, this article of the WTO agreement similarly allows rejection of timely voluntary responses only where the number of exporters or producers is so large that individual examinations would be unduly burdensome and prevent the timely completion of the investigation. While Philips acknowledges that the Statement of Administrative Action (SAA) indicates that section 782(a) of the Act generally codifies existing practice, Philips argues that this statement in the SAA should not be interpreted as giving the Department license to ignore voluntary responses, thereby avoiding making a rational determination as

[3] Philips notes that it filed a response to section A of the questionnaire one week prior to the deadline for the mandatory respondents. Similarly, Philips remarks that it filed a response to sections B and C two weeks prior to the mandatory respondents' deadline.

to the extent of the burden based on the actual number, and complexity, of the questionnaire responses submitted by voluntary respondents. Philips contends that, according to the WTO Agreement, it is not enough for the Department to point to the factors that led it to limit the number of mandatory respondents as an excuse for ignoring all voluntary responses. In this case, Philips argues that the Department made the determination that accepting voluntary responses was unduly burdensome before receiving the responses, failing both to follow the proper procedures for respondent selection and to adhere to the United States' international obligations.

The petitioners did not comment on this issue.

Department's Position:

As a threshold matter, we disagree with Philips that the Act requires the Department to accept all voluntary responses. Although section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise, this provision does not apply in all situations. Rather, section 777A(c)(2) of the Act sets forth the following explicit exception:

> If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to --
>
> (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or
>
> (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

In this case, the data on the record indicate that there were 35 producers/exporters of subject merchandise to the United States during the period of investigation POI, 12 of which responded to section A of the questionnaire. After a careful examination of our available resources, we determined that it was not practicable to examine all known producers/exporters of subject merchandise. Therefore, in accordance with section 777A(c)(2)(B) of the Act and our normal practice, we selected the maximum number of mandatory respondents that we could reasonably investigate, which in this case was four. Selection of these four companies resulted in total export coverage of 91.40 percent. See the July 22, 2003, memorandum from the Team to Louis Apple, entitled "Selection of Respondents" (Respondent Selection Memo) at pages 2 and 3. Contrary to Philips' contention, the decision to investigate only four respondents was reasonable, given the Department's resource constraints, and

therefore it is in accordance with law. Moreover, this provision of the law is in accordance with our obligations under the WTO Agreement.

We note that, had the Department determined that it had the resources to investigate five companies, we would not have selected either Philips or Haier as the fifth mandatory respondent because, based upon the respondent selection methodology, neither of these companies had the next largest export sales volume. See the Respondent Selection Memo at Attachment I.

We disagree with Philips that the acceptance of one additional respondent would not have increased the Department's administrative burden significantly. The Department considers a number of factors when it is faced with the task of assessing the burden of conducting an antidumping duty investigation. These factors include the complexity of the product under investigation and the type of case involved (in this instance, a less-than-fair value investigation involving an NME). As noted by the respondents in their case briefs, CTVs have hundreds of parts, each of which must be valued separately for margin calculation purposes. For this reason, this case is substantially more complicated than a case involving a simple product, like plastic bags or certain chemicals. Moreover, this case is rendered even more complicated by the fact that it is an investigation, rather than an administrative review; thus, not only are the companies and the product unfamiliar and many novel issues raised, but this is also the first time that any of the exporters named as mandatory respondents has participated in an antidumping proceeding. In such a situation, it is important to recognize that there is a learning curve for both the Department and the respondents, unlike in administrative reviews of orders such as antifriction bearings which are conducted year after year. Furthermore, many reviews include resellers, which are much less complex than a producer. See, e.g., Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

As a consequence, the analysis of each company's response, the collection and analysis of surrogate value data for each unique part used by each respondent, and performing the margin calculations require an enormous expenditure of resources by the Department. For example, each of Changhong's reported CTV models contained hundreds of parts that the Department valued using surrogate values. Further, Changhong raised a number of unusually complicated issues in the early stages of this investigation, and thus Philips was well aware of the complexity of this case prior to the submission of the questionnaire responses. See Changhong's July 1, 2003, submission.

Although the Department appreciates that Philips made timely submissions and comments, the Department did not have time to analyze its responses. We note that the analysis of an initial questionnaire response makes up only a limited portion of the work performed with respect to any given respondent. Rather, the Department frequently issues multiple supplemental questionnaires, and it also must collect surrogate value data for the factors of production used by each individual respondent, identify and resolve any issues with respect to such data, calculate a separate margin for each company, verify the data, and address any issues raised in case and rebuttal briefs. Each of these activities requires the expenditure of significant resources. For this reason the Department lacked the resources

to analyze Philips' response, even though it was submitted one or two weeks earlier than those of the mandatory respondents.

We also disagree with Philips that our actions were contrary to the statute because we limited our assessment of administrative burden only to the resources of Office 2, rather than to the those of Import Administration as a whole. It is the Department's practice to assign investigations based on the current workload of Import Administration as a whole. Specifically, when a petition is filed, it is assigned to an office which has the administrative capability to handle the case. Moreover, the burdens of Office 2 cited in the Respondent Selection Memo are an accurate representation of the administrative burdens of Import Administration as a whole. Unfortunately, because of the number of issues involved, the complexity of the product under investigation, and the administrative burden on Import Administration and on Office 2, the Department could not examine all the producers/exporters of CTVs from the PRC. Philips points to no evidence indicating otherwise.

Finally, we note that we have not eliminated Philips' right to obtain its own dumping rate. Specifically, we note that Philips will have a chance to request a review and obtain its own rate if an order is issued after the completion of this investigation and the ITC's injury investigation.

Comment 3: *Critical Circumstances*

In October 2003, we initiated an investigation to determine whether critical circumstances exist in this case, based on an adequate allegation by the petitioners. As a result, we obtained information regarding the volume and value of shipments, by month, for the period January 2001 through October 2003 from all mandatory respondents in this investigation. In addition, one of the mandatory respondents, Changhong, also reported its shipments in December 2000. At the preliminary determination, we analyzed this information for only the four mandatory respondents and found that: 1) imports were massive for each; and 2) although seasonal trends exist in the CTV industry, the increase in imports was not fully explained by seasonality.[4] Based on this analysis, we found that critical circumstances existed for all exporters of CTVs from the PRC (including Philips).

After the preliminary determination, each of the companies noted above provided information on its shipments through October 2003 and Philips, a non-selected voluntary respondent reported its shipments for the period January 2001 through September 2003. We received comments on this data from two of the four mandatory respondents (i.e., Changhong and TCL), Philips, and three importers of CTVs (i.e., Apex, Sears, and Wal-Mart).[5] These companies argued that we should no longer find that

[4] We performed a similar analysis for companies covered by the PRC-wide rate, using U.S. import data.

[5] We also received comments from the petitioners, who support the preliminary finding of critical circumstances.

critical circumstances exist, based on one or more of the following arguments: 1) the Department now has more data on which to base its analysis; 2) the Department should disregard shipments made under pre-petition contracts; 3) the Department should adjust Changhong's shipment data to account for delays due to the severe acute respiratory syndrome (SARS) epidemic; 4) imports of CTVs are heavily seasonal; 5) there is insufficient data on the record to perform a seasonality analysis for certain companies; and 6) there is no evidence that importers had knowledge that PRC companies were dumping.

First, Changhong notes that the Department used five-month periods before and after the filing of the petition in assessing whether or not increases in imports had been massive, but used four-month periods in its analysis of seasonal trends in imports because it did not have import data regarding shipments prior to January 2001. See the November 21, 2003, memorandum from the Team to Louis Apple entitled, "Antidumping Duty Investigation of Certain Color Television Receivers (CTVs) from the People's Republic of China (PRC) — Preliminary Affirmative Determination of Critical Circumstances" at page 4 (footnote 1) (Preliminary Critical Circumstances Memo). Changhong and Apex argue that the Department can only make a reasonable assessment of critical circumstances if it uses five-month base and comparison periods in its seasonality analysis. Changhong notes that the Department now possesses all the information it needs to perform the seasonality test using the same five-month period it used for the initial critical circumstances test. Changhong also states that to assess seasonality using a five-month period, the Department would normally examine Changhong's shipments in the period May through September to its shipments during December through April for 2001, 2002, and 2003. Changhong also contends that it is questionable whether its shipment data for 2001 permit a meaningful seasonality analysis because it did not have significant shipments during most of that year. See the April 12, 2004, memorandum from the Team to Louis Apple entitled, "Antidumping Duty Investigation of Certain Color Television Receivers (CTVs) from the People's Republic of China (PRC) — Final Negative Determination of Critical Circumstances" (Final Critical Circumstances Memo) at page 4 (footnote 4).

Second, Changhong, TCL, Wal-Mart, Apex, and Philips argue that the Department should exclude from its analysis post-petition shipments made to fulfill pre-petition long-term contracts. Specifically, Changhong maintains that certain of its shipments during the comparison period were made subsequent to contracts entered into in April 2003; TCL contends that its increase in exports was the result of a long-term supply contract entered into with its customer in December 2002; Apex contends that a significant share of shipments of subject merchandise were made to fulfill long-term pre-petition contracts; and Wal-Mart notes that its import commitments for the Thanksgiving/Christmas season were made well in advance of the filing of the petition and the goods for this sale entered the United States during the post-petition comparison period. Moreover, Philips contends that TCL's shipment pattern reflects startup operations that began four and one half months before the filing of the petition and was not an attempt to circumvent the imposition of antidumping duties.

The respondents argue that the Department's decision to include pre-petition contracts in its analysis is inappropriate because it is inconsistent with the purpose of the critical circumstances provision and its own precedent. Changhong and Apex note that the Department has stated that the purpose of the critical circumstances provision is to deter exporters whose merchandise is subject to an antidumping investigation from circumventing the suspension of liquidation by stockpiling imports prior to the preliminary determination. See Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Socialist Republic of Romania, 52 FR 17433, 17438 (May 8, 1987) (TRBs from Romania); Final Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters From Singapore, 58 FR 43334, 43337 (Aug. 16, 1993); Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision memorandum at Comment 7 (Fish Fillets from Vietnam). Therefore, according to Changhong and Apex, there is no reason to apply the critical circumstances provision in cases where the post-petition imports were not intended to circumvent the imposition of antidumping duties, such as shipments made pursuant to long-term contracts that were entered into prior to the filing of the petition.

Changhong and Apex also argue that the Department has recognized that shipments under pre-petition contracts may constitute an exception to the rules regarding the retroactive imposition of antidumping duties. See TRBs from Romania, 52 FR at 17438. Changhong states that the Department has identified a number of requirements that long-term contracts must meet to prove that shipments made after a petition was filed were not meant to circumvent the imposition of antidumping duties and that certain of its shipments meet these criteria. Changhong also notes that, in its preliminary determination, the Department treated Changhong's date of contract as the date of sale and that under the Department's regulations, the date of sale is the date on which the material terms of the sale are fixed. See 19 CFR 351.401(I).

In addition, Changhong, Apex, and Wal-Mart argue that the Department should shift shipments delayed due to SARS from the post-petition period to the pre-petition period. Changhong argues that its shipments in the post-petition period were inflated temporarily by the impact of SARS, and it placed documents on the record showing that certain shipments which it was contractually obligated to make in April 2003 were unavoidably delayed due to this reason. (See Changhong's November 3, 2003 letter to the Department at page 4.) According to Changhong, since these shipments were clearly not intended to circumvent the imposition of antidumping duties, they should be subtracted from Changhong's shipments in the post-petition comparison period and added to Changhong's pre-petition base period.

Finally, Changhong, Sears, Apex, Wal-Mart, and Philips argue that the Department should take into consideration the seasonal nature of CTV sales in its final determination. Changhong states that, because its shipments show a strong seasonal pattern, the Department should compare shipments in the five-month period May through September 2003 to shipments in the period May through September

2002 as part of its seasonality analysis. See 19 CFR 351.206(h); see also Preliminary Determination of Critical Circumstances: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation, 64 FR 60422, 60423 (Nov. 5, 1999).

Apex notes that the vast majority of Wal-Mart's purchases of Apex brand televisions were slated for the store's annual day-after-Thanksgiving sale and also states that a similar pattern characterizes sales of subject merchandise to its other retail customers. Wal-Mart confirms this assertion, stating that it sells an exceptionally high number of CTVs during its post-Thanksgiving "Blitz" sale and requires a higher than normal inventory of CTVs for Christmas sales. Wal-mart notes that it explained in its testimony to the International Trade Commission (ITC) how domestic suppliers did not meet the requirements for the "Blitz" due to the volumes involved. As a result, Wal-mart argues, an examination of Wal-mart's purchasing and import trends will show that the period following the filing of the petition in this proceeding has consistently been a period of temporarily increased imports for Wal-Mart.

Wal-Mart and Apex state that the majority of merchandise for these seasonal promotions enters the United States during the period from May through September of any given year. Wal-Mart notes that this period coincides nearly identically with the comparison period following the filing of the petition used by the Department in its preliminary critical circumstances finding.
Thus, Wal-Mart argues that the timing of the petition was intended to create the appearance of massive imports over a relatively short period.

Regarding the Department's finding that seasonal trends account for some, but not all of the increase in imports of CTVs from the PRC, Wal-Mart argues that it has only recently added PRC-suppliers to the group of suppliers capable of high-volume output for the "Blitz" sale. Wal-Mart also notes that the "Blitz" sale has increased in popularity since its inception in 2001 and, as a result, it was required to use foreign suppliers to meet this increased demand.

Philips maintains that the Department should take into account the seasonality of CTV imports into the United States with respect to TCL, as it did with other respondents. Philips notes that the Department has acknowledged that CTV imports from the PRC are subject to seasonal demand. See the Preliminary Critical Circumstances Memo at page 4. Given the absence of any significant 2001 or 2002 shipments by TCL with which to adjust TCL's 2003 shipments on a seasonal basis, Philips contends that the Department erred in concluding that TCL's increase of shipments during the post-petition period was not accounted for by seasonal trends and must either conclude as facts available that critical circumstances do not exist with respect to TCL, or else compare TCL's 2003 increase in shipments to the 2002 increases by the other mandatory respondents as facts available. Furthermore, Philips contends that it is inappropriate to make an affirmative critical circumstances finding with respect to TCL based solely on its shipments in 2003 because the Department has already found that imports of CTVs are subject to seasonal demand. Philips notes that where the Department has been unable to draw conclusions with respect to massive imports based on the data available to it, the Department determined that critical circumstances do not exist. See Notice of Preliminary Determination of Sales at

Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan, 68 FR 71072, 71077 (Dec. 22, 2003) (Thermal Transfer Ribbons from Japan); see also Preliminary Determinations of Critical Circumstances: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and South Africa, 65 FR 12509, 12511 (Mar. 9, 2000) (Carbon and Alloy Pipe).

Additionally, Philips argues that it would be inappropriate for the Department to rely on PRC-wide import figures for 2002 to make a seasonality finding with respect to TCL because TCL's data prove that the PRC-wide import figures are not in any way an accurate reflection of TCL's behavior in 2002. Similarly, Philips argues that the Department may not rely on the findings it has made with respect to other mandatory respondents that did have shipments in prior years because TCL verifiably had no significant shipments in those prior years. As a result, Philips argues, the Department must make a negative determination of critical circumstances with respect to TCL.

Philips also argues that the Department should use the company-specific data it submitted for purposes of analyzing the seasonality of its CTV imports. Philips contends that it is not only inappropriate to impute critical circumstances findings to cooperative non-mandatory respondents when it finds that critical circumstances exist with regard to the mandatory respondents, but it is also against the Department's practice to do so. See Thermal Transfer Ribbons From Japan, 68 FR at 71077. Philips argues that, although the Department usually looks to Customs and Border Protection data to measure whether imports are "massive" for respondents in the "all others" category absent better data, the Department prefers to use company-specific data where such data have been placed on the record. See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329, 24338 (May 6, 1999); see also Notice of Affirmative Preliminary Determination of Critical Circumstances for Voluntary Section A Respondents: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 31681 (May 28, 2003) (Fish Fillets Preliminary Critical Circumstances). Philips argues that the Department's decision to rely on company-specific data in Fish Fillets Preliminary Critical Circumstances is consistent with the Department's recognition that it should rely on the most accurate and probative information possible in making a critical circumstances determination. According to Philips, a review of its shipment data in this case shows that, after taking into account the same seasonal adjustment methodology used by the Department in its preliminary finding of critical circumstances, its shipments were not "massive."

Sears urges the Department to more carefully consider the relative importance of CTV imports as a share of domestic consumption. Sears notes that the Department stated in its preliminary determination that it was "unable...to consider the share of domestic consumption accounted for by the imports because the available data did not permit such analysis." See the Preliminary Determination, 68 FR at 66809. Sears argues that data gathered by the ITC in this proceeding indicate that apparent domestic consumption grew from 15.6 million units in 2000 to 18.6 million units in 2002. See Certain Color Television Receivers from China and Malaysia, Inv. Nos. 731-TA-1034 and 1035 (Preliminary), USITC Pub. 3607 at II-5 (June 2003) (ITC CTV Preliminary). While Sears acknowledges that these

data are not contemporaneous with the six-month POI, Sears urges the Department to take administrative notice of the ITC's findings and argues that once the ITC data are taken into account, it is clear that the post-petition increase in imports cannot be properly characterized as "massive."

Sears also argues that there is no evidence on the record that Sears or any other importer had actual knowledge that PRC producers/exporters were selling subject merchandise at less than fair value. Not only does Sears affirmatively deny any such knowledge, but it asserts that there was no finding in the preliminary determination that importers "should have known" that sales of subject merchandise were at dumped prices. Sears disagrees with the Department's reliance on a 2002 European Union (EU) Council Regulation imposing antidumping duty measures on CTVs from the PRC to find a history of dumping and material injury by reason of dumped imports. See the Preliminary Determination, 68 FR at 66809. Sears questions the probative value of the EU notice, given that the scope of the EU order differs with regard to screen size from the merchandise covered here. Moreover, Sears argues that it is impossible to know to what extent the margins calculated by the EU are based on prices and costs from the much larger CTVs at issue in this investigation. Further, Sears notes that EU margins in question were based on facts available data, and thus were not calculated for any individual PRC CTV producers. Sears argues, therefore, that the Department should not rely on the EU's 2002 determination since it does not provide meaningful notice to U.S. importers that large-screen CTVs produced and exported from the PRC were sold at "dumped prices" as that term is defined under U.S. law.

The petitioners agree with the Department's preliminary finding that critical circumstances exist in this case, and they argue that the Department should uphold this finding in the final determination. The petitioners argue that none of the respondents' arguments have merit when taken in the context of the Department's practice in this area.

Regarding the argument with respect to long-term contracts, the petitioners assert that there is no factual basis for excluding these shipments from the comparison period. The petitioners contend that the cases put forth by Changhong to support its claim (i.e., TRBs from Romania and Fish Fillets from Vietnam) do not affirmatively establish the requirements for excluding post-petition shipments made under pre-petition contracts. Similarly, the petitioners argue that TCL failed to provide any evidence to support its argument that all of its shipments during the post-petition period were the result of a pre-existing agreement with its customer. The petitioners argue that since TCL did not provide evidence showing that its pre-petition contract with this customer contained binding shipment schedules, the Department should not exclude these shipments from its analysis. Moreover, the petitioners note that the Department used invoice date rather than contract date as the date of sale in the preliminary determination for this company. See the November 21, 2003, memorandum to the file from the Team entitled, "U.S. Price and Factors of Production Adjustments for TCL Corporation for the Preliminary Determination" at Attachment 6.

In addition, the petitioners maintain that the Department properly rejected the argument that shipments delayed due to SARS should be included in the pre-petition base period rather than the post-petition comparison period. The petitioners assert that the Department's regulations instruct the Department to examine the actual change in import volumes following the filing of the petition to the period immediately before the filing of the petition, regardless of when shipments were intended to be made. See 19 CFR 351.206(h).

Finally, regarding seasonality, the petitioners argue that, even considering this factor, imports in the post-petition comparison period increased massively. Furthermore, the petitioners argue that the Department should not use a five-month comparison period to analyze seasonality for Changhong because its import volumes in September 2003 were impacted by the Department's pending preliminary determination. As a result, it would be distortive for the Department to include this "fifth month" in its seasonality analysis.

Regarding the other considerations noted above, the petitioners contend that Wal-Mart's claim that the increase in imports during the comparison period is a result of its recent contracts with PRC suppliers is not supported by any record evidence and should thus not be considered. Moreover, the petitioners disagree with Philips' argument that the Department should have taken into consideration the fact that TCL did not have any shipments prior to January 2003. The petitioners state that TCL's imports in 2003 did increase at a faster pace than in 2002 because there was no such increase in 2002. The petitioners also argue that, if the Department exempts TCL from a finding of critical circumstances, new entrants in the market would unduly benefit by escaping a critical circumstances finding whenever seasonality is a factor.

The petitioners also disagree with Philips' argument that the Department must make a negative finding of critical circumstances with respect to TCL because it did not have enough information to make an affirmative finding. The petitioners contend that Philips' reliance on Thermal Transfer Ribbons from Japan and Carbon and Alloy Pipe is misguided because these cases involve determinations made with respect to companies in the "all others" category and not those receiving separate rates such as TCL. Furthermore, the petitioners state that in these cases the Department made a negative critical circumstances finding because it lacked company-specific data and also found U.S. Customs data unreliable because it included both subject and non-subject merchandise. The petitioners assert that, in the instant case, the Department has company-specific data from TCL which clearly demonstrate that TCL's imports during the post-petition period were massive. Regarding Philips' final argument, the petitioners disagree that the Department should not have automatically applied the results of the investigated companies to Philips. The petitioners state that it is the Department's normal practice to conduct its critical circumstances analysis "based on the experience of the investigated companies." See Preliminary Determination at page 5; see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand 68 FR 68348, 68349 (Dec. 8, 2003) (Steel Wire Strand from Thailand).

Finally, the petitioners disagree with Sears' assertion that once growth in domestic consumption is taken into account, it is clear that the post-petition increase in imports is not "massive." The petitioners maintain that there is still no domestic consumption data on the record of this case to permit the Department to consider the share of domestic consumption accounted for by imports.

Department's Position:

Section 735(a)(3) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether:

(A) (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there would be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Regarding section 735(a)(3)(A)(i) above, we note that the EU currently has in place an antidumping duty measure against color televisions from the PRC. Consequently, because it is the Department's practice to rely on dumping findings put in place by other countries, we find that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. We disagree with Sears' contention that the EU's imposition of antidumping duty measures on imports of CTVs from the PRC is not a valid basis to find a history of dumping in this case. In accordance with section 735(a)(3)(A)(i), the Department generally considers current or previous U.S. antidumping duty orders on the subject merchandise from the country in question and current orders in any other country to determine whether a history of dumping and material injury exists. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4986, 4995 (Jan. 31, 2003); see also Notice of Preliminary Determination of Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 19779, 19780 (April 22, 2003). Furthermore, we do not find that it is appropriate to question the probative value of the EU measure on CTVs, because its finding was made in the ordinary course of its proceeding, after presumably considering all relevant facts. In any event, we need not address this argument because we find that imports of CTVs have not been massive under 19 CFR 351.206(h) and we therefore do not find that the requirements of section 735(a)(3)(B) are met. See SAA at 892.

In determining whether imports of the subject merchandise have been massive under section 735(a)(3)(B) of the Act, the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. Pursuant to 19 CFR 351.206(h), we generally will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period.

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 735(a)(3)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the "base period") to a comparable period of at least three months following the filing of the petition (i.e., the "comparison period"). We agree with Changhong and Apex that it is our normal practice to include in our analysis data concerning the respondents' imports of subject merchandise up to the date of the preliminary determination, where such data are available. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Silicon Metal From the Russian Federation, 67 FR 59253, 59256 (Sept. 20, 2002). Accordingly, in determining whether imports of the subject merchandise have been massive, we have based our analysis on shipment data for comparable six-month periods preceding and following the filing of the petition. Regarding the petitioners' argument that we should consider Changhong's particular import pattern within this period, we disagree. We note that this argument is based purely on speculation and thus there is no actual evidence on the record to support it. This type of argument has been rejected in the past by the Courts, and we find it appropriate to reject it here. See Asociacion Colombiana Exportadores de Flores v. United States, 40 F. Supp. 2d 466 (CIT 1999) (where the CIT held that speculation cannot constitute substantial evidence).

In determining whether imports during the six-month comparison period were massive under 19 CFR 351.206(h), we have reconsidered our decision not to reclassify Changhong's shipments delayed due to SARS to the pre-petition base period. While we agree with the petitioners that it is the Department's general practice to analyze import data without adjustments, we find that the circumstances presented here, i.e., the SARS epidemic, are extraordinary, and Changhong's reaction to them is well-documented. Specifically, the documents that Changhong has placed on the record of this investigation not only clearly show that the shipments in question were scheduled to be made prior to the filing of the petition, but they also explicitly cite SARS as the reason for the shipment delay. See Changhong's November 3 letter to the Department at exhibit 5. Because no other respondents have placed such documentation on the record of this case, we have not made any adjustments to other respondents' reported shipments.

Regarding the arguments with respect to long-term contracts, however, we have continued to include these shipments in our analysis. Although the Department has acknowledged in prior cases that the purpose of the critical circumstances provision is to prevent attempts to circumvent the imposition of antidumping duties, in those cases we did not state that all shipments made pursuant to long-term contracts should be excluded. Such a general finding would be inappropriate because under the terms

of many long-term contracts, including those examined in this investigation, respondents have the flexibility to increase shipments prior to the suspension of liquidation, thereby circumventing the imposition of antidumping duties.

Contrary to the respondents' claims, the Department's ruling in TRBs from Romania directly supports this conclusion. In that case, the Department stated:

> . . . we do not believe that the existence of long term contracts in this case precludes a finding of massive imports. Most of the contracts we examined did not provide a binding schedule of shipments. Respondent itself noted that, where schedules were included, shipments could be, and were, cancelled. Thus, we find that the contracts do not account for the import pattern and we find that the level of imports may have been affected by the filing of the petition.

See TRBs from Romania, 52 FR at 17438. Similarly, in Fish Fillets from Vietnam, the Department noted that the respondent's negotiated contracts were subject to change and the respondent had ample opportunity to respond to the anticipated filing of the petition. See Fish Fillets from Vietnam at Comment 7. Therefore, we have not found that shipments made pursuant to long-term contracts should be excluded automatically from our critical circumstances analysis.

In this case, with respect to TCL's argument that all of its shipments were made subsequent to a long-term pre-petition contract, we note that TCL did not place on the record any evidence in support of its claim. Moreover, we note that the shipping schedules included in Changhong's long-term contracts provided shipping windows, but did not provide specific shipment dates. As a result, we find that Changhong has the flexibility to increase its shipments prior to the suspension of liquidation under the terms of its contracts. In any event, we note that disregarding these shipments would make our analysis less accurate because the respondents did not provide any information related to contract shipments made in the pre-petition base period. We find that comparing the full volume of shipments in the base period to an adjusted volume of shipments in the comparison period would not result in an apples-to-apples comparison, and thus the outcome of such an analysis would be distorted. Therefore, we find no basis to exclude shipments made pursuant to long-term contracts from our critical circumstances analysis for the final determination.

According to the monthly shipment information obtained from the mandatory respondents in this investigation, adjusted as described above, we find the volume of shipments of CTVs increased by more than 15 percent from May through October 2003, when compared to the shipment volume in the base period. See the Final Critical Circumstances Memo at Attachment I. However, we have also examined the customs import data for the three year period prior to the filing of the petition in order to determine whether seasonal trends exist with respect to the PRC CTV industry as a whole. We find that it is not appropriate to include data for the base and comparison periods for 2001 in our analysis because shipments of CTVs from China were not made in significant quantities during these periods. Based on our analysis of customs import data for the relevant periods in 2002 and 2003, we find that

imports of CTVs from the PRC clearly follow a seasonal pattern. See the Final Critical Circumstances Memo at Attachment II.

In order to determine whether the seasonality factor accounted for the increase in imports from the individual respondents in this case, we attempted to examine the shipment data of these exporters for prior years. However, we find that it is not appropriate to use shipment data from the relevant periods in 2001 and 2002 in our analysis for any exporter other than Changhong, given that they did not report significant shipments of CTVs during these periods. See the Final Critical Circumstances Memo at page 4 (footnote 4). Moreover, we also find that it is not appropriate to use shipment data from Changhong for the relevant periods in 2001, given that Changhong did not have signification shipments in the 2001 base period.

An analysis of the data for Changhong shows that seasonality accounts for the entire increase in Changhong's shipments in the post-petition comparison period. Accordingly, we find that Changhong's shipments in the post-petition period are not massive under 19 CFR 351.206(h). See the Final Critical Circumstances Memo at Attachment III. Since the data for the other respondents are not sufficiently complete to permit a similar analysis of seasonality, we have relied on information with respect to Changhong and the companies covered by the PRC-wide rate regarding seasonality to make a determination for these respondents (see below). Based on this analysis, we have similarly concluded that seasonal trends account for the increase in imports following the filing of the petition for these companies, and thus are not massive under 19 CFR 351.206(h).

To determine whether critical circumstances exist with regard to companies which fall under the category of "PRC entity" (i.e., those companies subject to the PRC-wide rate), we relied upon U.S. import data, as we did in the preliminary determination. For the final determination we used U.S. import data for the period January 2001 through October 2003. As part of our analysis we subtracted company-specific import data for each of the mandatory respondents from the aggregate import data and compared the remaining volume of imports in the base period to the remaining imports in the comparison period; this comparison indicates that the increase in imports following the filing of the petition is greater than 15 percent. Pursuant to 19 CFR 351.206(h)(ii), we have examined whether this increase in imports is explained by seasonal trends. To assess the impact of seasonal trends we have compared time series U.S. import data and have determined that seasonal trends account for the entire increase in imports during the post-petition comparison period. See the Final Critical Circumstances Memo at Attachment III.

Finally, regarding those exporters subject to the "all others" rate, we disagree with Philips that the Department should use the company-specific shipment data it placed on the record. See Steel Wire Strand from Thailand, 68 FR at 68349; see also Thermal Transfer Ribbons from Japan, 68 FR at 71077. While the Department may separately consider the factors set forth in section 735(a)(3) of the Act for this group of companies, we have not relied on company-specific data in critical circumstances determinations. Instead, as we noted in Thermal Transfer Ribbons from Japan, 68 FR at 71077

> it is the Department's normal practice to conduct its critical circumstances analysis of companies in the "all others" group based on the experience of the investigated companies. . . However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "all others" rate. . . Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "all others" rate.

Similarly, in Hot-Rolled Flat-Rolled Steel from Japan and Fish Fillets Preliminary Critical Circumstances, the Department noted that it may not be appropriate to simply apply the finding for mandatory respondents to companies subject to the "all others" rate in cases where we find that critical circumstances exist for some, but not all, of the mandatory respondents. For example, in Fish Fillets Preliminary Critical Circumstances, because the Department preliminarily determined that critical circumstances exist for only some of the mandatory respondents and that the broader import data available to the Department were at odds with the results for the majority of the mandatory respondents, the Department determined that the most appropriate action would be to obtain producer-specific shipment data from the non-selected respondents to form the basis of its analysis. In the instant case, because we determine that imports by the mandatory respondents were not massive under 19 CFR 351.206(h), we conclude that imports by non-selected respondents subject to the "all others" rate are also not massive under 19 CFR 351.206(h). As a result, we find that critical circumstances do not exist for non-selected respondents subject to the "all others" rate.

Comment 4: *Updating the PRC Labor Rate*

In the preliminary determination, we valued labor in the PRC using a 2000 PRC regression-based labor rate of $0.83, as published on the Department's website. The petitioners maintain that, for the final determination, the Department should update this labor rate to a rate contemporaneous with the POI. According to the petitioners, the Department has the discretion to use updated data after it has issued a preliminary decision, and indeed it has done so in the past. See Final Results of the Antidumping Duty Administrative Review of Bulk Aspirin from the People's Republic of China, 68 FR 6710 (Feb. 10, 2003) and accompanying Issues and Decision Memorandum at Comment 6 (2000-2001 Aspirin).

The petitioners assert that the Department's calculation of the PRC labor rate is determined using a regression formula based on the PRC's per-capita gross national product (GNP). The petitioners contend that evidence on the record of this investigation shows that the economy of the PRC has been growing rapidly,[6] while the population of the PRC has been holding relatively steady. Using the

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[6] According to an 2002 article entitled "How WTO Membership Affects China" cited by the petitioners, the PRC's economy has experienced "growth rates averaging nearly 10 percent annually." See the August 12, 2003 MOI submission from Changhong, XOCECO, TCL, Philips, and Konka at Exhibit 5.

Department's 2000 labor rate calculation as a starting point, the petitioners calculate revised labor rates for 2001, 2002, and 2003 of $0.86, $0.89, and $0.93 per hour, respectively. Because the difference between these labor rates and the 2000 labor rate is significant, the petitioners argue that the Department must update the rate used in its calculations for the final determination.

According to Changhong, it is the Department's practice to use the most current labor rate published on the Department's website. Changhong notes that the 2000 PRC labor rate was used as recently as the Department's January 13, 2004, decision in Certain Cased Pencils from the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 69 FR 1965 (Jan. 13, 2004). Further, Changhong contends that, if the Department were to attempt to derive a more contemporaneous wage rate for use in its calculations for the final determination, the necessary information to perform the appropriate regression analysis is not on the record of this investigation. Changhong claims that the petitioners' methodology for calculating revised labor rates is only an approximation.

Similarly, Konka asserts that the Department should not adjust the PRC labor rate to make it contemporaneous with the POI. Konka contends that doing so would be contrary to the Department's own methodology, which does not adjust the surrogate labor rate for inflation.[7] According to Konka, the Department's methodology for calculating surrogate labor rates requires regression analysis using the wage rates of market-economy countries deemed economically comparable to the non-market economy country in question. Therefore, Konka notes that it would be inappropriate to adjust the labor rate used in this investigation based on an increase in the GNP of the PRC.

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[7] See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, Notice of Intent Not To Revoke in Part and Extension of Final Results of Reviews, 67 FR 10123, 10125 (Mar. 6, 2002) (Hand Tools Preliminary), unchanged in Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 67 FR 57789 (Sept. 12, 2002); Certain Cased Pencils From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 67 FR 2402, 2405-2406 (Jan. 17, 2002), unchanged in Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002); Potassium Permanganate From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 67 FR 303, 306 (Jan. 3, 2002), unchanged in Potassium Permanganate From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review, 67 FR 38254 (June 3, 2002); and Titanium Sponge From the Republic of Kazakhstan; Notice of Preliminary Results of Antidumping Duty Administrative Review, 64 FR 48793, 48794 (Sept. 8, 1999), unchanged in Titanium Sponge From the Republic of Kazakhstan; Notice of Final Results of Antidumping Duty Administrative Review, 64 FR 66169 (Nov. 24, 1999).

Department's Position:

Section 351.408 (c)(3) of the Department's regulations states that

> For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

In accordance with 19 CFR 351.408 (c)(3), it is the Department's practice to use the most current data available in our calculations. We also note that 19 CFR 351.408 (c)(3) directs the Department to calculate a labor rate using: 1) regression analysis and 2) the data of market-economy countries. Because the petitioners' methodology for calculating revised PRC labor rates for 2001, 2002, and 2003 is based on neither of these components, we find that it would be inappropriate to calculate the Department's labor rate in such a manner. Further, the Department's methodology in NME cases does not adjust the surrogate labor rate for inflation. See e.g., Hand Tools Preliminary, 67 FR at 10125, unchanged in the Final Results.

Since the preliminary determination, the Department has updated the regression-based wage rate for the PRC and has posted this rate on its website at http://www.ia.ita.doc.gov/wages/01wages/01wages.html. Accordingly, we have amended our calculations for the final determination to use this revised PRC labor rate (i.e., $0.90 per hour), rather than the 2000 rate used for the preliminary determination. We note that, as of the date of the final determination, this 2001 rate is based on the most current data available to the Department.

Comment 5: *Indian Imports of Small Quantities*

For purposes of the preliminary determination, we valued the respondents' factors of production using, among other sources, import data taken from the Monthly Statistics of the Foreign Trade of India (MSFTI). Changhong asserts that, in calculating the average values from the MSFTI, the Department departed from its long-standing practice of omitting those import values that were reported either: 1) in small quantities; or 2) at aberrational prices. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews, 60 FR 49251, 49256 (Sept. 22, 1995) (Hand Tools 1995). For example, Changhong notes that, while the Department properly excluded imports from NME countries and countries that have generally-available export subsidies from its calculation of the surrogate value for chokes and coils (i.e., Indian HTS number 8504.5001), the Department should also have excluded the imports of one choke from Finland, six chokes from Slovenia, and 37 inductors from Spain from its surrogate value calculation. According to Changhong, the average unit values (AUVs) for the imports of chokes and coils from these countries (i.e., Rs. 6,000, Rs. 2,333.33, and Rs. 837.84, respectively)

are aberrational because they are much higher than the AUV for imports from all other countries (i.e., Rs.12.36). Similarly, Changhong comments that the Department included in its surrogate value calculations imports of inputs where the six-month import total is less than 50 or 100 kilograms. Changhong alleges that such small quantities do not constitute commercial quantities and as such should be excluded from the Department's calculations.

Similarly, Philips argues that the Department has departed from its long-established practice of excluding aberrational data from its surrogate value calculations in this case. As evidence of the Department's practice, Philips cites 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 accompanying Issues and Decision Memorandum at Comment 1; Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China, 67 FR 71137 (Nov. 29, 2002) and accompanying Issues and Decision Memorandum at Comment 13; and Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 48026 (Sept. 17, 2001) and accompanying Issues and Decision Memorandum at Comment 11. Moreover, Philips asserts that the Department's small quantities methodology has been upheld by the Court. See Shakeproof Assembly Components Division of Illinois Tool Works, Inc. v. United States, 102 F. Supp. 2d 486, 492 (CIT 2000) (Shakeproof 2000). Therefore, Philips contends that the Department should revise its surrogate value calculations for the final determination to exclude a number of aberrational small-quantity imports. In its case brief, Philips provided a 15-page spreadsheet showing the import categories at issue and the recalculations necessary to exclude allegedly small-quantity aberrational imports from these categories.

Finally, TCL contends that the Department should recalculate the surrogate values used in this case for the final determination to exclude aberrational values, which it defines as quantities below 1,000 or values which differ from the overall AUV for a given input by greater than 1,000 percent.

The petitioners did not comment on this issue.

Department's Position:

We disagree with the respondents that it is the Department's normal practice to automatically exclude imports of small quantities of merchandise from the calculation of surrogate values. Rather, the Department's practice is to exclude only data that is deemed to be distortive (i.e., where import volumes from particular countries appear extremely low in comparison to other import volumes for the same input, and the values associated with these low import volumes appear to break significantly from the distribution of prices for that input). See Saccharin at Comment 1. This practice has been upheld by the Court of International Trade (CIT) in Shakeproof 2000. See also Shakeproof Assembly Components Division of Illinois Tool Works, Inc. v. United States, 59 F. Supp. 2d 1354, 1358-59

(CIT 1999) at page 11. Therefore, we have declined to adjust the surrogate values merely because certain of the underlying import quantities were small.

Nonetheless, we have re-examined the surrogate value data on the record of this investigation in order to determine whether any of the values cited in the respondents' case briefs are, in fact, aberrational. Based on this examination, we have now excluded from our calculations certain observations which we determined were aberrational, in accordance with our practice. For a list of these observations, and the associated recalculations, see the April 12, 2004, memorandum to the file from the team entitled, "Final Determination Factors Valuation Memorandum" at Attachment 2 (Final Factors Memo).

Comment 6: *Surrogate Value for Electricity*

In the preliminary determination, the Department used electricity rate data from the International Energy Agency's (IEA's) Key World Energy Statistics 2002 report to value the respondents' electricity usage. Changhong argues that for the final determination, the Department should use the all-India average electricity tariff published by the Power & Energy Division of the Government of India's Planning Commission. Changhong placed this tariff on the record in its January 28, 2004, surrogate value submission.

According to Changhong, the Department's practice is to use official public sources of surrogate value data wherever possible. Further, Changhong contends that because the all-India average electricity tariff represents an average of electricity prices across India, it serves as an accurate assessment of electricity pricing within the country. Changhong states that this tariff was last published in May 2002 and is thus a more contemporaneous data source for a surrogate value for electricity than that used in the preliminary determination. Changhong also claims the following facts make the all-India average electricity tariff a better source for surrogate value data: 1) the tariff has been reported and published continuously for 14 years; 2) the source of IEA's data is undetermined, while the data source of the all-India average electricity tariff is well known; and 3) the Department has relied upon the all-India average electricity tariff as a surrogate value in many recent proceedings. See, e.g., Certain Folding Gift Boxes From the People's Republic of China, 68 FR 58653, 58657 (Oct. 10, 2003) (Gift Boxes); Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 44921, 44923 (July 31, 2003) (2001-2002 Persulfates Prelim); Brake Rotors From the People's Republic of China: Preliminary Results of the Eighth New Shipper Review, 68 FR 33095, 33097 (June 3, 2003) (Brake Rotors); Notice of Preliminary Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China, 68 FR 23966, 23971 (May 6, 2003) (RBAO); and Synthetic Indigo from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11371, 11373 (Mar. 10, 2003) (Indigo). Therefore, Changhong asserts that the Department should use the all-India average electricity tariff as the surrogate value for electricity in the final determination of this investigation.

The petitioners did not comment on this issue.

Department's Position:

We disagree that it would be appropriate to rely upon the all-India average electricity tariff placed on the record by Changhong. We find that this tariff does not represent the best information available on the record of this investigation because it is not an actual consumption rate, but rather is an estimated or "AP" (i.e., annual plan) rate. The Department has specifically rejected the use of this type of estimated rate in prior cases, including a number of those cited by Changhong, given that it represents only planned electricity sales. See the April 12, 2004, memorandum from Elizabeth Eastwood to the file entitled, "Placing Information on the Record Regarding the Surrogate Value for Electricity in the Investigation of Certain Color Television Receivers from the People's Republic of China," which contains the discussion of the surrogate value for electricity from the preliminary factors memorandum for the 2001-2002 antidumping duty administrative review of persulfates from the PRC. See also Brake Rotors, 68 FR at 33097; RBAO, 68 FR at 23971; and Indigo, 68 FR at 11373.[8] In light of this fact, we find that Changhong's reliance on 2001-2002 Persulfates Prelim, Brake Rotors, RBAO, and Indigo is misplaced. In contrast, the Department has based the surrogate value for electricity on data from the 2002 IEA report in a number of recent proceedings. See, e.g., Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Sixth Administrative Review and Preliminary Results and Final Partial Rescission of the Ninth New Shipper Review, 69 FR 10402, 10407 (Mar. 5, 2004); Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review; Final Rescission, in Part; and Intent to Rescind, in Part, 68 FR 58064, 58070 (Oct. 8, 2003); and Creatine Monohydrate From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 62767, 62769 (Nov. 6, 2003).[9] As a consequence, we have continued to rely on the electricity price from the 2002 IEA report as the best information available to calculate the surrogate value for electricity for purposes of the final determination.

Comment 7: *Market-Economy Purchases from Indonesia, Korea, and Thailand*

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[8] We note that, although these references are to preliminary decisions, the source of the surrogate values for electricity was not changed in the final decisions in these proceedings.

[9] Although the cases referenced above are preliminary decisions, we note that the source of the surrogate value for electricity was not changed in the final results of the latter two cases. See Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and Final Rescission of Review, in Part, 69 FR 7193 (Feb. 13, 2004); and Creatine Monohydrate from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 69 FR 1970 (Jan. 13, 2004).

In its calculations for the preliminary determination, the Department declined to use the market-economy purchase prices for inputs purchased from Indonesia, Korea, and Thailand on the grounds that these countries maintain broadly-available, non-industry-specific subsidies which may benefit all exporters to all export markets. Instead, the Department used Indian surrogate values for such inputs in its calculations. Changhong and XOCECO contend that the Department should accept the market-economy purchase prices of inputs from these countries for purposes of the final determination.

Changhong and XOCECO argue that the CIT's recent decision in Fuyao Glass Industrial Group Co. v. United States, Consol No. 02 00282 Slip Op. 2003-169 (CIT Dec. 18, 2003) (Fuyao Glass) directly addressed whether the Department can disregard purchase prices from Korea in antidumping cases involving PRC products. According to Changhong and XOCECO, the Court maintained that, in order to support a decision to disregard prices from Korea, Thailand, or Indonesia, the Department "must demonstrate particular, specific, and objective evidence to uphold its reason to believe or suspect that the prices . . . paid the supplier for inputs were subsidized. China Nat'l Mach., 264 F. Supp. 2d at 1243 (CIT 2003)." Changhong and XOCECO state that in Fuyao Glass the CIT remanded this issue to the Department with instructions that it must provide specific and objective evidence to demonstrate that all exports from Korea, Thailand, and Indonesia are subsidized or that the specific input in question (i.e., float glass) is subsidized in all three countries.[10]

Further, Changhong comments that the Department itself has reached the same result, albeit in a different context, in a recent determination involving imports of persulfates from the PRC. See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 68030 (Dec. 5, 2003) (2001-2002 Persulfates Final) and accompanying Issues and Decision Memorandum at Comment 3. Specifically, Changhong asserts that in 2001-2002 Persulfates Final the Department relied on the financial statements of an Indian persulfates producer to determine the surrogate financial ratios, even though the Indian government provided subsidies to this company. Changhong notes that the Department analyzed these financial statements and found that the receipt of subsidies did not distort the producer's financing expenses.

According to Changhong, the facts on the record of this investigation do not support a conclusion that prices paid by respondents for inputs purchased from Indonesia, Korea, and Thailand were so distorted by subsidies as to be unreliable. Changhong argues that the petitioners not only have not

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[10] The underlying determination on which Fuyao Glass was based is Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China, 67 FR 6782 (Feb. 12, 2002) (Windshields) and accompanying Issues and Decision Memorandum at Comment 1. In Windshields, the Department excluded purchases from Korea from its analysis because it found evidence demonstrating the presence of broadly-available non-industry-specific export subsidies.

claimed that inputs purchased from these countries are subsidized, but they have even criticized Changhong for excluding purchases from Indonesia, Korea, and Thailand from its calculation of surrogate values using data from the MSFTI. See the petitioners' November 3, 2003, letter to the Department.

Changhong and XOCECO contend that the petitioners' criticism equally applies to the respondents' direct purchases from Indonesia, Korea, and Thailand. Changhong and XOCECO comment that there is no information on the record of this investigation that demonstrates the presence of generally-available export subsidies in these countries, nor is there information showing that the inputs purchased by the respondents benefitted from such subsidies. Further, with respect to Korea in particular, Changhong and XOCECO state that none of the cases cited by the Department in Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China, 68 FR 10685 (Mar. 6, 2003) (Ball Bearings from the PRC) as establishing the availability of generally available export subsidies involve CTVs or CPTs.[11] Finally, Changhong and XOCECO assert that there has never been a CVD case brought against the Korean CTV industry, although there have been a number of antidumping investigations of CTVs and components from Korea. Changhong and XOCECO argue that, if the Korean CTV industry benefitted from subsidies, the petitioners in those cases would not have hesitated to file a CVD case there. According to Changhong and XOCECO, the fact that a CVD case on Korean CTVs has never been filed shows that the Korean CTV industry has not benefitted from subsidies.

Therefore, based on the evidence on the record, Changhong and XOCECO contend that the Department should accept respondents' input prices for purchases from Indonesia, Korea, and Thailand, where applicable, in its calculations for the final determination.

The petitioners assert that, in the preliminary determination, the Department properly declined to use the respondents' prices for inputs purchased from Korea on the grounds that input prices in this country are distorted by broadly-available, non-industry-specific subsidies maintained by the government of Korea. The petitioners note that, while 19 U.S.C.1677b(c)(1)(B)[12] directs the Department to base surrogate values on the best available information in a market economy country considered to be appropriate by the administering authority, the Court has held that the Department enjoys wide discretion in valuing factors of production in an NME case.[13] Further, the petitioners cite

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[11] Changhong and XOCECO cite Ball Bearings from the PRC at Comment 8, where the Department presented a list of countervailing duty (CVD) cases which it said provided reasonable grounds to believe or suspect that prices of inputs from Korea are subsidized.

[12] This provision is also set forth in section 733(c)(1)(B)of the Act.

[13] See Lasko Metal Prods. Inc. v. United States, 43 F. Supp. 1442, 1446 (Fed. Cir. 1994) (Lasko). See also Shakeproof Assembly Components, Div. Of Ill. Toolworks, Inc. v. United States,

China National Machinery Import & Export Corp. V. United States, 264 F. Supp. 2d 1229, 1243 (CIT 2003) (CMC I), where the Court noted that 19 CFR 351.408(c)(1) allows the Department to depart from its normal practice of valuing an input using the purchase price where it is purchased from a market-economy supplier and paid for in a market-economy currency, when the Department has reason to believe or suspect that the price of the input price is subsidized. As additional support for their argument, the petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China, 67 FR 20090 (April 24, 2002) and accompanying Issues and Decision Memorandum at Comment 1; Kerr -McGee Chemical Corp. v. United States, 985 F. Supp. 1166 (CIT 1997); and Tehnoimportexport v. United States, 783 F. Supp. 1401 (CIT 1992) (Tehnoimportexport).

According to the petitioners, Changhong and XOCECO reliance on Fuyao Glass is misplaced because, contrary to Changhong's and XOCECO's contention, the Department does have substantial, specific, and objective evidence to support a finding that Korean CTV inputs are exported at subsidized prices. Specifically, the petitioners claim the Department has found in prior CVD proceedings that companies in high-technology industries in Korea have benefitted from both industry-specific subsidy programs as well as non-industry-specific export subsidies that were broadly available. For example, the petitioners state that in Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003) (DRAMs from Korea CVD Determination) and accompanying Issues and Decision Memorandum at pages 26-30, the Department determined that the government of Korea provides subsidies on a specific basis to companies in high-technology industries and that companies in these industries utilized such programs. Further, the petitioners note that the Department has found that the government of Korea maintains broadly available export subsidies that are not industry specific. See Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102 (Oct. 3, 2002) (Cold-Rolled Steel CVD Determination); and Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea, 68 FR 13267 (Mar. 19, 2003) (Sheet and Strip from Korea CVD Determination). According to the petitioners, such generally-available evidence meets the standard for "specific and objective evidence" which was upheld by the Court in China National Machinery Import & Export Corporation, 293 F. Supp. 2d 1334, 1339 (CIT 2003) (CMC II). Thus, the petitioners assert that it is reasonable to infer here, as the Court inferred in CMC II, that Korean manufacturers of CPT inputs would have taken advantage of these programs.

Therefore, the petitioners maintain that the Department's findings in these prior CVD proceedings provide the Department with substantial, specific, and objective evidence to support the suspicion that prices of CTVs inputs purchased from Korea may be distorted due to subsidies. Consequently, the

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268 F. Supp. 3d 1376, 1382 (Fed. Cir. 2001) (Shakeproof III).

petitioners assert that the Department should continue to disregard prices of inputs purchased from Korea in its calculations for the final determination.

Department's Position:

The Department excludes market-economy purchases from Indonesia, Korea, and Thailand from our analysis because of known, generally available, non-industry specific export subsidy programs in those countries. 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 April 12, 2004, memorandum from Elizabeth Eastwood to the file entitled, "Placing February 2002 Office of Policy Memorandum on the Record of the Investigation of Certain Color Television Receivers from the People's Republic of China."

The Department has applied this policy in numerous recent cases, including Windshields at Comments 1, 2, and 5; Ball Bearings from the PRC at Comment 8; 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 (Sept. 10, 2003) and accompanying Issues and Decision Memorandum at Comment 2; Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 68 FR 62053 (Oct. 31, 2003) and accompanying Issues and Decision Memorandum at Comment 6; and 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 (Mar. 15, 2004) and accompanying Issues and Decision Memorandum at Comment 2.

We disagree with Changhong and XOCECO that the Department's treatment of purchases from Indonesia, Korea, and Thailand is contrary to the CIT's ruling in Fuyao Glass. In that case, the Court did not reject the Department's application of its policy in general, 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 Glass at pages 15-16. Furthermore, we note that 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 thus it 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), (Mar. 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 available in Indonesia, Korea, and Thailand as further support of its policy in this area. Because this list equally applies here, we have placed it on the record of the instant investigation. See the April 12, 2004, memorandum from Elizabeth Eastwood to the file entitled, "Placing Information on the Record Regarding Subsidy Programs In the Investigation of Certain Color Television Receivers from the People's Republic of China."
Moreover, the Department has ample evidence from prior CVD proceedings to support the presumption that CTV inputs may be exported at subsidized prices. See DRAMs from Korea CVD Determination and accompanying Issues and Decision Memorandum at pages 26-30; Cold-Rolled Steel CVD Determination; Sheet and Strip from Korea CVD Determination; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (Oct. 3, 2001); and Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia, 66 FR 49637 (Sept. 28, 2001). Based on our findings in these cases, we find that this evidence meets the standard for "specific and objective" evidence set forth by the Court in CMC II. Therefore, for purposes of the final determination, the Department has continued to disregard the respondents' purchases of inputs from Indonesia, Korea, and Thailand, in accordance with our practice.

Comment 8: *Market-Economy Purchases from Hong Kong Trading Companies*

In the preliminary determination, the Department stated that all inputs purchased from Hong Kong suppliers should be considered market-economy purchases. However, we were unable to treat certain of the respondents' purchases from Hong Kong suppliers as market-economy transactions in our calculations for the preliminary determination because we lacked the information on the record to do so. Consequently, we stated that we intended to obtain this information from the respondents at verification. See the concurrence memorandum prepared for the preliminary determination at issue 2.[14]

Because the Department was able to obtain information related to its Hong Kong purchases at verification, Changhong asserts that the Department should use these market-economy purchase prices, regardless of the country of origin of these inputs, in its calculations for the final determination.

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[14] Although the discussion of the data limitations in the concurrence memorandum was limited to Changhong, we note that this issue applies equally to the other three respondents.

Changhong notes that it is the Department's practice to use a respondent's purchase price to value an input, rather than a surrogate value, when a respondent purchases an input from a market-economy country and pays in a market-economy currency. See Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China, 60 FR 22359, 22368 (May 5, 1995). Further, according to Changhong, the Department has applied this practice specifically to purchases from Hong Kong without regard to the original country of origin of the input. See Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 7 (Mushrooms from the PRC).

Further, Changhong argues that, even where the country of manufacture of an input purchased in Hong Kong was known to be the PRC, the Department's practice is to accept such prices as long as the inputs were purchased from a market-economy supplier outside of the PRC. See Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 68 FR 4758 (Jan. 30, 2003) and accompanying Issues and Decision Memorandum at Comment 9; and Notice of Negative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Determination of Critical Circumstances: Certain Color Televisions From Malaysia, 66810, 66814 (Nov. 29, 2003). Therefore, Changhong asserts that, for purposes of the final determination, the Department should continue to treat its inputs purchased through Hong Kong trading companies as market-economy purchases, regardless of the inputs' country of manufacture.

Konka similarly argues that the Department should accept its purchases of CPTs through Konka's affiliated trading company in Hong Kong because these inputs were purchased from a market economy supplier and paid for in a market-economy currency. Specifically, Konka argues that the Department should revise its treatment of values used for these inputs to use the price paid by Konka to the Hong Kong entity. Konka argues that this treatment would be consistent with Department practice and with decisions made by the CIT and the U.S. Court of Appeals for the Federal Circuit (CAFC). As support for its position, Konka cites the following cases: Olympia Industrial, Inc. v. United States, 1997 WL 181529, at 2 (CIT April 10, 1997); Lasko Metal Products v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994); Final Results of Redetermination On Remand Pursuant to Shakeproof Assembly Components Division of Illinois Tool Works, Inc. v. United States, Court No. 97-12-02066 (September 9, 1999); aff'd, 102 F. Supp. 2d 482; aff'd No. 00-1521 (Fed. Cir. October 12, 2001); and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997-1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837 (Nov. 15, 1999).

In addition, Konka argues that, although the CPTs in question may have been manufactured in Korea, its Hong Kong reseller may have purchased them indirectly from that country. Furthermore, Konka contends that in order to disregard Konka's market-economy CPT input prices, the Department would have to conclude not only that Korean exporters benefitted from subsidies, but also that a potential

intermediate company unrelated to the Korean exporter passed the benefits of such subsidies on to Konka. According to Konka, there is no evidence on the record of this case which would allow the Department to make these conclusions.

According to Konka, there is also no evidence on the record to suggest that: 1) Konka's Hong Kong supplier is affiliated with the company that exported the CPTs; 2) the prices paid by Konka were not at arm's length; and 3) or any possible benefits to Konka's Hong Kong supplier passed through to Konka. As support for its position, Konka cites to Preliminary Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Mexico, 49 FR 35842 (Sep. 12, 1984); Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review, 66 FR 14549 (Mar. 13, 2001) and accompanying Issues and Decision memorandum at Comment 6.

The petitioners claim that, because some of the inputs Changhong and Konka purchased through Hong Kong trading companies originated in a country with broadly available non-industry-specific export subsidies, these input prices are distorted due to subsidies and should be disregarded in the Department's calculations for the final determination. The petitioners cite Tehnoimportexport, where the Court held that the existence of non-product-specific subsidies, as evidenced by prior CVD proceedings, supports a finding that there is a reasonable basis to believe or suspect that surrogate export prices were subsidized. According to the petitioners, the Department's CVD regulations at 19 CFR 351.525(c) state that subsidies received by a producer of the merchandise in question are attributed to trading companies regardless of whether or not the trading company and the producing firm are affiliated. Therefore, the petitioners argue that, because ample evidence exists on the record to show that inputs purchased from countries with broadly available non-industry-specific export subsidies were exported at subsidized prices, the Department must infer that these subsidies were "passed through" to the trading companies in Hong Kong. Consequently, the petitioners contend that the prices charged by the Hong Kong trading companies to Changhong and Konka are distorted and the Department should disregard them for purposes of the final determination.

Department's Position:

We agree with the respondents that we should not reject prices of goods purchased in Hong Kong based on the country of origin of the goods. The Department's regulations at 19 CFR 351.408 state that we will normally use the reported market economy prices where a factor is purchased from a market economy supplier and paid for in a market currency. In Mushrooms from the PRC, the Department set forth the following interpretation of this regulation, stating:

> 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." This regulation does not require that the non-market economy respondent establish in which particular country the factor of

> production was produced, only that it was obtained from a market economy supplier. ...{A}lthough Raoping was unable to provide evidence of the cans' country of manufacture, Raoping demonstrated to the Department's satisfaction at verification that the material was obtained from a Hong Kong supplier and that Raoping paid for the material in U.S. dollars. . . Based on these circumstances, Raoping has met the regulatory criteria used to value the cans at the market-economy purchase price, and we have continued to value these cans based on that price.

See Mushrooms from the PRC at Comment 7.

In this case, because: 1) the suppliers are located in Hong Kong, which the Department treats as a market economy, and 2) the transactions in question are conducted in a market-economy currency, we have accepted the prices paid by Changhong and XOCECO for purposes of the final determination. This decision is consistent with our practice, as explained in Mushrooms from the PRC. Regarding Konka and TCL, we note that these respondents: 1) purchased inputs from affiliated parties in Hong Kong, 2) paid for these inputs in a market economy currency, and 3) reported the transactions between the affiliates and their own suppliers. Because our practice is to rely on transfer prices charged by affiliated parties only where those prices are at arm's length[15], we obtained the transfer prices for the inputs in question at the verifications conducted for these two respondents. For purposes of the final determination, we have relied on these transfer prices where we are satisfied that they are at arm's length. In cases where we found that the prices are not at arm's length, we adjusted them to an arm's-length basis by adding a portion of the affiliate's general and administrative expenses. For further discussion, see the April 12, 2004, memorandum from the team to the file entitled, "U.S. Price and Factors of Production Adjustments for Konka Group Compay, Ltd. (Konka) for the Final Determination," as well as the April 12, 2004, memorandum from the team to the file entitled, "U.S. Price and Factors of Production Adjustments for TCL Corporation for the Final Determination."

Regarding the petitioners' argument that inputs purchased through Hong Kong trading companies should be disregarded because the inputs originated in countries that maintain broadly available, non-industry-specific export subsidies, we disagree. 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. Specifically, where the producer and/or the exporting trading company have received countervailable

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[15] We note that this practice applies in NME cases only where one of the affiliates is located in a market economy. The Department does not rely on prices between entities located with an NME. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (Aug. 11, 2003) and accompanying Issues and Decision Memorandum at Comment 1 (PVA from the PRC).

subsidies, benefits from those subsidies are cumulated for purposes of the calculated ad valorem subsidy rate for the subject merchandise exported from that country, regardless of whether they are affiliated. The regulation does not address those instances where subsidized exports are shipped through a third-country trading company to its final destination. The trading company in the third country is not subject to the investigation, and cannot therefore be presumed to have benefitted from any subsidies received by the producer or exporter of the merchandise. Moreover, the petitioners have not alleged that the Hong Kong trading companies themselves have received subsidies. For these reasons, we have not rejected these input prices.

Comment 9: *Surrogate Value Data Obtained from www.infodriveindia.com*

In the preliminary determination, the Department based the surrogate values for speakers and certain CPTs on information obtained from the website www.infodriveindia.com (Infodriveindia), a fee-based website providing Indian customs data. We used this source because it provided the most specific information available on the record with respect to these inputs. Changhong contends that this data should not be used for the final determination because Infodriveindia does not constitute a reliable source of surrogate value information. Changhong bases this conclusion on the following premises: 1) Infodriveindia has never before been used by the Department and thus it is an unknown source for surrogate value data; 2) there is no information on the record regarding the source of Infodriveindia's underlying data, including the method whereby such information is collected and how such information is complied (i.e., what information is included or excluded), and thus there is no basis for assuming that the source is complete; and 3) this source appears to contain numerous errors and aberrational values, including many small entries of a container-load or less. Regarding this last point, Changhong claims that such small quantities do not represent shipments made in commercial quantities, which is significant because the Department has a stated policy of not basing surrogate values on shipments which are not made in commercial quantities. See Hand Tools 1995, 60 FR at 49253.

In addition, Changhong comments that, because data from Infodriveindia is obtained through keyword searches of its database, it is very easy to: 1) inadvertently omit observations from a given search; 2) tailor a search to exclude undesirable results; and 3) include clerical errors inherent in the raw data obtained from the database. According to Changhong, it is likely that the data obtained from Infodriveindia by one party will differ substantially from the data obtained by another party simply because of the search terms used. Changhong cites several examples of disparities between the data the petitioners obtained from Infodriveindia and the data Changhong itself obtained. For example, Changhong asserts that the Infodriveindia database contains several entries for 25- and 29-inch CPTs which had been classified as "COL OUR" picture tubes. Changhong asserts that the petitioners did not provide these observations in their surrogate value submissions to the Department, nor were they included in the Department's surrogate value calculations for the preliminary determination.

Similarly, TCL argues that the data obtained from Infodriveindia are deficient. According to TCL, the Infodriveindia data do not meet the Department's standards for best available surrogate value

information in that they are not publicly-available values which are: 1) non-export values; 2) representative of a range of prices within the POI or most contemporaneous with the POI; 3) product-specific; and 4) tax-exclusive.[16] TCL asserts that there is no evidence on the record that the Infodriveindia data are as reliable as the official, published import data from MSFTI. TCL also remarks that it is unaware of any case in which the Department has relied on a non-government data source that may be accessed only by paying a fee to a private subscription service.

The petitioners contend that the Department should continue to rely on Infodriveindia data as the source of surrogate values for CPTs and speakers, because they represent the best available information on the record on this investigation. Contrary to Changhong's claim that the data obtained from Infodriveindia must be based on a keyword database search, the petitioners assert that they obtained Infodriveindia data using HTS-number specific searches. The petitioners note that this is the same way that data are obtained from MSFTI, the Department's preferred source for surrogate value data. Further, the petitioners question Changhong's characterization of the quantities reported in the Infodriveindia database as non-commercial. According to the petitioners, the purchases reflected in the Infodriveindia data represent actual purchases made by the primary CTV manufacturers in India. Thus, the petitioners contend that these imports are made in the normal course of business and as a result must constitute commercial quantities.

The petitioners disagree with TCL's contention that the Department has never relied upon non-governmental data that may only be accessed upon payment to a private subscription service. In fact, the petitioners note that the Department has used data from World Trade Atlas, a fee-based internet subscription service published by the Global Trade Information Services, Inc. See Gift Boxes, 68 FR at 58656 and Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Duty Administrative Review, and Rescission of a New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China, 65 FR 60399, 60404 (Oct. 11, 2000) (Crawfish 2000).[17] Therefore, the petitioners maintain that the

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[16] TCL maintains that the Department's standards are laid out in the following decisions: Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964, 61987 (Nov. 20, 1997) (Carbon Steel Plate from the PRC); Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (Apr. 22, 2002) (Crawfish 2002) and accompanying Issues and Decision Memorandum at Comment 2; and RBAO at Comment 3.

[17] The petitioners note that, in the final results of Crawfish 2000, the Department used a different surrogate value source because it found that the new source represented the best available information. See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (Apr. 22, 2002).

Department should continue to use data from Infodriveindia to calculate surrogate values for CPTs and speakers for the final determination.

Department's Position:

In selecting the best available information for valuing factors of production in accordance with section 773(c)(1) of the Act, the Department's practice is, to the extent practicable, to select surrogate values which are: 1) non-export average values; 2) most contemporaneous with the POI; 3) product-specific; and 4) tax exclusive.[18] See, e.g., RBAO at Comment 3. For the preliminary determination, we based the surrogate values for most of the inputs used in the production of subject merchandise on data from MSFTI. We agree with TCL that the Department's preferred source of surrogate value data in this case should continue to be MSFTI data because it represents the best available information. However, we disagree that, where the MSFTI import categories are overly broad, the Department should be precluded from using Infodriveindia because of inherent flaws.

As a threshold matter, we disagree with TCL that data from Infodriveindia does not meet the Department's standard surrogate value criteria. The record shows that the Infodriveindia data: 1) represents import data; 2) is contemporaneous with the POI (or is from a period very close to the beginning or end of the POI); 3) is product-specific; and 4) is tax exclusive.[19] Moreover, we disagree that this data is not publicly-available solely because it is collected by a private subscription service. Pursuant to 19 CFR 351.105(b)(1), public information consists of factual information of a type that has been published or otherwise made available to the public by the person submitting it. See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review of , 68 FR 6712 (Feb. 10, 2003) and accompanying Issues and Decision memorandum at Comment 8 (2000-2001 Persulfates Final). Because Infodriveindia data is "otherwise made available to the public," we find that it is publicly-available and thus a legitimate source of surrogate value information in this case.

Indeed, the data on which Infodriveindia is based is not private at all, but rather is Indian customs data. Because we initially shared TCL's concerns about the source of this data, early on in this investigation, we contacted Infodrive India Pvt. Ltd. (Infodrive), the company responsible for maintaining the Infodriveindia website, and inquired about its data collection methods. According to Infodrive officials, Infodrive: 1) obtains the information in question from official Indian customs data; 2) receives daily customs data transmitted each month from the Indian customs department; and 3) presents the Indian customs data exactly as it is received, without additions or deletions. See the November 17, 2003,

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[18] See Comment 12, below, for a further discussion of the tax-exclusive nature of Infodriveindia data.

[19] As noted below, this data is Indian customs data obtained directly from the Indian government. As such, it is reasonable to infer that this data is stated on the same basis as the MFSTI data.

memorandum from Alice Gibbons to the file entitled, "Placing Information on the Record Regarding Infodriveindia.com in the Antidumping Duty Investigation on Color Television Receivers from the People's Republic of China (PRC)."

In any event, contrary to TCL's claim, the Department frequently relies on surrogate values from non-governmental sources. For example, the Department has a longstanding practice of relying on values taken from two fee-based sources: 1) the Indian trade publication, Chemical Weekly (published by a private company and available by paid subscription (see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the People's Republic of China, 68 FR 13674, 13680 (Mar. 20, 2003) (PVA Prelim), unchanged in PVA from the PRC, 68 FR 47538; and 2) World Trade Atlas, the source for the MSFTI data used to calculate surrogate values in most recent NME cases, including the preliminary determination of the instant investigation. Moreover, the Department has generally, as it has here, relied on the financial statements of individual companies in selecting surrogate financial ratios.

We similarly disagree with Changhong that the Infodriveindia data is fundamentally flawed because of the probability of "missing" values via a keyword search. The Department obtained all of the data it relied on from Infodriveindia using HTS category searches of the database. For this reason, we find that Changhong's concern in this area is without merit. As proof of this conclusion, we cite Changhong's own example (i.e., that "COL OUR" picture tubes were not included in the Department's calculations); this entry was, in fact, considered in our analysis - but as a flat screen CPT, not as a curved one.[20] Accordingly, we do not agree with Changhong concerning the suggested disparity in the data. Based upon all of our analysis above, therefore, we have used Infodriveindia data when it represented the best available information. See Final Factors Memo at page 2.

Comment 10: *Using Market-Economy Purchases Made by one PRC Respondent to Value the Factors of Production for Other PRC Respondents*

Changhong notes that there were instances where some respondents in this investigation purchased certain inputs from market-economy suppliers while others did not. According to Changhong, in instances where reliable surrogate value information is not available, the Department may use the market-economy price for an input paid by one foreign producer as the basis for valuing the input for another producer. See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026, 19029-30 (Apr. 30, 1996) (Bicycles); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (Apr. 13, 2000) (Apple Juice) and accompanying

[20] The product description for this observation (shown at Exhibit 3 of Changhong's January 28 response) clearly shows that this import is of Sony CPTs. In the preliminary factors memorandum at page 3, we stated, "we have classified all Sony CPTs as flat screen CPTs for all screen types."

Issues and Decision Memorandum at Comment 6. Further, Changhong asserts that the petitioners agree with this practice, given that they argued for it in their November 3, 2003, letter to the Department regarding surrogate valuation.

In this case, Changhong specifically argues that the Department should value 25-inch CPTs using the price paid by other PRC respondents for this input because the surrogate value data on the record for this input is unreliable. (See Changhong's arguments to Comment 9, above). In addition, Changhong asserts that, in instances where Changhong had market-economy purchases of certain inputs that other respondents did not have, the Department should use these purchases to value the inputs for other PRC respondents. For example, Changhong placed on the record of this investigation an invoice for a purchase of 29-inch CPTs from Mexico. In addition, Konka made market-economy purchases of 25-inch CPTs.

Both TCL and XOCECO argue that the Department should use public information regarding Changhong's market-economy purchases of 29-inch curved CPTs as a surrogate value for their own 29-inch curved CPTs. TCL states that the Department verified that this purchase was both: 1) made from a supplier located in a market-economy country; and 2) paid for in a market-economy currency. According to TCL, the value derived from Changhong's market-economy purchases is consistent with the petitioners' own calculation of the surrogate value for this input. See the petitioners' November 3 submission at page 25. TCL also contends that using Changhong's market-economy purchase price is consistent with the petitioners' suggestion that the Department use one respondent's market-economy purchase price as the surrogate value for another respondent. See the petitioners' November 3 submission at page 6. Moreover, TCL contends that the Department has used this methodology in past cases. As support for this assertion, TCL cites Apple Juice at Comment 6 and Bicycles, 61 FR at 19030.

XOCECO contends that the Department has a clear obligation to calculate the normal value in an NME case as accurately as possible, citing Lasko, 43 F.3d 1442. According to XOCECO, this means that the Department must utilize the best information on the record to value those material inputs that were actually used to produce the subject merchandise. See Anshan Iron & Steel Company v. United States, Slip Op. 2003-82 (CIT 2003). Therefore, XOCECO maintains that the Department should use the surrogate value data placed on the record by Changhong to value CPTs, because it is clearly the most accurate data.[21]

The petitioners argue that the Department should not base the surrogate value for 25-inch CPTs on the market-economy purchases of this input by another PRC respondent. Specifically, the petitioners

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[21] XOCECO cites Changhong's January 28 response as the source of the CPT surrogate value. In fact, we note that this data is located in Changhong's October 31 submission at Exhibit 1.

assert that the CPTs in question were obtained from suppliers located in countries which have been found to grant generally-available export subsidies and therefore should not be used. According to the petitioners, the Department should continue to rely on data from Infodriveindia as the source for its surrogate value for 25-inch CPTs for the final determination.

Department's Position:

Section 351.408 (b) of the Department's regulations states:

> In determining whether a country is at a level of economic development comparable to the nonmarket economy under section 773(c)(2)(B) or section 773(c)(4)(A) of the Act, the Secretary will place primary emphasis on *per capita* GDP as the measure of economic comparability.

In accordance with this regulation, the Department's practice is to value the factors of production using surrogate values from a single surrogate country which is at a comparable level of economic development, when it is unable to use a respondent's actual market-economy purchase price to value an input. In this case, because we have determined that it is inappropriate to use Changhong's purchase prices for 25-inch curved CPTs because these inputs were purchased from countries which the Department has found to provide generally-available export subsidies (see Comment 8, above), we have used surrogate value data to value these inputs. Contrary to Changhong's arguments against the use of Infodriveindia data, we continue to find that this data source is the best source of surrogate value data for 25-inch curved CPTs on the record (see Comments 9 and 11, above).

Regarding the respondents' argument that we have relied on other respondents' data in Bicycles and Apple Juice and that we should therefore do so here, we note that in those cases, the Department resorted to using other respondents' data as surrogate values because it did not have other usable surrogate value data for the inputs in question on the record. However, because we do have usable Infodriveindia data on the record for valuing 25-inch curved CPTs, we find that it is appropriate to use this data.

Similarly, with regard to Changhong's purchases of 29-inch curved CPTs from Thomson Mexico, we note that this purchase is not from one of the surrogate countries identified by the Department as being at a level of economic development comparable to the PRC. Therefore, it would be contrary to the Department's policy to rely on such surrogate value data for another respondent when we have acceptable surrogate value information on the record from India, the Department's selected surrogate country. See the Preliminary Determination, 68 FR at 66808; see also the July 10, 2003, memorandum to Louis Apple from Ron Lorentzen entitled, "Antidumping Duty Investigation of Color Television Receivers from the People's Republic of China (PRC): Request for a List of Surrogate Countries" for a list of the countries the Department deemed to be at a comparable level of economic development to the PRC in this investigation. Consequently, we find that Changhong's contract for 29-inch curved

CPTs from Thomson Mexico is not an appropriate surrogate value source for TCL's or XOCECO's CPTs.

Comment 11: *Surrogate Value for 25-inch Curved CPTs*

For purposes of the preliminary determination, the Department valued 25-inch curved CPTs using Infodriveindia data for the period March through September 2002, the most contemporaneous data available from this source. Changhong argues that, not only is the information published by Infodriveindia flawed for general reasons (see Comment 9, above), but it also is unuseable as a source to value 25-inch curved CPTs and thus should not be used for the final determination.

Specifically, Changhong notes that, to calculate a surrogate value for 25-inch curved CPTs, the Department used data from Infodriveindia showing imports from Austria, France, and Poland which occurred before the POI. Changhong cites information it received from Thomson, a large CPT producer based in France, and Philips Electronics, another major European CPT producer, stating that there is also no production of curved CPTs in France or Austria, respectively. See Changhong's January 28 submission at Exhibits 1 and 2. According to Changhong, because this evidence demonstrates that the Infodriveindia information showing 25-inch CPT imports from Austria and France is erroneous, the Department cannot rely on it for the final determination.[22] Further, Changhong contends that because: 1) the quantity of the remaining shipment from Poland was only 320 units and does not represent a commercial quantity when compared to the total quantity of CPTs used by Changhong during the POI;[23] and 2) the 25-inch CPT imports from Poland occurred in March 2002 (i.e., well before the period of investigation),[24] this data should not be used as a surrogate value source, according to the Department's practice.

However, Changhong asserts that the Department has multiple options at its disposal to obtain a surrogate value for 25-inch curved CPTs, all of which provide essentially the same cost for this input. Specifically, Changhong argues that the Department could: 1) follow its normal practice and base the

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[22] Changhong also argues that these issues indicate fundamental flaws with data from Infodriveindia as a whole, which should lead the Department to disregard such data in its entirety. See Comment 9, above.

[23] See Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 48026 (Sept. 12, 2001) and accompanying Issues and Decision Memorandum at Comment 11.

[24] See Notice of Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts From the People's Republic of China, 68 FR 20373 (Apr. 25, 2003) and accompanying Issues and Decision Memorandum at Comment 3.

surrogate value on data from MSFTI;[25] 2) use the price paid by other PRC producers to market-economy suppliers for this input (see Comment 10, above)[26]; 3) derive a price for 25-inch curved CPTs from the prices Changhong paid for other CPT sizes based on a weight ratio; or 4) use the price of 25-inch curved CPTs imported into India from Malaysia (i.e., $52.58 per unit), as shown in the Infodriveindia data placed on the record in Changhong's January 28 submission at Exhibit 3.

Regarding its first option, Changhong contends that, in its preliminary determination, the Department stated that the only reason it used data from Infodriveindia rather than data from MSFTI to value CPTs was because the Infodriveindia data provided the most specific data available for this input. Changhong argues that, since the Infodriveindia data has now been proven unusable, the Department has no reason not to use the MSFTI data. Regarding its third option, Changhong notes that both it and the petitioners have shown that there is a direct relationship between the size of a CPT and its cost. See Changhong's November 7 submission at page 15 and the petitioners' November 3, 2003, submission at page 9. According to Changhong, the Department has used such a weight ratio to calculate a surrogate value in past cases. See Crawfish 2002 at Comment 11. Regarding its fourth option, Changhong states that, while the quantity of the imports from Malaysia shown in the Infodriveindia data was small (i.e., 30 units), they occurred in August 2002, very close to the beginning of the POI. According to Changhong, the fact that five different sources (i.e., the four sources detailed above and Changhong's own purchases) of 25-inch curved CPT prices all fall within a narrow range points to the reliability of each of the alternative data sources proposed by Changhong.[27] Changhong contends that such a comparison is appropriate because the Department has a practice of comparing surrogate value data to other data sources in order to test its reliability. See Industrial Nitrocellulose From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65667, 65669 (Dec. 15, 1997) (Nitrocellulose).

The petitioners assert that the Infodriveindia data remain the best available information available as a surrogate value for 25-inch curved CPTs. According to the petitioners, the Department has been given broad discretion by the Courts in determining the "best available information" in a reasonable manner on a case-by-case basis. See Timken Co. v. United States, 166 F. Supp. 2d 608, 616 (CIT 2001); see also Lasko, 43 F. 3d at 1446; and Shakeproof III, 268 F. 3d at 1382. The petitioners contend that the Department prefers to select surrogate values which are comparable in terms of design or material-specific data to the actual input consumed by the PRC respondent where those characteristics have a significant impact on price. As support for this assertion, the petitioners cite Bicycles, 61 FR at

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[25] According to Changhong, the AUV obtained from this source is $53 per unit.

[26] Because this argument is set forth in Comment 10, we have not addressed it further here.

[27] Because some of the potential surrogate values proposed by Changhong are proprietary in nature, we are unable to discuss them in detail here. See Changhong's February 9, 2004, case brief for further discussion of these proprietary values.

19030; Manganese Metal From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 65 FR 30067 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 7; Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China, 62 FR 41347, 41354 (Aug. 1, 1997); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers From the People's Republic of China, 60 FR 54472, 54475 (Oct. 24, 1995). The petitioners state that the Courts have upheld the Department's approach, citing Union Camp Corp. v. United States, 8 F. Supp. 2d 842 (CIT 1998), where the Court instructed the Department to explain how the surrogate value and the factor of production in question in that case were comparable. See also Kerr-McGee Chem. Corp. v. United States, 985 F. Supp. 1166, 1176 (CIT 1997); Writing Instruments Mfrs. Assoc., Pencil Section v. United States, 984 F. Supp. 629, 636 (CIT 1997); and Shieldalloy Metallurgical Corp. v. United States, 947 F. Supp. 525, 532 (CIT 1996). Therefore, the petitioners contend that it is the Department's practice to value a factor of production using a surrogate value that is most comparable to the factor in terms of substantive physical characteristics.

The petitioners maintain that the MSFTI data reported under HTS category 8540.1100 does not meet this standard because it represents a broad basket category. Because CPT prices vary widely depending on product characteristics, the petitioners note that use of a surrogate value for 25-inch curved CPTs based on MSFTI data is inappropriate because it disregards such characteristics. Further, the petitioners allege that the MSFTI data is understated for purposes of this investigation because of the inclusion of smaller, non-subject CPTs. According to the petitioners, an examination of the line-by-line data available through Infodriveindia shows that many of the entries during the POI under HTS category 8540.1100 are of 14- and 21-inch CPTs, neither of which is included in the scope of this investigation.

Similarly, the petitioners assert that the Department should reject Changhong's proposal that the Department use a weight-based methodology for deriving the price for a 25-inch curved CPT from the price of another size CPT. According to the petitioners, Changhong has mischaracterized their statements from the November 3 submission where they noted a correlation between CPT weight and size. The petitioners contend that this correlation was presented only to show the inappropriateness of using MSFTI data as the surrogate value for CPTs, since this data source mixes very different products and results in an AUV too unspecific to value any size or type of CPT. The petitioners dismiss Changhong's assertion that the difference in weight between two CPT models would allow the Department to accurately derive a surrogate value for a CPT because of the technical differences that are not captured in weight differences alone. Further, the petitioners note that Changhong compares the weight-ratio-derived CPT price to its actual purchase price and claims that this is a meaningful benchmark. However, the petitioners assert that such a comparison is without merit because the Department does not consider purchase prices from suppliers located in NMEs. Finally, the petitioners maintain that the Department should disregard Changhong's fourth option of using Infodriveindia data to value 25-inch CPTs, but limiting the calculation to include only imports from Malaysia. The petitioners

note that such a methodology would exclude the vast majority of the Infodriveindia data for 25-inch CPTs (i.e., 97 percent) and leave the Department with a value based on the imports of only 30 units. According to the petitioners, it is inconsistent for Changhong to state that the total quantity of Infodriveindia data used to value 25-inch CPTs (i.e., 858 units) is too small to even be considered a commercial quantity, and yet also to advocate using only a fraction of the available Infodriveindia data as a surrogate value.

The petitioners contend that, to the extent that the respondents' claim that the Infodriveindia data contain errors relating to country of origin is accurate, such errors are reflected in the MSFTI data as well, given that both Austria and France are also identified in the MSFTI data as exporting merchandise to India under HTS category 8540.1100. Therefore, the petitioners claim that if Infodriveindia data are unreliable, this would call into question MSFTI data as well. Because no party has called into question the reliability of MSFTI data, the petitioners assert that the Infodriveindia data are also usable. Further, the petitioners note that the Infodriveindia data simply indicate that Thomson India imported CPTs from France without providing data on where the CPTs were manufactured. The petitioners find it telling that Thomson India did not provide an affidavit stating that it did not import CPTs from France. Additionally, the petitioners contend that, if Thomson India had a lower CPT purchase price than that shown in the Infodriveindia data, Changhong would have placed this data on the record. Because it did not, the petitioners surmise that the Infodriveindia data are correct and perhaps even understate the price paid by Thomson India for CPTs.

Finally, the petitioners contend that evidence on the record suggests that the CPTs in question could have been produced in Thomson's plant in Poland and shipped through France, the location of Thomson's corporate headquarters. As evidence of this assertion, the petitioners cite their February 13, 2004, submission at the attachment, which shows that one of Thomson's CPT production facilities is located in Poland. The petitioners also point to similarities in the Infodriveindia data between two Thomson imports identified as coming from France and Poland, respectively.[28] According to the petitioners, both of these transactions involved the same merchandise (i.e., 25-inch curved CPTs), the same quantity (i.e., 320 units) and the same total value (i.e., Rs. 1,194,983.52). The petitioners assert that these similarities suggest that the CPTs related to both transactions were likely obtained from the same source. The petitioners contend that if the CPTs had been purchased from both France and Poland, the total values would likely have differed due to differences in transportation costs. Therefore, the petitioners claim that the fact that Thomson had no CPT plant in France has no bearing on the legitimacy of the Infodriveindia data, because the CPTs in question could have either been sourced from another manufacturer or manufactured in Poland and shipped through France. Moreover, the petitioners note that the fact that the imports from Poland and France are comparable at a minimum corroborates the values from France.

[28] These imports are dated February 15, 2002, and March 15, 2002, respectively.

Therefore, the petitioners assert that the Department should reject each of Changhong's proposed alternative surrogate value options and instead continue to base for its surrogate value for 25-inch curved CPTs on data from Infodriveindia.

Department's Position:

For the final determination, we have relied on data from Infodriveindia to calculate the surrogate value for 25-inch curved CPTs because we continue to find that it represents the best information available on the record of this investigation. We disagree with Changhong's contention that the data for 25-inch curved CPTs from Infodriveindia is flawed because it shows imports from Austria and France. As the petitioners correctly point out, the Infodriveindia database only provides the country of exportation for each entry, rather than the country of manufacture. Even if these countries do not produce CPTs, we disagree with Changhong that the country of origin is relevant here, given that it is not our practice to look behind a surrogate country's import sources. See Comment 8, above. Because Austria and France are market economy countries, we consider imports from them to be legitimate sources of surrogate value data.

Further, as stated in Comment 9, above, there is no information on the record of this investigation to show that the quantities shown in the Infodriveindia data do not represent commercial quantities. Indeed, we note that Changhong itself proposed the selection of an importation in only 30 units as the surrogate value here, implying that this quantity is sufficiently large to be deemed commercial.

We also find unconvincing Changhong's claim that the import from Poland in March 2002 is too far outside the POI to provide a valid source of POI surrogate value data. We note that this data is only seven months before the beginning of the POI. The Department regularly bases surrogate values on data which is even less contemporaneous than this data. In fact, for both the preliminary and final determinations in this case (see Comment 6, above), we based the surrogate value for electricity on data from October through December 2001 because we find that this is the best information available. Consequently, we find it preferable to include this March 2002 data in our calculation of the surrogate value for 25-inch curved CPTs (which is based on data from February 2002 through September 2002), rather than to exclude it and base the surrogate value on fewer imports.

Finally, regarding Changhong's proposed alternative data sources to value 25-inch curved CPTs in this investigation, we find each of them problematic for the following reasons. First, import data from MSFTI, the Department's preferred source of surrogate value data, represents a broad basket category not specific to 25-inch curved CPTs. Because we have more product-specific import data on the record, we find it unnecessary to resort to the use of overly-broad MSFTI statistics.

Similarly, because we are continuing to rely on the specific 25-inch curved CPT data from Infodriveindia, we also find it unnecessary to resort to Changhong's proposed weight-ratio methodology. We find that it is more appropriate to use actual values, rather than ones derived from an

unsubstantiated methodology which does not appear to be standard in the CTVs industry. See the March 3, 2004, hearing transcript prepared for the instant investigation at page 17.

Finally, we have not included in our calculations the data provided by Changhong on January 28 regarding CPT imports from Malaysia. We note that we determined in the preliminary determination that this import is of 25-inch flat CPTs. See Comment 11, above. As such, in would be inappropriate to use this information to value 25-inch curved CPTs when we have other data specific to this screen size and type on the record of this investigation. Therefore, we are continuing to use the Infodriveindia data used for the preliminary determination to value 25-inch curved CPTs for the final determination.

Comment 12: *Surrogate Value for 29-inch CPTs*

For purposes of the preliminary determination, the Department valued 29-inch CPTs using Infodriveindia data for the POI. Similar to its argument with respect to 25-inch CPTs, Changhong argues that the information the Department used from Infodriveindia to value 29-inch CPTs is flawed (see Comment 9, above) and should not be used for the final determination.

Regarding 29-inch curved CPTs, Changhong notes that the imports shown in the Infodriveindia data used by the Department in the preliminary determination are from France, Hong Kong, and Singapore. Changhong states that it has already produced evidence showing that there is no CPT production in France (see Comment 11, above).[29] Further, Changhong points to its January 28 submission at Exhibit 2 where Philips affirmed that, to its knowledge, there is no production of curved CPTs in Hong Kong or Singapore. Consequently, Changhong contends that there is no remaining usable data for 29-inch curved CPTs from Infodriveindia on which the Department can confidently rely for the final determination.

According to Changhong, the Department has the following options at its disposal on which to base the surrogate value for 29-inch curved CPTs for the final determination: 1) it could use Changhong's purchase price from a supplier from a country which the Department has found to grant generally-available export subsidies;[30] or 2) it could use the price of 29-inch curved CPTs from a market-economy supplier which Changhong purchased after the POI. Regarding its second proposed option, Changhong asserts that these purchases were originally reported to the Department, but removed from the imported purchases database at the Department's request. However, Changhong notes that this purchase was verified by the Department. Further, Changhong asserts that, although this market-economy purchase was slightly outside of the POI, such purchases would correspond to its sales data since the Department used the contract date as its date of sale. Moreover, Changhong compares its

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[29] TCL also cites this evidence from Thomson as a further indication that the Department should not use the Infodriveindia data to value its 29-inch CPTs.

[30] See Comment 7, above, for further discussion.

market-economy purchase prices for 29-inch curved CPTs to the surrogate value used by the Department in the preliminary determination and found that the Infodriveindia surrogate value was significantly higher.[31] Therefore, Changhong maintains that the Department should use its market-economy purchases to value 29-inch curved CPTs for the final determination.

For 29-inch flat CPTs, Changhong notes that the Department relied on Infodriveindia data rather than on Changhong's market-economy purchases because the Department deemed that its market-economy purchases represented too small a percentage of Changhong's overall purchases of this input. Changhong contends that the Department's approach ignores the actual quantity Changhong purchased of the input and is contrary to the Department's reliance on Infodriveindia data involving a much smaller quantity (i.e., 516 units) as the basis for the surrogate value for this input. Further, Changhong comments that it also had market-economy purchases of this input from a country which grants generally available export subsidies (see Comment 10) and contends that, at a minimum, the Department should use these transactions in its final determination as to whether its percentage of market-economy purchases is small. According to Changhong, were the Department to consider these purchases, the percentage of 29-inch flat CPTs it purchased from market-economy suppliers would be significant.

TCL also argues against the Department's use of the Infodriveindia data to calculate a surrogate value for 29-inch CPTs. TCL alleges that data from Infodriveindia are unreliable because the foreign country of origin for 29-inch curved CPTs is not provided for any of the entries, making it impossible to determine where these CPTs were manufactured. Similarly, TCL remarks that it is unknown whether inland freight, import duties, value added tax, and other items are included in or excluded from the reported Infodriveindia prices. TCL asserts that, instead of using Infodriveindia data as the surrogate value for CPTs, the Department should use data published by MSFTI under Indian HTS category 8540.1100, as also suggested by the petitioners in their August 22, 2003, submission. According to TCL, the petitioners have themselves noted the reliability of the import statistics published in MSFTI.[32]

TCL remarks that, should the Department decide to apply a surrogate value for CPTs based on the Infodriveindia data, it proposes that the Department base this surrogate value only on CPTs comparable to those used by TCL in the production of subject merchandise. Specifically, TCL comments that the Department verified that the CPTs used by TCL have a 4:3 screen aspect, 39-inch screen size, and a curved screen. See the Department's January 14, 2004, Memorandum to the File entitled "Verification of the Questionnaire Responses of TCL King Electronics Huizhou Co., Ltd in the Less Than Fair Value Investigation on Certain Color Television Receivers from the People's Republic of China" (TCL FOP Verification Report) at page 8. Based on this information, TCL argues that the

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[31] Changhong states that the Department has a practice of comparing surrogate value data to other data to test its reliability. See Nitrocellulose, 62 FR at 65669.

[32] See the petitioners' October 3, 2003, submission at page 1.

Department should exclude all Infodriveindia entries that do not match all three of the characteristics of the CPTs used by TCL (i.e., screen aspect, size, and type), including those entries that do not list any information for one or more of these characteristics.

Most importantly, TCL asserts that for the final determination, the Department must exclude three entries shown in the Infodriveindia data that are clearly non-curved CPTs and were erroneously included in the surrogate value calculation for 29-inch curved CPTs for the preliminary determination. TCL argues that two of these CPTs are identifiable as flat-screen CPTs by their model number, which contains the characters EGD (i.e., the industry term for not quite pure flat CPTs according to the TCL FOP Verification Report at page 8). For the third CPT in question (i.e., labeled "29" CPT WITH DY & CPM"), TCL contends that the price listed for this CPT must be either: 1) an error or; 2) a pure flat CPT, because it is roughly twice as expensive as all of the other curved CPTs in the Infodriveindia data. TCL further remarks that the Department expressly intended to exclude 29-inch non-curved CPTs from its surrogate value calculation for 29-inch curved CPTs. See the Department's December 4, 2003, Memorandum to Louis Apple entitled Ministerial Error Allegation in the Antidumping Duty Investigation of Certain Color Television Receivers from the People's Republic of China (Ministerial Error Allegation Memo) at page 4 and the Final Factors Memo at page 3. Based on the Department's stated intention to exclude non-curved CTVs from its calculation of 29-inch curved CTVs, TCL maintains that the Department should exclude the above mentioned CPTs from its surrogate value calculation for the final determination.

The petitioners assert that the Infodriveindia data remain the best available information available to the Department to use as the surrogate values for 29-inch CPTs for the final determination for the reasons noted in Comments 9, 10, and 11, above, including the fact that the MSFTI data represents a broad basket category. Moreover, the petitioners disagree with TCL's argument that the Infodriveindia data are unreliable because the "foreign country" column is blank. The petitioners note that, for every instance where this is true, there is a column designated "foreign port" adjacent to it that indicates the country of origin. Regarding TCL's value argument, the petitioners contend that because the Infodriveindia data is obtained from the government of India, the data is reported on the same basis as the data in MSFTI.

The petitioners maintain that the Infodriveindia data is corroborated by evidence in the petition showing the actual production experience of an Indian CTV manufacturer for 29-inch curved and flat CPTs.[33] Specifically for TCL, the petitioners assert that the Department correctly used Infodriveindia data to value 29-inch curved CPTs for the preliminary determination. The petitioners argue that, while the

[33] According to the petitioners, the Court has stated that where the Department is presented with secondary information, it is required to corroborate that information in order to evaluate its probative value. See, e.g., Yantai Oriental Juice Co. v. United States, Slip Op. 02-56 at 21, 26 (CIT June 18, 2002).

Department verified that two of the entries in the Infodriveindia data represent "pure flat" screens, TCL provided no evidence to support its claim that the third CPT entry is a non-curved model. Therefore, the petitioners contend that, for the final determination, the Department should disregard the respondents' proposed surrogate value alternatives and calculate a revised surrogate value for 29-inch curved CPTs based on the Infodriveindia data exclusive of only the two non-curved CPTs which the Department examined at verification.

Department's Position:

Section 351.408(c)(1) of the Department's regulations states:

> The Secretary normally will use publicly available information to value factors. However, 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. In those instances where a portion of the factor is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, the Secretary will value the factor using the price paid to the market economy supplier.

Further, the preamble to the Department's regulation clarifies that the Department "would not rely on the price paid by an NME producer to a market economy supplier if the quantity of the input purchased was insignificant." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27366 (May 19, 1997) (Preamble). In the preliminary determination, we determined that Changhong's imports of 29-inch flat CPTs, as a percentage of its total purchases of this input, were insignificant. See the November 21, 2003, memorandum from the Team to the file entitled, "U.S. Price and Factors of Production Adjustments for Sichuan Changhong Electric Co., Ltd. for the Preliminary Determination" at page 4. Therefore, in accordance with the Department's practice, we disregarded Changhong's purchases of 29-inch flat CPTs in the preliminary determination and continue to do so for the final determination. See Creatine Monohydrate From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 62767, 62769 (Nov. 6, 2003) unchanged in Creatine Monohydrate from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 69 FR 1970 (Jan. 13, 2004); and Windshields at Comment 32.

We disagree with Changhong that, in determining whether its market-economy purchases are "insignificant," we should include products sourced from countries which we have found are not useable as the basis for input valuation. It would be both unreasonable and illogical to accept these purchases for this purpose, but not for the purpose of valuation. The purpose of the Department's practice is to ensure that any market-economy purchases relied on in our calculations are purchases of meaningful quantities. Therefore, because Changhong's "useable" market-economy purchases of 29-inch CPTs was an insignificant percentage of its total purchases of this input during the POI, we have not relied on

them for purposes of the final determination. Consequently, we have continued to value Changhong's 29-inch flat CPTs using a surrogate value based on Infodriveindia data.[34]

Regarding 29-inch curved CPTs, we note that for the preliminary determination, the Department based the surrogate value for this input for Changhong on data from Infodriveindia. However, we no longer find that this is appropriate given that at verification we examined information related to Changhong's market-economy purchases of this input from Thomson Mexico. See the January 20, 2004, memorandum to Louis Apple from Patrick Connolly and Elizabeth Eastwood through Shawn Thompson, entitled "Verification of the Questionnaire Responses of Sichuan Changhong Electric Co., Ltd. in the Antidumping Duty Investigation of Certain Color Television Receivers from the People's Republic of China" (Changhong Verification Report) at verification exhibit 11. Further, we have examined the quantity of these market-economy purchases and determined that they represent a significant quantity of Changhong's overall purchases of this input, and thus we find that they are significant within the meaning of the Preamble, 61 FR at 27366, and the Department's practice. Therefore, based on our findings at verification, we find that it is appropriate to use Changhong's market-economy purchases of 29-inch curved CTVs as the value for the final determination, in accordance with 19 CFR 351.408(c)(1). Nonetheless, we disagree that this purchase may be used to value the inputs of other respondents. See Comment 10, above. Thus, we have continued to base the surrogate value for XOCECO's 29-inch curved CPTs on the data from Infodriveindia.

Furthermore, we find that it is appropriate to adjust the Infodriveindia surrogate value data for 29-inch curved CPTs as discussed by the petitioners. Specifically, we find that, according to the information on the record, it is appropriate to exclude model numbers containing the characters EGD, as these models are not curved-screen CPTs. See TCL FOP Verification Report at page 8. Regarding TCL's claim on the third import, we note that there is insufficient record evidence to support TCL's conclusion that this not a curved-screen CPT. Consequently, we have recalculated the surrogate value for 29-inch curved CPTs to exclude only the two imports of model number A68EGD049X70.

Finally, we find unconvincing TCL's contentions that the Infodriveindia data are unreliable because: 1) the foreign country of origin column is blank for the 29-inch curved CPTs observations; and 2) it is unknown whether inland freight, import duties, value added tax, and other items are included or excluded from the prices. As the petitioners correctly remark, where the foreign country of origin column is blank in the Infodriveindia data, there is an adjacent "foreign port" column that also provides data regarding from where the merchandise was shipped. Similarly, we agree with the petitioners that, because data from Infodriveindia represent customs data obtained from the government of India, such data would be reported on the same basis as data in MSFTI (i.e., with respect to freight, duty, and

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[34] We note that, because of the reclassification of two observations which had been included in the Infodriveindia data for 29-inch curved screen CPTs, the surrogate value for 29-inch flat CPTs has been revised. See Final Factors Memo at Attachment 3.

taxes). As a consequence, we have continued to rely on data from Infodriveindia to calculate the surrogate value for 29-inch curved CPTs for XOCECO for the final determination.

Comment 13: *Surrogate Value for Speakers*

For purposes of the preliminary determination, the Department calculated a surrogate value for speakers using Infodriveindia data for the period October 2002 through March 2003. On March 17, 2004, the Department placed on the record additional information surrogate value information for speakers from Infodriveindia for September 2002 and April 2003, and we invited comments from interested parties on this data. See the March 17, 2004, memorandum from Elizabeth Eastwood to the file entitled, "Placing Information on the Record Regarding the Surrogate Value for Speakers in the Investigation of Color Television Receivers from the People's Republic of China." On March 19, 2004, the petitioners, Changhong, and TCL commented on the use of this information, and Changhong and TCL submitted rebuttal comments on March 22, 2004.

Changhong notes that the surrogate value for speakers used by the Department in the preliminary determination was based on Infodriveindia data for imports by Satguru Electronics (Satguru) of 230 speakers with plastic cabinets. Changhong asserts that the Department verified that the speakers it uses in the production of CTVs do not have a plastic cabinet. According to Changhong, it is the Department's stated practice not use a surrogate value for a component if differences in design and materials can lead to a large difference in values. See Bicycles, 61 FR at 19030. Changhong states that, since the preliminary determination, it has investigated the source of the speaker imports identified in the Infodriveindia data as well as the specifications of the speakers themselves. Changhong cites its January 28 submission at Exhibit 4, where it provided information obtained from a consultant regarding the speaker importer, Satguru. Specifically, Changhong asserts that: 1) Satguru is a seller of audio products and general household electronics and it does not supply parts to any producers of CTVs; 2) Satguru confirmed that it was the purchaser of the speakers shown in the Infodriveindia data; 3) the speakers in question are typically used as external speakers in home theater systems; and 4) the speakers are unsuitable for use as internal speakers in CTVs. Based on these facts, Changhong maintains that the Department cannot reasonably base its surrogate value for speakers in this investigation on the Infodriveindia data.

Changhong agrees with the Department's preliminary determination to not use MSFTI data as the source for the surrogate value for speakers. According to Changhong, the MSFTI data for HTS category 8518.2900 shows an AUV of Rs. 221.28 per unit (i.e., approximately $4.60 per unit). Changhong asserts that this value is aberrational, as evidenced by a comparison to the following alternatives for surrogate value information: 1) POI imports into India from Indonesia, Korea, and Thailand which have values of $0.386, $0.3895, and $1.06 per speaker, respectively; 2) actual invoices showing similar purchases of speakers before the POI with prices between $0.71 and $0.76 per speaker; and 3) an invoice from an Indian supplier showing a purchase of 100,000 units at a tax-exclusive price of $0.46 per speaker. Changhong placed the first two of these sources on the record in

its October 21, 2003, surrogate value submission and the latter in a submission dated January 28, 2004. Changhong cites Hand Tools 1995, 60 FR at 49253, to support its argument that it is the Department's well-established practice to compare surrogate value data to other potential surrogate value options for a given input.

According to Changhong, because the Infodriveindia data has been discredited and the MSFTI data is aberrational, the invoices that it placed on the record represent the best information available to the Department for internal CTVs speakers in this investigation. Changhong contends that there is precedent for relying on this data, as the Department has dealt with a nearly identical fact pattern in prior administrative proceedings. For example, Changhong cites Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part, 67 FR 69719 (Nov. 19, 2002) (Sebacic Acid) and accompanying Issues and Decision Memorandum at Comment 2, where the Department accepted a price quote from an Indian carbon producer as the surrogate value for activated carbon as the best available information, although it also had data from MSFTI and Chemical Weekly data for activated carbon.

Finally, Changhong notes that the four Indian speaker invoices are acceptable surrogate values because they represent: 1) publicly-available information; 2) actual completed transactions; 3) purchases made by manufacturers of CTVs; 4) substantial quantities; 5) contemporaneous data and 6) tax-exclusive prices. Consequently, Changhong argues that the Department should base the surrogate value for speakers on the Indian speaker invoices instead of relying on Infodriveindia data for the final determination.

TCL agrees with Changhong that the surrogate value used in the preliminary determination is inappropriate. TCL reiterates that, not only is the Infodriveindia data unreliable in general (see Comment 9, above), but the specific data under consideration is unsuitable as a surrogate value for the speakers TCL uses in the production of subject CTVs. Specifically, TCL comments that the Infodriveindia data used for the valuation of speakers for 29-inch CTVs consist of only two transactions of 60 units each for speakers with plastic cabinets. TCL further notes that at verification, the Department: 1) examined the speakers TCL used in production and confirmed that they did not contain plastic cabinets; and 2) compared these speakers to others which are housed in plastic cabinets and noted the vast physical distinctions between the two. See TCL FOP Verification Report at page 6 and verification exhibit 11. Therefore, TCL contends that the Infodriveindia data should not be used by the Department to value its speakers in the final determination.

Instead of the Infodriveindia data, TCL maintains that the Department should value its speakers using the invoice placed on the record by Changhong in its January 28 submission, because they are the same type, size, and specification used by TCL. TCL asserts that because this purchase represents a tax-exclusive, non-export price which is contemporaneous with the POI and is based on an actual sale, it is therefore the best available data on the record regarding the speakers used by TCL in the production of subject merchandise. According to TCL, the Department has the discretion to base surrogate values

on domestic prices and the Department prefers a reliable domestic tax-exclusive price over an import price.[35] In the alternative, TCL argues that the Department could apply an average of the speaker invoice values submitted by Changhong in its October 21 submission. Further, TCL contends that when actual domestic invoices have been unavailable, the Department has often used domestic price quotes and price lists from surrogate country producers to value raw materials.[36]

XOCECO contends that the Department has a clear obligation to calculate the normal value in an NME case as accurately as possible, citing Lasko, 43 F.3d 1442. According to XOCECO, this means that the Department must utilize the best information on the record to value those material inputs that were actually used to produce the subject merchandise. See Anshan Iron & Steel Company v. United States, Slip Op. 2003-82 (CIT 2003). XOCECO maintains that Changhong has placed credible evidence on the record in its January 28 submission showing that the surrogate value used in the preliminary determination was based on imports of external speakers, rather than the internal speakers used to produce CTVs. XOCECO argues that, if the Department were to continue to use this value, it would be contrary to the requirement that the Department value those material inputs actually used by the respondents in producing subject merchandise. Moreover, XOCECO notes that there is now an invoice on the record of this investigation showing the actual selling price for the same type of internal speakers used in the subject CTVs. Therefore, XOCECO maintains that the Department should use the invoice placed on the record by Changhong in its January 28 submission to value the respondents' speakers, because it is clearly the most accurate data.

Regarding the information the Department placed on the record on March 17, TCL argues that the Department should not rely on this data to calculate the surrogate value for speakers for the final determination. First, TCL notes that it is impossible to tie the new Infodriveindia data to MSFTI data for this HTS category. TCL remarks that the Department did not provide parties with the complete list of Infodriveindia data for the HTS category in question, only the items described as parts for CTVs.

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[35] In support of this assertion, TCL cites Carbon Steel Plate from the PRC, at 62 FR 61987; and RBAO at Comment 3.

[36] In support of this assertion, TCL cites Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 49345 (Sept. 27, 2001) and accompanying Issues and Decision Memorandum at Comment 6 (Magnesium from the PRC); Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 66 FR 15076 (Mar. 15, 2001) (Manganese Metal from the PRC) and accompanying Issues and Decision Memorandum at Comment 9; Potassium Permanganate from China: Notice of Final Results of Antidumping Duty Administrative Review, 66 FR 46775 (Sept. 7, 2001) and accompanying Issues and Decision Memorandum at Comment 18; and Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Romania, 61 FR 24274, 24279 (May 14, 1996).

Further, TCL comments that the record does not show that the Infodriveindia data for this category correspond to MSFTI data.

In addition, TCL contends that the speakers shown in the March 17 Infodriveindia data are Panasonic or other high-end branded speakers used in Sony televisions. According to TCL, the petitioners themselves have stated that Sony-brand CTVs are premium televisions which use high-quality components.[37] Therefore, because the speakers used by Sony are of significantly higher quality than the low-end speakers used by TCL to produce the subject merchandise, TCL maintains that it would be inappropriate for the Department to base its surrogate value for speakers on Infodriveindia data that consists solely of speakers for Sony CTVs. Further, TCL asserts that the Department has no need to resort to non-contemporaneous Infodriveindia data to value speakers for the final determination because Changhong placed a contemporaneous speaker invoice from Philips India on the record in its January 28 submission (see above). In fact, TCL claims that the Department's practice is only to rely on data from outside of the POI when no usable contemporaneous surrogate value data exists.[38]

Finally, TCL claims that the fact that the Infodriveindia data shows only four entries of high-end CTV speakers for the period September 2002 through April 2003 is instructive in that it shows that Indian CTV manufacturers only need to import CTV speakers for high-end CTVs. According to TCL, Indian CTV producers can source lower-end speakers from domestic sources, as demonstrated by the Philips India invoice. Consequently, TCL asserts that the Department should base the surrogate value for speakers on the Philips India invoice if its goal is to find a truly comparable surrogate value.

Regarding the petitioners' comments (see below), TCL asserts that the petitioners incorrectly state the overall average value of the March 17 Infodriveindia data. According to TCL, the correct average value is Rs. 56.78 per speaker, not Rs. 57.78. Further, TCL remarks that the size of its own speakers appears to fall in between the two speaker sizes shown in the Infodriveindia transactions. Therefore, TCL argues that it would not be meaningful to further categorize this already limited data as the petitioners suggested based on minor variations that have not been proven to reflect sufficient differences in value.

Similarly, Changhong contends that the Department should not rely on the March 17 Infodriveindia data for the reasons noted in Comment 9, above. Changhong comments that it is unlikely the 24,840 units shown in this data represent the totality of the Indian CTV industry's speaker imports for September

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[37] See Certain Color Television Receivers from China and Malaysia, United States International Trade Commission (ITC) Inv. Nos. 731-TA-1034-1035 (June 2003) (preliminary) at page 16.

[38] See Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China, 68 FR 46577 (Aug. 6, 2003) and accompanying Issues and Decision Memorandum at Comment 6 (Barium Carbonate from the PRC).

2002 through April 2003, given that the petitioners have reported that 2002 Indian CTVs sales were 8,741,414 units. See the petitioners' February 9 submission at page 13. According to Changhong, an examination of the Infodriveindia data for the aforementioned eight-month period reveals dozens of entries of ten-watt cone speakers without cabinets or other enclosures, which are the same type of speakers used by the respondents in the production of subject merchandise. Therefore, Changhong asserts that, if the Department chooses to rely on the Infodriveindia data, it should include as much of this data as possible in the surrogate value calculation to ensure accuracy and reliability. At the very least, Changhong maintains that the Department should use all four of the speaker imports identified in the March 17 Infodriveindia data, given that: 1) the April 2003 data is contemporaneous with many of its reported sales (because the Department used contract date as its date of sale); and 2) the Department has considered post-POI information to be an applicable source of surrogate value data in prior proceedings. See Manganese Metal from the PRC at Comment 3.

Changhong maintains that the petitioners' distinction (see below) between the per-pair surrogate value calculated for the preliminary determination and the per-unit AUV calculated from the March 17 Infodriveindia data is irrelevant, given that Changhong's factors for speakers were reported on a per-unit basis. Finally, Changhong argues that the petitioners' proposed methodology of further parsing the March 17 Infodriveindia data is confusing and unnecessary. According to Changhong, the two speaker dimensions shown in this data are nearly identical. Therefore, Changhong questions which size speaker from the March 17 Infodriveindia data would be the appropriate surrogate value for its 13 cm by 5 cm speakers and its 12 cm by 12 cm speakers.

The petitioners contend that the Department should continue to use the Infodriveindia data used to value speakers in the preliminary determination if it has evidence to demonstrate that the respondents used enclosed speakers in the production of subject merchandise. However, the petitioners assert that, if the Department has evidence showing that the respondents used unenclosed speakers, then the March 17 Infodriveindia data would be the appropriate surrogate value. Furthermore, according to the petitioners, the Department should attempt to match the speakers used by the respondents to the Infodriveindia data by the speaker dimensions.[39] The petitioners note that the Infodriveindia data contains information regarding two different speaker sizes. Therefore, the petitioners argue that the Department should only apply the average of the four Infodriveindia imports (i.e., Rs. 57.78 per speaker) where the dimensions of a particular speaker factor are not specified. Otherwise, the Department should calculate dimension-specific surrogate values from the Infodriveindia data and apply these based on which speaker dimensions are more similar to the factor in question.

Department's Position:

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[39] The petitioners also comment that, while the surrogate value for speakers used in the preliminary determination was stated on a per-pair basis, the March 17 Infodriveindia data provides a value for speakers stated on a per-unit basis.

We agree with the respondents that the Infodriveindia data used in the preliminary determination no longer represents the best available information on which to base the surrogate value for speakers in this investigation. We observed at verification for each of the respondents that they use small, internal speakers in the production of subject merchandise. See TCL FOP Verification Report at page 6.[40] Based on this observation, we have determined that such speakers are unlike the large, enclosed speakers referenced in the Infodriveindia data.

We note that Changhong placed three invoices for speakers for a period before the POI on the record in its October 21 submission and placed one more contemporaneous invoice on the record in its January 28 submission. Changhong asserts that these four invoices represent the best information available on which to base the surrogate value for speakers in this investigation, while TCL and XOCECO argue that the January 28 invoice is the best information available. Further, the Department placed additional speaker data from Infodriveindia on the record in its March 17 memorandum. (As noted in Comment 9, above, we continue to find that Infodriveindia is a legitimate source of surrogate value data.) Given these alternatives, we find that the March 17 Infodriveindia data represents the best available information.

The Department has a clear preference to use publicly-available prices, as opposed to specific price quotes (or invoices), unless there is evidence on the record of the proceeding demonstrating that the input used in the production of subject merchandise is of a specific type, which would not be accurately represented by the more public data. See PVA from the PRC at Comment 5.

In this case, we find that there is no persuasive evidence on the record demonstrating that the speakers shown on Changhong's invoices are more representative of the speakers used by the respondents than those referenced in the Infodriveindia data. See, e.g., the April 12, 2004, memorandum from the Team to the file entitled, "U.S. Price and Factors of Production Adjustments for Sichuan Changhong Electric Co., Ltd. for the Final Determination"; and the April 12, 2004, memorandum from the Team to the file entitled, "U.S. Price and Factors of Production Adjustments for TCL Holding Company Ltd." Further, we find TCL's argument – that the March 17 Infodriveindia speakers are unlike those used to produce the subject merchandise because they are high-quality speakers for use in Sony-brand CTVs – unconvincing because there is no information on the record regarding the quality of the speakers used to produce the subject merchandise. In fact, we note that the Department used Infodriveindia data for Sony-brand CPTs in the preliminary determination and no interested party objected to the inclusion of Sony data. See the November 21, 2003, memorandum from the team to the File entitled, "Preliminary Determination Factors Valuation Memorandum" (Preliminary Determination Factors Valuation Memorandum) at Attachment 6. Finally, the March 17 Infodriveindia data are publicly-available, representative of a range of prices, non-export values, and tax-exclusive. As a consequence, we find

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[40] Although this observation is set forth only in the verification report prepared for TCL, we note that it is equally true for the other three producers.

that this data represents the best information available for speakers, and have relied on it for the final determination.

Regarding the petitioners' contention that we should derive dimension-specific surrogate values for speakers from the Infodriveindia data, we disagree. After reviewing the speaker data reported by the respondents, we find that it would be inappropriate to segregate the data gathered from Infodriveindia in the manner proposed by the petitioners. Specifically, we note that, while the Infodriveindia data includes only the dimensions of the speakers, the respondents did not classify speakers based on their dimensions. Therefore, it is not possible to match the surrogate data to the factors reported by the respondents based on speaker dimensions.

Regarding TCL's argument that the petitioners have not proven a correlation between MSFTI data and Infodriveindia data, we note that, as discussed in Comment 9, above, we contacted officials at Infodriveindia in order determine the source of their data. Absent specific evidence to the contrary, we find it appropriate to rely on the assertions of these officials who prepared the data, because they are disinterested parties to this investigation. In any event, we note that this data source does provide multiple data points from an independent source. Therefore, we find it to be a preferable source for surrogate value data to the price quotes which were provided by an interested party and may not represent the full range of available prices.

Finally, we note that Changhong's assertion that we should use all 10-watt cone speakers shown in the Infodriveindia data for the POI is unsupported by information on the record. The Department is aware of no data on the record showing that all "cone type" speakers are appropriate for use in CTV production. Further, there is no information on the record showing that Changhong used 10-watt cone speakers in the production of subject merchandise, other than its unsupported contention in its March 29 submission. Therefore, we continue to find that the March 17 Infodriveindia data is the best information on the record to value this input, given that these speakers are specifically described as "parts of Sony TV." Consequently, we have calculated the surrogate value for speakers for the final determination using an average of the March 17 Infodriveindia data.

Comment 14: *Selection of the Appropriate Surrogate Financial Statements*

For the preliminary determination, the Department calculated surrogate financial ratios using the 2001-2002 financial statements of three Indian CTV producers: BPL Limited (BPL), Onida Saka Limited (Onida Saka), and Videocon International Limited (Videocon). These were the most contemporaneous data on the record for Indian producers of CTVs. After the preliminary determination, however, Changhong and Konka submitted the 2002-2003 financial statements of two additional Indian CTV producers, Calcom Vision Limited (Calcom) and Kalyani. In addition, Konka submitted the financial statements of a third Indian CTV producer, Matsushita. See Konka's and Changhong's January 27, 2004, and January 28, 2004, submissions, respectively.

The respondents argue that, for the final determination, the Department should base the surrogate financial ratios on the 2002-2003 financial statements of Calcom, Kalyani, and Matsushita. According to the respondents, the Department has a preference of basing surrogate values on the most contemporaneous data available, as set forth in the following cases: Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal from the Russian Federation, 68 FR 6885 (Feb. 11, 2003) and accompanying Issues and Decision Memorandum at Comment 9; Barium Carbonate from the PRC at Comment 6; and Ball Bearings from the PRC at Comment 1D. In addition, Konka asserts that the Department has explicitly stated its preference for contemporaneous data in this case in its own factors memorandum prepared for the preliminary determination. See Preliminary Determination Factors Valuation Memorandum at page 2.

The respondents note that the 2002-2003 financial statements of Calcom, Kalyani, and Matsushita cover the full POI which makes this data contemporaneous, unlike the 2001-2002 financial statements used in the preliminary determination which do not overlap with the POI at all. Furthermore, TCL argues that the Department also has a preference for using the most product-specific surrogate information available.[41] Consequently, TCL argues the Department should use the financial statements of Calcom, Kalyani, and Matsushita because these Indian CTV producers are representative of the experience of the PRC CTV respondents. Finally, Konka asserts that, where these financial statements show a loss, the Department should not reject these financial statements but instead set the profit percentage to zero.

Changhong, Konka, and TCL disagree with the petitioners (see below) that the Department should include the 2001-2002 surrogate financial statements of BPL and Videocon in its calculations of the surrogate financial ratios for the final determination because the Department can rely on the contemporaneous financial statements of Calcom, Kalyani, and Matsushita. Nonetheless, the respondents argue that, if the Department decides to use the 2001-2002 surrogate financial statements on the record, it should continue to rely on Onida Saka's data. According to these respondents, the fact that Onida Saka produces primarily for domestic consumption is irrelevant. Changhong and TCL note that the petitioners provided no case precedent where the Department has used the exporting nature of the surrogate producer as a criterion for including the producer in the calculation of the surrogate financial ratios. Rather, TCL asserts that the Department's regulations only require that a company produce identical or comparable merchandise to be considered an appropriate surrogate. See 19 CFR 351.408. Further, TCL remarks that the Department has a preference of using non-export prices (i.e., import values or a domestic prices) for surrogate values, when available. See RBAO at Comment 3.

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[41] See Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware From the People's Republic of China, 1708, 1712 (Jan. 13, 1997); and 2000-2001 Persulfates Final at Comment 9; see also 19 CFR 351.408(c)(4).

Further, Changhong also disagrees with the petitioners that Onida Saka should be removed from the surrogate financial ratio calculations because of its small size. Specifically, Changhong notes that the petitioners imply that different economies of scale may have an impact on the SG&A ratio; however, Changhong argues that smaller producers like Onida Saka should, in fact, have higher factory overhead and SG&A ratios. According to Changhong, the Department has determined that a surrogate producer does not need to replicate the experience of the companies under investigation in order to be an appropriate surrogate. See Bulk Aspirin from the People's Republic of China; Final Results of the Antidumping Duty Administrative Review, 68 FR 48337 (Aug. 7, 2003) and accompanying Issues and Decision memorandum at Comment 2 (2001-2002 Aspirin). Changhong further asserts that a non-branded company like Onida Saka is a more representative surrogate for Changhong because it reported no specific advertising expenses in its financial statements, mirroring Changhong's experience. TCL contends that, because the petitioners themselves recognized TCL to be the smallest of the PRC CTV producers under investigation (see the petitioners' November 10, 2003, submission at page 7), it has the most in common with a smaller Indian CTV producer like Onida Saka.

Finally, TCL remarks that the Department is calculating antidumping margins not only for the four mandatory respondents, but also for the numerous smaller PRC CTV producers whose margins will be based on the "all other" rate. Consequently, TCL argues that excluding legitimate Indian surrogate producers because they are smaller would only skew the financial ratio calculations. TCL asserts that such an action would be contrary to the CAFC's ruling in Sigma Corp. v. United States, 117 F.3d 1401 (CAFC. 1997) (Sigma), where the Court overturned the Department's factory overhead ratio calculation because it found that there was a "huge disparity between the overhead rates for large and small foundries in Pakistan." TCL maintains that this differs from the instant case in that there is no evidence that any of the surrogate financial ratios vary significantly based on whether a producer is large or small.

As a threshold matter, the petitioners contend that the Department may not rely on the 2002-2003 financial statements of Calcom because of its classification as a "sick company" by its auditors. According to the petitioners, it is the Department's practice to exclude the data of sick companies from its surrogate financial ratio calculations. As support for this assertion, the petitioners cite Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997 - 1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837, 61842 (Nov. 15, 1999); and Luoyang Bearing Factory v. United States, 240 F. Supp. 2d 1268 (CIT 2002).

The petitioners argue that the Department should also disregard the financial statements of Kalyani and Matshushita, and continue to rely on the financial statements of BPL and Videocon. According to the petitioners, these companies are not only the most representative of Indian CTV production, but they are also the most representative of the respondents' own experience. Regarding the third company, Onida Saka, the petitioners argue that the Department should not use its data for the final determination because this company's total production represents a very small portion of the Indian CTV industry and

it is a non-exporting company that operates primarily as a trader. Further, the petitioners assert that the record of this investigation shows that Onida Saka is not similar in function, structure, or economies of scale to the PRC respondents in this investigation. According to the petitioners, including Onida Saka's financial statements in the calculation of the surrogate financial ratios will lessen the accuracy of the ratios, in contradiction to the CAFC's ruling in Sigma.

With respect to Kalyani and Matshushita, the petitioners argue that, although contemporaneity is important, the Department considers other factors to be more significant when selecting an appropriate surrogate producer. Specifically, the petitioners assert that it is more important to use surrogate financial statements that are representative of the experience of the PRC respondents, including factors such as whether they are production or trading companies, whether they are domestic producers or subsidiaries of multinational corporations (MNCs), and to what extent differences in economies of scale exist. The petitioners assert that the fundamental structures of Kalyani and Matsushita are substantially different from the CTV respondents in this case. As a result, the petitioners argue that their data should not be used for the final determination because it will result in the calculation of incomparable surrogate financial ratios. Specifically, the petitioners contend that these two companies are subsidiaries of foreign-based MNCs, which makes them unlike any of the CTV respondents in this case. According to the petitioners, subsidiaries of MNCs draw on the expertise of their parent organizations (i.e., for technology, marketing, and sales expertise), and as a consequence they do not bear the full cost of such expenses. Further, the petitioners argue that Kalyani's and Matsushita's financial statements indicate that these companies act largely as resellers, not manufacturers, because the traded goods accounts of these companies account for a substantial portion of the companies' activities. The petitioners base this conclusion on the fact that: 1) the value of Kalyani's purchases of traded goods is nearly half the value of this company's purchases of raw materials for production; and 2) Matsushita's financial statements show the value of its traded goods sales to represent more than 10 percent of the value of its purchases of raw materials. Consequently, the petitioners assert that Kalyani and Matsushita are not appropriate surrogate producers for the PRC CTV companies.

The petitioners further contend that Kalyani and Matsushita have economies of scale that cannot compare with those of the PRC CTV respondents. The petitioners base this argument on the following analyses: 1) a comparison of each of the six Indian surrogate CTV producers' 2002 total sales values with those of the PRC CTV respondents; 2) a comparison of both the 2002 CTV revenue and 2002 total revenue of each of the six Indian surrogate CTV producers to the average 2002 CTV revenue of the PRC CTV respondents; and 3) a comparison of the magnitude of the total sales value to the total CTV sales value for each of the six Indian surrogate CTV producers. The petitioners conclude from these tests that Calcom, Kalyani, Matsushita, and Onida Saka together represent less than one-tenth of the Indian CTV industry, while BPL and Videocon together represent nearly 91 percent. As noted above, the petitioners contend that the CAFC ruled in Sigma that the Department must consider the relative economies of scale in selecting the foreign market companies whose financial statements are

used to derive the surrogate financial ratios.[42] Therefore, because the economies of scale of BPL and Videocon are the most representative of Indian CTV production and the most accurate representation of the economies of scale of the PRC CTV respondents, the petitioners argue that they alone should be used to calculate the surrogate financial ratios for the final determination.

The petitioners comment that they made efforts to obtain the 2002-2003 annual reports of BPL and Videocon, but these financial statements were not available before the Department's deadline for the submission of surrogate value information (i.e., January 28, 2004). The petitioners assert that the Department should seek to obtain this information for use in its calculations for the final determination. In any event, the petitioners claim that the similarity between Videocon's 2000-2001 and 2001-2002 financial ratios indicate that there would be no significant structural change from 2001-2002 to 2002-2003 for this company.

Department's Position:

The Department considers a variety of factors, not just contemporaneity, in selecting the appropriate surrogate producers on which to base our surrogate financial ratios. See 2000-2001 Persulfates Final at Comment 8. In the instant investigation, there is surrogate financial data on the record for six surrogate Indian CTV companies, as discussed above (i.e., BPL, Calcom, Kalyani, Matsushita, Onida Saka, and Videocon). The financial data for BPL, Onida Saka, and Videocon, which was used in the preliminary determination, is 2001-2002 data. In contrast, the financial data for Calcom, Kalyani, and Matsushita is contemporaneous with the POI.

It is the Department's practice to rely on the financial statements of surrogate producers of identical merchandise, unless those financial statements can be shown to be inaccurate or otherwise distorted. See 2000-2001 Persulfates Final at Comment 10. We note that these companies did not experience anything unusual in their production processes during the fiscal year (e.g., the start up of a new production line or facility or other events causing abnormally low production volumes) nor did any extraordinary events occur (e.g., fires or floods that would have resulted in long shut down periods or the replacement of expensive capital equipment). See, e.g., Magnesium from the PRC at Comment 3. Regarding Calcom, we have not used the financial data for this company in our calculations for the final determination because we determined that it is classified as a "sick" company as defined by India's Sick Industrial Companies Act. It is the Department's practice to exclude the data of "sick" companies from its surrogate financial ratios. See 1998-1999 Aspirin; and Tapered Roller Bearings and Parts Thereof,

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[42] In Sigma, the CAFC ruled that the Department must consider the relative economies of scale in selecting the foreign market economy companies whose financial statements are relied upon to calculate the financial ratios. On remand, the Department revised its factory overhead ratios to account for foundry size. See Sigma Corp. v. United States, 86 F. Supp.2d 1344, 1349 (CIT 2000) (Sigma II).

Finished and Unfinished, From the People's Republic of China; Final Results of 1997-1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837, 61842 (Nov. 15, 1999) (TRBs 1997- 1998).

Regarding the remaining companies, we agree with the petitioners that the surrogate financial data for BPL and Videocon should be included in our calculations. Because these two companies account for a significant portion of the Indian CTV industry, we find that it would be inappropriate to exclude them given that the time period of the BPL and Videocon financial statements is not so far outside the POI so as to be unusable. We have also included the financial data of Onida Saka because this company is an Indian CTV producer in the preferred surrogate country with financial statements equally contemporaneous to those of BPL and Videocon. Further, we find that it is also appropriate to rely on the financial statements of Kalyani and Matsushita, given that these companies are also Indian CTV producers and their financial statements are contemporaneous with the POI. In this case, the petitioners have not shown that any of the factors cited as reasons for not selecting Kalyani, Matsushita, or Onida Saka distorts their financial statements or otherwise renders them unreliable.

We disagree with the petitioners that Kalyani and Matsushita should be excluded on the grounds that these companies are subsidiaries of MNCs and therefore may not bear all costs (i.e., technology, marketing, and sales expertise) themselves. We note that the Department has used the financial data of subsidiaries of MNCs in its calculations in prior proceedings. See Ball Bearings from the PRC at Comment 1I.[43]

We also disagree with the petitioners' assertions that the financial statements of Kalyani, Matsushita, and Onida Saka should be excluded because they act as resellers and thus cannot be considered as

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[43] Specifically in Ball Bearings from the PRC, we stated:

> [W]e disagree with Peer that SKF should be excluded on the grounds that it is part of multinational corporation and may have a different focus than the Chinese companies. The fact that SKF is a part of large multinational corporation which produces a broad range of products, including automobile bearings, does not make it non-comparable to the Chinese respondent producers. The Department has frequently used subsidiaries of multinational corporations as surrogate producers when they produce the merchandise under investigation. Following the Department's precedent in TRBs XIV, we find that a company that is a producer of merchandise under investigation can be used as a surrogate company whether or not it is affiliated with foreign firms. In the present investigation, SKF is a significant producer of ball bearings, the merchandise under investigation, and, therefore, it can be used as a surrogate producer. For purposes of the final determination, we have included SKF as a surrogate source for valuing financial ratios.

comparable with the PRC respondents. While the financial statements of these two Indian companies indicate that they purchase and sell traded goods, the data also reflects that they manufacture and sell commercially significant volumes of CTVs.[44] Moreover, it is the Department's practice to treat general expenses (i.e., marketing, sales, technology) as costs that relate to the company's overall operations, rather than the operations of a division within the company or to a single product line (i.e., without differentiating between products manufactured by a company and those purchased and resold). See 2000-2001 Persulfates Final at Comment 9. Consequently, because Kalyani, Matsushita, and Onida Saka produced CTVs during fiscal year 2003, and we have determined that their experience as resellers does not disqualify them from serving as reliable surrogate Indian CTV producers, we have included the financial statements of these companies in our calculations of the surrogate financial ratios for the final determination.[45]

We also disagree with the petitioners' assertions that the financial statements of Kalyani, Matsushita, and Onida Saka should be excluded because they have smaller economies of scale than those of the PRC respondents. While the petitioners based part of their conclusion on the differences in revenue between Kalyani, Matsushita, and Onida Saka and the PRC respondents, we note that the petitioners have not demonstrated how differences in revenue are relevant to our analysis; therefore, we find that the petitioners' methodology is not meaningful in the determining whether or not to exclude certain surrogate data. Furthermore, we note that traditionally, differences in economies of scale impact a company's factory overhead ratios, as a given company may be more or less efficient as the scale of its production increases or decreases. In this case, however, we analyzed the overhead ratios of each of the surrogate companies and found that there is no clear correlation between the size of the company and its overhead ratio. In fact, we found that BPL's overhead ratio is higher than Onida Saka's and lower than that of other companies with smaller production scales (i.e., Kalyani's and Matsushita's). Consequently, given the facts noted above, we find no basis to conclude that the ratios of Kalyani, Matsushita, and Onida Saka are distorted by their economies of scale. While the overall production volumes of these companies may be lower than those of the respondents, we disagree that the facts in Sigma are similar to those present in this case. Again, we find that there is no evidence on the record of

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[44] We note that the petitioners have measured reselling activities as a percentage of material costs. We find that this comparison is not entirely meaningful because it overstates the cost of traded goods vis-a-vis manufactured products (which are more than merely the cost of raw materials).

[45] In any event, we note that the factory overhead percentage calculation for these companies would not be affected by their reselling activities because we have assigned all overhead expenses to actual production. (See Comment 20 below.) Moreover, because we consider SG&A expenses (and profit) to be general expenses (or income) not associated with any particular product line, we similarly do not find any basis to conclude that the SG&A (and profit) ratios are significantly impacted by reselling activities, and in fact, the petitioners have offered no evidence that they have been. Finally, we note that we have relied on the financial statements of surrogate companies with significant resale experience in prior cases. See, e.g., 2000-2001 Persulfates Final at Comment 9.

this case demonstrating that the types of distortions which would cause us to reject a company's financial statements are present. See 2000-2001 Persulfates Final at Comment 8.

Furthermore, we disagree with the petitioners that Kalyani, Matsushita and Onida Saka should be excluded because their selling activities are not "representative" of those of the PRC respondents. First, we find that the PRC respondents themselves are not homogeneous in terms of size or structure. Moreover, we note that it is not the Department's practice to attempt to match individual respondents to their most "representative" Indian producers; such an action would add a degree of complexity to this process, without necessarily adding additional accuracy. Indeed, while the Department has, in past cases, segregated surrogate producers into groups, it has only done so where there has been a clear difference in production activity which had a material impact on the financial ratios. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum at Comment 4 (1998-1999 Aspirin). That is not the case here.

Consequently, we have determined that, in the instant investigation, it is appropriate to balance the goals of contemporaneity and representativeness of the Indian CTV industry in calculating the surrogate financial ratios. Therefore, we have calculated the surrogate financial ratios based on the data of BPL, Kalyani, Matsushita, Onida Saka, and Videocon.

Comment 15: *Adjustments to the Surrogate Financial Ratios to Account for Freight, Price Adjustments, Non-Applicable Selling Expenses, Packing, and Taxes*

According to Changhong, Konka, and TCL, the Department should make various adjustments to the surrogate financial statements used to calculate the financial ratios for the final determination, regardless of which financial statements are used. For example, the respondents contend that, in NME cases, the Department excludes freight, discounts, rebates, and packing from its calculation of the SG&A expense ratio if they can be isolated because these expenses are excluded from the net U.S. price. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania, 65 FR 39125 (June 23, 2000) and accompanying Issues and Decision memorandum at Comment 2E; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Final Results and Rescission in Part of Antidumping Duty Administrative Review, 61 FR 51427, 51428 (Oct. 2, 1996); Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review, 64 FR 27961, 27965 (May 24, 1999); Brake Rotors From the People's Republic of China; Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review, 64 FR 73007, 73011 (Dec. 29, 1999) (Brake Rotors 1999). See also the Preliminary Determination Factors Valuation Memorandum at page 10. TCL remarks that the Department's practice is to treat discounts and rebates as price adjustments, rather than as SG&A expenses, in accordance with sections 773(a)(1)(B) and 773(a)(6) of the Act. Additionally, TCL notes that the Department's questionnaire in this investigation separately groups price adjustments (i.e.,

discounts and rebates) from selling expenses and the Department's glossary of terms clearly distinguishes between discounts and rebates and selling expenses. Further, TCL contends that the Department's margin calculation program distinguishes discounts and rebates from selling expenses because it assigns distinct variables to these separate items. Finally, TCL states that while the statue directs the Department to apply the CEP profit ratio to the expenses included in sections 772(d)(1) and (2) and 772(f)(2)(b) of the Act, the Department does not interpret those selling expenses to be inclusive of discounts and rebates. See the Department's Policy Bulletin 97/1 (Sept. 4, 1997) at page 2. Therefore, Changhong and TCL argue that the Department should exclude all SG&A expenses that can be isolated and are not included in net U.S. price from its SG&A expense ratio calculation (i.e., discounts and rebates, advertising, and warranty expenses).

According to Changhong and TCL, branded consumer electronics companies, such as BPL and Videocon, incur significant advertising, promotional expenses, and warranty expenses which are not incurred by original equipment manufacturer (OEM) producers like Changhong and TCL. Therefore, Changhong and TCL assert that the Department should adjust the financial ratios for BPL and Videocon to more closely resemble the type of expenses incurred by an OEM CTV producer like themselves.

TCL argues that failure to exclude these types of expenses will result in an SG&A ratio that is grossly and unfairly overstated. TCL asserts that the Department has taken the individual circumstances of a PRC producer into account in calculating surrogate financial ratios in the past. As support for this assertion, TCL cites Sigma II, where CIT affirmed the Department's calculation of separate factory overhead ratios for the respondents' medium and small foundries. TCL cites the preamble to the Department's proposed regulations, which states that given the importance of manufacturing overhead, general expenses and profit in the calculations of normal value, the Department believes it is important to seek information that is as accurate as possible.[46]

According to TCL, while it is the Department's practice to treat general and administrative (G&A) expenses as company-wide expenses, selling expenses are always calculated by the Department on a basis specific to the company, market, and level of trade.[47] Furthermore, TCL claims that with specific regard to SG&A in PRC cases, the Department has stated that it will make adjustments to normal value for selling expenses "upon a sufficient showing that differences exist justifying the adjustment." See Bicycles, 61 FR at 19029. TCL asserts that, while the Department denied the adjustment in Bicycles because the financial statements of the Indian producers did not include any particular selling expenses,

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[46] Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7345-46 (Feb. 27, 1996)

[47] See Notice of Preliminary Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipe and Tube From Turkey, 63 FR 6155, 6158 (Feb. 6, 1998).

in the current investigation the financial statements of the Indian surrogate CTV producers clearly itemize advertising and sales promotion expenses.

Finally, Konka asserts that duties, sales taxes, and other taxes should be excluded from the surrogate financial ratio calculations because the surrogate country's revenue-collecting practices are not relevant in the calculation of normal value. Similarly, Changhong notes that the Department excluded from its calculations any taxes shown on Onida Saka's and Videocon's financial statements. However, Changhong maintains that the Department failed to exclude from these calculations BPL's income taxes and should do so for the final determination.

The petitioners disagree with the majority of the changes proposed by the respondents to these ratios. First, the petitioners assert that they agree that the Department should exclude discounts from the SG&A ratio; however, they disagree that line items containing discounts and other selling expenses should be excluded wholesale. Rather, the petitioners propose that the Department segregate the discounts from other expenses before excluding them. Specifically, the petitioners note that Matshushita's financial statements contains a line item for "schemes and discounts." According to the petitioners, schemes relate to product promotions and trade shows, and thus should be included in SG&A. Because the financial statements do not contain sufficient detail to break out these amounts, the petitioners propose that the Department divide them equally and exclude only half from SG&A.

Regarding advertising and warranty expenses, the petitioners disagree that these expenses should not be considered as a part of SG&A expenses. The petitioners argue that the respondents' claims that they did not incur advertising or warranty expense on their U.S. sales is irrelevant because, in NME cases, it is the Department's practice to account for the home market SG&A expenses of a PRC respondent through factor analysis. The petitioners maintain that the theory underlying this practice is that, by using a surrogate producer, the Department is attempting to determine the selling expenses the PRC respondent would have incurred if it had home market sales in a market economy. Further, the petitioners argue that because the Department does not make circumstance-of-sale adjustments in NME calculations for EP sales, it would be inappropriate to exclude advertising and warranty expenses from the calculation of SG&A expenses.

Department's Position:

We agree that movement/freight expenses, discounts, and rebates should be excluded from the surrogate SG&A ratio calculations where they are clearly identified on the surrogate financial statements because these items are price adjustments which are separately valued elsewhere in the calculation of normal value. See 1998-1999 Aspirin at Comment 5; and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the PRC; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke in Part, 63 FR 63842, 63852 (Nov. 17, 1998). See also 2000-2001 Persulfates Final at Comment 10. We also agree with the respondents that we should exclude taxes from our surrogate ratio calculations, in accordance with our

practice. See Brake Rotors 1999;[48] and Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 18439,18443 (April 9, 2001). Consequently, we have excluded taxes from the surrogate financial ratio calculations for the final determination.

Regarding the petitioners' contention that we should exclude only a portion of the line item on Matshushita's financial statements for "schemes and discounts," we agree that it would be appropriate to include certain of these expenses in SG&A. Therefore, we have adopted the petitioners' proposal for allocating these expenses between schemes and discounts, in light of the fact that there is no information on the record which would permit a more accurate allocation.

Regarding advertising, sales promotion, and warranty expenses, we disagree with Changhong and TCL that it would be appropriate to exclude these expenses from the surrogate financial ratio calculation based on the assertion that the respondents do not incur these expenses. The respondents' request in essence would require the Department to evaluate whether both the surrogates and the respondents have identical cost structures and then to adjust these cost structures to account for observed differences. However, these types of adjustments are contrary to the Department's long-standing practice of not adjusting a surrogate producer's figures. See PVA from the PRC.[49]

In calculating surrogate overhead and SG&A ratios, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category. See, e.g., Magnesium from the PRC at Comment 4; 1996-1998 Persulfates. For example, in 1996-1998 Persulfates we stated:

> the Department does not tailor the factory overhead and SG&A expenses of a surrogate company to match the experience of the PRC producer. The U.S. Court of Appeals upheld in Nation Ford that, although "a surrogate value must be as representative of the situation in the NME country as is feasible," we are not required to "duplicate the exact production experience of the NME producer'" at the expense of choosing a surrogate value that most accurately represents the fair market value of the various factors of production in the surrogate country. Further, the U.S. Court of Appeals upheld the decision made in Magnesium Corp. of Am. v. United States, 166 F. 3d 1364 (CAFC 1999), that a factors of production analysis "does not require item-by-item accounting for factory overhead.

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[48] While Brake Rotors 1999 specifically addresses the issue of excluding Indian taxes from input prices, we find that this same principle applies to financial ratios.

[49] While PVA from the PRC specifically addresses the issue of factory overhead, we find that this same principle applies to all financial ratios. This conclusion was explicitly set forth in Persulfates from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 64 FR 69494, 69497 (Dec. 13, 1999) (1996-1998 Persulfates).

The Department's reasoning behind this policy is simple. Because we do not know all of the components that make up the costs of the surrogate producer, adjusting these costs may not make them any more accurate and indeed may only provide the illusion of precision. This reasoning was explained in Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation, 60 FR 16440 (Pure Magnesium from Russia), 16446-7 (Mar. 30, 1995). Also, the Department's policy has been sanctioned by the CIT. Rhodia, Inc. V. United States, 240 F. Supp. 2d 1247, 1250 - 1251 (CIT 2002) (Rhodia 2002). Specifically, the CIT stated in Rhodia 2002:

> Based on this analysis of the evidence, Commerce refrained from adjusting the Indian surrogate producers' data in its calculation of the normal value on remand. This decision is consistent with Commerce's normal practice because Commerce does not generally adjust the surrogate values used in the calculation of factory overhead. . . . Rather, once Commerce establishes that the surrogate produces identical or comparable merchandise, closely approximating the nonmarket economy producer's experience, Commerce merely uses the surrogate producer's data. . . . Unless there is substantial evidence in the record which supports a finding that the surrogate producers are less integrated that (sic) the PRC producers, and as a result have a lower overhead ratio, Commerce cannot depart from its standard practice.

Therefore, because it is our practice to accept the data from the surrogate producer in toto, we have not adjusted the SG&A ratios of BPL and Videocon to account for alleged differences in advertising, promotional expenses, and warranty expenses.

Comment 16: *Adjustment to the Surrogate Factory Overhead Ratios*

In their case briefs, Changhong and Konka provided proposed calculations for factory overhead, SG&A expenses, and profit for Calcom, Kalyani, and Matshushita. The petitioners argue that, in the event that the Department relies on the financial statements of Kalyani and Matshushita for purposes of the final determination, the Department should make the following adjustments to the calculations provided by Changhong and Konka. First, the petitioners assert that the Department should include the cost of stores and spare parts consumed in manufacturing as part of factory overhead. The petitioners maintain that this action would be consistent with the Department's statement in the preliminary determination that it believed that such costs were captured in the factory overhead ratio. Second, the petitioners assert that Kalyani's depreciation on furniture, fitting, and equipment should be included as SG&A expenses, rather than as factory overhead (as in the calculations provided by Changhong), and Matshushita's depreciation on land, buildings, plant and machinery, dies and molds should be split between factory overhead and SG&A expenses using the proportional amounts of factory and SG&A staff labor. Finally, the petitioners assert that research and development (R&D) costs should be included in SG&A, rather than in factory overhead, as proposed by Konka.

In addition to these adjustments, the petitioners contend that the Department should also include the cost of stores and spares shown on BPL's and Onida Saka's financial statements in factory overhead, as well as the cost of BPL's building repairs. Finally, the petitioners assert that the Department should reclassify certain depreciation (i.e., labeled "Depreciation Transferred from General Services") shown on Videocon's financial statements to SG&A expenses, because this is the category in which it was originally incurred.

Changhong and TCL disagree that the cost of stores and spares consumed should be included in the calculation of factory overhead expenses for the final determination. Rather, the respondents assert that spares are correctly categorized as materials expenses and should therefore be included in the denominator of the surrogate ratios as part of the materials, labor, and energy (or "MLE") costs. TCL further asserts that the Department has stated in other cases that it is its practice to exclude these items from factory overhead expenses in order to avoid overstating such costs. See Silicomanganese from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514, 31515 (May 18, 2000) (Silicomanganese) and accompanying Issues and Decision memorandum at Comment 1.

Finally, Changhong argues that the Department appropriately treated Videocon's depreciation on "general services" in the preliminary determination. Changhong asserts that this amount is shown in Videocon's financial statements as a transfer from the company's general reserve related to the revaluation of certain plant and machinery. Changhong asserts that, while it is appropriate to recognize a reduction to factory overhead for this amount, it is not appropriate to add it to SG&A. According to Changhong, this revaluation is not a selling or general expense, but rather a reduction to the company's reserve that decreases retained earnings on the balance sheet.

Department's Position:

We agree with the petitioners that stores and spares must be included in the calculation of surrogate factory overhead since these items were not valued as individual factors in this case, because they were: 1) reported as used in very small amounts; and/or 2) may be included in the overhead percentage used. See Preliminary Determination Factors Valuation Memorandum at pages 3 through 4. It is the Department's general practice to treat stores and spares as factory overhead expenses. Under normal accounting practices, direct materials are classified as raw materials whereas indirect materials are treated as part of factory overhead. The distinction lies in whether the costs are incurred with respect to a particular product. Specifically, indirect materials are defined as:

> usually items used in the production process but not traceable to a particular product. This category also includes 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 (e.g., the cost of glue used in furniture manufacturing).

See PVA from the PRC at Comment 7.

We disagree with the respondents that Silicomanganese applies here. In Silicomanganese, the item at issue was electrode paste, which is considered a "process material." In that case, we stated:

> such materials are often included in factory overhead as "consumables" when they are used in production infrequently and in small quantities. However, when such materials constitute a significant portion of the cost of the finished product, companies may choose to trace the cost of materials to the finished product, rather than allocating them over total production. . . In those cases, we valued electrode paste as a cost element separate from factory overhead.

Unlike in Silicomanganese, here the items in question are consumables. Consequently, we have allocated all stores and spares items from the surrogate financial ratios to the surrogate factory overhead ratio calculation consistent with our practice.

We disagree with the petitioners that the figure for depreciation transferred from general reserve from Videocon's financial statements should be included as a part of Videocon's SG&A expenses. After further reviewing Videocon's financial statements, we find that this amount represents depreciation on the revaluation of fixed assets and should therefore be included as part of the total depreciation expenses.[50] Furthermore, we disagree with Changhong that this amount should be treated as a reduction to factory overhead because it is depreciation expenses on the revalued fixed asset amounts. Consequently, for the final determination we have taken the total depreciation expenses (including this figure) and appropriately allocated them between SG&A expenses and factory overhead expenses based on the depreciation cost categories shown in Videocon's financial statements.

We also disagree with the petitioners that leasehold land and building depreciation expenses should be allocated between factory overhead and SG&A expenses. Because Matsushita's financial statements do not provide any details regarding its leasehold land or buildings, we believe it is reasonable to assume that these depreciation amounts relate to: 1) leasehold improvements which are typically for the

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[50] Specifically, we believe that Videocon records depreciation on its fixed assets as follows: 1) at the time that it revalued its fixed assets it debited its fixed asset accounts by the amount of the revaluation and credited its general reserve account for the corresponding amount; 2) at the end of each fiscal year Videocon recognizes depreciation expense based on the historical value of its assets by debiting depreciation expense and crediting accumulated depreciation; 3) at the same time Videocon recognizes an additional amount of depreciation related to the revaluation by debiting depreciation expense and crediting accumulated depreciation; and 4) Videocon transfers this revaluation depreciation from its general reserve by debiting the general reserve account and crediting depreciation expenses. This latter amount appears on Videocon's income statement as an offset to depreciation expenses.

production facilities; and 2) the company's factory buildings, because they are not otherwise specified. Therefore, we have included these depreciation expenses in the surrogate factory overhead ratio calculation for the final determination.

Finally, we agree the petitioners that Matshushita's R&D expenses should be included in SG&A. It is the Department's practice to include general R&D expenses in SG&A. See Dynamic Random Access Memory Semiconductors for One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 64 FR 69964, 69702 (Dec. 14, 1999). Because Matshushita classified these expenses as SG&A expenses on its financial statements and we have no evidence that these expenses are product-specific in nature, we have included them in SG&A for purposes of the final determination.

Comment 17: *Additional Adjustments to the Surrogate Financial Ratios for BPL, Onida Saka, and Videocon*

For the preliminary determination, we made various adjustments to the figures used in our calculations of the surrogate SG&A ratios for BPL, Onida Saka, and Videocon. Changhong disagrees with one of these adjustments, arguing that the Department incorrectly deducted costs associated with "Directors' Sitting Fees" from BPL's MLE expenses. According the Changhong, schedule 16 of BPL's financial statements clearly separates these fees from BPL's salary and wage expenses. Therefore, Changhong asserts that there is no basis for deducting this figure from MLE expenses because it is not recorded as part of labor. Rather, Changhong asserts that this expense should be included only once – in SG&A. In addition, TCL asserts that the Department inappropriately double counted audit fees (i.e., reported as "Payment to Auditors") for BPPL because such fees are already included in either "Other General Expenses" or "Other Selling Expenses." Consequently, TCL asserts that the Department should not add an additional amount for these expenses in its SG&A expense calculation.

Regarding Videocon's financial statements, TCL argues that because the financial statements detail this company's short-term interest income, it's financing expenses should be offset with its reported short-term interest income in accordance with the Department's practice.[51]

The petitioners agree with certain of these changes, as well as propose additional corrections. Specifically, the petitioners maintain that the Department should: 1) correct a clerical error made when it included Videocon's labor cost in MLE expenses for BPL; 2) not revise MLE expenses for BPL to include directors' sitting fees, as proposed by Changhong, but rather include these expenses in SG&A; 3) offset Videocon's financial expenses with bank deposit income because this income is short-term in nature; 4) include any losses on Videocon's investments and securities; and 5) remove the figure for

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[51] See 2000-2001 Persulfates Final at Comment 11; and Carbon Steel Plate from the PRC, at 62 FR 61970.

auditors remuneration included in the calculation of BPL's SG&A expenses in order to avoid double counting, because it is already captured in the SG&A calculation elsewhere.

Department's Position:

We agree that the surrogate overhead ratio calculated for BPL contains a clerical error because we included Videocon's labor cost. We have corrected this error by including BPL's own labor in BPL's overhead ratio calculation for the final determination.

In addition, we agree that we double-counted BPL's audit fees in the SG&A calculation because these fees are already included in the "other general expenses" or "other selling expenses" of BPL's financial statements. Consequently, we have excluded this amount from BPL's surrogate SG&A calculation for the final determination.

We also agree that "Sitting Fees to Directors" should be included in BPL's total SG&A expenses. However, we disagree with Changhong that we incorrectly deducted these fees from MLE expenses for the preliminary determination. Rather, these expenses appear to be included in the total reported "salaries, wages, and other benefits" amount on BPL's income statement since they are not distinguished as a separate line item. Because we based the labor component on "salaries, wages, and other benefits," we find that it was proper to exclude these SG&A expenses from MLE.

Finally, we agree with TCL that we should offset Videocon's financial expenses by the amount for "interest on deposits" from Videocon's financial statements because this interest income amount is short-term in nature.[52] See 1998-1999 Aspirin at Comment 5.

However, we disagree with the petitioners that it would be appropriate to include any loss on investments and securities in the surrogate ratio calculation for Videocon. It is the Department's practice to exclude such losses in our calculation of the cost of production because the only cost elements that are linked to a product are those costs incurred for the production and sale of the merchandise. In Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 67 FR 63616 (Oct. 15, 2002) and accompanying Issues and Decision memorandum at Comment 15, the Department stated:

> the "reversal of provision for investments" is excluded because the Department excludes gains and losses, income and expenses, write-downs or reversals on investing activities. By definition investing is an activity separate from the production or sale of merchandise. While the Department properly includes in COP or CV the financial expenses related to borrowings,

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[52] TCL notes that Matshushita's financials statements similarly show short-term interest income under the line item "Interest Received on Fixed Deposits."

> including an offset for short-term interest income from working capital, it would be inappropriate to include income or expenses related to what is essentially a separate line of business.

Furthermore, in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 65 FR 49219 (Aug. 11, 2000) and accompanying Issues and Decision memorandum at Comment 71, the Department stated:

> we find that NTN Japan excluded its losses on the revaluation of marketable securities from its reported costs properly. First, such losses are manifestly not a part of COM. Second, we do not include losses (or gains) on the revaluation of marketable securities as a part of G&A expenses because such expenses are related to investment activities which are not associated with the core business of NTN Japan. This practice has been upheld by the CIT. In U.S. Steel Group a Unit of USX Corporation, USS/Kobe Steel Co., and Koppel Steel Corp. v. United States, 998 F. Supp. 1151 (CIT February 25, 1998), the CIT upheld our remand determination, in which we stated "where . . . items of income and expense are most closely related to the general operations of the company (all general activities associated with the company's core business), it is appropriate to treat those items as part of G&A." The question as to whether such losses are extraordinary, in this instance, is irrelevant. Therefore, we have not recalculated NTN Japan's reported costs.

Accordingly, we have deducted Videocon's short-term interest income from our surrogate SG&A ratio calculation for the final determination, and we have continued to exclude any losses related to investments and securities.

We note that we also reviewed the financial statements of BPL, Onida Saka, Kalyani, and Matsushita and found that only the financial statements of Matsushita provide a detailed amount for short-term interest income. Therefore, in accordance with our practice, we have also offset Matsushita's financial expenses with its short-term interest income during the fiscal year in question.

Comment 18: *Additional Adjustments to the Surrogate Financial Ratios for Calcom, Kalyani and Matsushita*

According to the petitioners, should the Department decide to use the 2002-2003 financial statements of Kalyani and Matsushita for the final determination, the petitioners contend that it should make several corrections to the surrogate financial ratio calculations submitted by the respondents. Specifically, with respect to Kalyani, the petitioners note that the Department should: 1) include the change in inventory in

the calculation of Kalyani's MLE expenses (from the beginning to the end of the period)[53]; 2) exclude the amount for "insurance claims" from SG&A expenses because these claims are related to "recovery of amounts towards labour charges, after sales service charges and other related incidental expenses incurred toward service of warranty claims" and instead apply this amount to reduce labor charges in MLE; 3) include the amount of "sales promotion income" as part of total revenue, instead of treating it as an offset to SG&A expenses, given that it is likely that this income is related to goods sold in promotional efforts (e.g., at trade shows); 4) include losses on the sales and retirement of assets in the calculation of SG&A expenses[54]; 5) allocate depreciation costs appropriately between factory overhead and SG&A expenses based on the nature of the assets depreciated; and 6) use the figure for period profits before taxes in the calculation of the surrogate profit ratio.[55]

Regarding Matsushita, the petitioners argue that the Department should include insurance costs in SG&A expenses, rather than in factory overhead, because these expenses relate to insuring the company and its assets. As such, the petitioners assert they are general expenses to the company. Finally, if the Department decides to use Calcom's data in its calculation, the petitioners assert that the amounts for penalty interest should be included in SG&A expense.

The respondents did not comment on these issues separate from presenting the methodology used to perform their calculations of the financial ratios.

Department's Position:

We have analyzed the financial statements of Kalyani and Matshushita and agree that certain adjustments should be made. Each of these adjustments is discussed below. Regarding the financial statements of Calcom, as noted in Comment 14, above, we have not relied on these financials statements for purposes of the final determination. Therefore, we have not addressed any comments made with respect to Calcom.

Regarding the inclusion of the amount for "decrease in WIP/finished goods" in the calculation of MLE expenses for Kalyani, we agree with Konka and the petitioners, in part. After reviewing Kalyani's

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[53] The petitioners assert that Konka properly included this charge in inventory amount in its calculation of MLE expenses shown at Exhibit 1 of its case brief, while Changhong improperly failed to include this amount in its calculation shown at Exhibit 6 of its January 28, 2004, submission.

[54] The petitioners note that Konka included this amount in its calculation of SG&A expenses shown at Exhibit 1 of its case brief.

[55] The petitioners note that Changhong used the net profit, including the balance of profit carried forward at the beginning of the fiscal period, whereas Konka used the period profits before taxes.

financial statements, we have determined that these financial statements provide sufficient information to distinguish the portion of inventories related to work in progress from the portion related to "traded and manufactured finished goods" for the line item in question. Therefore, we have isolated the "decrease in WIP" from this line item and included it in the calculation of MLE expenses as part of factory overhead, while excluding the portion of this line item related to finished goods. For further discussion of this allocation, see Final Factors Memo.

Regarding Kalyani's "insurance claims," we disagree with the petitioners that this amount should be classified as an offset to labor expenses. It is clear from the description included in Kalyani's financial statements that these amounts are received as a recovery on warranty-type claims. Therefore, because both the warranty expenses, and the original insurance premiums, are included in SG&A, we find that it is appropriate to offset these expenses by the amount of any reimbursements from Kalyani's insurance company related to them.

We also disagree with the petitioners that the amount for "net sales promotion" should be treated as a revenue item. After reviewing Kalyani's financial statements, we have determined that this amount is netted from advertising expenses and should therefore appropriately be treated as an offset to Kalyani's SG&A expenses for the final determination. See note 24 to Kalyani's 2002-2003 financial statements. We find no reason to question Kalyani's treatment of this revenue in its own books and records.

Regarding the "loss on sale and retirement of assets, net," we agree that these should be included in Kalayni's SG&A expenses, in accordance with the Department's practice. See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 65 FR 5554, 5582 (Feb. 4, 2000) (Cold-Rolled Flat-Rolled Steel from Brazil).

Furthermore, we agree with petitioners that it is appropriate to use the amount for "profits before tax" in the calculation of normal value, in accordance with the Department's well-established practice. See Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy, 65 FR 54993 (Sept. 12, 2000) and accompanying issues and decision memo at Comment 2; Notice of Initiation of Antidumping Duty Investigations: Oil Country Tubular Goods from Austria, Brazil, the People's Republic of China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela, 67 FR 20730, 20738 (Apr. 26, 2002); and Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part: Certain Pasta From Italy, 65 FR 48467, 48470 (Aug. 8, 2000).[56] See also the Department's Policy Bulletin: Calculation of Profit for Constructed Export Price Transactions, issued on September 4, 1997 (Policy Bulletin on CEP Profit). Therefore, we applied the

[56] This was upheld in the final. See Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (Dec. 13, 2000).

amount for "profit before tax" in our calculation of the surrogate financial ratios for the final determination.

Finally, we agree that depreciation expenses should be allocated between factory overhead and SG&A expenses based on the nature of the assets depreciated. Therefore, we have continued to apply this allocation to the surrogate ratio calculations for BPL and Videocon (as done for the preliminary determination) as well as to those of Kalyani and Matsushita. Regarding Onida Saka, although we did not allocate the depreciation between factory overhead and SG&A for the preliminary determination, we have done so for the final determination in the interest of consistency. Because Onida Saka's current year depreciation is not broken down by cost, we performed this allocation using the historical experience of the company. For further discussion, see Final Factors Memo at page 5.

Comment 19: *Adjustment to the Surrogate Financial Ratios to Account for SG&A Labor*

The petitioners assert that the Department incorrectly included the salary and benefits for BPL's and Videocon's marketing, general and administrative staff in the MLE expense for the preliminary determination. Specifically, the petitioners assert that the Department should: 1) apportion total non-director salaries, wages, and benefit costs among factory workers and SG&A staff between SG&A and factory labor; and 2) include the former in the numerator of the SG&A ratio and the latter in MLE. According to the petitioners, the Department verified that each of the respondents only reported labor factors related to direct and indirect factory staff involved in the production of CTVs.[57] Therefore, the petitioners assert that SG&A labor has not been accounted for in the respondents' factors of production. The petitioners propose that the Department reallocate the labor costs in question using the companies' relative depreciation expenses (for BPL, Kalyani, and Videocon) and the percentage of manufactured to traded goods (for Onida Saka). Regarding Matshushita, the petitioners note that the financial statements of this company segregate factory labor. Therefore, the petitioners propose that only managerial employment expenses be included in SG&A.

Changhong, Konka, and TCL argue that it would be inappropriate to allocate a portion of labor wages to SG&A expenses for the Indian surrogate companies. According to the respondents, the Department

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[57] See the Changhong Verification Report at page 26; the January 12, 2004, memorandum to Louis Apple from Jill Pollack and Shawn Thompson, entitled "Verification of the Factors of Production Data Submitted by Konka Group Co., Ltd. in the Less Than Fair Value Investigation on Certain Color Television Receivers from the People's Republic of China" at page 13; the TCL FOP Verification Report at page 14; and the January 30, 2004, memorandum from Michael Strollo and Gregory Kalbaugh through Shawn Thompson entitled, "Verification of the Questionnaire Responses of Xiamen Overseas Chinese Electronic Co., Ltd. in the Antidumping Duty Investigation of Certain Color Televisions from the People's Republic of China" (XOCECO verification report) at pages 17 through 25.

should continue to include the full amount for wages in the MLE figure for the Indian surrogate companies because either that: 1) it is the Department's policy to include all labor in MLE; or 2) SG&A labor may already be classified as SG&A expenses on the surrogate producers' financial statements. In support of this assertion, the respondents cite Mushrooms from the PRC at Comment 4; 2000-2001 Persulfates Final at Comment 9; and Carbon Steel Plate from the PRC, at 62 FR 61974. Indeed, Changhong and TCL assert that it is the Department's practice not to make arbitrary adjustments to its financial ratio calculations. See Notice of Final Determination of the Sales at Less Than Fair Value: Honey from the People's Republic of China, 66 FR 50608 (Oct. 4, 2001) and accompanying Issues and Decision memorandum at Comment 3. Changhong notes that the petitioners do not argue that the Indian surrogate financial statements do not include wages in their SG&A expenses, but rather they focus only on the CTV respondents' questionnaire responses regarding the allocation of labor.

The respondents maintain that the Department does not adjust a surrogate producer's factory overhead and SG&A expenses when calculating surrogate financial ratios unless there is a compelling reason to do so[58], and it never goes behind the annual reports of the companies in the surrogate country when the financial statements lack specific information regarding a specific expense.[59] In any event, the respondents disagree with the petitioners' labor allocation suggestion on the grounds that is arbitrary. The respondents state that using this methodology would be inappropriate it is based on depreciation categories without addressing how: 1) depreciation is related to wages; or 2) the relative amounts of depreciation for different categories of assets can be used to allocate labor. Moreover, TCL adds that this methodology is distortive because it would overstate SG&A labor, given that SG&A depreciation is based on items with shorter depreciation periods (such as computers); TCL maintains that, as a consequence, these items will have a relatively greater amount of depreciation expenses in a year than items with longer depreciation periods such as plant and machinery. Nonetheless, TCL contends that, if the Department were to consider this allocation, it should allocate based on fixed assets (i.e., "net block"), not depreciation.

Department's Position:

We disagree with the respondents that it is not our practice to account for SG&A labor in the calculation of NV. Indeed, we note that, while we did not do so in the first four administrative reviews of the antidumping duty order on persulfates, we reconsidered our position in the fifth administrative review, covering 2001-2002. Specifically, in that case, we stated:

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[58] See Pure Magnesium from Russia, at 60 FR 16447; Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 61 FR 58514, 58518 (Nov. 15, 1996); and 1996-1998 Persulfates, 64 FR at 69500. Konka also cites Ball Bearings from the PRC at Comment 21.

[59] See Windshields at Comment 24.

> Because we believe that SG&A labor is not classified as part of the SG&A costs reflected on Gujarat's financial statements, we have accounted for SG&A labor hours by calculating a dollar-per-MT labor hours amount and adding this amount to SG&A.

See Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recission, 67 FR 50866 (Aug. 6, 2002).[60] We similarly have valued SG&A labor separately in other recent proceedings. See, e.g., PVA Prelim, 68 FR at 13680, unchanged in PVA from the PRC.

In this case, we have re-examined the financial statements of each of the surrogate producers relied on for the final determination, and we have concluded that SG&A labor is not classified as part of the SG&A costs reflected on them. Specifically, we note that none of the categories shown under the SG&A categories specifically identifies any labor components. Thus, we find that it is reasonable to conclude that these expenses are categorized under the headings "Salaries, Wages and Other Benefits " (BPL); "Salaries, Wages and Bonus, Staff Welfare, and Contributions to Provident and Other Funds" (Kalyani); "Personnel Expenses" (Matsushita); "Salaries, Wages and Other Benefits" (Onida Saka); and "Salaries, Wages & Employees' Benefits "(Videocon).

As the petitioners correctly point out, we confirmed at verification of each of the respondents that none had reported factors for SG&A labor in its total labor hours. Because: 1) these companies did, in fact, employ sales and administrative staff; and 2) the salaries of this staff has not been included in SG&A, we find that: 1) these labor expenses have not been accounted for in our calculations; and 2) inclusion of the entire labor amount in MLE systematically understates the financial ratios.

Nonetheless, we disagree with the petitioners that it is reasonable to apportion labor between SG&A staff and factory workers based on either relative depreciation expenses or type of good sold (i.e., traded or produced), because neither of these methodologies is rationally related to the types of labor being allocated. We have also not adopted TCL's "net block" allocation methodology for a similar reason. Indeed, we have analyzed the financial statements of these companies and find that there is no accurate method of performing such an allocation given the level of detail shown on them. For this reason, we find that adopting an arbitrary methodology may well overstate the amount of labor assigned to SG&A. As a result, we have taken the conservative approach for BPL, Kalyani, and Matshushita and included in SG&A expenses only those labor-related costs which are clearly identifiable as SG&A. These costs include managerial remuneration, directors sitting fees, and directors' remuneration.

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[60] This decision was unchanged in the final results. See 2000-2001 Persulfates Final at Margin Calculations.

Regarding Onida Saka and Videocon, we note that the financial statements of these companies do not separately identify any categories of labor, and thus we are unable to reclassify any of their stated labor expenses to SG&A. In these cases, however, we find that it is appropriate to allocate a portion of total labor expenses to management, based on the average experience of the other three surrogate producers as noted above. We find that this method is still conservative, as it in all likelihood understates the amount of SG&A labor incurred by these companies by not attempting to capture the portion associated with sales and administrative staff. Moreover, we find that this approach is more reasonable than either of the alternatives proposed by the petitioners because it is more rationally related to the types of expenses being allocated. For the details of these calculations, see the Final Factors Memo at pages 3 through 5.

Comment 20: *Treatment of Finished Goods In the Surrogate Financial Ratio Calculations*

In the preliminary determination, the Department excluded purchases of finished goods from the denominator when calculating the surrogate factory overhead ratio for Onida Saka and included this expense in the denominator of the calculation of the SG&A and profit ratios. We did not perform a similar calculation for either BPL nor Videocon because the financial statements of these companies did not reflect any sales of traded goods.

The petitioners assert that the Department should exclude the value of traded goods from the denominators of all surrogate ratio calculations for the final determination, in accordance with the Department's practice as stated in Luoyang Bearing Factory v. United States, 240 F. Supp. 2d 1268, 1305 (CIT 2002) (Luoyang Bearing). In that case, the CIT required the Department to exclude purchases of traded goods from the surrogate fixed overhead, SG&A expense and profit ratios under the reasoning that the Department "failed to demonstrate how these already manufactured goods constitute a material cost incurred in manufacturing the subject merchandise." Nonetheless, the petitioners assert that, if the Department chooses not to apply the full scope of Luoyang Bearing, at a minimum it should exclude purchases of traded goods from MLE in the calculation of the fixed overhead ratio for Kalyani and Matsushita, as it did for Onida Saka in the preliminary determination.

Changhong, Konka, and TCL argue that the value of Onida Saka's purchases of traded goods should be included in the denominator of the SG&A and profit ratios because a company's SG&A and profit correspond to all sales of the company, not only to the products that the company itself produced.[61] Konka maintains that the Department recognizes the distinction between factory overhead costs and SG&A expenses and profit by excluding purchases of traded goods only from the denominator only in the calculation of the surrogate factory overhead ratio. See 2000-2001 Persulfates Final at Comment 9; Bulk Aspirin from the People's Republic of China: Notice of Amended Final Determination and

[61] TCL argues that the Department should follow this practice in calculating the SG&A and profit ratios for all Indian surrogate producers, not just Onida Saka.

Amended Order Pursuant to Final Court Decision, 68 FR 75208, 75209 (Dec. 30, 2003) (1998-1999 Aspirin Amended Final); and Bulk Aspirin from the People's Republic of China; Notice of Court Decision and Suspension of Liquidation, 67 FR 61315, 61316 (Sept. 30, 2002). Konka contends that, while Luoyang Bearing required the exclusion of traded goods from the SG&A and profit ratios, the Court did not state that traded goods had no relation to SG&A expenses, nor did it state that the sale of such goods had no effect on the company's profits. Therefore, Changhong, Konka, and TCL contend that the Department should continue to follow its practice and include the value of purchased goods for resale in the denominator of the calculation of the surrogate SG&A and profit ratios for the final determination.

Department's Position:

The Department's practice is to allocate surrogate factory overhead expenses only to products manufactured by the surrogate producer, and not to products purchased for resale. See 2000-2001 Persulfates Final at Comment 9. This practice has been affirmed by the CIT. For example, in Redetermination Pursuant to Court Remand: Rhodia, Inc. v. United States and Jilin Pharmaceutical Co. Ltd.; Shandong Xinhua Pharmaceutical Factory, Ltd., Consolidated Court No. 00-08-00407 (Mar. 29, 2002) (Rhodia), the CIT first required the Department to revise its calculation of the surrogate factory overhead ratio by removing traded goods from the denominator. This remand was then affirmed by the Court. See remand aff'd, Rhodia 2002. Consequently, we have continued to exclude the traded goods amount from the surrogate overhead calculation for Onida Saka and we have also excluded this amount from the surrogate overhead ratio calculated using Kalyani's and Matsushita's financial data for purposes of the final determination.

However, we disagree with the petitioners that we should exclude purchases of traded goods from the denominators of the surrogate SG&A and profit calculations for Kalyani, Onida Saka, and Matsushita. Regarding SG&A, it is the Department's practice is to treat general expenses as costs that relate to the company's overall operations, rather than the operations of a division within the company or to a single product line (i.e., without differentiating between products manufactured by a company and those purchased and resold). Therefore, it is our practice to allocate these general expenses to individual products by dividing the company's general expenses by its total cost of sales. Moreover, because a company's profit is a function of its total expenses, it would be inappropriate to exclude traded goods from the surrogate profit calculation. See 2000-2001 Persulfates Final at Comment 9.

We find that adopting the petitioners' proposed methodology would create unacceptable distortions in the SG&A and profit ratios, because it effectively assigns all SG&A expenses and profit to a company's own production. This methodology is unreasonable because companies incur SG&A expenses in order to resell goods. For example, companies pay salaries to the employees responsible for making sales, they pay rent on the sales offices from which the traded goods are resold, etc. Similarly, it would be unreasonable to assume that these companies make no profit on their resales.

We note that this interpretation is consistent with the CIT's recent ruling on this issue in Fuyao Glass. Specifically, in the Department's final remand redetermination related to this case, we stated:

> In the CIT remand order, the CIT ordered the Department to either: (1) eliminate the expenses relating to the purchase of traded goods from the numerator of the SG&A ratio, (2) include costs relating to the purchase of traded goods in the denominator of the SG&A ratio, or (3) develop a reasonable method for accounting for traded goods. The CIT based its remand on past CIT cases which held that the Department cannot include traded goods in the denominator of the SG&A ratio because this would distort the SG&A ratio. The CIT further reasoned that because the purchase of traded goods cannot be included in the denominator of the SG&A ratio, "in like manner," costs associated with the purchase of traded goods should not be included in the numerator. . . .

See Fuyao Glass Remand Redetermination at page 77. Based on this directive, we complied with the CIT's instructions by including traded goods in the denominator of the SG&A and profit ratios. Specifically, we stated:

> Since the surrogate (i.e., Saint Gobain) has selling, general and administrative expenses for both the cost of manufacturing and the purchase of traded goods in its SG&A, which comprises the numerator of the SG&A ratio, in order to achieve a symmetrical ratio for purposes of this allocation, we have included the purchase of traded goods in the denominator of the SG&A ratio. Therefore, because the surrogate company's expenses associated with the purchase of traded goods cannot be excluded from the numerator of the SG&A ratio, for these Draft Results, as directed by the CIT, we have included the purchase of traded goods in the denominator of the SG&A ratio (i.e., in the cost of goods sold).

Id. at page 78.

Therefore, for the final determination, we have not adjusted the SG&A and profit ratios of Kalyani, Matsushita, and Onida Saka to remove traded goods from MLE, in accordance with our practice.

Comment 21: *Weighted- vs. Simple-Average Surrogate Financial Ratios*

For the preliminary determination, we calculated the surrogate financial ratios using a simple average of the surrogate data for BPL, Onida Saka, and Videocon, in accordance with our practice. As noted above (see Comment 14), the petitioners have argued that the Department should rely on the financial statements of only BPL and Videocon for the final determination. Failing that, however, the petitioners argue that the Department should, at a minimum, weight-average the data of the companies selected. The petitioners claim that BPL and Videocon account for nearly 91 percent of 2002 fiscal year Indian CTV sales, and thus weight-averaging will mitigate the distortion caused by including "outlier" companies in the calculation.

Changhong and TCL argue that the Department should continue to calculate the surrogate financial ratios using a simple average of all of the Indian surrogate producers for whom information is available on the record. Changhong asserts that the petitioners' argument is contrary to the Department's practice, and thus it should be rejected. In support of this assertion, Changhong cites Mushrooms from the PRC at Comment 3, where the Department determined that a simple average of the surrogate producers' financial statements provided a broader-based surrogate value, minimizing the particular circumstances of any one producer, which is more representative of the specific industry, as a whole. Changhong and TCL also note that the Department's practice in this area is laid out in Bicycles, 61 FR at 19039; Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343 (CIT 2001); 1998-1999 Aspirin Amended Final; and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 2001-2002 Administrative Review and Partial Rescission of Review, 68 FR 70488 (Dec. 18, 2003) (TRBs 2003) and accompanying Issues and Decision memorandum at Comment 5.

Department's Position:

We agree with the respondents that we should calculate the surrogate financial ratios based on a simple average. It is the Department's policy to use simple averages to derive the overhead, SG&A, and profit ratios. See Ball Bearings from the PRC at Comment 1B. See also TRBs 2003 at Comment 5. The CIT also recently ruled that the Department should follow its usual practice and calculate its surrogate financial ratios based on a simple average. See Rhodia 2002. On remand, the Department agreed with the CIT.

The petitioners have provided no evidence to demonstrate that the financial ratios vary by size of producing company or the degree of trading activity. For further discussion, see Comment 14. As a consequence, we find no reason to deviate from our practice in this case, and thus we have used a simple average to derive the surrogate financial ratios for purposes of the final determination.

Comment 22: *Clerical Errors in the Preliminary Determination*

Konka argues that the Department made a clerical error in its calculation of the preliminary margin for Konka because it used an incorrect total U.S. quantity of sales to calculate the weighted-average dumping margin. Konka contends that the Department should correct this error for purposes of the final determination.

TCL also maintains that the Department made two clerical errors in the preliminary determination. First, TCL asserts that the Department erroneously double-counted packing expenses in the preliminary determination by including them as part of the total cost of manufacturing (TOTCOM) and again at the foreign unit price in dollars (FUPDOL) stage of the margin program. In addition, TCL asserts that the Department made a clerical error in its margin calculation program regarding the calculation of freight for TCL's purchases of batteries. Specifically, TCL notes that this program contains an extra asterisk

at line 3074, resulting in an incorrect calculation for freight for this component (i.e., category RM72). TCL notes that the Department acknowledged the former ministerial error in a decision memorandum prepared after the preliminary determination. See the Ministerial Error Allegation Memo at page 2. TCL asserts that both errors should be corrected in the final determination.

The petitioners did not comment on these issues.

Department's Position:

We agree that we used an incorrect quantity in the calculation of Konka's preliminary weighted-average dumping margin. For purposes of the final determination, we have calculated Konka's dumping margin using the total volume of U.S. sales made by the company during the POI.

We also agree with TCL that we made ministerial errors in our calculations performed for the preliminary determination by double-counting packing expenses and mis-calculating freight on the company's purchases of batteries. We have corrected these errors for the final determination.

Comment 23: *Corrections Arising from Verification*

Konka asserts that the Department should revise the data used for the preliminary determination to incorporate corrections to its reported data identified on the first day of the sales verification. According to Konka, such treatment of these changes is consistent with the Department's practice to correct errors presented at verification when the errors are isolated to particular areas and do not affect the integrity of the data. See e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews and Determination to Revoke in Part, 62 FR 2173, 2177 (Jan. 13, 1999); and Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 64 FR 9972, 9977 (Mar. 1, 1999). In addition, Konka argues that, to the extent the Department found errors at verification which were not presented by Konka itself, it should also correct such errors using the evidence of record because Konka has been a cooperative respondent and the application of adverse facts available is not warranted.

Similarly, TCL contends that the Department should use the revised factors of production (FOP) and U.S. sales databases as well as the updated surrogate value table submitted to the Department on February 9, 2004, in its calculations for the final determination. According to TCL, these databases reflect the corrections to the data made by the Department for the preliminary determination and noted at verification.[62] TCL also asserts that the Department should revise the "Sigma"distance used in its

[62] Specifically, TCL notes that it revised the raw material groups RM67, RM35, RM60, RM69, and PM02 based on the Department's calculations for the preliminary determination. Further,

calculations for the final determination to 60 km, because this is the verified distance from TCL's factory to the port.[63]

The petitioners assert that the Department should amend its calculations for the final determination for Changhong to incorporate both the minor corrections presented at verification and those discrepancies noted by the Department in the Changhong Verification Report.

With respect to TCL, however, the petitioners argue that the revised data submitted by TCL does not reflect all of the changes noted in the TCL FOP verification report and thus it should be rejected. Specifically, the petitioners note that the actual distances from the factory to the supplier for two part numbers were revised at verification. See TCL FOP Verification Report at page 12. While TCL's revised data reflects the verified distances for these two part numbers, the petitioners argue that, because the supplier of one of these inputs also supplied other inputs to TCL during the POI, TCL should have applied this revised supplier distance to all inputs purchased from this supplier. Because TCL did not do so, the petitioners contend that the Department should use partial facts available for the final determination by applying the verified distance for this supplier to all of TCL's raw material purchases from the city where this supplier is located. Furthermore, the petitioners assert that TCL did not include the weights requested by the Department for two part numbers in its revised data. See the TCL FOP Verification Report at page 8. According to the petitioners, the Department should use these verified weights in its calculations for the final determination. Finally, the petitioners assert that the Department should account for the additional usage of one component used in the production of subject merchandise discovered at verification. See TCL FOP Verification Report at pages 7, 9, 11, and 13, respectively.

Changhong did not comment on this issue.

Department's Position:

Although we did not request updated sales and FOP databases from Konka, we agree that it is appropriate to incorporate the changes arising from verification of Konka's data in this case, and we have revised our calculations to do so. Regarding Changhong and TCL, we similarly find that it is

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TCL states that it removed raw material groups RM10, RM29, and RM62 from the revised data because at verification, the Department determined that these components were not used in the production of the subject merchandise during the POI. See TCL FOP Verification Report at verification exhibit 1.

[63] The "Sigma" distance is the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the CAFC's decision in Sigma Corporation v. United States, 117 F. 3d 1401, 1407-08 (Fed. Cir. 1997) (Sigma I).

appropriate to incorporate both the corrections presented at the start of verification for these companies, as well as the findings noted by the Department. We requested that both of these respondents revise their submitted databases to incorporate all discrepancies noted in the Changhong and TCL verification reports. See the February 20, 2004, memorandum from Elizabeth Eastwood to the file entitled, "Requested Changes to the Sichuan Changhong Electric Co., Ltd. Databases in the Investigation of Certain Color Television Receivers from the People's Republic of China," and the April 8, 2004, memorandum from Alice Gibbons to the file entitled, "Requested Changes to TCL Corporation's Database in the Investigation of Certain Color Television Receivers from the People's Republic of China." We have used Changhong's revised sales and FOP databases, and TCL's revised FOP database, in our calculations for the final determination. Regarding TCL's U.S. sales database, we have used the most recent database submitted prior to the preliminary determination (i.e., on October 3, 2003), rather than the one submitted on February 9, 2004, because there were no changes to this database based on our verification findings.

Regarding the issues raised by the petitioners with respect to TCL's FOP data, we disagree that this database is so incomplete that it cannot be used. Nonetheless, we have adjusted the data to include the weights for two part numbers requested by the Department at verification. See the TCL FOP Verification Report at page 8. While we agree with petitioners that it would be appropriate to use the revised supplier distance for all purchases from that same supplier reported by TCL, we find that this change is unnecessary here, because the "Sigma" distance of 60 km. is lower than the revised supplier distance. For further discussion, see the April 12, 2004, Memorandum To the File From the Team entitled "U.S. Price and Factors of Production Adjustments for TCL Corporation for the Final Determination." Finally, we note that TCL did, in fact, incorporate in its revised factors the additional usage amount for the component in question, as noted at verification; thus, no further changes with respect to this component are warranted.

II. Company-Specific Issues

Comment 24: *New Factual Information in Changhong's Surrogate Value Submission*

On January 28, 2004, Changhong made a timely submission regarding surrogate value data. In accordance with 19 CFR 351.301(c)(1), on February 9, 2004, the petitioners filed a rebuttal to this submission. Although we rejected this submission on February 12, 2004, because we determined that the petitioners' submission contained untimely-filed new factual information, we afforded the petitioners an opportunity to resubmit a redacted version. The petitioners did so on February 13, 2004. However, they contend in their February 13 filing that Changhong's January 28 submission also contains untimely filed new factual information which the Department should reject. Specifically, the petitioners argue that information contained in Exhibits 1 through 5 of Changhong's January 28 submission merely rebuts the surrogate value information submitted by the petitioners on October 3, 2003, and as such does not constitute new surrogate value information. Therefore, the petitioners

argue that this information should have been submitted to the Department by December 1, 2003 (i.e., the deadline for the submission of new factual information).

In any event, the petitioners claim that their rejected February 9 response did not contain new factual information. They argue that, because Changhong in its January 28 submission urged the Department to reject import data for CPTs from certain market economy countries, Changhong would have the Department rely on CPT imports from Korea. Therefore, the petitioners contend that the information in their February 9 submission related to Korean electronics manufacturers and Korean subsidy programs was submitted in direct rebuttal to Changhong's January 28 submission.

Department's Position:

We disagree with the petitioners that Changhong's January 28 submission was untimely filed. While the petitioners correctly note that the general deadline for filing new factual information on the record of this case was December 1, 2003, the deadline for new surrogate value information was January 7, 2004, pursuant to 19 CFR 351.301(c)(3). Moreover, the Department extended this deadline for all interested parties until January 28, 2004. See, e.g., the December 4, 2003, letter from the Department to Changhong granting its extension request, in part. Thus, Changhong's surrogate value submission was timely filed on January 28, 2004.

Moreover, we disagree with the petitioners' contention that this submission constitutes new factual information because it rebuts information submitted before the preliminary determination. We note that Changhong's submission deals directly with surrogate value information. Moreover, the petitioners themselves did not cite any legal basis to support their claim. Therefore, we have accepted Changhong's January 28 submission because: 1) the information in this submission is publicly available; 2) it directly relates to the selection of surrogate values in this investigation; and 3) it was timely filed, according to the deadlines set forth in this proceeding.

Finally, we find that the petitioners' argument that its February 9 submission did not contain new factual information to be without merit. Contrary to the petitioners' assertion, Changhong made no mention of Korea in its January 28 submission. Therefore, because the information related to Korean electronics manufacturers and Korean subsidy programs in the petitioners' submission, we find that it did not directly rebut, clarify, or correct the information contained in Changhong's January 28 submission, as required by 19 CFR 351.301(c)(1). As a consequence, we find that it constituted untimely-filed new factual information. We note that, had the petitioners submitted this information regarding Korea on or before the deadline for new surrogate value information (i.e., January 28, 2004), the Department would have accepted it.

Comment 25: *Changhong Market-Economy Purchases*

For purposes of the preliminary determination, the Department did not accept certain of Changhong's market-economy purchases because the respondent was unable to document that these inputs were purchased from market-economy suppliers and paid for in market-economy currencies. Changhong states that at verification the Department examined documentation related to these market-economy purchases. According to Changhong, the Department confirmed that, with only minor exceptions, the inputs in question had been purchased from market-economy suppliers and paid for in market-economy currencies. Consequently, Changhong asserts that the Department must use these market-economy purchase prices in its calculations for the final determination.

The petitioners did not comment on this issue.

Department's Position:

We agree with Changhong that we should use its verified market-economy purchases in our calculations for the final determination. Therefore, for purposes of the final determination, we have used the market-economy purchase prices which we confirmed at verification as purchases from market-economy suppliers paid for in market economy currencies.

We note, however, that at verification Changhong was unable to substantiate certain purchases as market-economy transactions. See the Changhong Verification Report at page 24. In these instances, we have continued to value the associated factors using surrogate values.

Comment 26: *Date of Sale for Konka*

In its questionnaire responses, Konka reported that it made sales to the United States pursuant to long-term contracts. Because these contracts established the material terms of sale, Konka used the date that they were signed as the date of sale, and it reported all actual shipments made pursuant to these contracts in its U.S. sales listing. Konka also reported in the sales listing any unshipped portion of the contracts. At verification, Konka informed us that it experienced a technical problem in producing one of the products sold under contract and, as a result, the customer refused to take additional deliveries of this model. See the January 9, 2004, memorandum to Louis Apple from Shawn Thompson and Jill Pollack, entitled "Verification of the Sales Response of Konka Hong Kong in the Less Than Fair Value Investigation on Certain Color Television Receivers from the People's Republic of China" (Konka Sales Verification Report) at page 3.

The petitioners argue that the customer's refusal to accept further shipments invalidates the contract, because this constitutes a change to the material terms of sale. Therefore, the petitioners argue that the Department should use invoice date as the date of sale for the shipments in question. Moreover, because the dates of invoice fall outside the POI, the petitioners argue that the Department should disregard these transactions for purposes of the final determination.

According to the petitioners, the Department's practice, pursuant to 19 CFR 351.401(i), is to use the invoice date as the date of sale for the subject merchandise if the invoice date is reflected in the respondent's business records. As support for its position, the petitioners cite SeAH Steel Corp. v. United States, Slip Op. 01-20 at 5 (CIT 2001) (SeAH Steel Corp) (citing Thai Pineapple Canning Indus. Corp. v. United States, 24 CIT 107 (2000), aff'd in part, rev'd in part, 273 F.3rd 1077 (Fed. Cir. 2001)). The petitioners assert that the Department has the discretion to apply a date of sale other than invoice date if the facts of a case indicate a different date better reflects the time at which the material terms of sale (i.e., price, quantity, and payment terms) were established. See SeAH Steel Corp at 5; Cold-Rolled Flat-Rolled Steel from Brazil, at 65 FR 5575. The petitioners maintain that the Department may exercise its discretion to rely on a date other than the invoice date for the date of sale only if the material terms are not subject to change between the proposed date and the invoice date, or if the agency provides a rational explanation as to why the alternative date better reflects the date when material terms are established. See SeAH Steel Corp at 5. The petitioners argue that, because the Department verified that the terms of sale changed between the contract date and the date of shipment for one of Konka's U.S. sales, consistent with its determination in SeAH Steel Corp, it should rely on the date of invoice as the date of sale.

Konka argues that the Department should continue to base the date of sale on the contract date for the transaction in question. According to Konka the purpose of an antidumping investigation is to calculate the approximate level of a producer's/exporter's margin of dumping. Konka contends that disregarding the transactions in question would result in a deposit rate that does not represent Konka's expected level of dumping on future sales. While Konka acknowledges that the Department normally uses invoice date as the date of sale in accordance with 19 CFR 351.401(i), it contends that the Department may use another date, such as the date of contract, if that date better reflects the date on which the material terms of the sale were established. According to Konka, the Department explained that its purpose in adopting this regulation was to establish a uniform event which could be used as the date of sale. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27348-49 (May 19, 1997). Konka further claims that the Department explained that it does not treat an initial agreement as establishing the material terms of sale between the buyer and seller when changes to such an agreement are common, even if, for a particular sale, the terms did not actually change. Consequently, argues Konka, the Department's analysis focuses on whether changes are sufficiently common to allow the Department to conclude that initial agreements should not be considered to establish the material terms of sale.

Konka contends that the documentation on the record shows that, although certain material terms of sale of a POI contract (i.e., quantity) were subject to change after the date of the contract, the changes were not sufficiently common for the Department to conclude that the contract did not establish the material terms of sale. Konka states that for one contract signed during the POI, the Department's sales verification report indicates that Konka's customer instructed Konka to cease production temporarily one month after shipment began because of a technical problem. See the Konka Sales Verification Report at pages 3 and 4. In addition, Konka states that it did not ship the additional units

remaining under the contract because of the ongoing antidumping investigation. Konka claims that these events: 1) did not report in a change in unit prices or delivery terms; and 2) were not foreseeable at the time the contract was signed. Moreover, Konka maintains that the situation surrounding the change of contract terms was completely unpredictable, and thus not so common as to nullify the contract date as the appropriate date of sale. In any event, Konka argues that the petitioners' analysis does not support its conclusion that date of invoice is the appropriate date of sale.

However, Konka argues, if the Department determines that the change in quantity for one of Konka's U.S. sales merits a conclusion that the unshipped portion is not representative of Konka's sales to the United States, rather than changing its date of sale methodology, it should instead use the volume of television units Konka actually shipped pursuant to the contract in question in its final margin calculations. As support for its position, Konka cites to Stainless Steel Bar from India: Final Results of New Shipper Antidumping Duty Administrative Review, 62 FR 4029, 4030 (January 28, 1997) at Comment 2 (SSB from India), (where the Department continued to use contract date as the date of sale (and used the shipped quantity in its margin calculations) even though it found at verification that a portion of the goods had not been shipped as of the last day of verification).

Department's Position:

Regarding choosing the appropriate date of sale, 19 CFR 351.401(i) states:

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

In general, the Department defines the "material terms of sale" as price and quantity. See SSB from India at Comment 2. In this case, we used the contract date as the date of sale for the preliminary determination based on Konka's assertion that the price and quantity of the sale were set on the date that the contract was signed. However, at verification, we found that the terms of sale changed after the signing of the contract and that Konka did not ship the vast majority of the television units which were contracted. Moreover, Konka informed us at verification that it did not intend to enforce the terms of the contract by requiring the customer to accept delivery of additional units. See the Konka sales Verification Report at pages 3 and 4.

Because the material terms of sale changed after the signing of the contract, we find that it is inappropriate to use the date of contract as the date of sale for the transaction in question, in accordance with our practice. Consequently, we are revising our treatment of the date of sale for this transaction and using the invoice date as the date of sale. As a result, we have disregarded any

shipments associated with these invoices for purposes of the final determination because the dates of invoice are outside the POI.

We disagree with Konka that the circumstances in SSB from India are factually similar to those in this case. In SSB from India, unlike here, we found that the contract in question established the material terms of sale, and these terms remained changed. Thus, our use of contract date as date of sale in that case, and our inclusion of actual shipments made pursuant to that contract in our analysis, is entirely consistent with the Department's practice in this area.

Finally, we disagree with Konka that we should use the contract date as the presumptive date of sale for all transactions, despite the fact that these contracts were not binding in all cases. Section 351.401(i) directs the Department to use the date of invoice as the date of sale unless is satisfied that a different date better reflects the date on the material terms of sale are established. In this case, we are not satisfied that the material terms of sale were established on the contract date and thus we have relied on invoice date, as required under our regulations.

Comment 27: *TCL's Unreported U.S. Sales*

Early in this investigation, TCL requested that it be excused from reporting certain sales to the United States during the POI because they were of a small quantity, sold through a different sales channel (i.e., to a Japanese reseller), and of different models than TCL's sales to its main customer. TCL identified an additional small number of similar sales immediately prior to verification and also requested that it be excused from reporting them to the Department. We granted both of these requests, contingent upon TCL's ability to support its assertions that the volume of these sales was small. See the letters from Shawn Thompson to Raymond Peretzky, dated July 21, 2003, and November 4, 2003.

At verification, we found that TCL had made a number of additional sales similar to those which TCL had requested permission not to report. See the Department's January 7, 2004, memorandum to the file entitled "Verification of the Sales Responses of TCL OEM Sales Co. Ltd. in the Less Than Fair Value Investigation on Certain Color Television Receivers from the People's Republic of China" (TCL Sales Verification Report) at page 1 and verification exhibit 1. The petitioners contend that, when these additional units are added to the quantity of previously-excluded sales, the resulting total unreported U.S. sales quantity for TCL is significant. According to the petitioners, the Department generally does not exclude any U.S. sales from its calculation of U.S. price, and that, where it has done so, the circumstances have been unusual. Specifically, the petitioners state that the Department in past cases has excluded from its analyses certain U.S. sales involving samples, trials, and defective merchandise that were sold in small quantities. As support for these claims, the petitioners cite Granular Polytetrafluoroethylene Resin From Japan; Final Results of Antidumping Duty Administrative Review, 58 FR 50343, 50345 (Sept. 27, 1993) (where the Department excluded certain home market sales made outside the ordinary course of trade); Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 61 FR 48465, 48470 (Sept.

13, 1996) (where the Department included certain U.S. sample sales in its analysis); Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan, 61 FR 38139, 38151 (July 23, 1996) (where the Department included a particular sale in its analysis because there was insufficient evidence on the record of the case that the sale was "so unusual that it should be disregarded"); Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland, 56 FR 56363, 56371 (Nov. 4, 1991) (Coated Groundwood Paper from Finland) (where the Department disregarded U.S. trial sales and sale of damaged merchandise); and Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia, 60 FR 6980, 7004 (Feb. 6, 1995) (where the Department disregarded sample sales).

In any event, the petitioners assert that the Department has a "standard" five-percent threshold for disregarding unusual sales, as set forth in Final Determination of Sales at Less than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (Sept. 27, 2001) and accompanying issues and decision memorandum at Comment 10 (Russian Magnesium), and both the quantity and value of TCL's unreported transactions are above this threshold. Moreover, the petitioners note that TCL was aware of the Department's directions requiring it to report all sales transshipped to the United States, as evidenced by statements in its July 14 response, and the total unreported sales quantity was over double the amount the Department originally allowed TCL to exclude.

According to the petitioners, permitting exclusion of such substantial numbers of transshipped CTVs would allow for easy circumvention of any order. Moreover, the petitioners assert that TCL improperly withheld information requested by the Department until verification, and, as a consequence, the Department should make an adverse inference with respect to these sales in accordance with sections 776(a)(2)(A) and (B), and 776(a) and (b) of the Act. As AFA for these sales, the petitioners assert that the Department should apply the highest non-aberrational margin calculated for any single sale.

TCL argues that the Department should make no adverse inferences with respect to the U.S. sales in question. Specifically, TCL contends that: 1) the record of this investigation shows that the volume of the sales in question was only marginally higher than the five percent guideline figure typically used by the Department in such cases; 2) the Department verified that the sales channel is no longer actively used by TCL and will not resume; 3) these sales were not reported due to a mistake by TCL's staff who were unfamiliar with the precedent of an antidumping duty investigation, rather than an intent to mislead the Department; 4) the sales terms, sales circumstances, and selling expenses related to these sales were distinct; 5) the burden associated with reporting the sales in question would have been very high; and 6) given that the prices of these sales are much higher than those of TCL's reported U.S. sales, including them in the margin analysis would have only lowered the calculated dumping margin.

Regarding the latter three points, TCL asserts that the terms and circumstances of the sales to its this customer differed from the vast majority of TCL's U.S. sales during the POI, and consequently

reporting these additional sales would have required the Department to investigate an entirely separate sales channel through a company located in a third country. TCL maintains that not only do the sales and expense documentation differ for these sales, but the sales were of small quantities and in five "very different" models, some of which were produced in a separate facility from the model reported. (Elsewhere in its case brief, however, TCL asserts that the only factor in which these models differed was in their less-advanced sound system.) As a result, TCL argues that the burden on both TCL and the Department in reporting/reviewing and verifying these sales would have been magnified six-fold. According to TCL, there is no compelling reason why such an enormous burden should have been imposed when the resulting gain in coverage would have been so small.

Regarding TCL's contention that it was conservative for it not to have reported these sales, TCL asserts that the Department examined invoices for these sales at verification which showed the prices were higher than the price of the reported sales; and it verified that the only factor in which the models differed was in their (less-advanced) sound system. TCL asserts that it is not surprising that the prices of the sales to its Japanese reseller were higher than the direct sales to its U.S. customer because the reseller has much less bargaining power than the U.S. customer (a major multinational corporation with a world famous brand which purchased in large volumes on a long-term basis).

Finally, TCL contends that disregarding the transactions in question would be consistent with the Department's precedents in this area. According to TCL, in investigations (as opposed to administrative reviews), the Department frequently has excluded sales in volumes exceeding five percent, a guideline figure which has no basis in the antidumping statute or the Department's regulations. See Coated Groundwood Paper from Finland. TCL also cites Preliminary Determination of Sales at Less Than Fair Value Investigation: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea, 55 FR 49668, 49669 (Nov. 30, 1990), unchanged in the Final Determination, where the Department excused a respondent from reporting sales of further-processed product when those sales accounted for no more than six percent of the respondent's total U.S. sales. Similarly, TCL asserts that in numerous investigations, the Department has excluded particular types of sales if they are atypical and involve a heavy burden of reporting and verifying, even if those sales constitute more than five percent of the total sales to the United States. For example, TCL argues that in many investigations the Department has limited the reporting requirements to identical products sold in both the U.S. and home markets, even if this resulted in less than 95 percent coverage of the U.S. sales during the POI. In support of this statement, TCL cites Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada, 56 FR 56062, 56064-65 (Nov. 6, 2001) (Softwood Lumber from Canada); Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 57 FR 49066, 49067 (Oct. 29, 1992); and GMN George Muller Nurnberg AG v. United States, 763 F. Supp. 607, 613 (CIT 1991) (G. Muller Nurnberg AG v. United States). TCL notes that, in Softwood Lumber from Canada, the Department instructed respondents to limit reporting to sales of identical products sold in both the U.S. and home markets as long as at least 33 percent of U.S. sales were reported, and

this methodology was upheld in G. Muller Nurnberg AG v. United States. According the TCL, in some investigations, where the Department followed the 33 percent reporting guideline, the Department has accepted even less than 33 percent. See Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 18992, 19029 (May 3, 1989).

TCL further asserts that Department considers both a respondent's reporting burden for a particular category of sales and atypical sales channels to be significant factors in its willingness to exclude those sales. For example, TCL cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Belgium, 67 FR 62130 (Oct. 3, 2002) and accompanying Issues and Decision Memorandum at Comment 1 (where the Department allowed a respondent not to report certain further-manufactured products based on the facts that the respondent encountered data collection difficulties and these sales represented less than five percent of the company's overall sales); Final Determination of Sales at Less Than Fair Value: Certain All Terrain Vehicles from Japan, 54 FR 4864, 4867 (Jan. 31, 1989) (where the Department stated that it would consider excluding sales "when those sales are not representative of the respondent's selling practices in the U.S. market, or where those sales are so small that they would have an insignificant effect on the margin"); and Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan, 55 FR 34585, 34597 (Jan. 31, 1989) (where the Department held that a respondent's sales channel may be excluded if it is complicated to report and either: 1) involves merchandise or types of transactions that will not occur after suspension of liquidation; or 2) involve volumes so small that they would have an insignificant effect on margin analysis). TCL contends that, because each of these factors is present in this case, the Department has no reason to consider TCL's unreported U.S. sales for the final determination.

Department's Position:

As noted above, in July 2003, TCL notified the Department that, during the POI, it made a small volume of sales to the United States through a Japanese reseller. Because these sales were made through a separate sales channel and were of different models than those sold to its "mainstream" customer, TCL requested to be excused from reporting these transactions. We granted this request, but only on the condition that TCL be able to demonstrate at verification that the volume of these sales was small.

In October 2003, TCL informed the Department that it had discovered an additional sale made to the United States. TCL also requested not to report this sales transaction, based on its assertion that this was a sample sale made in a very small quantity. Again, we granted TCL's request, contingent on its ability to support its assertion that the unreported sales volume was small.

On the first day of verification, however, TCL provided a list of "corrections." The first item on this list was a worksheet showing that TCL had, in fact, made a number of additional POI subject sales

through Japan which had not been reported to the Department. See the TCL Sales Verification Report at page 1 and verification exhibit 1. When the volume of these new sales was added to that of the unreported sales previously identified, we found that they represented, in the aggregate, greater than five percent of TCL's U.S. sales activity during the POI.

In less-than-fair-value investigations, the Department is not required to examine all sales transactions in the United States. For this reason, our practice has been to disregard unusual transactions when they represent a small percentage (i.e., typically less than five percent) of a respondent's total sales. See, e.g., Russian Magnesium at Comment 10; Notice of Preliminary Determination of Sales at Less Than Fair Value Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan, 64 FR 8291, 8295 (Feb. 19, 1999). Nonetheless, we are not required, either by the regulations or by our practice, to disregard any unreported sales even if made in small quantities.

In this case, we disagree with TCL that it would be appropriate to disregard the transactions in question. We informed TCL on two occasions that it would be required to demonstrate that the total sales volume of unreported sales was small, and it was unable to do so at verification. Moreover, we disagree with TCL's implications that: 1) these sales were so unusual that it would have been inappropriate to have included them in our analysis; or 2) we would have acquiesced, had TCL requested early in the proceeding to be permitted to not report these sales, because of the additional burden associated with analyzing them. Indeed, we note that each of the other mandatory respondents reported sales and factors data for multiple models.[64] In any event, we note that it is the Department's decision, not TCL's, to determine whether the additional burden due to complexity outweighs any increase in accuracy in the case. In this instance, we find that reviewing additional models sold in quantities that we do not deem to be "small" would not have increased the complexity to an unacceptable degree. We note that this assessment is supported by the fact that: 1) the sales in question were EP transactions, and, thus, while they were in fact to an additional customer located in a different market, the burden associated with collecting invoicing and movement information would be minimal; and 2) the factors information for these models should be quite similar to the information to that provided for TCL's reported model, given that, by TCL's own admission, the only factor in which the models differed was in their less-advanced sound system.

Moreover, we disagree with TCL that its failure to report these transactions was necessarily conservative because their prices were higher. We note that price only represents one side of the dumping equation; absent information showing that the normal value would be the same or lower, we are unable to conclude that these sales would have been dumped at a lower rate than the company's reported sales. Indeed, given that TCL included one or more "free" samples with a number of these transactions, the true unit price would actually be lower than that shown on the correction list examined at verification. See, e.g., Notice of Final Results of the Sixth Administrative Review of the Antidumping

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[64] For example, Changhong alone reported significantly more than 10 unique models.

Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255 (Feb. 10, 2004) and accompanying issues and decision memorandum at Comment 40 (where the Department treated free samples as discounts).

In this case, because TCL did not provide the Department with the complete information regarding its universe of POI subject sales in a timely manner, we find that it is appropriate to resort to facts otherwise available to account for the unreported information. See Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand, 68 FR 65247 (Nov. 19, 2003) and accompanying issues and decision memorandum at Comment 20b. TCL's failure to provide this necessary information meets the requirements set forth in Nippon Steel Corp. v. United States, 337 F. 3d 1373 (Fed. Cir. 2003) (Nippon Steel). As stated by the CAFC during its discussion of section 776(a) of the Act in Nippon Steel, "[t] he focus of subsection (a) is respondent's failure to provide information. The reason for the failure is of no moment. The mere failure of a respondent to furnish requested information - for any reason - requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination."

In regard to the use of an adverse inference, section 776(b) of the Act states that the Department may use an adverse inference if "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. . ." In Nippon Steel, the Court set out two requirements for drawing an adverse inference under section 776(b) of the Act. First, the Department "must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations." Nippon Steel, 3337 F. 3d 1382-83. Next the Department must "make a subjective showing that the respondent . . .has failed to promptly produce the requested information" and that "failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records." Id. Because: 1) TCL had the necessary information within its control and it did not report this information; and 2) it failed to put forth its maximum effort as required by the Department's questionnaire, we find that TCL's failure to respond in this case clearly meets these standards.

As facts available, we have applied the highest non-aberrational margin calculated for any U.S. transaction to the volume of TCL's unreported sales to its Japanese reseller, in accordance with our practice. See Static Random Access Memory Semiconductors from Taiwan; Final Results of the Antidumping Duty New Shipper Review, 65 FR 12214 (Mar. 8, 2000) and accompanying issues and decision memorandum at Comment 1. In selecting a facts available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of TCL's customary selling practices and is rationally

related to the transactions to which the adverse facts available are being applied. In this case, all of TCL's sales were EP transactions and it reported sales of only one model. Therefore, we selected the highest margin on an individual TCL sale in a commercial quantity that fell within the mainstream of the respondent's transactions.

Comment 28: *TCL's Brokerage and Handling Expenses*

In its initial questionnaire response, TCL reported that it had an agreement with of its customers whereby TCL was reimbursed for brokerage and handling expenses incurred on specific transactions. Although TCL admitted that the customer had not actually reimbursed the company for these expenses as of the date of the preliminary determination, it added these expenses to its gross unit price reported in the U.S. sales listing (i.e., GRSUPRU). However, it also reported the price exclusive of these expenses in an additional field (i.e., GRSUPRU2). For purposes of the preliminary determination, the Department used TCL's gross unit price excluding brokerage and handling expenses (i.e., the price reported in the field GRSUPRU2) because these expenses had not been reimbursed by TCL's U.S. customer.

The petitioners argue that TCL improperly calculated its gross unit price by including brokerage and handling expenses incurred on its U.S. sales that were payable by its U.S. customer (i.e., GRSUPRU). The petitioners comment that TCL previously stated that it expected its U.S. customer to reimburse it for these expenses. However, the petitioners note that TCL informed the Department at verification that it had not yet been reimbursed by its U.S. customer. Therefore, the petitioners assert that the Department should use gross unit price exclusive of brokerage and handling expenses (i.e., GRSUPRU2) in its calculations for TCL for the final determination.

TCL notes that, because: 1) the Department used GRSUPRU2 in its calculations for the preliminary determination; and 2) the Department verified that TCL's U.S. customer did not reimburse TCL for the brokerage and handling expenses in question, the Department does not need to revise its calculations for the final determination with respect to TCL's brokerage and handling expenses.

Department's Position:

At verification, we found that TCL's customer had not yet reimbursed TCL for the expenses in question. See the TCL Sales Verification Report at page 10. Therefore, we continue to find that it is appropriate to rely on TCL's reported prices, exclusive of brokerage and handling expenses. Because we relied on these prices in the preliminary determination, no revision to our calculations is necessary.

Comment 29: *Surrogate Value for TCL's Magnetic Circle Inductors*

In the preliminary determination, the Department excluded certain components from TCL's miscellaneous component category (i.e. RM67) and valued these components separately using

surrogate value data on the record of this investigation. See the November 21, 2003, Memorandum to the File entitled, "U.S. Price and Factors of Production Adjustments for TCL Corporation for the Preliminary Determination" (TCL Prelim Calculation Memo) at page 3.

TCL asserts that the Department incorrectly applied a surrogate value to TCL's magnetic circle inductors using a surrogate value based on MFSTI data for Indian HTS category 8504.5001, the surrogate value for all choke coils and inductors. TCL contends that in its October 31, 2003, supplemental response, it made apparent the distinction between a magnetic circle inductor and a choke coil when it defined its "magnetic circle inductor" (i.e., magnetic ring) as "a bare jumper with a magnet circle on it to provide inductance" and defined a choke coil as "a circuit element used to suppress or limit the flow of alternating current without affecting the flow of direct current." Further TCL remarks that it clearly distinguished these parts from one another by including choke coils (i.e., substantial parts that weigh 18 grams each) in a separate category from magnetic rings (i.e., tiny components that weigh 1/3 of a gram each). Therefore, TCL contends that the choke coil surrogate value cannot be reasonably applied to a part as dissimilar as a magnetic ring, particularly since the choke coil surrogate value is applied on a per-piece basis while the surrogate value for magnetic rings is applied on a per-kilogram basis.

To support its claim, TCL cites the Department's response to its ministerial error allegation made after the preliminary determination regarding the valuation of its magnetic circle inductor, where the Department stated it would examine this issue further at verification. See the Ministerial Error Allegation Memo at pages 3 and 4. TCL maintains that the Department verified that the magnetic circle inductors used by TCL in the production of subject merchandise were tiny magnetic rings used to filter radio interference. See the TCL FOP Verification Report at page 6 and verification exhibit 11. Therefore, TCL argues that the Department should apply a surrogate value based on MFSTI data for HTS categories 8505.1101 and 8505.1109 (i.e., magnetic and transformer cores, mag{netic} rings, constant and transformer magnets) to TCL's factor for magnetic circle inductors for the final determination.

The petitioners contend that, while TCL makes the distinction between its choke coils (i.e., category RM50) and inductors, it notes that TCL failed to acknowledge that the Department should then apply the correct surrogate value for choke coils (i.e., MFSTI data for HTS category 8504.5001) to TCL's choke coils category. Therefore, for the final determination, the petitioners claim that the Department should calculate the surrogate value for TCL's choke coils using MFSTI data for this HTS category.

Department's Position:

We agree with TCL that we should apply a surrogate value based on MFSTI data for HTS categories 8505.1101 and 8505.1109 to TCL's factor for magnetic circle inductors based on the Department's verification findings regarding this material input. See the TCL FOP Verification Report at page 6 and verification exhibit 11. We also agree with the petitioners that we should apply a surrogate value based

on MFSTI data for HTS category 8504.5001 to value TCL's factor for choke coils (i.e., RM50) for the final determination because this MFSTI data is more appropriate for the valuation of choke coils than that which was applied to TCL's choke coils for the preliminary determination (i.e., HTS categories 8505.1109 and 8505.1101). See TCL Prelim Calculation Memo at Attachment five. We have revised the margin calculations for TCL accordingly for the final determination.

Comment 30: *Surrogate Value for TCL's Aluminum and Iron Heat Sinks and Heating Plates*

In the preliminary determination, the Department valued TCL's factors for aluminum heat sinks, aluminum heating plates, and iron heating plates (i.e., categories RM55, RM56, and RM57, respectively) using MFSTI data for HTS category 8529.9009. World Trade Atlas data indicates that this HTS category covers printed circuit boards and ceramic substrates with components assembled thereon, for color television receivers and subassemblies containing one or more of such boards or substrates, except tuners or convergence assemblies.

TCL asserts that the use of this HTS category is inappropriate to value the inputs in question because the inputs are pieces of metal that absorb and dissipate excess heat, not electronic components. TCL notes that the Department specifically examined these parts at verification and confirmed that they are little more than heavy pieces of protective metal. In addition, TCL maintains that the verification findings are further confirmed by various industry materials provided in TCL's January 27, 2004, submission which detail the physical characteristics of heat sinks, including their composition and size.

TCL asserts that, for the valuation of its factors for aluminum components (i.e., categories RM55 and RM56), the Department should use MFSTI data for the HTS categories recommended by both TCL and the petitioners in their October 31 and October 3, 2003, submissions, respectively (i.e., HTS categories 7601.2001 and 7601.2002). For TCL's iron component (i.e., category RM57), TCL recommends that the Department apply a surrogate value using MFSTI data for the HTS category for iron placed on the record in TCL's October 31 submission (i.e., HTS category 7206.1009). TCL notes that the Department has selected other surrogate values in this case based on a similar material composition standard. For example, TCL points out that the Department selected a copper materials HTS category (i.e., HTS category 7416.0000) for the surrogate valuation of coil and a rubber materials HTS category (i.e., HTS category 4001.1001) for the surrogate valuation of conduction rubber.

The petitioners disagree, stating the Department's verification report does not bear out TCL's claim that the Department confirmed that aluminum and iron heat sinks and heating plates are "little more than heavy pieces of protective metal." Rather, the petitioners assert that the verification report only addresses a discrepancy between the reported suppliers of this input and the actual suppliers. Further, the petitioners allege that verification exhibit 11 only contains untranslated documents and an illegible description of aluminum heat sinks. Therefore, the petitioners contend that the Department should continue to use the same surrogate value for TCL's aluminum and iron heat sinks and heating plates for the final determination.

Department's Position:

We agree with TCL that we should apply MFSTI data for HTS categories 7601.2001 and 7601.2002 to value its factors for aluminum components and MFSTI data for HTS category 7206.1009 to value TCL's iron component because these HTS categories are more representative of the inputs in question than HTS category 8529.9009, which includes electronic components.

At verification, we examined the parts in question and discussed both their physical specifications and use with company officials. See the TCL FOP Verification Report at page 6 and verification exhibit 11. As discussed in the report, we examined documentation showing the component specification of various components including TCL's aluminum heat sinks (i.e., category RM55). While it is true that the documents in verification exhibit 11 are not translated into English, we note that they were translated verbally at verification by the interpreter hired by the Department, and we were satisfied with the explanations provided at that time. Further, after reviewing TCL's description of heat sinks contained in its October 31 submission as well as the materials detailing the physical characteristics of heat sinks provided in TCL's January 27 submission, we find that TCL's aluminum and iron heat sinks are composed of similar materials as those in the HTS categories in question. As a consequence, we find that this surrogate data is the best available data and we have used it for purposes of the final determination.

Comment 31: *Distance from TCL's Factory to TCL Hong Kong*

In its final supplemental response prior to the preliminary determination, TCL reported the distance from its factory to its affiliate, TCL Electronics (HK) Limited (TCL HK), in miles. See TCL's October 14, 2003, response at page 4. Therefore, in the preliminary determination, the Department converted this distance to kilometers (km) in order to correctly apply the surrogate value for inland freight, which was stated in km.

In its case brief, TCL argues that the Department should not have performed this conversion because the distance was in fact reported in km. According to TCL, the unit of measure shown in the October 14 response was inaccurate, and that the Department verified that the correct distance was 125 km. See the TCL FOP Verification Report at page 12. Further, TCL maintains that it correctly reported this distance as 125 km an earlier response. See TCL's September 10, 2003, response at page 4. Consequently, TCL maintains that the Department should use the 125 km distance between the factory and TCL HK in its calculations for the final determination.

The petitioners disagree that the Department should adjust the distance between TCL's factory and TCL HK to 125 km for the final determination. The petitioners argue that, while this distance is stated as 125 km in TCL's September 10 response, this distance is stated as 125 miles in TCL's October 14 response, providing the Department with conflicting data. Furthermore, the petitioners claim that the Department's verification showed TCL's data to lack reliability and accuracy, because many of the

reported weights, distances, prices, yield loss figures, and quantities did not reconcile to the verified figures. In addition, the petitioners contend that TCL should have brought this issue to the Department's attention during verification but did not do so. Based on these assertions, the petitioners argue that the Department should reject TCL's claim and instead resort to using AFA by continuing to use 125 miles as the distance between TCL's factory and TCL HK for the final determination.

Department's Position:

We agree with the petitioners that we should continue to use 125 miles as the distance between TCL's factory and TCL HK in our calculations for the final determination. The record of this investigation reflects conflicting data regarding the distance between TCL's factory and TCL HK. See TCL's September 10 and October 14 responses.

In cases where a respondent submits multiple responses, the Department generally considers data in the most recent response to supersede previous versions. Time permitting and/or upon request by one of the parties to the proceeding, the Department may examine conflicting submissions at verification. In this instance, however, this issue was raised by TCL for the first time in its case brief, after verification. Moreover, we did not examine this distance at verification, despite TCL's assertions that we did so. TCL's citation to the TCL FOP Verification Report at page 12 is misplaced because there is no discussion of this distance in the Department's report or accompanying verification exhibits. Therefore, because the most current data on the record (i.e., TCL's October 14 response) states that the distance from TCL's factory to TCL HK is 125 miles and this distance was not examined at verification, we have continued to use 125 miles as the distance from TCL's factory to TCL HK in our calculations for the final determination.

Comment 32: *TCL's Energy Consumption*

In order to verify the energy consumed in the production of subject merchandise at verification, the Department requested that TCL demonstrate how its accounting records were used to determine the consumption amounts for the POI. As part of its response to this request, TCL provided the Department with a meter reading worksheet for March 2003, which provided the total amounts of energy consumed at each of the four sections of the factory, as well as various accounting documents and electricity bills. See the TCL FOP Verification Report at verification exhibit 14.

The petitioners contend that the Department should increase TCL's reported electricity consumption for the final determination because the documents reviewed at verification are confusing at best and inaccurate at worst. First, the petitioners assert that TCL's March 2003 meter reading worksheet is "plagued" with calculation errors because each of the meter readings shown on the worksheet for the individual sections of the factory do not sum to the subtotals. Second, the petitioners note that this worksheet does not reconcile to the company's internal accounting system; according to the petitioners, TCL's explanation at verification for this difference (i.e., that the worksheet was based on actual meter

readings, while the accounting data was taken from actual electricity bills) is suspect because the electricity bill does not reflect the period of days covered. Consequently, the petitioners argue that the Department should increase TCL's total energy consumption, as well as the per-CTV energy consumption factors, for the POI to reflect the percentage difference between the total March 2003 energy consumption shown on TCL's meter reading worksheet and the figures calculated by the petitioners and noted in their case brief.

TCL disagrees that its reported energy usage amounts do not tie to its accounting system. Specifically, TCL asserts that the Department noted no discrepancies at verification, stating that it "tied the March 2003 energy consumption for the CTV production lines in the CTV workshop, as shown on the accounting department worksheet, to the worksheet used to prepare the CTV consumption figure reported in the response." Moreover, TCL asserts that the Department confirmed that the remaining energy consumption figures shown on the March 2003 accounting department worksheet had either been accounted for in the reported figures or related to the production of non-subject merchandise (or factory overhead-type activities). Therefore, TCL asserts that the electricity usage amounts reported by TCL reconciled to its internal cost accounting records as kept in the ordinary course of business.[65]

TCL further argues that at verification the Department tied the cost accounting records to the actual electricity bills, tracing the amounts actually invoiced by the utility supplier to the company's general ledger. TCL points out that the Department's report explains that TCL's accounting worksheets were compiled on the basis of calendar months, while the electricity bills reflected the period from the 10th of each month through the 9th of the following month. TCL argues that, since the accounting records and the utility company invoices were based on readings from the same electricity meters, the difference in the energy consumption from the two sources found by the Department for the period January 2003 through March 2003 was virtually non-existent, as would be expected.

According to TCL, the petitioners have simply misread the documents gathered by the Department at verification. TCL contends, therefore, that there is no basis for the Department to make an adjustment to TCL's reported energy consumption figures. According to TCL, at most, the documents examined at verification support an adjustment of no more than the percentage variance between the total energy consumption figure from the meter reading worksheet and the accounting department worksheet found by the Department. (TCL notes that the report contains an error in the placement of the decimal point, and thus the actual difference is only one-tenth of the stated difference.) In any event, TCL notes that the revised FOP database submitted by TCL to the Department on February 9 reflects the additional electricity usage discovered by the Department at verification (i.e., for packing operations), and thus no additional adjustments to the reported energy consumption figures are necessary for the final determination.

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[65] TCL notes that the "worksheets" in question were not prepared for verification, but rather are maintained by the company in the ordinary course of business.

Department's Position:

At verification, we reviewed TCL's methodology for reporting electricity consumed at each of its production factories. We obtained internal company documents used to track electricity usage in the ordinary course of business and tied these documents to accounting worksheets also prepared routinely by company officials. Finally, we tied the accounting worksheets to TCL's actual electricity bills and to its general ledger using standard verification procedures. Based on this review, we found that TCL had not significantly understated its electricity consumption during the POI. See the TCL FOP Verification Report at pages 15 through 17.

Nonetheless, we have reexamined certain of the documents taken at verification and we agree with the petitioners that these documents contain various mathematical discrepancies. As a result, we have compared the energy usage shown on the internal meter reading worksheet for March 2003 (i.e., the only monthly worksheet contained in verification exhibit 14) to the monthly amount reflected on the electricity usage worksheet used to prepare the response. Based on this comparison, we find that TCL's reported figures were conservative in some cases and not conservative in others. Specifically, we find that the electricity usage reported for the plastic injection workshop is significantly higher than that shown on the internal meter reading worksheet, while the electricity usage reported for the CTV workshop is higher in some instances and lower in others. For example, the electricity usage reported for the CTV, PCB, and AIS sections of the CTV workshop are all higher in the response than on the internal worksheet; the electricity usage for the quality assurance section is lower than on the internal worksheet; and the electricity worksheet for one additional section does not appear to be reported. In the aggregate, however, TCL reported higher electricity consumption for the plastic injection and CTV workshops than is shown on the internal meter reading worksheet. Given these facts, we find no basis to increase the reported electricity figures contained in TCL's response. Because the underlying information on which this conclusion is based is business proprietary, we are unable to disclose it here. For further discussion, see the April 12, 2004, memorandum from Alice Gibbons to the File entitled, "Analysis of Electricity Consumption Data for TCL."

Finally, we disagree with the petitioners that TCL's accounting department worksheets are suspect because they cannot be directly tied to the company's electricity bills. At verification, we compared the energy consumption figures shown on the electricity bills to the energy consumption figures shown on the accounting department worksheet for March 2003. We assessed the magnitude of this difference and found that it was insignificant. Moreover, we found no reason to doubt the company's explanation that the small difference observed was due to timing. Therefore, we also find that there is no basis to increase TCL's electricity consumption for the final determination because the reported amounts differed slightly from the amounts billed by the electricity company.

Comment 33: *Use of TCL's "Actual" SG&A Rate*

As noted in Comment 14, above, in the preliminary determination the Department based the surrogate financial ratios for all respondents in this investigation on the 2001-2002 financial statements of three Indian producers of CTVs, BPL, Onida Saka, and Videocon.

According to TCL, all of its reported U.S. sales during the POI were made by a subsidiary located in Hong Kong, TCL OEM Sales Ltd. (TCL OEM). TCL asserts that, as a result, all of the SG&A expenses for its sales of subject merchandise were incurred in Hong Kong in a market-economy currency. Based on this fact pattern, TCL argues that the Department should use the actual SG&A expenses of TCL OEM, as shown on this company's 2002 financial statements, for purposes of the final determination, rather than SG&A expenses based on the financial statements of an Indian surrogate CTV producer.

The petitioners disagree that it is appropriate to base TCL's SG&A expense ratio on the financial statements of TCL OEM. Specifically, the petitioners contend that the Department should base all of the financial ratios (i.e., factory overhead SG&A expenses, and profit) on a single set of financial statements, rather than taking overhead and profit from one (or more) market-economy companies and SG&A from another. According to the petitioners, the Department's goal in using surrogate financial ratios in an NME case is to attempt to place the NME company in a market-economy context. Therefore, the petitioners contend that it is proper to evaluate the expenses of the selected surrogate CTV producers as a whole.

Department's Position:

We disagree with TCL that it would be appropriate to base TCL's SG&A expense ratio on the financial statements of its Hong Kong sales subsidiary, TCL OEM. Section 351.408(c)(4) of the Department's regulations states:

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

In this case, the surrogate country is India, not Hong Kong. More importantly, however, we find that using the SG&A rate of TCL's Hong Kong subsidiary would not properly account for any general expenses incurred at the factory in the PRC. Because TCL OEM's SG&A ratio does not fully capture the company's general expenses associated with producing the subject merchandise, we have not relied on it for purposes of the final determination.

In any event, we note that the Department has a clear preference for using the same financial statements to calculate all of the financial ratios in a proceeding, including the SG&A rate. See 2000-2001 Persulfates Final at Comment 9. Given that TCL has not provided a better alternative, we find that inadequate grounds exist for us to depart from our standard practice in this area.

Comment 34: *Use of Total Adverse Facts Available for XOCECO*

The petitioners argue that the Department should apply total AFA with respect to XOCECO because XOCECO has failed to provide critical, significant, and verifiable information throughout the course of the Department's investigation. Specifically, the petitioners assert that the XOCECO has failed to establish that its sales database is reliable, given the fact that XOCECO: 1) was unable to tie sales of subject merchandise with their corresponding entries into the United States; 2) was unable to link sales returns with specific sales invoices; and 3) misreported the U.S. dates of sale by a significant margin. In addition, the petitioners claim that the Department discovered a host of errors in XOCECO's selling expense and FOP data at verification, including U.S. warehousing costs, U.S. warranty expenses, the weight of the finished CTVs, as well as various production components, electricity usage, and labor in one of XOCECO's component factories. The petitioners assert that these errors warrant the rejection of XOCECO's entire response.

In any event, the petitioners contend that XOCECO has already received a "beneficial facts available" antidumping duty rate at the preliminary determination because XOCECO's rate was lower than the Department's calculated weighted-average antidumping duty rate applied to voluntary respondents. The petitioners argue that, despite not having cooperated fully with the Department during the investigation, XOCECO improperly received this "beneficial facts available" rate. According to the petitioners, the Department should not give a "beneficial facts available" rate to a respondent that has provided unverifiable and unusable data to the Department. Accordingly, the petitioners argue that, while the application of AFA is warranted, at a minimum, the Department should assign XOCECO the "neutral facts available" weighted-average rate applied to voluntary respondents. However, failing that, the petitioners contend that the Department should apply partial AFA to each of the areas noted above.

XOCECO argues that there is no justification for basing its margin on total AFA. XOCECO notes that the Department's long-standing practice is to assign total AFA only in instances where either an uncooperative respondent has withheld requested information or impeded the Department's investigation by not complying with deadlines or where a respondent's unverifiable information has been of such magnitude as to prevent the Department from calculating a dumping margin. XOCECO states that neither of these circumstances exists here.

XOCECO notes that it has responded in a timely manner to all of the Department's questionnaires and was forthright in explaining when XOCECO's books and records prevented it from submitting data to the Department in the requested format. XOCECO argues that because it answered all of the Department's questions in a timely manner and completely explained difficulties in submitting data in the format requested by the Department, there is no justification for applying AFA to XOCECO.

XOCECO contends that the Department's CEP verification report confirms the completeness and accuracy of XOCECO's sales database. According to XOCECO, the petitioners have no basis to

argue for the use of total AFA because of XOCECO's inability to tie imports of subject merchandise with specific sales in the U.S. market. XOCECO claims that the Department never requested that XOCECO or its U.S. subsidiary, Prima Technology, Inc. (PTI), undertake such a linkage prior to verification. Moreover, XOCECO notes that the Department understands that most importers are unable to link imported purchases of goods to outgoing sales from its inventory.

XOCECO argues that there is no justification for the use of total AFA in cases where it is clear that a company's records kept in the ordinary course of business prevent it from reporting certain information or in cases where the Department has not requested the information in question. XOCECO states that its inability to tie returns to sales is insignificant because the value of these returns accounts for only a very small percentage of PTI's reported sales value. XOCECO claims that netting out XOCECO's returns has the same effect as linking returns to specific sales of subject merchandise.

Finally, XOCECO argues that the petitioners misread the Department's verification report with respect to the reported date of sale. Rather, XOCECO notes that the Department found minor errors with respect to some of XOCECO's payment dates, not sale dates. Therefore, according to XOCECO, because the Department completely verified the date of sale for all of its sales, the Department has no basis to apply AFA to XOCECO for the final determination.

Department's Position:

According to section 776(a) of the Act, the Department shall use the facts otherwise available in reaching a determination if:

1) necessary information is not available on the record; or

2) an interested party or any other person

A) withholds information that has been requested by the administering authority or the Commission under this title;

B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782;

C) significantly impedes a proceeding under this title; or

D) provides such information but the information cannot be verified as provided in section 782(i).

We find that XOCECO did not, *in toto*, withhold information, fail to provide information to the Department in a timely manner, impede the proceeding, or provide unverifiable information. Data necessary to perform our margin calculations was on the record of this proceeding prior to the date of the preliminary determination.

We agree that XOCECO's initial and supplemental questionnaire responses contain certain inaccuracies and omissions, as noted in our verification reports and/or as discussed below. Nonetheless, we were able to verify the vast majority of the submitted information and are satisfied that adequate information exists on the record of this investigation with which to calculate an accurate dumping margin. Contrary to the petitioners' claim, we have not found XOCECO's data to be inadequate, unreliable, or unverifiable in most instances.

Regarding the petitioners' specific allegations, we disagree that XOCECO's U.S. sales database is fundamentally flawed. As a threshold matter, we note that it is not unusual for a U.S. reseller which sells merchandise from inventory to be unable to tie its sales to the associated entries of subject merchandise into the United States. More importantly, however, we note that the Department generally does not require respondents to provide this information, given that it is not used in less-than-fair-value investigations to define the universe of transactions investigated. Indeed, we note that we did not request this data here, nor did we attempt to obtain it at verification as the petitioners imply. Rather, the verification report touches on this issue only in the context of whether PTI was able to tie specific ocean freight expenses to individual sales in the U.S. sales listing. See the January 21, 2004, memorandum from Irina Itkin and Patrick Connolly to Louis Apple entitled, "Verification of the Sales Questionnaire Responses of Prima Technology, Inc. in the Antidumping Duty Investigation of Certain Color Televisions from the People's Republic of China" (PTI verification report) at page 11. In light of these facts, we find the petitioners' reference to any verification "findings" on this topic to be misguided.

We similarly do not find it suspicious that a reseller may not maintain sufficient documentation to tie individual sales returns to specific sales invoices. At verification, we examined PTI's record-keeping practices, including the methods by which it accounted for both sales and returned merchandise. We found no evidence during this examination that PTI could link returns to specific sales invoices. See the PTI verification report at page 5. Given the limitations of PTI's accounting system, we find no basis to conclude that the company withheld information or impeded the investigation, as the petitioners contend.

With respect to the date of sale issue raised by the petitioners, we have reviewed the verification report in question and agree that the petitioners misinterpreted the findings set forth in this report. Specifically, at verification we found a small number of discrepancies with XOCECO's reported payment dates, not with XOCECO's reported dates of sale. See the PTI verification report at page 6. Consequently, we agree with XOCECO that there is no basis to apply AFA with respect to these particular sales. Regarding the misreported payment dates, because we have verified the information on the record of

this case and find it accurate, we have used this information to recalculate PTI's credit expenses, in accordance with our practice.

For the foregoing reasons, we find that neither total AFA nor total neutral facts available with respect to XOCECO's data is warranted. Nonetheless, we have applied AFA with respect to certain elements of XOCECO's response, based on XOCECO's failure to provide sufficient information to the Department prior to verification, or its inability to substantiate the reported data at verification. For a discussion of the specifics of each of these issues, see Comments 36, 38, and 44, below.

Comment 35: *Screen Type Code for XOCECO*

The petitioners note that, at verification, the Department discovered that XOCECO incorrectly reported the screen type code (i.e., SCRNTYPU) for one of XOCECO's products. The petitioners state that the Department should use the correct screen type code for the final determination.

XOCECO did not comment on this issue.

Department's Position:

We agree and have used the correct screen type code for this product for purposes of the final determination. We have also applied a surrogate value for this screen type to the model in question in our calculations of normal value.

Comment 36: *XOCECO's U.S. Warranty Expenses*

In two supplemental questionnaires, we requested that XOCECO provide documentation substantiating the breakdown of warranty expenses between subject and non-subject merchandise because XOCECO assigned the majority of its warranty expenses to non-subject products. In both cases, XOCECO failed to provide the requested information, stating that its warranty claims were handled by an affiliate, Prima Electronics, Inc. (PEI), and PEI's books and records required manual review to locate the necessary information. Although XOCECO explained that it would provide this documentation "as soon as possible," it did not do so. Because: 1) we found that this information was necessary for our analysis; and 2) XOCECO inconsistently reported the number of returned products, and their associated costs, during the POI, we made a preliminary finding that XOCECO failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, and we based XOCECO's U.S. warranty expenses on AFA. As AFA, we used the highest reported model-specific warranty expense for every transaction during the POI. See Preliminary Determination, 68 FR at 66807.

The deadline for submitting new factual information in this case was December 1, 2003. Although XOCECO submitted new information to remedy other deficiencies in its response (see Comment 37,

below), it provided no new information with respect to its U.S. warranties.[66] As a consequence, we determined that there was inadequate information on the record to accept XOCECO's warranty calculation, and we did not include this expense in the U.S. sales verification outline. Moreover, we verbally informed XOCECO prior to verification that we did not intend to verify this expense, but at XOCECO's request, we agreed to examine XOCECO's warranty expenses at verification if time permitted. Consistent with this statement, we did, in fact, attempt to review these expenses at verification, but we were unable to reconcile them to the company's accounting records in the time allotted for verification.

Given this result, the petitioners argue that the Department should continue to apply the highest reported warranty expense reported by XOCECO to all U.S. sales for purposes of the final determination. The petitioners contend that XOCECO's inability to provide information related to its warranty expenses illustrates XOCECO's uncooperativeness throughout the course of the investigation.

The petitioners contend that the record in this case supports the Department's preliminary decision to base warranty expenses on AFA. Specifically, the petitioners assert that XOCECO reported a significantly larger number of returns in its October 22, 2003, supplemental response than those identified in its August 1, 2003, initial questionnaire response; however, they point out that the revised costs associated with these returns were only marginally higher. The petitioners also argue that XOCECO has been uncooperative in this case, implying that XOCECO should have been able to tie sales invoices with returns. According to the petitioners, it is impossible to estimate the costs associated with returns (or indeed to ensure that all sales have been reported) if the respondent blatantly refuses to cooperate with the investigation.

Moreover, the petitioners point out that the Department was unable to reconcile the reported warranty expenses to the accounting records of the company in the time allotted for verification. The petitioners contend that XOCECO's failure to provide such important information further undermines the integrity of its response, and they claim that it is "unclear" why XOCECO would not have such information available in its U.S. offices if the reported information was truthful and accurate. The petitioners assert that warranty costs are a vital part of the costs incurred by any company and should be available to both the company's accountants and its managers. The petitioners therefore argue that, at a minimum, the Department should apply as AFA the highest warranty expense reported by XOCECO.

XOCECO argues that the Department should accept its warranty expenses as reported for purposes of the final determination. According to XOCECO, the record evidence on this case with respect to warranty expenses is consistent because the total direct warranty expense contained in the October 22

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[66] We recognize that XOCECO did attempt to provide an explanation of the apparent discrepancy with respect to the number and cost of returns.

exhibit is almost identical to the total warranty expense figure derived from the sales database submitted on this date.

XOCECO maintains that it did not provide the documentation requested by the Department due to limited resources. According to XOCECO, its affiliate, PEI, had limited resources to reconcile reported warranty expenses to its accounting records. XOCECO notes that it explained in its supplemental questionnaire responses that it would provide this reconciliation at verification. XOCECO characterizes the Department's decision to use AFA as unreasonable, given XOCECO's explained difficulty in reporting this information.

XOCECO argues that the Department improperly based its use of AFA on XOCECO's failure to provide a complex reconciliation of its reported expenses to its accounting system. XOCECO contends that this type of documentation is more appropriately provided at verification than as part of a supplemental questionnaire response. XOCECO contends that it provided cogent questionnaire responses to the Department's questions on warranty expenses and argues that its failure to provide a reconciliation alone does not distort these expenses or make them unusable.

Furthermore, XOCECO faults the Department for initially deciding not to examine its warranty expenses at verification and states that the Department wrongfully concluded these expenses were unusable before requesting an explanation for these expenses from company officials. Finally, XOCECO claims that the Department "set up XOCECO to fail verification" by not examining XOCECO's warranty expenses and characterizes the Department's decision to examine these expenses on a time-permitting basis as a "gotcha" practice that has been rejected by the CIT in other cases. See Bowe-Passat v. United States, 17 CIT 335, at 343 (CIT 1993) (Bowe-Passat). XOCECO argues that the Department never provided XOCECO with a reasonable opportunity to reconcile its reported warranty expenses. Therefore, XOCECO argues that the Department should accept them as submitted for purposes of the final determination.

Department's Position:

We have continued to base XOCECO's U.S. warranty expenses on AFA for purposes of the final determination. At verification, we attempted to review XOCECO's warranty experience, and we found that we were unable to "reconcile the reported warranty expenses to the accounting records of the company in the time allotted for verification." See the PTI verification report at page 16. Because: 1) we were unable to verify this expense; and 2) XOCECO did not provide all information requested prior to verification, we find that the use of facts available, pursuant to section 776(a)(2)(A) of the Act, is appropriate. Furthermore, since we find that XOCECO failed to cooperate by not acting to the best of its ability to comply with the request for information, an adverse inference is warranted under section 776(b) of the Act. As AFA, we have continued to assign the highest reported model-specific warranty expense to every transaction during the POI.

Contrary to XOCECO's argument, we did not "set up XOCECO to fail verification" by not verifying warranty expenses until the end. XOCECO knew well in advance of verification that, based on the current record, the Department had found insufficient grounds to accept as XOCECO's warranty expense as reliable or accurate. Although we requested on two separate occasions that XOCECO provide supplemental information, it failed to do so. See the Department's August 22, 2003, supplemental section C questionnaire and its October 9, 2003, supplemental sections C and D questionnaire. In each instance, XOCECO indicated that it understood the Department's requests and that it was gathering documents in an attempt to comply. Nonetheless, it never submitted this information, even though the deadline for submission of new factual information was more than two months after the Department's first request. In light of the fact that XOCECO: 1) had full access to the requested data; 2) had ample time to gather it; and 3) knew of the importance that the Department placed on it (given that the Department requested it twice and then based our preliminary finding on AFA when XOCECO failed to provide it), we find the company's attempts to shift blame onto the Department to be unreasonable at best.

Moreover, we find XOCECO's continual failure to provide this information to be particularly puzzling in light of the fact that it provided a breakdown of warranty expenses by subject merchandise and non-subject merchandise in its original questionnaire response. It is unclear how XOCECO could have compiled and reported this information without itself documenting this breakdown. Given the numerous inconsistencies with XOCECO's data (see below) and its own claim that the reconciliation in question was complex, it was not unreasonable for the Department to request additional warranty expense information from XOCECO well before verification. Indeed, provision of this reconciliation before verification could only have helped XOCECO because we would have had time to review it and to prepare in advance for verification. XOCECO's failure to do so leads us to conclude that the data itself could not be reconciled to underlying supporting documentation.

In any event, we note that XOCECO's warranty expense information is deficient in other respects. Specifically, as noted above, we found that XOCECO inconsistently reported the number of returned products, and their associated costs, during the POI. Moreover, although XOCECO revised its warranty expense information in exhibits contained in its September 5, 2003, and October 22, 2003, supplemental questionnaire responses, it did not revise its sales database to reflect these changes. Finally, we also found a discrepancy between the narrative portion of one of XOCECO's supplemental questionnaire responses concerning warranty expenses and a related exhibit. At the Department's request, XOCECO excluded reported indirect warranty expenses from its reported warranty expenses and instead revised its indirect selling expense ratio to account for these expenses. However, in a subsequent supplemental questionnaire response, XOCECO stated that it had included these indirect warranty expenses in its overall reported warranty expenses, something that did not comport with the related exhibit. See page 4 of XOCECO's October 22 supplemental questionnaire response. In sum, the Department has numerous concerns about the accuracy and reliability of XOCECO's reported warranty expense information. We did not specifically identify certain of these concerns to XOCECO given that either they arose from XOCECO's latest supplemental response or they were correctable by

the Department itself. Moreover, in similar situations, the Department often permits respondents to explain apparent discrepancies at verification. In this case, however, we note XOCECO could not support the most basic of its reported expenses at verification, much less any apparent discrepancies related to them.

Although PEI may have had limited resources to respond to the Department's request for information on warranty expenses, it does not lessen XOCECO's responsibility to provide timely and accurate information to the Department. As stated by the CAFC during its discussion of section 776(a) of the Act in Nippon Steel, "(t)he focus of subsection (a) is respondent's failure to provide information. The reason for the failure is of no moment. The mere failure of a respondent to furnish requested information for any reason requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination." See Nippon Steel, 337 F. 3d at 1373. See also Comment 27, above. Accordingly, we find that the use of AFA for the final determination continues to be appropriate here. We find that XOCECO's failure to respond in this case clearly meets the standards for applying AFA as set forth in Nippon Steel because: 1) XOCECO had the necessary information within its control and it did not report this information; and 2) it failed to put forth its maximum effort to respond to the Department's questionnaire.

Finally, we disagree with XOCECO that the Department's decision to examine XOCECO's warranty expense information at verification only if time permitted is in any way unreasonable. Unlike in Bowe-Passat, where the Court found that the Department failed to address adequately a respondent's deficiencies and then later penalized the respondent for these deficiencies, in this case, the respondent was fully aware of the deficiency on which the Department predicated its use of AFA because the Department repeatedly identified this deficiency in supplemental questionnaires.

Comment 37: *XOCECO's U.S. Warehousing and Other Transportation Expenses*

In the preliminary determination, the Department used facts available with respect to XOCECO's warehousing and U.S. other transportation expenses because we found that: 1) XOCECO was only partially responsive to our requests for information; and 2) it failed to properly include this information in its sales database. As facts otherwise available, we applied the average of the reported model-specific warehouse and other transportation expenses for every transaction during the POI. See Preliminary Determination, 68 FR at 66807. On December 1, 2003, XOCECO provided additional data with respect to these expenses, and we reviewed this data during the CEP verification conducted at XOCECO's U.S. affiliated sales agent, PTI.

The petitioners state that the Department should, at a minimum, use the corrected warehousing costs obtained at verification. Additionally, the petitioners note that the Department should use the revised indirect selling expense ratio that the Department calculated at verification to include certain FedEx charges and other miscellaneous expenses that XOCECO failed to report as part of its U.S. warehousing expenses.

With respect to U.S. other transportation expenses, the petitioners note that the Department discovered at verification that XOCECO's reported shrink wrap expenses were based on estimates and not on the actual expenses incurred. The petitioners question why XOCECO reported estimates, instead of the actual amounts, and argue that the Department should use XOCECO's highest reported shrink wrap charges as AFA.

XOCECO claims that the Department improperly resorted to facts available in the preliminary determination, given that it provided complete responses to the Department's questions regarding these two expenses. According to XOCECO, however, this issue is moot because the Department has now fully verified the expenses in question. Therefore, XOCECO contends that the Department should use this information for purposes of the final determination.

Moreover, XOCECO disagrees with the petitioners that the Department "discovered" that XOCECO estimated its shrink wrap expenses, given that it reported this information in its October 22, 2003, supplemental questionnaire response. In any event, XOCECO argues that there is no basis for the Department to apply AFA to XOCECO's shrink wrap expenses because the Department examined, and corrected, them at verification.

Department's Position:

In the preliminary determination, we based XOCECO's U.S. warehousing and "other" transportation expenses on facts available because the data contained in the U.S. sales database did not appear to be accurate or reliable. However, as noted above, XOCECO remedied the deficiencies in this information in a timely submission filed prior to verification. Moreover, we examined XOCECO's revised data at verification and found that it tied to the company's accounting system without significant discrepancy. Although we noted that XOCECO's shrink wrap charges were based on estimates, we were able to obtain a revised worksheet showing the actual cost of these charges, which we tied to the relevant invoices. See the PTI verification report at page 12.

Therefore, because we have accurate and verified information on the record for XOCECO's U.S. warehousing and other transportation expenses, including the correct shrink wrap charges, we find that it would be inappropriate to base the amount of these expenses on either neutral or adverse facts available. Consequently, we have relied on this data in our final determination. Additionally, we have used the revised indirect selling expense ratio calculated at verification that includes certain FedEx and other charges that were previously excluded. See the PTI verification report at page 15.

Comment 38: *XOCECO's Supplier Distances and Supplier Modes of Transportation*

In the preliminary determination, we found that XOCECO failed to include in its FOP database the distances and modes of transportation from NME suppliers, despite a specific request that it do so. As a result, we found that the use of the facts otherwise available, pursuant to section 776(a)(2)(A) of the

Act, was appropriate. Furthermore, because XOCECO failed to cooperate by not acting to the best of its ability to comply with the request for information, we found that an adverse inference was warranted under section 776(b) of the Act. In calculating freight on factor inputs, as adverse facts available, we multiplied the factor input by the highest freight surrogate value on the record of this case and the distance from the applicable port to the factory. See Preliminary Determination, 68 FR at 66807.

XOCECO argues that there was no basis to resort to facts available. XOCECO notes that it provided the following information in an exhibit contained in a supplemental questionnaire response: purchases of raw materials from NME suppliers during the POI, the quantity purchased from each supplier, the distance from each supplier to XOCECO's factory, and the mode of transportation used. (See Exhibit SDQR-9 of XOCECO's September 22, 2003, submission.) XOCECO also claims that it submitted to the Department the SAS file in electronic format used to produce this exhibit.

Although the above data was not contained in XOCECO's FOP database, XOCECO claims that, theoretically, the Department could have used this supplier information by merging data in the above-referenced SAS file with XOCECO's FOP database. Nonetheless, XOCECO states that this issue is now moot because the Department verified XOCECO's supplier distances at verification. Accordingly, XOCECO argues that the Department should use the supplier distances contained in XOCECO's December 1, 2003, submission and verified by the Department.

The petitioners did not comment on this issue.

Department's Position:

For purposes of the final determination, we have used the supplier information provided by XOCECO on December 1, 2003 (revised, as appropriate, based on the Department's findings at verification). However, we note that the supplier information contained in XOCECO's updated December 1 FOP database remains incomplete. In numerous instances, XOCECO failed to provide supplier information for a variety of inputs in this database. Furthermore, XOCECO did not amend its three self-produced inputs databases to include any supplier information on inputs used to produce XOCECO's self-produced inputs.[67] While we recognize that certain of this information was submitted in hard copy form in XOCECO's September 22, 2003, submission, this information was not provided electronically (e.g.,

[67] Regarding this latter category of inputs, we note that XOCECO reported supplier and distance information for certain finished self-produced inputs in its FOP database. However, in many cases, these inputs were produced from more than one component. Because XOCECO did not explain to which component the freight information related, we are unable to rely on this information for purposes of the final determination.

in a SAS file submitted prior to the preliminary determination), contrary to XOCECO's claim. Not only do we have no record of receiving this file in any of the diskettes submitted by XOCECO, but we confirmed with XOCECO that this file had not in fact been submitted. See the March 22, 2004, memorandum from Patrick Connolly to the file entitled, "XOCECO SAS file." Because the information contained in XOCECO's September 22 submission is voluminous, it would require an extraordinary amount of administrative burden to manually insert it into our analysis. Given the Department's limited resources and XOCECO's failure to submit the information in useable form, we have not considered this information for the final determination.[68]

In all instances where XOCECO failed to provide useable supplier information, we find that the continued use of facts available, pursuant to section 776(a)(2)(A) of the Act, is appropriate. Furthermore, because XOCECO failed to cooperate by not acting to the best of its ability to comply with the request for information, we find that an adverse inference continues to be warranted under section 776(b) of the Act. We find that XOCECO's failure to respond in this case clearly meets the standards for applying AFA as set forth in Nippon Steel because:
1) XOCECO had the necessary information within its control and it did not report this information; and
2) it failed to put forth its maximum effort as required by the Department's questionnaire. In calculating freight on factor inputs for which XOCECO did not provide complete supplier information, as AFA, we multiplied the factor input by the highest freight surrogate value on the record of this case and the distance from the applicable port to the factory. For further discussion, see the April 12, 2004, memorandum from Patrick Connolly to the file entitled, "Calculations Performed for Xiamen Overseas Chinese Electronic Co., Ltd. (XOCECO) for the Final Determination in the Investigation of Certain Color Television Receivers (CTVs) from the People's Republic of China" (XOCECO calculation memorandum).

Comment 39: *Reclassification of Certain of XOCECO's Components as "Miscellaneous"*

In the preliminary determination, the Department valued certain CTV components using a "miscellaneous" HTS category (i.e., 8529.9009) because we found that the descriptions provided by XOCECO were not sufficiently detailed to permit us to determine the appropriate surrogate value. XOCECO maintains that this valuation resulted in significant distortions in the factor values assigned to these parts. XOCECO notes that, pursuant to 19 CFR 351.408(a), the Department must value an NME producer's factors of production in a market economy. According to XOCECO, inherent in this directive is the concept that the Department must value the reported factors of production unless the Department has reason to believe the reported factors are incorrect, distortive, or improperly grouped.

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[68] We note that, because: 1) the Department also did not use this information in the preliminary determination; and 2) the deadline for the submission of new factual information was December 1, 2003, XOCECO had adequate notice that this information was necessary to the Department's analysis and it had adequate time to provide it.

XOCECO argues that no basis exists to categorize certain factors of production using a miscellaneous category because neither the Department nor the petitioners have provided a rationale to support its use.

Accordingly, for the final determination, XOCECO contends that the Department should value the factors of production for purchased components based on updated descriptions provided by XOCECO and verified by the Department. In addition, XOCECO notes that the part numbers of all the self-produced cabinet components that the Department classified as "miscellaneous" at the preliminary determination cannot be tied to the production factory database because all of these components were produced prior to the POI. XOCECO requests that the Department value these components using "virtually identical component parts" in the projection factory database.

The petitioners did not comment on this issue.

Department's Position:

As noted above, we found in the preliminary determination that, in certain instances, XOCECO had not provided clear descriptions of its material inputs. Therefore, we valued these components using a "miscellaneous" HTS category. We also used the "miscellaneous" HTS category to value other inputs, such as remote controls, when the Department had no better surrogate value on the record.

Because the Department closely examined XOCECO's material inputs at verification and because XOCECO has provided additional descriptions for these components, we have reclassified many of these inputs using more accurate, appropriate surrogate values for purposes of the final determination. However, we have continued to use the "miscellaneous" HTS category for the final determination in those few instances where the Department does not have a more appropriate surrogate value on the record with which to value these inputs. We find that this HTS category is the best available information.

Finally, at the preliminary determination, we valued certain projection factory inputs in the FOP database using the most similar part in the projection factory database. For the final determination, we have valued additional projection factory inputs using the same methodology in instances where these inputs were previously classified under the "miscellaneous" HTS category.

Comment 40: *XOCECO's Packed Weights*

The petitioners note that, at verification, the Department discovered that XOCECO misreported the packed weights for each of the reported subject CTV models. The petitioners contend that this discrepancy illustrates the overall unreliability of XOCECO's data submitted throughout the course of this proceeding. Consequently, the petitioners argue that the Department should apply, at a minimum, AFA to all of XOCECO's reported packed weights.

XOCECO did not comment on this issue.

Department's Position:

At verification, we found that XOCECO used an internal document from its factory in China to report the packed weights of its subject CTVs during the POI. Although the weights on these documents did not match those set forth on customs entry forms also provided by XOCECO at verification, we noted that the reported weights were higher. See page 16 of the PTI verification report. As a consequence, we find that XOCECO conservatively reported the packed weight of each of the models sold to the United States during the POI. Therefore, we do not find that the application of facts available, adverse or otherwise, is warranted with respect to XOCECO's packed weights. Accordingly, we have accepted these weights, as reported, for purposes of the final determination.

Comment 41: *Offset for Sales of Tin Scrap Generated During XOCECO's Production Process*

In the preliminary determination, the Department denied XOCECO's request for an offset for sales of tin scrap generated during the production process, based on its failure to provide certain documentation requested by the Department to demonstrate that it actually sold scrap metal during the POI. Because XOCECO failed to cooperate by not acting to the best of its ability to comply with the requests for information, the Department applied adverse facts available at the preliminary determination by allocating the quantity of tin scrap across the production of subject merchandise during the POI, which increased the per-unit consumption of tin in the production process. See Preliminary Determination, 68 FR at 66807.

XOCECO notes that some components which are inserted into the printed circuit board have metal protruding from the bottom. XOCECO states that, at verification, the Department confirmed that this extraneous metal is cut by the factory's wave soldering machine, collected, and eventually sold as scrap. Therefore, XOCECO asserts that the cost of the metal scrap is already accounted for in the build-up of normal value because the raw material inserted into the PCB contains the scrap metal. As such, XOCECO argues the Department should not allocate the quantity of tin scrap across the production of subject merchandise for the final determination, as this increase in normal value would constitute double counting. Moreover, XOCECO notes that the Department fully verified the original invoices and payment documentation related to the sale of tin scrap. Therefore, for the final determination, XOCECO contends that the Department should grant XOCECO a by-product offset for its sales of tin scrap generated during the production process.

The petitioners did not comment on this issue.

Department's Position:

At verification, we confirmed that XOCECO generated scrap in the manner described above and sold it to outside parties during the POI. We found that this information was consistent with the information provided in XOCECO's October 22, 2003, supplemental questionnaire response. See page 26 of the XOCECO verification report. Therefore, for the final determination, we have granted XOCECO a by-product offset for its sales of tin scrap generated during the production process.

Comment 42: *Labor Hours for XOCECO's Printed Circuit Board (PCB) Factory*

The petitioners contend that the Department should not use XOCECO's labor hours reported for the PCB factory because the Department discovered during verification that XOCECO had under-reported all indirect and direct labor for each PCB. The petitioners charge that XOCECO has attempted to understate most costs related to the production of PCBs and, therefore, the petitioners conclude that XOCECO's reported labor hours are unreliable. Accordingly, the petitioners argue that the Department should use total AFA in calculating XOCECO's PCB labor consumption for both direct and indirect labor hours for the final determination.

XOCECO disagrees, noting that the Department has documentation concerning the correct labor hours in verification exhibits. XOCECO argues that the Department can use neither facts available nor total AFA because verified information concerning labor hours for the PCB factory are on the record of the proceeding. Therefore, XOCECO contends that the Department should use the corrected PCB factory labor hours.

Department's Position:

During verification, we determined that XOCECO had under-reported all direct labor hours and most of the indirect labor hours for the PCB factory. See the XOCECO verification report at pages 22 and 23. Nonetheless, we do not find that the application of AFA with respect to XOCECO's PCB direct and indirect labor consumption is warranted in this case because the magnitude of each discrepancy is minor. Indeed, the discrepancies with respect to both direct and indirect labor consumption are only significant at the third decimal place. Therefore, because the errors discovered at verification with respect to XOCECO's direct and indirect labor consumption at the PCB factory were minor, and the actual verified information is on the record of this proceeding, for the final determination, we have used the revised PCB factory labor hours obtained at verification.

Comment 43: *XOCECO's Projection Factory Weights*

According to the petitioners, at verification the Department found numerous discrepancies in the weight reported for various parts produced in XOCECO's projection factory, as well as in the total gross weight of all produced by the heavy piece workshop. Moreover, the petitioners maintain that the Department found that XOCECO misreported the number of parts produced in this factory. The

petitioners note that XOCECO was unable to explain these discrepancies or to provide revised worksheets in the time allotted for verification.

The petitioners argue that, due to the complexity of the subject merchandise, it is crucial that the normal value used by the Department be calculated using accurate and reasonably reliable information. Although the petitioners note that the weights for some parts were understated while others were overstated, the petitioners maintain that the discrepancies were pervasive. As a result, the petitioners contend that XOCECO impeded the investigation and therefore the Department should not rely on XOCECO's reported product weights. Instead, the petitioners contend that the Department should either use AFA for the product weights at issue or reject XOCECO's response in its entirety. Alternatively, the petitioners argue that the Department should instruct XOCECO to correct the information concerning the heavy piece workshop and report weights based on finished product weight.

XOCECO disagrees, stating that the errors discovered during verification were both minor and inadvertent. XOCECO notes that, although the Department found inaccuracies in some of the reported production quantities of certain plastic pieces at the projection factory, the Department verified the accuracy of the factors of production reported in XOCECO's other factories. XOCECO argues that the petitioners provide no argument as to why the Department should disregard the factors of production information in XOCECO's four FOP databases as a result of insignificant discrepancies in the projection factory database alone.

Similarly, XOCECO argues that its reporting of weights is not distortive and does not warrant the use of AFA. XOCECO characterizes the Department's requirement that XOCECO report weight-based usage of all individual CTV components as extraordinarily burdensome considering that it does not maintain this information in the normal course of business. Even so, XOCECO argues that it correctly reported the input weights for the overwhelming majority of CTV components and notes that the discrepancies in input weights the Department discovered during verification were minor. XOCECO further notes that the Department found discrepancies in reported input weights at the projection factory only; XOCECO states that the Department weighed numerous inputs at XOCECO's other factories, including the CTV factory itself, and did not find any material discrepancies in reported input weights.

XOCECO argues that the discrepancies in reported inputs weights were of such insignificance as to have no material impact on the Department's dumping calculation. Additionally, XOCECO claims that certain over-reported weights of some CTV components demonstrates that XOCECO inadvertently misreported this information and did not intentionally seek to distort the Department's margin calculations. Accordingly, XOCECO argues that there is no reason for the Department not to use XOCECO's verified, corrected data.

Finally, XOCECO argues that any mistakes XOCECO made in reporting production quantities will not seriously affect the final determination, as the petitioners assert. Indeed, XOCECO asserts that under-reported or over-reported production quantities are entirely immaterial to the Department's calculated

final margin in this investigation. XOCECO states that inaccuracies the Department discovered during verification involved plastic parts made in molds. XOCECO explains that the input weight for these plastic parts does not vary according to production quantities because the mold for each plastic part always requires the same set quantity of plastic resin for that part. Furthermore, XOCECO states that, because it allocated its labor and electricity usage based on the input weight of each piece, misreported production quantities has no effect on these factors of production, either.

Department's Position:

During verification, we found errors with respect to the weights of certain inputs produced at XOCECO's projection factory. We also found certain incorrect part-specific production quantities. See pages 20 and 21 of the XOCECO verification report. We note that, while we found a number of discrepancies in the weights reported for parts produced in the projection factory, as well as in the aggregate weight of all components, these discrepancies were minor in nature. Additionally, the majority of these discrepancies related to inputs used in the production of non-subject merchandise; and of the remainder, we found that XOCECO had over-reported the weight for all but one input. Therefore, we note that XOCECO's reporting of these production weights was predominantly conservative. Given these facts, we find that the application of AFA with respect to XOCECO's entire factors of production information is not warranted.

Nonetheless, we have corrected the weight of any individual part used in the production of subject merchandise because this weight is used to calculate the appropriate factor value. Regarding the errors observed in the production quantities of individual components, we note that the errors do not affect the labor hours allocated to these parts because labor hours and electricity are allocated on an input-weight basis. Therefore, for purposes of the final determination, we have not adjusted the production quantities for individual pieces made in the projection factory as they have no impact on the allocation of direct labor hours to individual component parts.

Finally, the Department's decision to apply AFA with respect to XOCECO's electricity consumption (see below) renders moot any discussion of the manner in which any reallocation may have impacted part-specific electricity usage.

Comment 44: *XOCECO's Electricity Consumption*

The petitioners argue that the Department should base XOCECO's electricity consumption on AFA because at verification XOCECO was unable either to: 1) explain its methodology used to allocate electricity among its factories and affiliated companies; or 2) substantiate the reported electricity consumption figure for the sole month examined. Regarding this latter point, the petitioners contend that there likely are errors in XOCECO's reported electricity consumption for other months during the POI, based on the errors discovered for the only month examined.

XOCECO did not comment on this issue.

Department's Position:

At verification, we found that XOCECO was unable to substantiate the methodology it used to allocate electricity between its various factories and affiliated companies. In addition, we noted that there were significant differences between the power company's meter readings and XOCECO's own. Finally, we found that XOCECO was unable to reconcile its reported figures with those recorded in its accounting system. See the XOCECO verification report at page 25. Due to the basic nature of the problems identified, XOCECO was unable to remedy these deficiencies in the time allotted for verification.

We note that a company's ability to explain and substantiate its allocation methodologies at verification is essential to our determination of the reasonableness and accuracy of its response. A company may shift costs away from subject merchandise and onto other products merely by choosing one allocation methodology over another. For this reason, we find that XOCECO's inability to substantiate its electricity consumption during verification warrants the application of AFA. We find that XOCECO's failure to respond in this case clearly meets the standards for applying AFA as set forth in Nippon Steel because: 1) XOCECO had the necessary information within its control and it did not report this information; and 2) it failed to put forth its maximum effort as required by the Department. Because XOCECO had the ability to provide accurate information to the Department, we find that XOCECO failed to cooperate by not acting to the best of its ability, in accordance with section 776(b) of the Act, and thus we find that an adverse inference is appropriate. As AFA, we have applied the highest reported CONNUM-specific electricity consumption rate to each of the remaining CONNUMs.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the Federal Register.

Agree____ Disagree ____

Jeffrey A. May
Acting Assistant Secretary
for Import Administration

(Date)