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February 16, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Less-Than-Fair-Value Investigation of Magnesium Metal from the People's Republic of China

SUMMARY

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

Issues with Respect to RSM

Abbreviations

We have used the following abbreviations in this Issues and Decision Memorandum:

Act	Tariff Act of 1930, as amended
AFA	Adverse Facts Available
CBP	U.S. Customs and Border Protection
CEP	Constructed Export Price
CIT	Court of International Trade

Department	Department of Commerce
HTS	Harmonized Tariff Schedule
POI	Period of Investigation
PRC	People's Republic of China
SG&A	Selling, General, and Administrative Expenses
LTFV	Less Than Fair Value
NME	Non-Market Economy

Interested Parties

Petitioners U.S. Magnesium LLC, United Steelworkers of America, Local 8319 and Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374.

Mandatory Respondents

RSM In the preliminary determination we determined that the following companies were collapsed members of the RSM group of companies for the purposes of this investigation: Nanjing Yunhai Special Metals Co., Ltd. ("Yunhai Special"), Nanjing Welbow Metals Co., Ltd. ("Welbow"), Nanjing Yunhai Magnesium Co., Ltd. ("Yunhai Magnesium"), and Shanxi Wenxi Yunhai Metals Co., Ltd. ("Wenxi Yunhai").[1]

Jiangsu Metals China National Nonferrous Metals I/E Corp. Jiangsu Branch. RSM originally included Jiangsu Metals in the RSM group of companies for the purposes of obtaining a separate rate in this investigation. In the preliminary determination, we determined not to collapse Jiangsu Metals with the members of the RSM group of companies but determined that Jiangsu Metals was entitled to a separate rate for the purposes of calculating the antidumping duty margin.[1]

Tianjin Tianjin Magnesium International Co., Ltd.

Section A Respondent

Guangling Beijing Guangling Jinghua Science & Technology Co., Ltd.

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[1] See Memorandum to Laurie Parkhill, Office Director, China/NME Group, through Robert Bolling, Program Manager, from Laurel LaCivita, Senior Case Analyst and Lilit Astvatsatrian, Case Analyst, Magnesium Metal from the People's Republic of China: Separate Rates Memorandum ("Separate Rates Memorandum"), dated September 24, 2004.

BACKGROUND

The Department published its preliminary determination of sales at LTFV on October 4, 2004. See Preliminary Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China, 69 FR 59187 (October 4, 2004) ("Preliminary Determination"). The Department conducted verification of RSM and Tianjin in both the PRC and the United States, where applicable. On November 22, 2004, the Petitioners, the RSM companies, and Tianjin submitted surrogate-value information and on December 2, 2004, parties submitted rebuttals to those surrogate-value submissions. On December 28, 2004, the Petitioners submitted an allegation of critical circumstances in accordance with section 733(e)(1) of the Act and 19 CFR 351.206(c)(1). On January 4, 2005, the Petitioners, RSM, and Tianjin submitted case briefs. On January 10, 2005, all three parties submitted rebuttal briefs. The sole Section A respondent, Guangling, did not submit case or rebuttal briefs. On January 11, 2005, the Department invited all parties to comment on the allegation of critical circumstances and requested that RSM, Tianjin, and Guangling report their shipments of subject merchandise to the United States on a monthly basis for the period January 2003 through December 2004. On January 19, 2005, RSM and Tianjin provided the requested information; Guangling did not respond to the Department's request for information. On February 3, 2005, the Department published its preliminary determination of critical circumstances in which it found that critical circumstances exist with regard to imports of magnesium metal from the PRC for Tianjin, Guangling, and the PRC-wide entity. See Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606 (February 3, 2005) ("Critical Circumstances

Determination"). On February 7, 2005, the Petitioners submitted comments on the Department's preliminary determination of critical circumstances. None of the respondents provided comments or rebuttals on the Department's preliminary determination of critical circumstances.

CHANGES FROM THE PRELIMINARY DETERMINATION

Based on our analysis of comments received, we have made changes in the margin calculations for Tianjin. We did not analyze the information provided by RSM because we determined the margin for RSM based on total AFA. See the "Adverse Facts Available" section of this notice. For discussion of the company-specific changes we have made since the Preliminary Determination to Tianjin's final margin program, see memorandum to the file from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, Final Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China: Tianjin Magnesium Co., Ltd. ("Tianjin") ("Tianjin Final Analysis Memorandum"), dated February 16, 2005. The changes to the margin calculations are listed below:

- We determined the profit ratios for the Indian surrogate companies as a percentage of the cost of manufacturing, SG&A, and interest.
- We calculated the surrogate value for the subject merchandise produced by Yinguang Metal based on its purchases of pure magnesium from affiliated and unaffiliated suppliers rather than use surrogate values for inputs used to produce the raw magnesium produced and supplied to Yinguang by Yangyu Magnesium, an affiliated supplier.

DISCUSSION OF THE ISSUES

Issues with Respect to RSM

Comment 1: TAI's Verification Failure

The Petitioners contend that the Department should apply total AFA to the RSM group of companies because Toyota Tsusho America, Inc. ("TAI"), RSM's affiliated reseller in the United States, failed verification. The Petitioners contend that TAI failed both to prepare adequately for the verification and to provide the Department with an adequate understanding of how and where the company maintains its records. They contend that TAI failed to support its selection of the purchase-order date as the appropriate date of sale, to reconcile its sales of subject merchandise to its audited financial statements, to report all of its selling expenses in the United States, and to provide supporting documentation for freight, warehousing, and brokerage expenses incurred in the United States. The Petitioners contend that TAI failed to report certain sales and provided incorrect and misleading sales information. Thus, the Petitioners contend, TAI failed to cooperate by not acting to the best of its ability in this investigation such that the Department was unable to verify TAI's reported U.S. sales. Consequently, the Petitioners argue, there are no verified U.S. sales data with which to calculate a dumping margin for RSM.

The Petitioners argue that TAI withheld requested information, significantly impeded the investigation, provided unverifiable information and failed to cooperate by not acting to the best of its ability. The Petitioners cite Fujian Mach. and Equip. Imp. & Exp. Corp. v. United States, 276 F. Supp. 2d 1371, 1376 (CIT 2003), where the CIT explained that, "{b}ecause an accurate

determination of U.S. sales is critical to the calculation of dumping margins, the discrepancies in the . . . sales records constitute substantial evidence that FMEC failed verification, particularly when taken with the remaining deficiencies that are equally serious." Accordingly, the Petitioners argue, the Department should apply AFA pursuant to sections 776(a) and 776(b) of the Act.

Date of Sale

The Petitioners argue that RSM used the purchase-order date as the date of sale for reporting its sales to the United States inappropriately and thus failed to report the appropriate universe of sales for the Department to examine in its investigation. The Petitioners contend that the Department's regulations establish the authority for determining the date of sale, stating, "{a}bsent satisfactory evidence that the terms of sale were finally established on a different date, the Department will presume that the date of sale is the date of invoice."

The Petitioners argue that RSM provided no satisfactory evidence to support its claim that the purchase-order date is the correct date of sale and that record evidence establishes that RSM should have reported sales in the United States based on the invoice date of TAI and not the purchase-order date. Additionally, the Petitioners contend that the terms of certain sales changed after the purchase-order date with respect to at least two sales and that the Department stated in its verification report that handwritten notes on the invoice indicate that adjustments were made to the price and quantity of the sale. The Petitioners allege that RSM selected a date-of-sale methodology based on purchase-order date in order to exclude unfavorable U.S. sales. Consequently, the Petitioners contend, TAI's entire U.S. sales database is flawed and unverifiable.

The Petitioners contend further that the Department found a number of verification failures during the course of its sales reconciliation and completeness tests concerning TAI's sales which indicate that TAI's purchase-order date is not the appropriate date of sale. They summarize those failures as follows: (1) the Department discovered several unreported sales; (2) TAI failed to report sales in its U.S. sales database which TAI had imported and warehoused pursuant to a purchase order confirmed during the POI for one customer but ultimately sold to a second customer whose purchase order preceded the POI; (3) TAI failed to provide a purchase order for some sales for which the purchase order preceded the POI; (4) TAI made shipments after May 2004, the month which TAI reported that it had made its last shipment pursuant to purchase orders during the POI; (5) TAI established the date for a purchase order which was confirmed orally and shipped from the PRC during the POI as January 1, 2004, to exclude it from the investigation. The Petitioners argue that RSM's attempt to report a fictitious purchase-order date to remove sales from the Department's analysis warrants the imposition of total AFA.

RSM contends that the Department raised the issue of the date of sale in the U.S. market in its verification inappropriately despite the fact that TAI submitted separate U.S. sales databases reflecting sales based on purchase orders during the POI and invoice dates during the POI.

RSM argues that TAI and its customers finalize the terms of sale in the purchase order, such that the price is set and does not change. RSM contends that, because TAI supplies its customers' annual production requirements, the quantity is also set at the time of the purchase order.

Consequently, RSM argues, TAI and its customers believe that the purchase order represents an enforceable contract between the two parties.

RSM contends that the Department has accepted the date of purchase order as the date of sale for requirements contracts in previous cases. In Final Determination of Sales at Less Than Fair Value: Cellular Mobile Telephones and Subassemblies from Japan, 50 FR 45447 (October 31, 1985) (Hitachi Comment 1). RSM contends that the Department determined that the requirements contract was a binding agreement even though the price and quantity were not determined precisely at the time the contract was executed but only established in the sense that the customer agreed to purchase all of the cellular mobile telephones that it may "require" for a specified period of time. In Titanium Sponge From Japan: Final Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part, 54 FR 13403 (April 3, 1989), RSM argues, the Department determined that the absolute quantity was determined to be fixed and definite in the purchase order/contract because the contract required the customer to purchase all that the customer required. RSM also asserts that, in Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 2, the Department determined that the material terms of sale were set and binding at the date of contract even though no minimum quantity was established because contract customers agreed to buy all their requirements from the respondent for a fixed period of time.

RSM argues further that TAI's later course of conduct confirms that purchase-order date is the date of sale for purposes of U.S. antidumping law in accordance with Final Determination of Sales at

Less Than Fair Value; Polyvinyl Alcohol From Taiwan, 61 FR 14064, 14068 (March 29, 1996) ("PVA from Taiwan"), Final Determination of Sales at Less than Fair Value: Gray Portland Cement and Clinker from Mexico, 55 FR 29244 (July 18, 1990), and Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts From the Federal Republic of Germany, 52 FR 28175 (July 28, 1987) ("Crankshafts"), each case, RSM contends, supports the premise that a party's later course of action provided evidence that an earlier document, such as a purchase order or letter agreement, represents a binding agreement.

Thus, RSM contends, the following facts indicate that its purchase-order date represents the date of sale in accordance with PVA from Taiwan: (1) pages 24 and 25 of RSM's August 19, 2004, submission explain that production begins after the purchase order is signed; (2) TAI shipped pursuant to purchase orders/agreements/contracts; (3) TAI and its customers had no disputes concerning the quantities shipped pursuant to purchase orders; (4) there were no further negotiations concerning the terms of the purchase orders because TAI shipped pursuant to, and in compliance with, the agreed-upon terms in the purchase orders.

RSM argues further that statements on TAI's purchase orders that indicate that it will terminate shipments upon the filing of an antidumping petition do not affect the date of sale. RSM contends that the terms of sale were fixed and binding on the parties at the time of the purchase order and no longer subject to control of the parties, such that purchase order is the date of sale to use in accordance with, among others, Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand, 69 FR 34122 (June 18, 2004) ("Retail Carrier Bags"), and accompanying Issues and

Decision Memorandum at Comment 2. RSM argues that, because PVA from Taiwan held that "the Department has a well-established and long-standing practice that a sale is completed within the meaning of the Act when the essential terms, i.e., usually price and quantity, are definite and firm" as recently as 2004, it is still the law.

RSM contends that pages 5 and 6 of the memorandum to the file from Laurel LaCivita, Senior Case Analyst, and Michael Holton, Case Analyst, through Robert Bolling, Program Manager, Verification of Sales Reported by Toyota Tsusho America, Inc. in the Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China, dated December 28, 2004 ("TAI Verification Report") indicate erroneously that TAI's shipments during the POI were less than the amounts indicated on the purchase orders. RSM contends that the filing of the antidumping petition led to the termination of the purchase orders and all subsequent shipments without affecting the date of sale. Thus, RSM contends, POI shipments based on pre-POI purchase orders should not be expected to match POI purchase-order quantities. Finally, RSM argues, as in PVA from Taiwan, the delivery schedule is not a material term of sale that affects the date of sale for purposes of the antidumping law.

RSM argues that TAI's books and records support the purchase-order date as the date of sale even though the financial statements are based on the quantity and value of sales pursuant to invoice date. RSM contends that the fact that the audited financial statements are derived from the quantity and value of sales based on invoice date does not mean that the date of shipment is the date of sale for purposes of U.S. antidumping law. RSM contends that the law specifies that the date of sale is the date on which price and quantity are fixed and no longer subject to change. Thus, according to RSM, the

statutory "date of sale" may differ from a company's normal accounting practices as explained in PVA from Taiwan at 14068, in which the Department stated that the "{p}urchase order sets the date of sale for U.S. antidumping law purposes. It does not matter how the respondent treats the sales, e.g., in its books." RSM contends that TAI reported all of its sales based on the purchase-order date as the date of sale properly.

RSM also contends that cancelled sales and sales outside the POI should not be subject to the Department's reporting requirements. Thus, RSM argues, TAI should not have reported the sales to which the Department refers on page 10 of its TAI Verification Report which had been imported and warehoused pursuant to one purchase order confirmed during the POI and subsequently sold to a second customer whose purchase order preceded the POI. RSM contends that the first referenced sale was cancelled and that the second sale should not have been reported because the purchase order antedated the POI. RSM contends further that it reported a separate U.S. sales database based on invoice date as the date of sale which accounts for all shipments during the POI. RSM asserts that, because the purchase-order date is the date of sale, the U.S. sales database by purchase-order date, as reported, includes all appropriate sales of subject merchandise covered by the Department's investigation.

RSM argues that it has no obligation to report the sale described on page 1 of the Department's TAI Verification Report for which the date of purchase order was January 1, 2004, because that date is outside the POI. RSM contends that the January 2004 purchase order was confirmed orally prior to January 1, 2004, and thus the date of the purchase order is the date of the

written confirmation of the purchase order from an unaffiliated U.S. customer to TAI. Further, RSM contends, shipment from RSM to TAI is TAI's product because TAI continues to hold legal title. RSM asserts that shipment from RSM to TAI is irrelevant to the determination of the date of sale.

RSM also argues that the price of the merchandise on this purchase order is higher than the other prices reported during the POI. As a result, RSM argues, it would have been to TAI's advantage, as far as a lower dumping margin, to report this sale. Consequently, RSM argues, TAI's treatment of this sale leads to an overstatement of the dumping margin and indicates that no adverse inference is warranted in accordance with Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria, 60 FR 33551, 33553 (June 28, 1995), and Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") From Taiwan, 64 FR 56308, 56316 (October 19, 1999), and accompanying Issues and Decision Memorandum at Comment 7, in which the Department did not make adverse inferences against the respondent when the omission of unreported sales was adverse to the respondent's interests.

RSM states that the Department's TAI Verification Report indicates that TAI could not locate the purchase orders for certain sales made in the first month of the POI, July 2003, but reported them in the U.S. database based on purchase-order date as an exercise of caution. Thus, RSM contends, TAI is being over-inclusive. RSM claims that the U.S. sales database based on the purchase-order date indicates that these sales were made at prices lower than other sales during the POI and therefore increased the margin so that adverse inferences are not warranted.

RSM also contends that the lead time between purchase order and invoice is two months so that these arguably lower-priced U.S. sales could be excluded from TAI's U.S. sales database because the date of purchase order is likely to have been prior to the POI. RSM contends that omitting these sales would reduce the dumping margin.

Although the Petitioners agree that the date of sale is established when price and quantity are fixed, they respond that record evidence does not support RSM's claim that TAI's terms of sales are fixed at the purchase-order date, citing the Department's TAI Verification Report which states that "TAI uses the date of shipment, rather than the date of purchase order, as the date of sale within the normal course of business." The Petitioners argue that RSM's response to this statement was to explain that it was uncertain as to the support for this statement and to argue that the purchase order sets the date of sale for U.S. antidumping law purposes.

In PVA from Taiwan, the Petitioners argue, the Department determined that purchase-order date was the appropriate date of sale based on a binding agreement of either an express contract signed by both parties or a course of conduct which evidenced that there was a meeting of the minds as to the essential terms, the price, and the quantity because neither price nor quantity were altered in the course of performance.

The Petitioners argue that the facts of this case establish that the terms of TAI's sales are not set until either shipment date or invoice date. The Petitioners argue that, according to the Department's TAI Verification Report, TAI explained that either the customer or TAI can change the quantity on these blanket purchase-order dates at any time as, for example, when it stopped shipping magnesium

from the PRC when the antidumping duty petition was filed. The Petitioners contend that some of the purchase orders covered by the investigation include such language and others do not, although TAI stopped all shipments of magnesium when the investigation began. For example, the Petitioners explain, the purchase order for one of the Department's pre-selected sales for examination at the TAI verification does not indicate that TAI would discontinue shipments upon the filing of a dumping petition so that, if TAI believed that the purchase order was a binding agreement, it would have honored its commitments by shipping the full amount of magnesium covered by the purchase order. Thus, the Petitioners conclude, TAI's decision to cancel all future shipments to its customers unilaterally indicates that TAI believed the purchase order for that pre-selected sale (and all other purchase orders) was not a binding commitment.

The Petitioners argue that RSM's position on purchase-order date is contradicted further by an another purchase order where proprietary language on the purchase order establishes that the terms of sale were not established until TAI's shipment date which, as discussed previously, corresponds closely with invoice date.

RSM responds that the Petitioners' argument that TAI used the wrong date of sale based on the statements on page 9 of the Department's TAI Verification Report is erroneous. RSM contends that the discussion of these invoices has nothing to do with the sale of subject merchandise to TAI's unaffiliated U.S. customers but rather concerns TAI's cost-analysis documents with respect to TAI's purchase of magnesium metal from its affiliate in Japan, not invoices to its unaffiliated U.S. customers. RSM argues that statements in the Department's TAI Verification Report are not inconsistent with this

analysis. RSM contends further that the price and quantity on either of these invoices did not change between the purchase-order date and the invoice date. Thus, RSM emphasizes, the note on the invoice does not refer to an adjustment of price or quantity to the unaffiliated customer. Finally, RSM contends that the purchase-order dates for the two sales at issue are January 1, 2004, and February 20, 2004, respectively, both of which are outside the POI. Consequently, RSM argues, these invoices are irrelevant to the investigation.

RSM also disagrees with the Petitioners' allegation that the January 1, 2004, purchase order is fictitious and claims that the Petitioners provided no evidence to support their claim. RSM contends that the Department must base its determinations on substantial evidence in accordance with law, not speculation or innuendo.

Department's Position: We have determined that RSM failed to substantiate its claims that the purchase-order date represents the date of sale for the purpose of this investigation. As a consequence, RSM did not report the appropriate universe of sales and the Department cannot calculate a margin in accordance with section 731 of the Act.

Section 351.401(I) of the Department's regulations establishes the Department's authority for determining the date of sale, stating, "{i}n 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 a discussion concerning the

need to establish a uniform date of sale for all companies, the preamble to the Department's regulations explains: "{a}bsent satisfactory evidence that the terms of sale were finally established on a different date, the Department will presume that the date of sale is the date of invoice." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296 (May 19, 1997) at 27349. As a result, the Department's regulations establish invoice date as the date of sale unless the exporter or producer can demonstrate to the Department's satisfaction that a different date better reflects the date on which the exporter or producer established the material terms of sale. Thus, the respondents in an antidumping proceeding bear the burden of demonstrating to the Department's satisfaction that any date other than the invoice date is the appropriate date of sale for the purposes of the proceeding.

As described in greater detail below, RSM has described TAI's date of sale variously as the invoice date from RSM to TAI and purchase-order date. We were unable to verify that purchase-order date was the date of sale (i.e., the date on which the terms of sale became fixed). In fact, we found the company's record-keeping to be incomplete and unreliable, not just with respect to date of sale but with respect to many other claimed adjustments.

RSM first reported TAI's purchase-order date as the date of sale in the United States. See RSM's June 3, 2004, Section A questionnaire response ("AQR") at 13 and its June 21, 2004, Section C questionnaire response ("CQR") at 13. In its supplemental questionnaire response, RSM clarified that the date of sale it reported originally was the date of the purchase order issued to TAI by its customers. See RSM's August 20, 2004, supplemental Section A-E questionnaire response

("SAEQR") at 32. In addition, in that response, RSM explained that it now considered its U.S. sales, which it had reported originally as CEP sales, as EP sales. See RSM's SAEQR at 5.

Then RSM explained that, because the relevant universe of sales changed from TAI's sales to its first unaffiliated customer in the United States to RSM's sales to TAI, the date of sale also changed from purchase-order date to invoice date because the price and quantity of RSM's sales were not finalized until the invoice date. See SAEQR at 32. Also, in that response, RSM claimed that TAI's invoice date was the date of sale for TAI's sales to its affiliated U.S. further manufacturer because the terms of sale were not finalized until TAI invoiced its customer. See SAEQR at 32. After this explanation, the Department requested that TAI revise its U.S. sales database to report all of RSM's sales through TAI based on invoice date as the date of sale. See the Department's second supplemental questionnaire of September 2, 2004, at 3.

In the Preliminary Determination, the Department stated:

> After examining the sales documentation placed on the record by the mandatory respondents, we preliminarily determine that date of purchase order is the most appropriate date of sale for RSM and Tianjin. In their submissions, RSM and Tianjin stated that they establish the date of sale on their purchase-order date because all of their sales terms are finalized by the purchase-order date. Additionally, RSM and Tianjin provided no evidence to suggest that their sales terms changed after the purchase order was established. Based on record evidence, we have determined that RSM's and Tianjin's sales terms did not change after the purchase-order date, and thus we have used purchase-order date as the date of sale for the preliminary determination for RSM and Tianjin.
>
> The Department intends to examine the date-of-sale issue at verification thoroughly and may reconsider its position for the final determination based on the results of verification.

See Preliminary Determination at 59195.

Thus, the Department provided RSM ample notification that the date of sale would be the subject of close examination at verification.

The evidence TAI presented during the course of the Department's verification did not support the company's claim in the SAEQR that the date of purchase order is the date of sale for the purposes of this antidumping duty investigation. First, TAI company officials contradicted the SAEQR and explained at verification that the company regards date of shipment as the date of sale in the normal course of business. See TAI Verification Report at 1 and 6. Second, TAI demonstrated that, in contrast to many companies which regard purchase-order date as the date of sale, it does not keep complete and comprehensive records of its purchase orders against which to measure order confirmations, production, inventory, and shipments. See TAI Verification Report at 9. Rather, TAI stated specifically that it does not keep track of its shipments of subject merchandise by purchase-order number, explaining that, "if there was a dispute concerning the quantity shipped, it would then have to tally its shipments to determine if it had fulfilled a purchase order." See TAI Verification Report at 10. TAI explained that, in order to select the universe of sales for the U.S. sales purchase-order database, first it reconciled all of its invoices to imports of subject merchandise that entered the United States from July 2003 to the present. See TAI Verification Report at 9. Therein the Department explained TAI's description that it:

> ...reconciled its invoices to imports, added the purchase order date, purchase order price and quantity, and the sales price. TAI stated that it submitted this list to RSM, and to its customers to verify the accuracy of the price and quantity of these sales.

> Then TAI sorted the list by the purchase order date and reported all shipment whose purchase order date fell within the POI. In addition, TAI reconciled all container numbers, bundles and mill certificates to its sales.

As a result, in order to prepare the U.S. sales database based on purchase-order date, TAI had to first identify the list of shipments during the relevant period and then research the corresponding purchase-order number and date. See TAI Verification Report at 10. Thus, TAI demonstrated that purchase-order date is not the governing date of sale it uses in its normal course of business.

Numerous other verification failures with respect to the date of sale indicate that the purchase-order date is not the date of sale TAI used in its normal course of business and would not be an appropriate date of sale for use in this antidumping duty investigation. First, TAI reported that it had no purchase orders for a number of July 2003 transactions which it had reported in the U.S. sales purchase-order database. See TAI Verification Report at 10. TAI explained that, for purposes of the U.S. sales purchase-order database, it reported a purchase-order date for these sales of August 2003 although these sales had been shipped to the customer during the previous month. See TAI Verification Report at 10. Thus, TAI's claim that it did not have purchase orders for a number of sales contradicts its contention that production cannot begin until it has a signed purchase order and that the lead time from purchase order through production for shipment to the United States and final shipment to the customer is at least two months. See TAI Verification Report at 12 and RSM's SAEQR at 24. Therefore, the record evidence demonstrates that RSM could not provide support for its claim that all of its sales were made pursuant to purchase orders.

Other record evidence indicates that the purchase-order date does not necessarily represent the date of sale since RSM demonstrated that TAI has the ability to change customer, price, and quantity until the time of shipment from the U.S. warehouse, indicating that the terms of sale are not fixed or binding until shipment. For example, RSM reported that TAI diverted a number of sales of merchandise which were imported under one purchase order to a second customer whose purchase order preceded the POI. See TAI Verification Report at 10 and verification exhibits 4A and 4K. As a result, RSM did not report the sale to the second customer in its U.S. sales purchase-order database. RSM claims that the first sale was cancelled although TAI did not present any explanation, information, or evidence at verification indicating that it had cancelled the first sale. See the RSM companies' and Tianjin's case brief at 9 and TAI Verification Report at 10. By importing merchandise under the purchase order of one customer and placing it in that customer's dedicated warehouse and then shipping it to a second customer priced in conformity with the terms of sale of the second customer's purchase order, RSM demonstrated that the first purchase order did not govern the date of sale of the merchandise. Moreover, TAI provided this merchandise to the second customer to replace a shipment from another supplier so that the second shipment was not made for the purpose of filling the second customer's purchase order but in addition to it. Thus, RSM demonstrated that the second customer's purchase order did not govern the date of sale of merchandise either.

Furthermore, TAI's sales ledger and inventory reconciliations demonstrate that it changed customers, sales, and quantities up to the date of shipment. For example, verification exhibit 4K provides TAI's customer-specific inventory reconciliation worksheet which records the sales to the first

customer in conformity with the terms of the first customer's purchase order. See verification exhibit 4K. At verification, TAI explained that it made the sales to a different customer. See TAI Verification Report at 10. In contrast, TAI's sales ledger reflects the revised invoice price and quantity for the same invoice numbers, showing that they were actually made to the second customer at the second customer's purchase-order price. See verification exhibit 4A.

The unreliability of TAI's claims with respect to date of sale (and the materiality of that unreliability to the Department's fundamental analysis) is evident in another sample sale examined at verification. In that case, TAI claimed that the date of sale fell outside the POI and offered a purchase order dated January 1, 2004. See TAI Verification Report at 10 and verification exhibits 4A, 4B, 4C, 4E, 4F, 4G, 4H, and 4I. Evidence the Department examined showed that the date of shipment was several weeks later, contradicting TAI's claim that it requires several months' lead time to ship materials to U.S. customers after receiving a purchase order. See TAI Verification Report at 12 and verification exhibit 4K. When pressed, company officials admitted that "there may have been a verbal negotiation and purchase order prior to January 2004, so that the shipment was on the water by the time the purchase order was finally signed." See TAI Verification Report at 12 and verification exhibits 4H and 4K. This demonstrates not only the unreliability of TAI's reported date of sale but also the likelihood that the universe of sales RSM reported included some outside the POI.

Although TAI also provided a sales database using invoice date as the date of sale, this database proved unreliable and inaccurate as well. We requested and TAI provided a U.S. sales database based on the invoice date of its sales to the United States. We compared the information

provided in the invoice date database with the sales information provided in verification exhibit 4A, which is a sales ledger for the POI, and TAI's reconciliation of those sales to purchase orders signed during or prior to the POI. See Memorandum to the File from Laurel LaCivita, Senior Case Analyst, through Robert Bolling, Program Manager, Magnesium Metal from the People's Republic of China: Final Analysis Memorandum for RSM and China National Nonferrous Metals I/E Corp. Jiangsu Branch, dated February 16, 2005 ("RSM Final Analysis Memorandum"). We found that a number of transactions in that database were not recorded in the sales ledger in verification exhibit 4A. See RSM Final Analysis Memorandum. We also identified a number of invoices that were recorded in the sales ledger but not reported in RSM's U.S. sales invoice database. See RSM Final Analysis Memorandum. Among them were the transactions pursuant to the sales that RSM imported on behalf of one customer but diverted to a second customer. Although RSM has maintained that it reported these sales in its U.S. sales invoice database, this is not in fact true. See the RSM companies' and Tianjin's case brief at 8 and RSM's September 14, 2004, and second supplemental questionnaire response at exhibit 1. Therefore, because we could not reconcile the sales RSM reported in the U.S. sales invoice database with the sales ledger RSM/TAI provided at verification, we determine that the U.S. sales invoice database is also not usable for the purpose of calculating the dumping margin for this investigation.

Completeness of Sales Reporting

The Petitioners also contend that TAI failed to reconcile its U.S. sales and failed the Department's completeness test at verification. As a result, the Petitioners argue, the Department has

no verified U.S. sales to use in the margin calculation. The Petitioners contend that TAI failed to report certain sales and provided incorrect and misleading sales information. The Petitioners allege that, although TAI provided a reconciliation of its 2003 sales, it did not attempt to reconcile its 2004 sales despite clear instructions in the Department's verification outline to reconcile the total reported U.S. sales to sales journals, summary entries in the general ledger based on sales journals, and the financial statements for the POI. Because TAI received the verification outline three weeks prior to the beginning of verification, the Petitioners contend, TAI's delay in providing this information significantly impeded the Department's verification, citing Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 60980, 60983-84 (October 14, 2004), in which the Department determined that the respondent's unpreparedness significantly impeded the verification process. Further, the Petitioners contend that, in Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 4, the Department states explicitly that "sales reconciliation is required of respondents to determine whether they have reported all appropriate sales" and serves as a "starting point" for the Department at verification. Thus, the Petitioners argue, the Department has determined in previous cases that failure to provide a timely and complete reconciliation of reported U.S. sales constitutes sufficient grounds, on its own, to resort to total AFA.

RSM contends that TAI reported the date of sale correctly and provided a viable and verifiable questionnaire response. RSM also argues that TAI provided and the Department accepted a

reconciliation for 2003 and 2004 in contrast to the Petitioners' allegations. RSM claims further that the Department's TAI Verification Report at page 8 states that it "identified all sales . . . during the POI."

Department's Position: Although TAI did not provide a reconciliation of its 2004 sales prior to verification, it reconciled its total and quantity and value of sales for 2003 and 2004 at verification based on TAI's assumptions that the date of purchase order was the date of sale. See TAI Verification Report at 7-10. In addition, the Department conducted a number of standard completeness tests at verification and did not find any major errors or discrepancies with respect to the sales reconciliation, again based on TAI's assumptions that the date of purchase order was the date of sale. See TAI Verification Report at 1-2 and 7-10.

Because of the inability of TAI to substantiate its date-of-sale claims, however, we cannot be sure of what constitutes the actual universe of sales during the POI. Consequently, although TAI may have been able to reconcile its purchase-order-based U.S. sales database to its sales journals and financial statements, the sales database itself is unreliable as discussed above. In fact, the results of the Department's "completeness" examination at verification demonstrated that the date of sale RSM reported was not accurate and that it should have reported U.S. sales based on invoice date.

At verification, TAI provided a reconciliation worksheet which appeared to provide a complete listing of TAI's magnesium sales during the POI. See verification exhibit 4A. At verification, we identified all of the sales reported in the U.S. sales purchase-order database in that exhibit. See TAI Verification Report at 8. As we described above, however, a further comparison of that document with TAI's U.S. sales invoice database indicated that TAI reported sales that were not in TAI's sales

ledger and that TAI's reconciliation worksheet included sales that it had included in its U.S. sales invoice database despite claims to the contrary. As a result, we find that neither RSM's purchase-order database nor its invoice database is reliable for purposes of calculating a margin for the final determination.

TAI's Lack of Preparation

The Petitioners agree with the Department's statements on page 8 of the TAI Verification Report that TAI's lack of preparedness was highly unusual and that TAI's counsel was experienced and understood well the requirements of verification. The Petitioners argue further that TAI had ample time to prepare for verification since the Department issued the verification outline three weeks rather than the (one week prior) to the beginning of verification.

The Petitioners argue that TAI's failure to prepare adequately for verification does not indicate that the respondent was willing but unable to meet the Department's requests for information. Rather, the Petitioners argue, the record evidence demonstrates that TAI failed to cooperate by not acting to the best of its ability. The Petitioners contend further that the record evidence demonstrates that TAI impeded the Department's investigation by withholding necessary and requested information and by providing unverifiable information, citing to the CIT's decision in Acciai Speciali Terni S.P.A. v. United States, 142 R. Supp. 2d 969, 989 (CIT 2001), in which it ruled that "{t}he requirement that Commerce find the respondent did not comply 'to the best of its ability' at least implies a duty on the respondent to make its response reasonably accurate. Where the relevant information was available to

the respondent, its failure to use the information and accurately report the data requested by Commerce is evidence of its failure to meet the standard."

RSM contends that it was fully cooperative with the Department and did all it could to induce cooperation from TAI such as offering the assistance of RSM legal counsel well in advance of verification, which TAI declined. RSM contends that it has no direct ties, such as direct ownership, to TAI to compel TAI to participate fully in the investigation. Further, RSM asserts, TAI has since exited the magnesium metal business and is no longer an RSM customer.

RSM contends that its Section A response discusses its relationships with TAI. It also contends that the Petitioners' June 25, 2004, submission asserts that "affiliation between all of the RSM companies and TAI has not been established with the submission of the Section A response." Thus, RSM argues, the Petitioners have acknowledge that the relationship did not amount to affiliation or control. RSM contends that the indirect ownership relationship between RSM and TAI was so tenuous that RSM could not compel TAI to do anything with respect to participation in this investigation.

Department's Position: TAI's failure to prepare adequately for verification indicates that the respondent did not act to the best of its ability to provide the Department with information that was within its control. The record indicates that TAI's efforts to prepare for verification were wholly inadequate. Consequently, TAI cannot be characterized as " willing but unable" to meet the Department's requests for information.

The Department issued the verification outline to RSM three weeks prior to the verification. Additionally, the Department postponed the verification to accommodate TAI's claimed need for

additional time to prepare for verification. See RSM's letter of November 24, 2004, and the memorandum to the file from Robert Bolling, Program Manager, Magnesium Metal from the People's Republic of China, dated November 24, 2004. RSM now contends that TAI resisted adequate verification preparation time. See the RSM companies' and Tianjin's case brief at 9-11. Thus, RSM has confirmed the inadequacy of TAI's preparations for the Department's verification.

TAI's failure to prepare for verification impeded the Department's efforts to verify the information reported by the company. For example, TAI did not have sufficient documentation to support its sales information for the sales the Department selected prior to verification for close examination. TAI failed to provide sales-journal pages showing the selected sale, the accounts receivable page showing the corresponding sales-journal information, and invoices and records of payment for actual charges and/or adjustments in its sales-trace packages. See TAI Verification Report at 14-18 and at Attachment II. See also the sales traces at verification exhibits 6A-6H. Also TAI's sales-trace packages did not include any general or subsidiary ledgers. See TAI Verification Report at 14. Further, TAI failed to substantiate freight, warehousing, and brokerage expenses incurred in the United States for sales of subject merchandise. See TAI Verification Report at pages 14-18 and verification exhibits 6A-6H. In addition, TAI did not report price adjustments for sales to certain U.S. customers. See TAI Verification Report at 9.

Similarly, at verification, TAI explained "that it did not understand that it would have to prepare a reconciliation from the metals division (section 550) up to the audited financial statements, and that such a trace required the assistance of their controller in Kentucky, who was not readily available on

December 14, 2004." See TAI Verification Report at 8. Yet, as stated previously, the Department provided TAI with a detailed verification outline explaining what would be required with respect to reconciliation three weeks before verification. TAI was not ready or able, however, to present its sales reconciliation to the Department until late in the second day of the verification. Ibid. Moreover, TAI failed to provide an accurate description of its corporate structure or to inform the Department where the documents and personnel required for verification were located. See TAI Verification Report at 3. TAI failed to describe in its questionnaire responses the existence or role of the nonferrous metals division in making sales of subject merchandise. Ibid. Further, at verification, TAI mis-identified a number of verification exhibits. For example, TAI identified verification exhibit 3C as a "chart of accounts," when, in actuality, it presented a list of customer and supplier names. See verification exhibit 3C and the TAI Verification Report at Attachment II. TAI identified verification exhibit 3D as "monthly financial statements" when, in actuality, the documents presented gross sales and profit statements for the POI. See verification exhibit 3D and the TAI Verification Report at Attachment II. TAI identified verification exhibit 3E as an "accounts receivable ledger" whereas the documents presented represented their aging schedule. See verification exhibit 3E and the TAI Verification Report at Attachment II. TAI identified an exhibit "Magnesium Entries 550 Sales Ledger July 01/03 - Dec 31/03" when, in actuality, it was a worksheet prepared from information in its sales ledger. See verification exhibit 4A. All of this is indicative of the considerable state of confusion that characterized the Department's verification of TAI.

Consequently, the Department lost a great deal of time at verification trying to understand the nature of the information presented rather than examining the information itself. The Department lost additional time waiting for the company to assemble the requested documents which, contrary to the self-selected reports TAI provided, reconcile to the audited financial statements. Further, due to these and other failures documented at verification, TAI deprived the Department of the opportunity to conduct a reasonable verification of the information RSM provided in its questionnaire responses. For these reasons, we have determined that TAI impeded the progress of the verification and did not cooperate to the best of its ability.

Location of the Accounting Documents and Site Selection for Verification

The Petitioners contend that TAI failed to disclose material facts concerning the location of accounting documents and personnel prior to the start of verification. For example, the Petitioners contend, the Department was unaware, until its arrival at verification, that TAI's Southfield, Michigan, office, which TAI identified as the appropriate location for verification, was not the office that maintained and compiled the audited financial statements. Rather, the Petitioners assert, the Department learned for the first time at verification that most of TAI's accounting functions were performed in Georgetown, Kentucky, and that company officials in the Michigan office did not have access to most of the accounting records required for verification. The Petitioners claim that, if RSM had advised the Department in advance that the relevant accounting personnel and records were located in Georgetown, Kentucky, the Department could have selected Georgetown as the site for verification. Alternatively, the Petitioners argue, TAI could have made the relevant personnel and

documents available in Michigan. The Petitioners argue that, by failing to disclose material facts which were in its control, TAI failed to cooperate by not acting to the best of its ability to comply with the Department's request for information.

RSM argues that the Department conducted the verification in Southfield, Michigan, because all of the key individuals and original documents are located there. RSM contends that all of the pertinent personnel were present during verification. RSM contends that all of the accounting records are accessible in Michigan. RSM asserts that the Department had the key documents needed to verify key terms of the pre-selected sales. RSM also contends that during the verification process the Department requested and received various ledgers.

The Petitioners contend that the record is replete with evidence that TAI withheld requested information, significantly impeded the investigation, provided unverifiable information, and failed to cooperate by not acting to the best of its ability. As a result, the Petitioners assert, TAI failed the Department's verification. The Petitioners argue further that the joint case brief for the RSM companies and Tianjin not only fails to rebut these conclusions adequately but actually supports them. For example, the Petitioners claim, the joint case brief confirms that TAI was well-informed of its duties and obligations with respect to verification but "TAI was not willing" to prepare adequately, RSM and TAI are affiliated, and TAI failed to report certain sales based upon its inaccurate selection of purchase-order date as the date of sale.

Department's Position: Contrary to RSM's claims, all of the accounting records necessary for a complete verification were not available in TAI's Southfield, Michigan, office for our verification of

RSM's responses. Our verification report explains that TAI's sales traces did not include any general or subsidiary ledgers. See TAI Verification Report at 15. Additionally, TAI did not provide appropriate supporting documentation for most of its sales traces. See TAI Verification Report at 14-18 and verification exhibits 6A-6H. TAI company officials explained that they did not have access to all of the accounting information necessary to reconcile TAI's sales data to the audited financial statements (TAI Verification Report at 3) and that they were unaware that such a trace was required (TAI Verification Report at 8). As mentioned previously, RSM had the benefit of three weeks to prepare for verification, including a verification outline that explained precisely the types of documents that would be required.

Further, all of the relevant personnel were not present at the verification in Southfield, Michigan. The company officials explained that a reconciliation from the metals division (section 550) up to the audited financial statements "required the assistance of their controller in Kentucky, who was not readily available on December 14, 2004." See TAI Verification Report at 8. The verification report also shows that the highest ranking company official with accounting expertise present at verification held the title of administrative assistant. See TAI Verification Report at Attachment I. Further, the TAI Verification Report shows that TAI did not have a representative from management present during the verification. Ibid. Thus, given that the company officials present at verification were unable to carry out the tasks required of a standard verification, we disagree with RSM that all of the relevant personnel were present at the verification.

As a result of TAI's lack of preparedness, the Department was precluded from conducting as in-depth a verification as is required. The Department lost valuable time at verification while TAI company officials negotiated with their superiors to obtain access to the information required for verification. Although TAI provided some of the required information in the end, its lack of preparedness meant that much of this information was provided in rudimentary form. Therefore, we find that TAI's failure to identify the location of sales and accounting information adequately, or to gather copies of pertinent documents and personnel at one location, impeded our verification significantly.

Sales-Trace Documentation

The Petitioners contend that TAI failed to provide proper sales-trace documentation as the Department requested in its verification outline. According to the Petitioners, TAI failed to provide any general ledgers or subsidiary ledgers, negotiation correspondence, customer contracts, order confirmations, invoices to customers, price lists, sales-journal pages showing the selected sale, the accounts receivable page showing the corresponding sales-journal information, and invoices and records of payment for actual charges and/or adjustments in its sales-trace packages. The Petitioners argue that TAI was notified appropriately that these records would be necessary for the verification of the reported U.S. sales because the Department issued the verification outline three weeks prior to the verification.

Thus, the Petitioners contend, because TAI was unable to provide the requested information located in its Georgetown, Kentucky, headquarters and also withheld information which was within its

power to provide, TAI failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. The Petitioners contend that, in past cases, the Department has determined that similar gaps in the verification have warranted the applications of AFA, citing Mexican Cement in which the Department determined that, because it was neither able to trace the total quantity and value of sales to detailed source documentation nor conduct tests to ensure that all sales were reported properly, it was unable to rely upon that information in the calculation of a dumping margin. Thus, the Petitioners contend, TAI's verification failures warrant the application of AFA for all of the RSM companies.

Department's Position: We find that TAI failed to provide proper sales-trace documentation. In our verification report, we explained that TAI failed to provide any general ledgers or subsidiary ledgers in its sales-trace packages. See TAI Verification Report at 14. In addition, TAI failed to document brokerage, warehousing, and freight expenses it incurred in the United States. See TAI Verification Report at 15-18. Further TAI received more than adequate notification of the records we required for verification because, although we usually issue our outline 7-10 days in advance of our verification, in this instance, we issued the verification outline three full weeks prior to verification in this instance.

As we discuss above, upon our arrival at verification, TAI indicated that it did not understand that it would have to prepare a reconciliation from the metals division (section 550) up to the audited financial statements. Further, TAI did not have the appropriate personnel available at verification. For example, TAI company officials explained that tracing the company's sales to the audited financial

statements "required the assistance of their controller in Kentucky, who was not readily available" on the day of verification. As such, we find that TAI did not cooperate to the best of its ability.

Brokerage Expenses Incurred in the United States

The Petitioners assert that TAI failed to report U.S. brokerage fees, that TAI understated estimated storage fees for certain transactions, and that TAI also failed to provide proof of payment for warehouse entry and withdrawal fees. The Petitioners contend that TAI failed to report miscellaneous fees, such as formal entry fees, ocean import fees, messenger fees, courier fees, AMS fees, and document-handling fees for the pre-selected and on-site selected sales the Department examined at verification.

RSM contends that page 1 of the Department's TAI Verification Report indicates erroneously that TAI failed to report brokerage expenses in its U.S. sales database. RSM argues that the Department's May 6, 2004, questionnaire required only "yes" or "no" responses with respect to brokerage and handling expenses. Thus, RSM contends, TAI responded fully to the Department's questionnaire and cooperated with its request for information. RSM makes the following claims: (1) the Department did not request additional information with respect to TAI's brokerage and handling expenses in its July 23, 2004, supplemental questionnaire; (2) the Petitioners did not submit any deficiency comments concerning RSM's brokerage and handling expenses; (3) the Department's model NME questionnaire on its web site, ia.ita.doc.gov, does not require companies to report brokerage expenses incurred in the United States.

RSM contends further that the Department's standard NME normal-value calculations include the full amount of the SG&A expenses of the surrogate company, including brokerage expenses. Thus, according to RSM, the Department cannot reduce the respondent's U.S. price for brokerage expenses without overstating the dumping margin.

RSM argues that any adverse inferences made as a result of TAI's failure to report brokerage expenses would be contrary to law. RSM argues that the antidumping statute mandates that an adverse inference is only permitted if a respondent does not respond to a Department request for information. RSM states further that, in Olympic Adhesives Inc. v. United States, 899 F. 2d 1565, 1573-74 (Fed. Cir. 1990) and Usinor Sacilor v. United States, 907 F. Supp. 426, 427 (CIT 1995), the CIT ruled that the Department has a statutory "obligation to be precise in its requests, thereby affording companies adequate notice to defend their interests … Claims that respondents should have been familiar with the {Department's} procedures" are unavailing. RSM argues that the CIT mandated further that the Department may not impose facts available where its "instructions were unclear" or where it has not requested the information at all. Thus, RSM argues, because the Department did not request TAI to report brokerage expenses in its questionnaire response or request it to gather brokerage expenses for all the U.S. sales at verification, it cannot make adverse inferences or impose facts available as a result in the margin calculations for the final determination.

RSM contends further that the Department double-counted TAI's brokerage and warehousing expenses in the Preliminary Determination because the Department deducted them from the starting price in addition to making an adjustment for indirect selling expenses which included all of the SG&A

expenses at TAI rather than the nonferrous division. Thus, RSM argues, the margin the Department calculated for the Preliminary Determination was overstated.

Department's Position: Contrary to its assertion, RSM did not respond fully to the Department's questionnaire by responding either "yes" or "no" to the question therein with respect to brokerage and handling. First, the general instructions for Section C of the questionnaire concerning U.S. sales require companies to identify any market-economy inputs purchased from a market-economy supplier and paid for in a market-economy currency during the POI. See May 6, 2004, questionnaire at 15. The instructions also require the respondent to report the price actually paid for such inputs, to identify the market-economy country and currency in which the input was paid, to identify whether the price of the input was based on weight or value, to provide all details of the transaction, including the name of the supplier, the source country, terms of payment, and any other arrangements made, and to detail the percentage it purchased from a market-economy country and the percentage it purchased from an NME suppler. Ibid. Second, the Department's May 6, 2004, questionnaire includes a data field for "Other U.S. Transportation Expense" in which RSM should have reported additional expenses not identified specifically in the questionnaire response. See May 6, 2004, questionnaire at 17. Thus, the Department notified RSM that it needed to report any market-economy expenses ir incurred in transporting the subject merchandise to the United States.

Additionally, we disagree that we double-counted RSM's brokerage and warehousing expenses in the Preliminary Determination. The issue is moot, however, because we have not calculated a margin for RSM for the final determination.

Warehousing and Freight Expenses Incurred in the United States

The Petitioners assert that TAI failed to document the warehousing and additional freight expenses it reported in the U.S. sales database. The Petitioners contend that each of the pre-selected and on-site-selected sales the Department examined at verification included undocumented expenses and fees. For example, the Petitioners report, TAI could not track warehousing fees and freight expenses to specific shipments and thus provided estimated expenses which did not tie to the pre-selected sales. The Petitioners allege further that certain documents TAI used as the basis for estimated freight expenses were dated prior to withdrawal of the merchandise from inventory. The Petitioners contend that TAI could not substantiate tri-axle (overweight shipping) fees and/or brokerage and handling fees for certain pre-selected sales. The Petitioners allege that someone altered a primary source document provided in one pre-selected sale, even though TAI could not identify the link between that document and expenses recorded for the pre-selected sale. Finally, the Petitioners allege that TAI failed to substantiate the value of its warehousing fee for an on-site-selected sale.

RSM contends that TAI did the best that it could to report accurate warehousing and freight expenses it incurred in the United States for sales of subject merchandise. RSM argues that TAI's warehouse invoices do not separately identify the type of material moved or stored in the ordinary course of business and, thus, it cannot determine such expenses on a sale-specific basis. RSM contends that, at verification, TAI explained its inability to document its expenses for warehouse overtime, customs spot check, drayage, and tri-axle charges. RSM claims that TAI does not enter these expenses into a single account consistently and, thus, according to RSM, an easy allocation of

expenses from a particular account to sales of subject merchandise was not possible. Nevertheless, RSM maintains that TAI records such expenses normally as cost of sales.

RSM contends that, as reported at verification, TAI closed down its magnesium business after a very short period. RSM maintains that TAI officials explained at verification that the company was in the process of moving towards a better accounting system with respect to magnesium sales but had not yet achieved its goal. Consequently, RSM argues, TAI did the best it could to report accurately the freight and warehousing expenses it incurred in the United States though acknowledging concern that it may have understated such costs. As a result, RSM contends, adverse inferences are inappropriate under the statute.

RSM contends that the bill of lading changed by a service provider, with corrections, is still valid, contrary to the Petitioners' claim, since service providers sometimes correct their own documents.

The Petitioners argue that, despite RSM's contention that TAI acted to the best of its ability in reporting miscellaneous warehousing and freight costs, TAI either failed to provide supporting documentation or provided incomplete documentation and/or provided inaccurate information concerning these expenses. They allege further that TAI's reporting omissions and errors result from an explicit unwillingness to prepare for verification, as counsel for respondent stated that TAI declined and "was not willing" to allow more than one or two days of preparation for verification.

Department's Position: We disagree that TAI acted to the best of its ability to report accurate warehousing and freight expenses it incurred in the United States for sales of subject merchandise. We

also disagree with RSM's claim that it is irrelevant for purposes of this antidumping investigation that TAI sought to justify its inability to document its expenses for warehouse overtime, customs spot check, drayage, and tri-axle by claiming that it does not enter these expenses consistently into a single account. The record reflects that TAI made no attempt to provide verifiable information with respect to warehousing expenses. In our TAI Verification Report, we explain that TAI provided invoices for warehousing expenses from a given warehouse as an example of charges for these items, but the warehousing invoices do not identify the type of material and antedated the withdrawal of the merchandise from inventory. See TAI Verification Report at 15. Thus, the information TAI provided as "an estimate of the appropriate charges applicable to each shipment" did not confirm that the shipment at issue ever entered the warehouse named on the invoice, included the shipment's entry or withdrawal date from the warehouse, or demonstrated that the reported charges were applicable to the subject merchandise. Therefore, the Department cannot accept this invoice, or any single invoice, as "an estimate of the appropriate charges applicable to each shipment."

It is the Department's long-standing practice to require proof of payment as the standard of verification. Thus, respondents are required to provide all supporting documentation, including cancelled checks, telegraphic transfers, or bank statements, showing that they paid reported expenses as claimed. Respondents are then required to tie the reported information both to the per-unit expenses recorded in their books and records and to their audited financial statements. In the alternative, companies may provide some type of average expense. For example, TAI could have provided an average daily storage rate for each of its suppliers and then applied that rate to the number of days for

which each shipment remained in inventory. There are many other reasonable methods TAI could have used. For the purposes of this verification, however, TAI did not substantiate its assertions with respect to warehousing expenses.

We disagree with RSM's contention in its case brief that a specific "bill of lading, drafted by a service provider, with correction, is still valid." First, RSM mis-characterizes the issue. In our TAI Verification Report, we stated that the service provider had:

> whited-out the number of bundles and kilograms on the original bill of lading and put in the number of bundles and kilograms appropriate to this shipment. In addition, it crossed out the container number recorded on the mill certificate and put in the number of the other container that applied to this invoice.

See TAI Verification Report at 17.

Second, we were aware that these contrived changes were made only because we saw the same bill of lading in a previous sales trace. See TAI Verification Report at 17, verification exhibits 6E and 6F, and the Department's TAI verification outline of November 23, 2004, at Appendix I. Thus, our comments in the verification report were directed toward the fact that the handwritten notes on that particular bill of lading appeared to be altered manually in preparation for the verification. We disagree that these notes represented "corrections" to the information on the bill of lading because most of the information that appeared on the "altered" document also appeared on the document TAI presented for the other sales trace. See verification exhibits 6E and 6F. Thus, because "TAI explained that there is no relationship between the supporting documents provided for the warehousing charges and the

information reported in the questionnaire response" (see TAI Verification Report at 17), we disagree with RSM that, in this instance, the service provider corrected its own document.

Therefore, we have determined that TAI did not cooperate to the best of its ability in documenting warehousing and freight expenses it incurred in the United States.

Indirect Selling Expenses

The Petitioners assert that the Department stated in the verification report that the revised indirect selling expenses which TAI attempted to present as minor corrections at verification constituted new information rather than a correction of the information already on the record. They contend that the Department stated further that it was unable to assess either the methodological or the numerical accuracy of the revised figures or to tie them to any information presented previously in a questionnaire response. Thus, the Petitioners argue, none of TAI's reported indirect selling expenses was verified following the standard established in Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review, 68 FR 54203 (September, 16, 2003) ("Mexican Cement"), and accompanying Issues and Decision Memorandum at Comment 6, in which the Department asserted that it was unable to verify expenses incurred on certain pre-selected sales even though it was able to trace the total sales quantity and value to company records.

RSM contends that the Department did not request TAI to report indirect selling expenses, brokerage costs, including entry fees, courier fees, AMS fees, messenger fees, ocean import entry fees, document-handling fees, or various other costs in either its original questionnaire or its supplemental questionnaires. Further, RSM contends, the questionnaire posted on the Department's web site does

not request that respondents report U.S. indirect selling expenses. Therefore, RSM argues, the Department is not in a position to state that there is substantial evidence for such adjustments, much less speak to the magnitude of such adjustments or apply adverse inferences to these adjustments. RSM reiterates that the Petitioners did not request the Department to explore such information further during the deficiency comment period. Thus, RSM contends, the Department cannot apply adverse inferences to the information provided by TAI, citing Ta Chen Stainless Steel Pipe v. United States, 1999 (CIT) LEXIS 110, Slip Op. 99-177, No. 97-08-01344, 19999 WL 1001194 (CIT October 1999), which states, at pages 12 and 13, that the Department did not "comply with section 1977m(d) of the antidumping statute when making the adjustments (adverse ones), because it never specifically requested the information." RSM contends that the Petitioners may not speculate on what adjustments should be made because speculation is not substantial evidence upon which the Department may make a decision in accordance with law.

RSM argues that the Department did not require TAI to report its indirect selling expenses because the normal value that the Department uses in the dumping margin calculation in NME proceedings includes SG&A. Thus, RSM contends, it would not be appropriate to remove selling expenses from U.S. price because such costs should be included in normal value.

The Petitioners contend that at the beginning of verification TAI introduced new information regarding indirect selling expenses under the guise of minor corrections. They argue further that the Department rejected this information at verification properly. Consequently, the Petitioners argue, because the Department rejected the new information TAI presented at verification, RSM would have

the Department ignore its statutory obligation to reduce CEP by selling expenses associated with economic activity in the United States, contrary to Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19040 (April 30, 1996), in which the Department stated, "{w}e have reevaluated our practice in this area and have concluded that CEP deductions are required by section 772(c)(2)(d) of the Act, which states that CEP 'shall be reduced' by the selling expenses associated with economic activity in the United States. The statute provides no exception for cases involving non-market economy countries." In addition, the Petitioners contend, the deduction of CEP expenses from U.S. price is supported by Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 61 FR 53702, at Comment 9 (October 15, 1996), in which the Department stated, "CEP shall be reduced by the amount of expenses incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise . . . . The statute provides no exceptions for NME cases." The Petitioners thus contend that RSM was responsible for reporting timely, accurate, and verifiable data and that, because TAI's indirect selling expense data were unverifiable, the Department cannot rely upon such data in the calculation of a dumping margin.

Department's Position: RSM was responsible for reporting timely, accurate, and verifiable data with respect to its indirect selling expenses in accordance with section 772(c)(2)(d) of the Act. As we discussed above, RSM had the knowledge, obligation, notification, and opportunity to report all of its indirect selling expenses in the United States. While our original questionnaire did not directly request RSM to report TAI's indirect selling expenses, or brokerage expenses, the questionnaire did provide

numerous instructions with respect to indirect selling expenses related to the U.S. sales of subject merchandise. Further, the Petitioners identified the lack of such information on the record prior to the Department's verification. See the Petitioners' letter of September 17, 2004. TAI submitted a letter providing information concerning its indirect selling expenses on October 12, 2004, and then attempted to correct such information in the minor corrections it presented at verification. See the Petitioners' letter of September 17, 2004, RSM's letter of October 12, 2004, and the Department's TAI Verification Report at 2-3. We explained at verification, however, that we would not examine the revised indirect selling expenses because RSM's October 12, 2004, letter did not provide a meaningful or accurate description of the information provided. Thus, we determine that RSM did not cooperate to the best of its ability to provide information reasonably at its disposal to comply with our requests for information.

Although the Department's original questionnaire in this investigation did not instruct RSM to report indirect selling expenses it incurred in the United States for U.S. sales, after the Petitioners had identified the lack of such information, RSM provided an unsolicited submission reporting TAI's indirect selling expenses as a percentage of sales value. In that letter, TAI did not identify which part of the organization incurred the expenses or made the sales. See RSM letter of October 12, 2004. At verification, TAI explained that the reported expenses represented the budgeted amounts for the nonferrous metals department which makes sales of the subject merchandise in the United States. The Department declined to examine the revised figures TAI presented at verification because the respondent did not identify the source of the information it presented in its letter of October 12, 2004,

Instead, it stated simply that it had reported "TAI's July to December 2003 period of investigation ("POI") administrative, interest and selling expenses, as a percent of POI sales value." See RSM's October 12, 2004, submission. At verification, TAI explained that the reported figures constituted not TAI's SG&A expenses but the SG&A expenses of TAI's nonferrous metals division. In addition, TAI clarified further that the information it presented in the October 12, 2004, letter represented budgeted figures and that the information it was now attempting to present represented actual figures for the nonferrous division. We explained in the TAI Verification Report that "the questionnaire responses do not at any time, including the unsolicited October 12, 2004, letter, reference or indicate either the existence or the role of section 550, the nonferrous division, but rather describe the sales and expenses of TAI as a whole." See TAI Verification Report at 3. Thus, we explained in the verification report, "we determined, after a conference call with superiors in Washington, that the revised selling expenses presented as minor corrections to the responses constitute new information, rather than a correction of the information already on the record." See TAI Verification Report at 2-3.

Although we agree that our original questionnaire did not directly request RSM to report TAI's indirect selling expenses or brokerage expenses, the questionnaire did provide numerous instructions with respect to indirect selling expenses related to the U.S. sales of subject merchandise. For example, at page 25 it states: "If the invoice to your customer includes separate charges for other services directly related to the sale, such as a charge for shipping, create a separate field for reporting the unit price charged the customer for each additional service." Thus, TAI was notified that it was required to report all expenses directly related to a sale and it was instructed to report such expenses in a separate

data field. The record shows, moreover, that RSM is incorrect that neither we nor the Petitioners commented on TAI's omission of indirect selling expenses incurred in the United States. As we stated in our Preliminary Analysis Memorandum at 7, the Petitioners had commented that RSM had not provided TAI's indirect selling expenses incurred in the United States. See Letter of September 17, 2004, Magnesium Metal from the People's Republic of China, Petitioners' Pre-Preliminary Determination Comments at 4. Thus, for the Preliminary Determination, the Department calculated an indirect selling expense consistent with Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026, 19031 (April 30, 1996). See Preliminary Analysis Memorandum at 7.

Comment 2: Application of Adverse Facts Available

The Petitioners argue that the Department should apply the same rate that it applies to the PRC-wide entity to RSM. For the Preliminary Determination, the Petitioners claim, the Department used the highest margin on the record for the PRC-wide rate, which was 177.62 percent based on the preliminary margin the Department had calculated for Tianjin. They explain that the petition rate, as adjusted by the Department at initiation, was 141.49 percent. For the final determination, the Petitioners argue, the Department should use the highest rate available on the record, which in no event should be lower than the adjusted petition rate (i.e., 141.49 percent) in accordance with Automotive Replacement Glass Windshields From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, at 69 FR 25555 (May 7, 2004).

RSM contends that it cooperated fully with the Department's requests for information during the course of this investigation. In addition, RSM argues, it has no direct affiliation with TAI but is only affiliated through a common partial minority owner. RSM contends that TAI is only its customer and magnesium accounts for only one percent of TAI's nonferrous metals sales, which in turn represent a de minimis portion of TAI's overall sales. RSM contends that the relationship between RSM and TAI is so attenuated that even the Petitioners argued that TAI and RSM are not affiliated and the Department requested RSM to report its U.S. sales to TAI because RSM may not be affiliated with TAI.

Moreover, RSM argues that TAI is no longer its customer since, as described in the Department's verification report, TAI discontinued its magnesium shipments when the petition was filed. Further, RSM argues, while TAI could get material from other sources, it did not try to find substitutes for RSM's magnesium once the dumping investigation began.

RSM contends that the affiliation between RSM and TAI is not legally sufficient to justify a finding that RSM had the ability to compel TAI to cooperate fully to the best of its ability in accordance with China Steel Corp. et al. v. United States et al., CIT Slip Op. 04-6, January 26, 2004 ("China Steel"), at p. 35, where the CIT upheld a Department finding that a party was in position to compel another party to act but only because the Department had found several indicia of sufficiently substantial control that one party could compel another to provide information. RSM argues that China Steel suggests that RSM should only be penalized by the Department if RSM could exert "substantial" control over TAI. RSM asserts that the facts in this case do not suggest "substantial" control.

RSM contends that an adverse inference against RSM, rather than TAI, is inappropriate because in past cases the Department has determined that adverse inferences were inappropriate when the respondent was unable to compel its affiliated U.S. customers to provide information. RSM asserts that, in Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan, 62 FR 60472, 60476 (November 10, 1997), the Department determined that the respondent was unable to compel its affiliated U.S. customer to provide the information, rendering AFA against the respondent contrary to the statute. RSM also claims that in Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Termination of Antidumping Duty Administrative Review, 63 FR 5354, 5356 (February 2, 1998), the Department determined that neutral facts available were appropriate because the U.S. affiliate ceased sales of the subject merchandise such that the respondent could not obtain full cooperation from it. Finally, RSM cites Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review, 59 FR 66912 (December 28, 1994), in which the Department determined that a respondent who had requested the review did not report U.S. sales by an affiliated subsidiary. RSM contends that in that case the Department did not use AFA because the respondent could not get the affiliate's full cooperation concerning the reporting of the affiliate's resales. RSM also argues that in Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan, 63 FR 40461, 40464 (July 29, 1998), the Department found adverse inferences were not warranted where an affiliate failed to report a significant number of CEP sales and price adjustments because, due to the nature of

the relationship between that company and the respondent, the respondent was not in a position to report the information and the Department could make reliable corrections. Consistent with the practice established in these cases, RSM argues, any dumping margin calculation should be based on RSM's factors-of-production data and the latest surrogate-value information rather than on TAI's sales to the United States.

RSM claims that its attorneys were retained to defend RSM in this matter, not TAI. RSM contends that it forwarded the Department's verification outline to TAI immediately, including the necessary reconciliations to audited financial statements. RSM states that it also sent TAI extensive materials on preparing for verification, including reconciliations to audited financial statements, as well as a list of things to be done, including sales reconciliations and pre-selected sales packages. RSM argues that it had multiple e-mail messages and phone calls from TAI over several weeks concerning verification preparations, including reconciliations to audited financial statements. RSM requested TAI to prepare all such materials for its review in the event more work needed to be done in advance of the Department's arrival and to ensure that TAI was in fact doing the work correctly. Finally, RSM claims that it stressed repeatedly to TAI that it was important for its attorneys to arrive at TAI well in advance (e.g., a week or so) to help prepare for verification, but TAI was not willing. RSM claims that it pushed TAI as hard as it could.

The Petitioners rebut that, in its Preliminary Determination, the Department determined properly that Toyota Tsusho Corporation ("TTC")/TAI is affiliated with RSM under sections 771(33)(E) and (F) of the Act, stating that the role that TAI and TTC play in RSM's sales process indicates that TAI is

legally and operationally in a position to exercise control over the RSM group of companies in accordance with section 771(33)(F) of the Act. The Petitioners assert that the Department recognized in its memorandum to Laurie Parkhill, Director, Office 8 from Laurel LaCivita, Senior Case Analyst through Robert Bolling, Program Manager, Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China: Affiliation Between Toyota America, Inc. and Its Downstream Further Manufacturer, TG Missouri Corporation ("TGMO") ("Affiliation Memorandum") that RSM claimed originally that it was affiliated with TAI during the POI. Further, the Petitioners claim, the Department's TAI Verification Report provides a proprietary description of TAI's explanation of the nature of its corporate relationship with RSM.

The Petitioners disagree with RSM's current argument that the nature of its affiliation with TAI is not legally sufficient to justify a finding that RSM had the ability to compel its U.S. customer, TAI, to cooperate fully to the best of its ability. The Petitioners contend that RSM does not argue that it is not affiliated with TAI but only that the affiliation is tenuous. They claim that, once affiliation has been established for purposes of the CEP calculation, the statute treats the exporter and the U.S. affiliate collectively, rather than independently, regardless of whether the exporter controls the affiliate and they cite Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329, 24367-24369 (May 6, 1999) ("Hot-Rolled Steel from Japan").

The Petitioners argue that RSM's reference to China Steel is inapposite because China Steel involved imports from a market-economy country, not an NME. Furthermore, they argue, the key

issue in China Steel was whether the Department based its determination on the facts available properly due to the respondent's failure to report home-market downstream sales. The Petitioners claim that the Department uses a distinct methodology for determining when home-market reseller sales must be reported in accordance with 19 CFR 351.403(d) and Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69195-96 (November 15, 2002). The Petitioners argue that these regulations do not require the use of reseller sales in every market-economy case in which home-market sales are made through an affiliate. They contend that the Department has recognized that, in certain instances, there may be a legitimate reason for not reporting home-market downstream sales, citing Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Preliminary Results of Antidumping Duty Administrative Review of the Suspension Agreement, 66 FR 41500 (August 8, 2001), where the Department stated that "{w}e have preliminarily determined that the sales by affiliated resellers would likely be used to match to few, if any, U.S. sales, and we have not required respondents to report resales by their affiliates."

In contrast, the Petitioners argue, when U.S. sales are made through an affiliate, the affiliate's resales must be reported in all cases as established in Hot-Rolled Steel from Japan where the Department stated that "{i}t is undisputed that KSC's sales of subject merchandise through its affiliate CST are constructed export price ("CEP") sales. Therefore, the statute requires that the U.S. price of these sales for margin calculation purposes be calculated by using CSI's price to the first unaffiliated U.S. customer and adjusted, pursuant to section 772(c) and (d) of the Act, to account for certain expenses incurred by CSI and KSC." Thus, the Petitioners claim, if the U.S. affiliate's sales are not

reported (or not verified) and the respondent has not acted to the best of its ability to comply with the Department's request for information, the Department must base the margin on AFA. The Petitioners argue that the Department must reject RSM's suggestion that AFA should not be applied to the RSM companies in the PRC because the RSM companies do not exert "substantial" control over TAI.

Department's Position: Based on record evidence and pursuant to the statutory requirements of the Act, the Department has determined that TAI impeded this investigation, provided unverifiable information, and did not cooperate to the best of its ability to comply with the Department's requests for information. Therefore, the application of AFA with respect to TAI and, consequently, the RSM companies is proper for this final determination.

Section 776(a)(2)(C) of the Act provides that, subject to section 782(d) of the Act, the Department shall use facts otherwise available when a respondent significantly impedes a proceeding under this title. As described above, TAI impeded the proceeding by failing to prepare adequately for verification despite the fact that the Department postponed the verification at TAI's request and issued the verification outline three weeks in advance of verification. TAI failed further to prepare its sales reconciliation prior to verification, so that it spent a large part of the time during verification assembling the documents required for the sales reconciliation. TAI's actions limited the Department's ability to test the completeness of the reported information or to set the agenda for conducting other parts of the verification. TAI also impeded the verification by failing to inform the Department prior to its arrival at verification of the location at which TAI facility it maintains documents normally and, thus, where submitted data could be verified. TAI also failed to have present at verification key company

accounting personnel with access to the information required to reconcile the sales of subject merchandise to the audited financial statements.

Section 776(a)(2)(D) of the Act provides that, if an interested party provides information but the information cannot be verified as provided in section 782(I) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination. We were unable to verify the accuracy of the U.S. sales databases provided by TAI in the course of this investigation. TAI failed to report its date of sale to the Department accurately and thus failed to report the appropriate universe of sales for the purposes of calculating the dumping margin. In addition, TAI failed to provide supporting documentation for the brokerage, warehousing, and freight expenses incurred in the United States for sales of subject merchandise. See TAI Verification Report at 14-18. Further, TAI failed to report a complete listing of its U.S. sales by invoice date. Moreover, TAI failed to report price adjustments for sales to certain U.S. customers. See TAI Verification Report at 9.

Section 782(c)(1) of the Act provides that, if the respondent notifies the Department promptly that it is unable to submit the information requested, explains why, and suggests alternatives, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Similarly, section 782(c)(2) of the Act provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable.

In this case, TAI did not identify to the Department any difficulties that it may have had locating documentation for its freight and warehousing expenses or obtaining access to its own financial data for the sales reconciliation. Thus, its claims that it was "up front" about its difficulties are not persuasive.

We find unpersuasive RSM's contention that it is either not affiliated with TAI or so slightly affiliated with TAI that it cannot compel TAI to cooperate to the best of its ability in this investigation and thus TAI's verification failure should not be imputed to the RSM group of companies. In the Preliminary Determination, we analyzed the affiliation between TAI and the RSM companies and determined that TAI meets the criteria for affiliation under sections 771(33)(E) and (F) of the Act. See memorandum to Laurie Parkhill, Director, Office 8, China/NME Unit, through Robert Bolling, Program Manager, from Laurel LaCivita, Senior Case Analyst, Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China: Affiliation and Collapsing of Members of the RSM Group and its Affiliated U.S. Reseller, Toyota Tsusho America, Inc., dated September 24, 2004 ("Collapsing Memorandum"), at 7. In this memorandum, then, the Department established affiliation between TAI and RSM for the purposes of the CEP calculation in accordance with section 772(b) of the Act. Thus, following the practice established in Hot-Rolled Steel from Japan at 24367, we have continued to treat the exporter, RSM, and the U.S. affiliate, TAI, collectively.

RSM's argument that it was not in a position to obtain the cooperation of TAI is also not persuasive. At verification, TAI explained that its parent company, Toyota Tsusho Corporation of Japan, was instrumental in introducing RSM to the U.S. market and that TAI was instrumental in finding other unaffiliated customers for RSM's merchandise. See verification exhibit at 11-12. This is

suggestive of a close commercial relationship between the two companies in addition to the ownership stakes held by Toyota Tsusho Corporation in both RSM and TAI as discussed in the Collapsing Memorandum. Thus, we disagree with RSM's claim that its relationship with TAI was attenuated during the POI.

We also disagree that the limited value of TAI's magnesium sales as a percentage of its total sales and the fact that RSM has stopped shipping to the United States has any relevance to the investigation. Further, while we would normally find RSM's claim that its attorneys were retained to defend RSM, not TAI, irrelevant to the investigation, in this case, RSM's claim is contradicted by the record. RSM's notice of appearance includes TAI. See RSM's letter of April 14, 2004. In addition, RSM's November 24, 2004, letter requesting a postponement of the TAI verification is signed "Counsel for Toyota Tsusho." See RSM's letter of November 24, 2004.

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

The Court of Appeals for the Federal Circuit ("CAFC"), in Nippon Steel Corporation v. United States, 337 F. 3d 1373, 1380 (Fed. Cir. 2003) ("Nippon Steel"), provided an explanation of the "failure to act to the best of its ability" standard, holding that the Department need not show

intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed, i.e., information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown." See Nippon Steel at 1382. The court also stated that, to find that a respondent has not acted to the best of its ability, the Department needs to make two showings: (1) an objective showing that "a reasonable and responsible importer would have known that the requested information was required to be kept and maintained," and (2) "a subjective showing that the respondent not only has failed to promptly produce the requested information" but that the failure is due to failure either to maintain required records or to put forth the maximum effort to obtain the information requested. See Nippon Steel at 1382-83. The court clarified further that "{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made." See Nippon Steel at 1383.

The Department has determined that RSM did not act to the best of its ability because TAI withheld information that was under its control. The company could have complied with the Department's requests for information at verification if it had prepared the appropriate materials and had made qualified company officials available. It did neither. TAI did not prepare adequately for verification despite the fact that it had the verification outline for three weeks prior to the start of verification. TAI did not inform the Department of the location of company records and failed to have the appropriate documents and personnel present at verification. As a result, TAI was not able to substantiate its claim that purchase-order date – or any other date – was the correct date of its U.S.

sale. Consequently, the Department was unable to verify that the company had reported the correct universe of sales for purposes of the Department's antidumping margin calculation. TAI did not prepare the sales traces adequately, omitting such crucial documents as sales ledgers and sub-ledgers. TAI did not provide documentation for its U.S. selling expenses such as brokerage and handling, warehousing, and freight. For the foregoing reasons, the Department has determined to use AFA to establish the dumping margin for RSM's sales of subject merchandise in the final determination.

In our Preliminary Determination, we found that TAI and Jiangsu Metals were affiliated with RSM. Since the Preliminary Determination, no information has been submitted on the record that calls into question the affiliation between RSM, Jiangsu Metals, and TAI. Therefore, because RSM and Jiangsu Metals made all of their sales in the United States through their affiliated party, TAI, we have determined to apply total AFA to the sales made by RSM and Jiangsu Metals.

We conducted verification in the PRC of the sales and factors of production of Jiangsu Metals, RSM, and Bada Magnesium, RSM's affiliated supplier. In contrast to TAI's U.S. verification, RSM, Jiangsu Metals, and Bada were prepared for verification. Key personnel were available to explain all the intricacies of their accounting system. All three companies documented promptly all of the requested information concerning their sales transactions and factors of production. Without a verified U.S. sales database, however, the Department is unable to calculate a margin in accordance with section 731 of the Act. Therefore, because RSM and Jiangsu Metals made all of their sales in the United States through their affiliated party, TAI, for the final determination, we have determined to apply total AFA to the sales made by RSM and Jiangsu Metals.

Comment 3: Separate Rate for Jiangsu Metals

The Petitioners contend that the Department's decision in the Preliminary Determination to calculate a separate dumping margin for China National Nonferrous Metals I/E Corp. Jiangsu Branch ("Jiangsu Metals"), RSM's affiliated exporter, reflects a misunderstanding of the law and is contrary to the Department's recent practice. They argue that, in the final determination, the Department should collapse Jiangsu Metals with the other members of the RSM group of companies.

The Petitioners contend that the Department's Preliminary Determination reflects the mistaken view that the Department has no authority under the statute or regulations to collapse affiliated producers and exporters in NME investigations. The Petitioners argue that, on the contrary, the Department has the authority to collapse affiliated NME producers and exporters as evidenced by determinations in several recent cases in which the Department collapsed affiliated NME exporters and producers under 19 CFR 351.401(f) if it determined that there is a significant potential for the manipulation of prices or production if the entities were not collapsed. They cite, among others, Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004), and accompanying Issues and Decision Memorandum at Comment 6.C, and Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002-2003 Administrative Review, 69 FR 65148, 65149 (November 10, 2004). The Petitioners contend further that the CIT affirmed the Department's exercise of authority to collapse

affiliated NME producers and exporters under 19 CFR 351.401(f) as a reasonable interpretation of the statute in Hontex Enterprises Inc. v. United States, 248 F. Supp. 2d 1323 (CIT 2003).

The Petitioners argue that the criteria for collapsing Jiangsu Metals with the other members of the RSM group of companies have been met. They claim that RSM described Jiangsu Metals as a member of the RSM group of companies in its Section A questionnaire response. The Petitioners contend that the Department examined Jiangsu Metals's equity interest in Yunhai Magnesium at verification and reviewed the extent to which the RSM group of companies controls Jiangsu Metals's sales of the subject merchandise.

The Petitioners claim that the following facts from verification indicate that the Department should collapse Jiangsu Metals with the RSM group of companies: (1) the Department found that Jiangsu Metals acts as a sales agent for the RSM group of companies and does not take title to the merchandise or purchase magnesium on its own account; (2) Jiangsu Metals stated that it made all of its magnesium sales to the United States under an agency agreement with RSM; (3) Jiangsu Metals made all of its sales of the subject merchandise to the United States during the POI to TAI, RSM's affiliated reseller in the United States; (4) Jiangsu Metals claims that it has no authority to set prices for sales of the subject merchandise to the United States and Jiangsu Metals explained that it bears no risk of non-payment if the U.S. customer does not pay.

Thus, the Petitioners contend, Jiangsu Metals is an affiliated sales agent for the RSM group of companies, subject to the control of the RSM group of companies, and a potential for the manipulation of pricing absent collapsing exists in this case. Therefore, they argue, the Department should not

calculate a separate dumping margin for Jiangsu Metals but should collapse Jiangsu Metals and the RSM group of companies and calculate one dumping margin applicable to all sales of the affiliated group.

RSM did not respond to this issue.

Department's Position: In the Preliminary Determination, we determined the RSM group of companies and Jiangsu Metals were affiliated under sections 771(33)(E) and (F) of the Act and that TAI and the RSM group of companies were affiliated under sections 771(33)(E) and (F) of the Act. See Preliminary Determination at 59192. There has been no information placed on the record since the Preliminary Determination that contradicts our affiliation determinations. Therefore, for the final determination, we continue to find that RSM, Jiangsu Metals, and TAI affiliated under the statute.

Because we have found that TAI did not cooperate to the best of its ability and have applied AFA to all of TAI's sales of subject merchandise in the United States, we have determined to apply AFA to RSM and Jiangsu Metals which produced and/or exported the subject merchandise to TAI. Given our determination to apply total AFA to these affiliated parties, neither RSM nor Jiangsu is entitled to a separate rate. Therefore, a discussion on the appropriateness of collapsing RSM and Jiangsu is unnecessary for this investigation.

Comment 4: Labor-Rate Factor at Bada Magnesium

RSM states that errors the Department found at verification as it discussed in the memorandum to the file through Laurie Parkhill, Office Director, and Robert Bolling, Program Manager, NME/China

Unit, Office 8, from Laurel LaCivita, Senior Case Analyst and Lilit Astvatsatrian, Case Analyst, Verification of the Factors of Production Reported by Shanxi Wenxi Bada Magnesium Co., Ltd., in the Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China, dated December 20, 2004, are minor and do not appear to be errors. RSM states that the discrepancy found by the Department between the number of workers reported to the Department and number recorded on the daily labor reports stems from the method of calculation rather than an actual error. RSM explains that, if the number of workers on the daily shift reports are added, the actual number of workers will be obtained. RSM further maintains that existing employee turnover explains why the actual number of employees is higher than the average reported by Bada.

The Petitioners did not comment on this issue.

Department's Position: Because we have determined to apply AFA to the RSM companies for the final determination, it is not necessary for the Department to address this issue.

General Issues

Comment 5: Critical Circumstances

The Petitioners argue that the Department should incorporate data for September 2004 in its analysis of whether critical circumstances exist and base its critical-circumstances finding on a seven-month base and comparison period (i.e., August 2003 through February 2004 and March 2004 through September 2004). Citing Zhejiang Native Produce & Animal By-Products I & E Corp. v. United States, Slip Op. 2003-151, at n. 25 (CIT 2003), and H.R. Rep. No. 96-317, 96th Cong., 1st

Sess. at 63 (1979), the Petitioners assert that the critical-circumstances provision of the Act was promulgated "to provide prompt relief to domestic industries suffering from large volumes of, or a surge over a short period of, imports" and was designed to serve as a deterrent to "exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by {Commerce}." The Petitioners argue that the import-surge analysis should focus on a relatively short period of time prior to the suspension of liquidation, citing the Statement of Administrative Action accompanying H.R. 5110, H.R. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994), at 876. They state that the result of an affirmative critical-circumstances determination is to move the effective date for provisional measures – which normally is publication date of the relevant preliminary determination – back by 90 calendar days, citing section 733(d)(2) and (e)(2) of the Act. The Petitioners argue that the effective date of a preliminary determination is central to the critical-circumstances analysis because entries of subject merchandise up to that date are scrutinized for significant changes in import levels and because the remedy specified by the statute turns on the publication date. Accordingly, the Petitioners argue that the Department should examine time periods that terminate as close to the publication date of the preliminary determination as possible to determine whether entries of subject merchandise have surged prior to imposition of provisional measures.

The Petitioners argue that the preliminary critical circumstances determination is inconsistent with the Department's longstanding policy to examine import data available from the petition date through the publication date of the preliminary determination. They argue that the Department's

practice "is to rely upon the longest period for which information is available from the month that the petition was filed through the date of the preliminary determinations," citing 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 (November 28, 2003) ("CTVs"). The Petitioners contend that, in CTVs, the Department identified the effective date, rather than the signature date, when identifying the base and comparison periods and that the Department followed this practice in other cases, citing, among others, 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), and Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China, 63 FR 72255, 72263 (December 31, 1998) ("Mushrooms II"). Specifically, the Petitioners assert that, in Mushrooms II, the preliminary determination was signed on July 27, 1998, but was published in the following month, i.e., August 5, 1998, and that the Department used a seven-month base and comparison period to analyze the existence of critical circumstances including data through July 1998. The Petitioners assert that, to their knowledge, the only case in which the Department followed a different course was in Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710 at 30729 (June 8, 1999) ("SSSS from Germany"), where the Department declined to include data in its critical-circumstances analysis for December 1998 despite a preliminary determination publication date of January 4, 1999. The Petitioners assert that, in

SSSS from Germany, the Department explained its deviation from its standard practice of including all available data through the effective date by stating that the preliminary determination was signed "in the middle of the month of December" (i.e., December 17, 1998). For the reasons stated above, the Petitioners assert that, for the final determination of critical circumstances in this investigation, the Department should use a seven-month base and comparison period by including data through September 2004 in the comparison period and adjusting the base period accordingly.

The Petitioners also assert that, because RSM's January 19, 2005, response to the Department's January 11, 2005, request for shipment data was not verified but has led to a negative critical-circumstances finding, the Department should examine the exporter-specific entry data available to it through CBP to confirm the accuracy of RSM's January 19 response. The Petitioners contend that, if the Department discovers that RSM did have entries during the comparison period, the Department should make a final affirmative critical-circumstances determination for RSM based on application of AFA.

Department's Position: Section 351.206(I) of the Department's regulations defines "relatively short period" as generally the period beginning on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. In the Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606 (February 3, 2005) ("Preliminary Critical Circumstances Determination"), in this case, we explained that our practice is to rely upon the longest period for which information is available between the month that the petition was filed through the date of the preliminary determination to determine whether increases in imports of

the subject merchandise have been "massive." See, e.g., CTVs. In the memorandum from Laurie Parkhill, Office Director, China/NME Unit, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China (the "PRC") - Affirmative Preliminary Determination of Critical Circumstances, dated January 28, 2005 ("Critical Circumstances Memorandum"), we stated:

> We believe that a six-month period is most appropriate as the basis for analysis because using six months captures all data available at the time of the preliminary determination (September 24, 2004) based on the date of the filing of the petition in February 2004. In addition, in general a six-month period properly reflects the "relatively short period" commanded by the statute for determining whether imports have been massive. See section 733(e)(1)(B) of the Act.

Critical Circumstances Memorandum at 5.

The Petitioners have not demonstrated that their approach would yield a different result than the Department's approach in the Preliminary Critical Circumstances Determination. Therefore, we have not made any changes to our preliminary decision in the Preliminary Critical Circumstances Determination with respect to the selection of six-month base and comparison periods.

As discussed in response to Comment 1 above, we have determined to apply AFA to RSM and Jiangsu Metals. As a result, we have not given them separate rates and, consequently, for the purpose of this investigation, they are part of the PRC-wide entity. Therefore, we have revised our critical-circumstances analysis to include imports from RSM and Jiangsu Metals into the United States in the total quantity of U.S. imports from the PRC-wide entity during the base and comparison periods. As a result of this change, we have determined that critical circumstances do not exist with respect to

the PRC-wide entity. See memorandum from Laurel LaCivita, Senior Case Analyst, to Laurie Parkhill, Office Director, AD/CVD Enforcement, Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China (the "PRC") - Affirmative Final Determination of Critical Circumstances, dated February 16, 2005.

Additionally, for this final determination we continue to find that critical circumstances exist for Tianjin and Guangling. Ibid.

Comment 6: Exporter-Producer Combination Rates

The Petitioners contend that, with the publication of Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries, 69 FR 77722 (December 28, 2004), the Department recognized that assigning rates only to NME exporters may hinder the enforcement of the calculated dumping margins. They argue that the Department should assign exporter-producer combination rates to the mandatory respondents in this proceeding. The Petitioners assert that, without a combination rate, producers of subject merchandise will be able to export subject merchandise through exporters that have been assigned a rate lower than the country-wide rate.

The Petitioners maintain further that it is critical that the Department assign a combination rate in this investigation because the mandatory respondents do not account for a majority of the imports of subject merchandise. They argue that, if the mandatory respondents receive a rate lower than the PRC-wide rate, the un-investigated exporters and producers will have an incentive to export subject merchandise through the mandatory respondents. Thus, the Petitioners argue, the Department should assign exporter-producer combination rates to respondents the final determination.

The respondents did not comment on this issue.

Department's position: It is Department's current practice to assign separate rates to NME exporters. See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67317 (November 17, 2004). Therefore, for the purposes of this proceeding we have not assigned exporter-producer combination rates to respondents. While the Department has issued a Federal Register notice requesting comments on a possible new separate-rates policy, no new policy has been put into place at the time of this notice. Accordingly, the Department has not diverged from its stated policy of providing only separate rates to exporters for purposes of this investigation.

Comment 7: Time Period for the Valuation of Pure Magnesium

The Petitioners argue that the Department should use World Trade Atlas ("WTA") Indian import statistics for calendar year 2003 to value pure magnesium. They maintain that the Indian import statistics they included in their August 19, 2004, submission for the POI reflected only exports from the PRC or exports from non-magnesium-producing countries. The Petitioners contend that use of calendar year 2003 would capture imports from magnesium-producing countries such as Australia, Canada, and Russia. They assert that, for example, in Final Results of New Shipper Administrative Review: Heavy Forged Hand Tools from the People's Republic of China, 66 FR 54503 (October 29, 2001), and accompanying Issues and Decision Memorandum. at Comment 1 ("Hand Tools"), the Department adopted a longer data-collection period.

The respondents argue that the Department should not depart from its practice of using Indian import prices for pure magnesium during the POI. They contend that it is irrelevant that many of the imports of pure magnesium into India are from the PRC since there are sufficient remaining imports into India from market-economy suppliers denominated in a market-economy currency with which to determine a valid surrogate value for pure magnesium. The respondents claim that the Petitioners want to use a broader period in order to obtain a higher surrogate value. They argue that Hand Tools does not support the Petitioners' claims because that case involved a 300-percent difference between the POI and non-POI import prices compared to a relatively low difference between POI and non-POI import prices involved in this proceeding.

Department's position: It is the Department's preference for the valuation of inputs to rely on a time period that is contemporaneous with the POI. We agree with the respondents that, in Hand Tools, the price difference between the POI and non-POI import prices was large and, thus, could have been construed as aberrational. In this case, the POI price of pure magnesium we used in the Preliminary Determination was $1,883.78 per metric ton. If we had chosen the full 2003 calendar year, the price would have been $1,914.46 per metric ton. A price difference of 1.6 percent does not suggest that the use of contemporaneous data would require reliance on "aberrational" data. Therefore, for the final determination we have not broadened the valuation period for pure magnesium.

Surrogate Values

Comment 8: Valuation of Pure Magnesium

The Petitioners argue that the Act requires the Department to "determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise…" They claim that the statute requires the Department to value the factors of production for the pure magnesium consumed by the producers of the subject merchandise rather than by valuing the inputs reported by the suppliers of pure magnesium, as was done for the Preliminary Determination. Therefore, the Petitioners contend, the Department should correct this error for the final determination.

The Petitioners cite numerous determinations including Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 68 FR 27530 (May 20, 2003), and accompanying Issues and Decision Memorandum at Comment 8, in which they claim the Department confirmed its practice to assign surrogate values to material inputs that are purchased and introduced directly into the respondent's production process. They argue that the Department should reject the use of the factors of production that the respondent obtained from its affiliated suppliers of pure magnesium unless section 773(c)(1) of the Act applies, where the respondent produces its own upstream material inputs. Therefore, for the final determination, the Petitioners argue that the Department should value pure magnesium for Tianjin using a surrogate value.

According to the Petitioners, the facts before the Department in Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum ("Polyvinyl Alcohol") are very similar

to the facts of this investigation. They maintain that, in Polyvinyl Alcohol, although the respondent argued that the Department was required to use an affiliated supplier's factors of production associated with the production of acetic acid, an upstream input used in production of subject merchandise, the Department rejected all of these arguments because it found that the respondent did not produce the input itself and instead purchased it from an NME supplier.

The Petitioners also argue that the Department rejected application of the intermediate-input methodology for inputs purchased from an affiliated supplier in Final Results of Antidumping Duty Administrative Review: Bulk Aspirin from the People's Republic of China, 68 FR 48338 (August 13, 2003). Therefore, because the circumstances are similar in this investigation, the Petitioners conclude that the Department should apply a surrogate value to pure magnesium for respondents.

The respondents contend that the Department valued pure magnesium in the Preliminary Determination properly by using the factors of production that each respondent's affiliated suppliers reported. They maintain that the Department should have also used such factors of production as facts available in order to value all pure magnesium consumed by the respondents to produce magnesium alloy. They argue that pure magnesium falls within the scope of this investigation and the definition of subject merchandise.

The respondents claim that the Petitioners misrepresent the Department's practice in challenging the Department's valuation of pure magnesium. They state that the Department has not only considered using an intermediate-factors methodology for an input produced by an unaffiliated supplier but has

actually used such methodology. The respondents also state that, if appropriate surrogate-value data is not available for an input, then the factors of production to produce it in the PRC may be used, citing Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke, in Part: Helical Spring Lock Washers from the People's Republic of China, 69 FR 12119 (March 15, 2004), and accompanying Issues and Decision Memorandum, at Comment 4. The respondents contend that the surrogate values for pure magnesium do not represent the best information available.

The respondents maintain that section 773(c)(1) of the Act requires the Department to determine the normal value of the subject merchandise on the basis of the value of the factors of production used in producing the merchandise. They argue further that the term "subject merchandise" means the class of merchandise that is within the scope of the investigation in accordance with section 773(25) of the Act. The respondents explain that both pure and alloy magnesium are in the same class of subject merchandise that is within the scope of the investigation.

Additionally, the respondents contend that the surrogate values for pure magnesium in India are unreliable because India does not produce pure or alloy magnesium. Therefore, they contend, the Indian imports of pure magnesium may not be the type used in the production of magnesium alloy.

The respondents state that the Act requires the Department to value the factors of production for every subject class or kind of merchandise that a producer supplies to a respondent exporter regardless of affiliation. They argue that the Department should use the factors of production reported by the pure magnesium producers affiliated with the respondents' magnesium alloy producers/exporters

for all suppliers of pure magnesium, including those for which the Department did not request factors of production.

The Petitioners state that section 773(c)(1) of the Act prohibits the Department from using the factors of production obtained from suppliers of raw materials. They argue further that the definition of class or kind of merchandise has no bearing on the appropriate factors of production applicable to individual producers of subject merchandise and maintain that the only task is to identify the factors of production which the particular producer/exporter used when producing the subject merchandise. The Petitioners argue that the Department's policy is to value only those material inputs that are introduced directly into production process, citing Polyvinyl Alcohol at Comment 1. They contend the scope of this investigation is limited expressly to alloy magnesium and all forms of pure magnesium are excluded expressly from the scope of the investigation.

Department's position: Because we have determined to apply AFA to RSM, it is not necessary to reach a decision on this issue with respect to RSM's suppliers. Valuation of any surrogate value is irrelevant with respect to any company to which we apply AFA.

The only suppliers of Tianjin that we considered to be integrated producers of subject merchandise for the Preliminary Determination were Shanxi Yinguang Metal Products Co., Ltd. ("Yinguang"), and Shanxi Jiang County Guoli Magnesium Co., Ltd. ("Guoli"). According to 19 CFR 351.408(a) and section 773 of the Act, the Department calculates normal value by valuing the NME producers' factors of production for Yinguang, as discussed below in Comment 14. Because record

evidence demonstrates that Guoli produced pure magnesium during the POI, we have applied an inputs-to-inputs methodology with regard to Guoli's factors of production. This approach is consistent with the Department's practice (See Polyvinyl Alcohol).

Comment 9: Surrogate Value for Dolomite

The respondents argue that the Department should not have used an Indian import price of $168/MT to value dolomite, the dominant raw material used to produce magnesium alloy, when the Department used a surrogate value of $5/MT for dolomite in its recent determinations on primary magnesium and granular magnesium from the PRC. The respondents argue that, in their December 2, 2004, submission, even the Petitioners concede that RSM provides "a variety of sources. . . based on a number of methodologies," which indicate domestic prices of dolomite in India of $5.63/MT and $4.47/MT to $12.30/MT.

The respondents contend that the Department should not value dolomite using the price quote for powdered dolomite submitted in the Petitioners' December 2, 2004, surrogate-value submission. First, The respondents contend, they do not use powdered dolomite to produce the subject merchandise but rather purchase block dolomite, which they must first calcine and crush before it enters into the production process for magnesium metal. Second, they claim, the source of the price quote is not clear because the Petitioners did not include the enquiry in their submission. Thus, the respondents claim that one cannot infer or deduce from the information provided whether the enquiry originated from abroad, for export, or from a Famous Minerals & Chemicals Pvt. Ltd. ("FMC") affiliate. The

respondents also claim that the currency of the quote is not indicated on the quote, the size is specified as 240 or 300 mesh, and the quantity is limited to 40 kg. to 50 kg, whereas RSM alone uses 100,000 MT of block dolomite a year. As a result, they claim, the FMC quote represents dolomite for a very specialized application rather than the material they use to produce magnesium metal. The respondents claim, the surrogate values they provided in their September 7, 2004, submission represent the latest, best available domestic prices in India. They claim that these prices, which range from $4.74/MT to $8.52/MT, were based on quantities of 3,800 MT to 3.3 million tons of dolomite. Thus, the respondents argue, because their surrogate values are based on relatively large quantities of dolomite, they are more representative and reliable than the Petitioners' FMC price quote.

Furthermore, the respondents also argue that the Petitioners based their surrogate value for dolomite on the unit values for dolomite recorded in HTS 2518.10 of the Indian tariff schedule. They contend that this category, which is entitled "{d}olomite, whether or not calcinated or sintered," includes calcined dolomite whereas they reported their respective factors of productions for calcinating dolomite as the first step of the production process. Further, the respondents claim, HTS 2518.10 is a basket category that includes powdered and other forms of dolomite, such as ornamental and structural stone. Further, the respondents argue that the Indian value reflects only 157 tons of imported dolomite compared to the Indian prices based on 3.3 million tons of domestically-produced dolomite.

The respondents disagree with the Petitioners' claim in their November 22, 2004, surrogate-value submission that the Indian import statistics are not aberrational because similar values exist for

imports into the PRC. They contend that the comparison is not valid because the PRC and India may import the same quality or processed form of dolomite that does not represent block dolomite for industrial use. Further, the respondents argue, because the PRC import statistics reflect a quantity of 455 MT of dolomite compared to India's 3.3 million tons of domestic production, the PRC import statistics are also too small to be representative. The respondents argue that, because the Petitioners submitted this information after the verifications in the PRC, such information could not be verified.

Finally, the respondents argue that, although the Department does not consider Russia to be a surrogate country for the PRC in this investigation, the Department can compare the Russian import values for this dolomite basket tariff category with the actual prices paid by the Russian magnesium alloy producers for block dolomite, using information placed on the record in the concurrent investigation of magnesium from Russia. The respondents argue that this comparison will demonstrate that the value for dolomite is a basket category and values are not representative of the actual dolomite which they used.

The Petitioners argue that the Department has a consistent preference for relying on the official import statistics for raw-material surrogate values and assert that they have provided substantial import statistics to value dolomite. They claim that the respondents have not made a compelling argument for the Department to use other sources and maintain that the respondents bear the burden of showing that WTA data are aberrational or distortive. The Petitioners state that the respondents' argument that HTS 2518.10.00 includes powdered dolomite is misleading because, although the respondents describe the

HTS category as "Dolomite, whether or not or sintered," the HTS actually defines the category as "Dolomite not calcined or sintered." The Petitioners maintain that this HTS category matches the dolomite the respondents use in the production of subject merchandise, based on their response.

Further, the Petitioners state that their FMC price quote is an appropriate benchmark or alternative surrogate value. They argue that the mere fact that the price quote does not state its currency simply means that it is a domestic price quote and they maintain that dolomite sold from a warehouse in India is invoiced in Indian rupees. Furthermore, the Petitioners contend that the references to 40 and 50 kilograms on the price quote refer to the size of bags used to hold the powdered dolomite, not the total volume of the price quote. The Petitioners also argue that the respondents did not report the type and grade of dolomite they used as an input in their suppliers' production process. Therefore, if the respondents use block dolomite, it is unclear whether they reported the material, labor, and energy necessary to transform block dolomite into powdered dolomite which, the Petitioners contend, is another reason not to employ an intermediate-input methodology. The Petitioners state that the Department, if it adopts such a methodology, should use the FMC price quote to value the dolomite.

The Petitioners also state that 455 MT imported during the POI and an additional 555 MT imported immediately after the POI do not support the claim by the respondents of aberrational or *de minimis* quantities. Additionally, the Petitioners state that, because the respondents did not report any market-economy purchases of dolomite, the Department cannot use such purchases to value dolomite.

They contend further that the Department should not use proprietary data regarding prices paid by Russian magnesium alloy producers in this investigation simply because Russian magnesium alloy producers are subject to a concurrent investigation.

Finally, the Petitioners contend that the Department should reject the respondents' alternative dolomite prices. They argue that, in Final Determination of Sales at Less Than Fair Value: Barium Carbonate from the People's Republic of China, 68 FR 46577 (August 6, 2003) ("Barium Carbonate"), and accompanying Issues and Decision Memorandum, at Comment 1C, the Department considered and rejected the data sources which the respondents suggest for this investigation.

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

66 FR 20634 (April 24, 2001), and the accompanying Issues and Decision Memorandum at Comment 2.

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

In the Preliminary Determination, we valued dolomite using Indian import statistics under HTS category 2518.10. In the final determination of this investigation, we have also valued dolomite using Indian import statistics. This issue is only applicable to our calculation of magnesium for Guoli, a supplier of Tianjin. We find that the Indian import statistics present the best available surrogate value because the value is publicly available, product-specific, tax-exclusive, contemporaneous, and representative of dolomite. The actual title of dolomite is "Dolomite not calcined or sintered."

The respondents have not provided a compelling argument for using alternative sources. First, the respondents did not place information on the record describing the technical specifications of the type of dolomite that they used to produce the subject merchandise. See RSM's June 21, 2004, response at 8 and Tianjin's June 21, 2004, response at exhibit D2-1. Therefore, we have no basis on which to evaluate the respondents' claim that HTS 2518.10, which we used as the source of the

surrogate value in the Preliminary Determination, included merchandise that was not similar to the merchandise they used to produce the subject merchandise. Second, their September 13, 2004, joint response provided a surrogate value for dolomite using HTS category 2518.10.

Additionally, we are unable to use the information the respondents provided in their December 2, 2004, surrogate-value submission because they did not include a narrative explaining how the Department should use the information they provided in thirteen exhibits in the calculation of a surrogate value. Six of these exhibits concern the valuation of dolomite. Exhibits 1, 7, and 8 provide statistics from various agencies of the government of India showing the value of dolomite and other minerals. None of the exhibits identifies whether the information represents regional or country wide values, how the reported information was obtained, or whether the values represent sales values or the cost of producing the merchandise. Although there is insufficient information to conclude that any of these exhibits represent the same sources we considered and disregarded in Barium Carbonate, we find that we cannot use them for the purposes of determining the surrogate value of dolomite in this investigation for the same reasons.

Finally, the respondents' December 2, 2004, joint surrogate-value submission also contains two exhibits which present a surrogate value based on a price quote. Exhibit 4 provides a portion of the Department's memorandum to the file from The Team through Shawn Thompson, Program Manager, AD/CVD Enforcement Group I, Office 2, Granular Pure Magnesium from the People's Republic of China (PRC), Preliminary Determination Factors Valuation Memorandum, dated April 23, 2001

("Granular Magnesium"). In that memorandum, the Department explained that it used an October 2000 price obtained from Tata International Limited ("Tata"), an Indian producer of ferro-alloys, as the basis of a surrogate value. Exhibit 9 provides a price quote through the e-mail correspondence of counsel for the respondents and Mr. A C Bose, Advisor (Regulatory Affairs) at Tata. An examination of the record reveals that, in each instance, the information the respondents provided does not identify the technical specification of the merchandise, the quantity upon which the price quote was based, or whether the price includes freight or other fees. Also, the price quote from Tata does not identify the basis upon which the quote was made or whether the price is publicly available or whether it represents price-list prices, historical prices granted, prices offered, or an average of prices during the two-year time period for which the prices were in effect. The price quote the Department used in Granular Magnesium also does not identify the quality or specificity of the data.

Therefore, for the foregoing reasons, we have used the import statistics in the WTA for the purposes of determining the surrogate value of dolomite in the calculation of normal value in the final determination.

Comment 10: Ferrosilicon, No. 2 Flux, Fluorite Powder, Magnesium and Barium Chlorides, Bituminous Coal

The respondents state that the Department should use the Metal Bulletin's POI average Indian ferrosilicon price of $0.62/kg or the price they offered in their November 22, 2004, surrogate-value submission to value ferrosilicon. Alternatively, the respondents argue that the Department could use the

Steel Authority of India Ltd ("SAIL") price they provided in their September 7, 2004, submission to value ferrosilicon for the final determination.

The respondents refer to their September 14, 2004, submission in which, at exhibit 11, they indicated that No. 2 flux consists of 0.46 kg of magnesium chloride, 0.49 kg of potassium chloride, and 0.08 kg of barium chloride.

The respondents claim that they have certified that the fluorite powder they used to produce the subject merchandise consists of 97 percent calcium fluorite and, thus, should be classified under HTS 2529.21.00 with the description of "Fluorspar Cntng by Wt Less Than 97 Percent" rather than 2529.22.00 which the Department used in the Preliminary Determination.

As for magnesium and barium chlorides, the respondents state that the Department should use the Chemical Weekly prices of $140 and $440, respectively, included in their September 7, 2004, submission. Also, they argue, they use bituminous coal in the production of magnesium and not steam coal which the Department used for valuation purposes in the Preliminary Determination. While agreeing with the substitution of bituminous coal value with steam coal value, the respondents argue that the Department has used a steam coal price from the International Energy Agency ("IEA") (i.e., "Steam Coal for Industry") and the Department should use the IEA "Steam Coal for Industry" price in its final determination, citing Preliminary Determinations of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination for Certain Tissue Paper Products, 69 FR 56407 (September 21, 2004).

With respect to ferrosilicon, the Petitioners argue that the respondents have not provided any compelling evidence as to why the Department should not use the WTA data. According to the Petitioners, the Metal Bulletin data appears to reflect import prices without any reference to a source while WTA data shows that India imports ferrosilicon from a variety of countries and that the largest import source is the PRC. The Petitioners state that, if the Metal Bulletin data reflect import prices, they are likely to be substantially influenced by the value of imports from the PRC or other NME countries and should not be used, particularly when reliable WTA data are readily available.

The Petitioners also argue that the respondents do not provide any legal authority or factual bases for their assertion that SAIL data is more representative than the WTA data the Department used in the Preliminary Determination. They maintain that the SAIL data share the same shortcomings the Department identified in Granular Magnesium, at Comment 6, where the Department found the SAIL data lacked "any details about whether the inputs were bought domestically or imported, "and found it impossible to determine "from which countries the inputs may have been imported." In addition, the Petitioners contend, the SAIL data precedes the POI and are not contemporaneous. The Petitioners argue that the Department should ignore the SAIL-based value and rely on the WTA data.

The Petitioners claim that the respondents did not provide surrogate-value information or an HTS classification for No. 2 flux anywhere on the record. Therefore, the Petitioners contend that the Department should continue to value No. 2 flux based on the WTA data for HTS subheading 2827.31.00.

The Petitioners argue that the respondents have shown no reason that the Department should consider WTA data to be aberrational and that they have no explanation as to why the Chemical Weekly prices would be more appropriate with respect to chlorides. The Petitioners argue that HTS 2827.31.00, which the Department used in the Preliminary Determination, covers "chlorides of magnesium," including magnesium chloride.

The Petitioners reject the respondents' argument to substitute bituminous coal for steam coal when valuing coal for the final determination due to the high surrogate value because they do not provide an explanation why the price for bituminous coal price is more accurate. The Petitioners claim that the WTA data the Department used in the Preliminary Determination is superior to the respondents' IEA data because it is contemporaneous with the POI and should not be rejected based on the respondents' high-price allegation.

Department's position: With respect to ferrosilicon, we have determined to use WTA data for valuation purposes for the final determination. While the respondents have provided a price from Metal Bulletin for ferrosilicon, it is not clear whether the price from this publication is an internal or domestic Indian price because the respondents did not provide a clear explanation in their submission as to the source.

Additionally, we have determined not to use the ferrosilicon price from SAIL that the respondents have offered as an alternative to Metal Bulletin because the SAIL price is not contemporaneous with the POI.

We have continued to value No. 2 flux using the same surrogate value as we used for the Preliminary Determination because the respondents did not provide an alternative value.

Additionally, the RSM companies describe RSM's fluorite powder as containing less than 97 percent calcium and, thus, attribute it to HTS number 2529.22.00. The valuation of RSM's fluorite powder is unnecessary due to our decision to apply to RSM in the final determination. Tianjin did not provide any data to state the type of fluorite powder it used. Thus, for the final determination, we have continued to use WTA data in valuing fluorite powder for Tianjin.

Because only RSM used chlorides in its production of subject merchandise and we have determined to apply total AFA to RSM for the final determination, it is unnecessary to address the issue of valuation of magnesium and barium chloride.

Comment 11: Electricity and Chemicals/Gases

The respondents urge the Department to use the surrogate values for electricity they provided in their September 7, 2004, and November 22, 2004, submissions.

They also argue that sulfur dioxide, nitrogen, and argon gases assist the manufacturing process of magnesium but do not enter the end product physically and, thus, consider them to be part of factory overhead, citing Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9154, 9160 (February 28, 1997). The respondents argue further that the use of HTS 2804.30 of the Indian tariff schedule which the Petitioners suggest to value

nitrogen gas is erroneous because it covers all nitrogen gas rather than just standard industrial gas which the respondents. The respondents claim that the Department should reject the use of nitrogen and argon import prices and use Indian nitrogen and argon gas price quotes.

The respondents claim that the Department should use the import data for sulfur dioxide they submitted on September 7, 2004, rather than WTA data. Finally, the respondents contend, the Department should use the Indian sulfuric-acid prices from Chemical Weekly which they submitted on September 7, 2004.

Citing the respondents' September 7, 2004, submission, the Petitioners argue that the respondents provided no support for their assertion that the IEA data with respect to electricity are not representative. The Petitioners state that the Department should continue to use the 2003 IEA report for calculating the surrogate value for electricity for the final determination.

The Petitioners claim that the respondents' rationale for not using nitrogen and argon gases is not correct. Citing the respondents' November 22, 2004, submission, the Petitioners claim that the respondents argued that these gases were not used in Granular Magnesium. The Petitioners argue that the Department did not use the values in that case because nitrogen and argon gases were never identified as factors of production.

The Petitioners claim that the RSM companies' and Tianjin's reference to their September 7, 2004, surrogate-value submission for corrected use of sulfur dioxide is not clear. The Petitioners claim

that the respondents agreed in their September 7, 2004, joint submission to the use of official Indian import statistics as a reliable source for sulfur dioxide surrogate values. With regard to sulfuric acid, the Petitioners contend, the RSM companies' and Tianjin's assertion that the Department should use prices reported in Chemical Weekly rather than official Indian statistics is inappropriate. The Petitioners remark that the respondents do not offer any reasoning why the Department should use Chemical Weekly data. Further, the Petitioners assert that the respondents' data do not indicate whether the price reflects import or domestic prices. The Petitioners argue that the Department should not use Indian import prices because imports from the PRC represent the largest volume of imported sulfuric acid in India.

Department's position: We have determined that for electricity it is appropriate to use the IEA surrogate-value data as we did for the Preliminary Determination. We find that the respondents did not explain sufficiently how they derived their proposed surrogate value in their September 7, 2004, submission and the IEA data represent the best available information.

We have also determined that the RSM companies' and Tianjin's reference to Granular Magnesium is incorrect because in that case we did not value nitrogen or argon. Because only RSM used these gases in its production of magnesium and we have not calculated a margin for RSM because we have applied facts available, this issue is moot.

For the final determination, we have continued to value sulfur dioxide for Tianjin using WTA data because respondents provided no record evidence indicating why we should make a change.

With respect to sulfuric acid, we have continued to use the value we used in the Preliminary Determination because Indian import statistics are contemporaneous with the POI and the Respondents did not provide any rationale for using Chemical Weekly instead of the WTA.

Comment 12: Use of Zinc Financial Statements Instead of Aluminum for Determination of the Overhead Ratios

The respondents state that in the past the Department found zinc comparable to magnesium and used zinc producers' data over aluminum producers for purpose of calculating surrogate financial ratios, citing Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001) ("Russian Magnesium"). They claim that magnesium production is more comparable to that of zinc than aluminum based on the production process. The respondents also state that magnesium end-use is more comparable to zinc than aluminum because both are used for die-casting. The respondents contend further that the financial statements of Indian zinc producers are usable, citing the Petitioners' December 2, 2004, submission. The respondents argue that the Petitioners seek to include more profitable aluminum companies which will lead to overstated profits. According to the respondents, both of the zinc-producing companies in the Petitioners' December 2, 2004, submission reflect companies with viable operations and usable financial statements.

The respondents claim that the financial statements of the surrogate Indian aluminum companies indicate abnormally high overhead costs and that fiscal year 2003-2004 was not consistent with the

companies' normal experience. The respondents state that Indian aluminum producers were experiencing record high profit during a time of high factory overhead because they benefitted from the Indian government's import protection. Therefore, the respondents contend, the Department should not use the financial statements of the Indian aluminum producers.

The Petitioners argue that, in Granular Magnesium, the Department reached its conclusion after considering the relative comparability of magnesium to aluminum, zinc, copper, and lead, and it found that aluminum is the most comparable to magnesium. The Petitioners refute further the respondents' argument that aluminum and magnesium have different production methods (electrolytic and thermal processes, respectively). The Petitioners argue that zinc also has two processes (refining and electrolytic) and it is not clear from the record whether Indian zinc producers use the refining or electrolytic process. They also state that the two zinc producers' financial statements provided by the respondents are "sick" companies and, citing Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, 68 FR 7765 (February 18, 2003), and the accompanying Issues and Decision Memorandum at Comment 4, the Department does not use such companies in its calculations.

The Petitioners state further that the respondents did not provide complete, audited financial statements for the Indian zinc producers and that the financial statements they provided are not contemporaneous with the POI.

The Petitioners argue that the financial statements for Indian aluminum producers are the preferable source of data because they are contemporaneous and complete. According to the Petitioners, the Department does not have a policy of rejecting the use of financial data for companies that are too profitable. The Petitioners claim that the article "Aluminum prospects seem promising" cited by the respondents emphasizes positive developments for the Indian aluminum industry, including the potential growth in domestic consumption of aluminum, strength of demand for the product, and low costs of production. Further, the Petitioners state that import tariffs on aluminum products are declining which has a direct impact on profits.

Department's position: In the Preliminary Determination, we determined aluminum to be the product most comparable to magnesium for the purposes of determining surrogate financial ratios and used Indian aluminum producers' financial statements to derive such ratios. The Department also found aluminum producers to be most comparable to magnesium producers in previous cases. See Russian Magnesium at Comment 1. Additionally, the Department has determined in a policy bulletin "... that 'comparable merchandise' comprised magnesium and aluminum because both are 'light metals' in terms of weight, are electricity-intensive products, are produced using an electrolytic process, and share some common end-uses." See Import Administration Bulletin No. 04.1 (March 1, 2004). Further, the financial statements of the Indian zinc producers are not complete and audited financial statements, and they are not contemporaneous with the POI. Therefore, for the final determination, we have continued

to use the financial statements of the Indian aluminum producers to calculate surrogate financial ratios for the purpose of calculating normal value.

Comment 13: Particle-board Pallets, Profit, and Marine Insurance

The respondents state that the unit measure of the WTA price for pallets is pieces whereas the unit measure of RSM's factors of production is kilograms. The respondents maintain that the Department must convert the WTA price to kilograms before using it in the margin calculations. The respondents also claim that they inflated the WTA price erroneously by a factor of 100 in their September 7, 2004, surrogate-value submission.

With respect to profit, the respondents argue that in the Preliminary Determination the Department calculated the surrogate profit rate correctly as a percentage of the total cost of manufacturing plus SG&A expenses in its calculation of normal value. The respondents argue that the Department overstated the profit in one part of its calculations by neglecting to include the SG&A component of the equation. The respondents state that the calculation of the profit rate as a percentage of the total cost of manufacturing plus SG&A is a long-standing Department practice which the Department did not apply in the Preliminary Determination.

The respondents also argue that the marine insurance rate the Department used in the Preliminary Determination is not representative of India and not consistent with the Department's past findings with regard to marine insurance. The Petitioners argue that the respondents provided no

reason why the marine insurance rate the Department used is not representative. They state that the rate the respondents suggest is based on June 1998 marine insurance data which is not contemporaneous with the POI.

Department's position: As particle-board pallets were not part of Tianjin's factors of production, and we have determined to apply facts available to RSM, it is unnecessary to address the conversion factor for particle-board pallets.

We agree with the respondents that we need to correct the calculation of the surrogate profit rate to ensure that the profit represents a percentage of TCOM, SG&A, and interest expense. Therefore, for the final determination, we have recalculated the profit, accordingly. See Tianjin Final Analysis Memorandum, at 1.

The respondents have not provided record evidence indicating that the marine-insurance rate we used in our Preliminary Determination is flawed. Therefore, we will make no changes to our calculations for the final determination.

Issues with Respect to Tianjin

Comment 14: Valuation of Pure Magnesium for Yinguang

The Petitioners claim that Tianjin's five unaffiliated suppliers purchased pure magnesium from affiliated or non-affiliated NME suppliers. Specifically, they contend, Tianyuan Minqiang Magnesium

Alloy Ltd., Shanxi Province Wenxi County Shengyu Light Alloy Products Co., Ltd., Hebi Coal Industry (Group) Corporation Limited Fuda Magnesium Factory, and Yinguang purchased, rather than produced, all of the pure magnesium they consumed in the production of the subject merchandise. Additionally, the Petitioners contend, the record is not clear whether Guoli purchased or produced pure magnesium used to produce the subject merchandise.

The Petitioners recognize that Tianjin reported Yinguang's portion of self-produced pure magnesium at the Yangyu magnesium workshop ("Yangyu") which was consumed in the production of subject merchandise. They argue that Yangyu is effectively an affiliated supplier of pure magnesium because the relationship between Yangyu and Yinguang is similar to the relationship between Yinguang and Wenxi County Yinguang Zhengfan Magnesium Co., Ltd. ("Zhengfan"), and Wenxi County Yinguang Huasheng Magnesium Industry Co., Ltd. ("Huasheng"), two of Yinguang's affiliated producers of pure magnesium whose financial statements like those of Yinguang and Yangyu are consolidated with the Yinguang Group. The Petitioners contend that Yinguang reported that it purchased pure magnesium from Zhengfan and Huasheng which are located separately and not integrated with the alloying process.

The Petitioners state that at its verification of Yangyu the Department found that Yangyu was located in another town in Shanxi province. They state that the Department learned at verification that Yinguang and Yangyu have separate financial statements and are not consolidated with each other but rather with Shanxi Wenxi Magnesium Industry (Group) Co., Ltd. Further, the Petitioners argue,

Yinguang's two other affiliated suppliers also prepare separate financial statements that are consolidated with the Yinguang Group. Thus, they claim, Yinguang treats annual financial reporting of Huasheng and Zhengfan in the same manner as Yangyu.

The Petitioners claim that at the verification the Department examined Yinguang's purchases of pure magnesium during December 2003 and traced such purchases from Yinguang's material activity book to the voucher for magnesium purchases, thereby establishing that Yangyu is an affiliated supplier rather than an integrated part of Yinguang. Furthermore, the Petitioners argue that Yinguang misstated its claim with respect to the production of pure magnesium and its claim that Yangyu is a workshop for Yinguang. Thus, they argue, for the final determination the Department should assign a surrogate value to all pure magnesium consumed by Yinguang in the production of the subject merchandise.

The Petitioners argue further that the data collected by the Department at the Yinguang verification is not identical to data in Tianjin's factors of production response. They state that the chart Yinguang provided comparing the factor-consumption rates from the verification exhibits with those reported in the questionnaire response shows that the consumption data are very similar to each other and contend that the Department must correct Tianjin's improper factors for pure magnesium with respect to Yinguang. The Petitioners argue that the Department should use the factor-consumption rates from the verification exhibits to calculate normal value for Tianjin for the final determination.

The Petitioners maintain that the Department has the appropriate information available to calculate normal value for Guoli using the surrogate value for pure magnesium rather than using Guoli's

upstream inputs. They contend that, because factors of production data is available for both Yinguang and Guoli, the Department should calculate normal value based on the quantity of pure magnesium and other inputs consumed as Tianjin reported in the factors of production responses described in the Department's verification report and verification report.

Tianjin claims that Yinguang's alloying workshop and Yangyu's Magnesium Workshop are the same company. It states that the two workshops share the same business license, indicating that they are one legal entity. Also, Tianjin argues that a single company can have separate cost or profit centers and financial statements. Tianjin maintains that a single entity may have "purchases" between its separate cost centers solely for accounting and management purposes.

Department's position: We have determined that the use of a factors-of-production analysis is inappropriate to value Yinguang's purchases of pure magnesium from Yangyu because, although affiliated, the Yangyu magnesium workshop is a separate entity from Yinguang Metal's alloying workshop.

According to 19 CFR. 351.408(a) and section 773 of the Act, the Department will calculate normal value by valuing NME producers' factors of production. For purposes of the final determination, we consider Yinguang, the producer of subject merchandise (magnesium metal), to be a purchaser of pure magnesium and, thus, not a fully integrated producer of subject merchandise for the following reasons: (1) Yinguang's suppliers' financial statements are not consolidated with Yinguang; (2) no supplier of pure magnesium is integrated with Yinguang; (3) Yinguang purchases all of its supply

of pure magnesium. We find that the use of an "inputs-to-inputs" analysis is inappropriate because the record shows that these two entities are separate entities and do not constitute a fully integrated producer.

In this case, Yangyu's financial statements are not consolidated with those of the Yinguang alloying workshop. See Translation of Financial Statements of Magnesium Workshop of Yinguang Metal in October 12, 2004, third supplemental questionnaire response, at Exhibit S3 A2. Instead, Yangyu's financial statements are consolidated with Yinguang Group's financial statements in the same manner as Yinguang's two other affiliated suppliers of pure magnesium. All of Yangyu's financial statements are prepared by Shanxi Yinguang Product Co., Ltd., Magnesium Workshop without any indication of consolidation with Yinguang Metal. Furthermore, only at the verification of Yinguang's alloying workshop did the Department discover that Yangyu is located at a location different from that reported previously. See Memorandum to the file from Laurel LaCivita, Senior Case Analyst, and Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, NME/China Unit, Office 8, Verification of the Factors of Production Reported by Shanxi Wenxi Yinguang Magnesium Industry Group in the Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China ("Yinguang Verification Report" Summary of findings, page 1. At verification, we discovered that the actual distance from Yinguang to Yangyu is significantly different from the distance Tianjin reported in its June 21, 2004, submission. At verification we examined two different sets of records of raw materials and labor for Yinguang and Yangyu. See verification exhibits 11-13. The record indicates

that Yinguang purchases pure magnesium from Yangyu as it would from any affiliated or unaffiliated party. See Yinguang Verification Report, at 9-10. As a result, we agree with the Petitioners that Yinguang and Yangyu are separate, albeit affiliated, entities. Consistent with our practice concerning the use of an inputs-to-inputs analysis, for the final determination, we have assigned a surrogate value to pure magnesium consumed by Yinguang. See Tianjin Final Analysis Memorandum at 2.

Comment 15: Yinguang's Consumption Rate for Dolomite

The Petitioners claim that the Department's verification report reveals that the Department was unable to verify the consumption rate for dolomite at Yinguang. Specifically, they contend, the report shows that Yangyu had no records for dolomite production and, thus, Yangyu could not report the quantity of dolomite required for the production of pure magnesium accurately. Therefore, the Petitioners argue, the consumption rate Tianjin reported for dolomite is unverified.

Tianjin disagrees with the Petitioners' claim that Yinguang does not have the inventory records to determine dolomite consumption. Tianjin contends that verification exhibits 11G and 11H provide the accounting ledgers for withdrawals of dolomite for consumption. It asserts that these accounting ledgers served as the basis for its reported dolomite information. Therefore, Tianjin argues that the Department was able to verify the reported consumption rate for dolomite.

Department's Position: Because we have determined that Yangyu is Yinguang's affiliated supplier for purposes of this investigation, we have based the value for pure magnesium on the surrogate-value

information rather than on a valuation of the inputs used in the production of pure magnesium. See our response to Comment 14. Therefore, it is not necessary to address Yinguang's consumption rate for dolomite.

Comment 16: Supplier Distance for Yangyu

Tianjin contends that Yinguang's magnesium and alloying workshops constitute one single factory. Therefore, it argues, the freight between them is included in factory overhead and the distance between them is not a supplier distance to be reported by Yinguang.

The Petitioners did not comment on this issue.

Department's position: We find that Yinguang should have reported Yangyu's actual distance to Yinguang in its supplier distances exhibit. See our response to Comment 14. Yinguang verification exhibit 8 and Revised Exhibit D8-3 of Tianjin's June 21, 2004, factors of production questionnaire response lists the Yangyu magnesium workshop as a supplier of pure magnesium along with its other two affiliated suppliers. This exhibit also lists actual transport distances for the two affiliated suppliers but not the actual distance for the Yangyu magnesium workshop. Accordingly, for the final determination we have used the actual supplier distance from Yangyu we obtained at verification as part of our calculation of normal value. See Tianjin Final Analysis Memorandum, at 2-3.

Comment 17: Valuation of Pure Magnesium for Guoli

The Petitioners contend that the Department did not verify Guoli's reported factors of production and the record contains no corroborating evidence supporting Tianjin's assertion that Guoli produces pure magnesium. They claim that, pursuant to section 773 of the Act, the Department is required to value only the material inputs "introduced directly into the respondent's production process" even if certain inputs are purchased from affiliates. They state that the foregoing discussion made clear that Yinguang did not produce the pure magnesium it required for production of the subject merchandise provided to Tianjin. The Petitioners argue further that the only exception to this statutory mandate is where a respondent produces upstream inputs itself. They argue that the Department should ignore all of Tianjin's factors of production for upstream inputs allegedly obtained from affiliated and unaffiliated suppliers and instead calculate normal value by assigning surrogate values to pure-magnesium inputs.

Tianjin did not comment on this issue.

Department's position: In the Preliminary Determination, we included Guoli's inputs into the production of pure magnesium in our calculation of normal value. Exhibit D G of Tianjin's August 13, 2004, questionnaire response explains that Guoli has a magnesium workshop which produces pure magnesium. Record evidence indicates that Guoli is a fully integrated producer of subject merchandise which produces pure magnesium. See Exhibit D G2-1 of Tianjin's August 13, 2004, questionnaire response. Therefore, we have not assigned a surrogate value to pure magnesium produced in Guoli's

magnesium workshop. Rather, according to section 351.408(a) and section 773 of the Act, the Department will calculate normal value by valuing NME producers' factors of production. Because record evidence indicates that Guoli produced pure magnesium during the POI, for the final determination we have applied an inputs-to-inputs methodology with regard to Guoli's factors of production.

RECOMMENDATION

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

AGREE_____ DISAGREE_____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date