A-570-905
Investigation
POI: 10/1/05 - 3/31/06
**Public Document**
IA/NME/9: MSH/PW

April 10, 2007

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

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

**SUBJECT:** Investigation of Certain Polyester Staple Fiber from the People's Republic of China: Issues and Decision Memorandum

**SUMMARY:**

We have analyzed the comments submitted in the investigation of certain polyester staple fiber ("PSF") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from the Preliminary Determination. See Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 71 FR 77373 (December 26, 2006) ("Preliminary Determination"). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty review for which we received comments on the Preliminary Determination:

**General Comments:**

**Comment 1:** **Zeroing/Targeted Dumping**
**Comment 2:** **Adjustments to Market Economy Purchases-Foreign Inland Freight**
**Comment 3:** **Adjustments to Market Economy Purchases-Foreign Brokerage & Handling**
**Comment 4:** **Adjustments to Market Economy Purchases-Application of PRC Duties**

**Surrogate Value Comments:**

**Comment 5:** **Surrogate Value for Brokerage & Handling**

**Comment 6:** **Surrogate Value for Waste Inputs**[1]
**Comment 7:** **Surrogate Value for Polymer Polyester Staple Fiber Waste**
**Comment 8:** **Surrogate Value for Lump, Popcorn or X-ray Film**
**Comment 9:** **Surrogate Value for Scrap Waste By-Product**
**Comment 10:** **Surrogate Value for Labor**
**Comment 11:** **Surrogate Value for Alkali Flake**
**Comment 12:** **Calculation of Surrogate Financial Ratios**
**Comment 13:** **General Export Subsidy Countries and Market Economy Inputs**

**Company Specific Comments - Cixi Jiangnan:**
**Comment 14:** **Cixi Jiangnan's Sales to Trading Companies**
**Comment 15:** **Cixi Jiangnan's International Freight for Its U.S. Sales**
**Comment 16:** **Cixi Jiangnan's Indirect Labor**
**Comment 17:** **Insurance for Cixi's Market Economy Purchases**

**Company Specific Comments - Far Eastern:**
**Comment 18:** **Far Eastern's Critical Circumstances**
**Comment 19:** **Far Eastern's Reported Scrap Offsets**
**Comment 20:** **Far Eastern's Bank Charges**
**Comment 21:** **Far Eastern's Market Economy Price for Ethylene Glycol**
**Comment 22:** **Far Eastern's Market Economy Price Adjustments for Purified Terephthalic Acid ("PTA")**
**Comment 23:** **Far Eastern's Brokerage and Handling Expenses**

**Company Specific Comments - Ningbo Dafa:**
**Comment 24:** **Ningbo Dafa's Consumption of Oils**
**Comment 25:** **Ningbo Dafa's Market Economy Purchases and Factor Usage of PET Flake**

**BACKGROUND:**

The merchandise covered by this investigation is certain PSF from the PRC as described in the "Scope of the Investigation" section in the Preliminary Determination. The period of investigation ("POI") is October 1, 2005 through March 31, 2006. Between January 8 and February 16, 2007, the Department conducted verifications of all three mandatory Respondents and three separate rate Respondents in the PRC.[2]

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[1] Respondents' waste inputs include PSF waste, Poly waste, scrap, fiber waste, white popcorn, white lump, green lump, green popcorn, x-ray film, PP waste and PET waste.

[2] See Memorandum to the File, from Paul Walker, Senior Case Analyst, through Alex Villanueva, Program Manager, Investigation of Certain Polyester Staple Fiber from the People's Republic of China: Verification of Hangzhou Huachuang Co. Ltd., dated March 1, 2007 ("Hangzhou Verification Report"); Memorandum to the File, from Paul Walker, Senior Case Analyst, through Alex Villanueva, Program Manager, Investigation of Certain

In accordance with section 351.309(c)(ii) of the Department's regulations, we invited parties to comment on our Preliminary Determination. On March 15, 2007, Petitioners[3], Insituform Technologies, Inc. ("ITI"), Ashley Furniture Industries, Inc. ("Ashley"), Fibertex Corporation ("Fibertex")[4], Far Eastern, Cixi Jiangnan and Ningbo Dafa filed case briefs. On March 20, 2007, Petitioners, Far Eastern, Cixi Jiangnan and Ningbo Dafa filed rebuttal briefs.

The specific calculation changes for Cixi Jiangnan Chemical Fiber Co., Ltd. ("Cixi Jiangnan") can be found in Analysis for the Final Determination of Certain Polyester Staple Fiber from the People's Republic of China: Cixi Jiangnan Chemical Fiber Co., Ltd. ("Cixi Jiangnan Analysis Memo"), dated April 10, 2007. The specific calculation changes for Far Eastern Industries (Shanghai) Ltd. ("Far Eastern") can be found in Analysis for the Final Determination of Certain Polyester Staple Fiber from the People's Republic of China: Far Eastern Industries (Shanghai) Ltd. ("Far Eastern Analysis Memo"), dated April 10, 2007. The specific calculation changes for Ningbo Dafa Chemical Fiber Co., Ltd. ("Ningbo Dafa") can be found in Analysis for the Final Determination of Certain Polyester Staple Fiber from the People's Republic of China: Ningbo Dafa Chemical Fiber Co., Ltd. ("Ningbo Dafa Analysis Memo"), dated April 10, 2007.

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Polyester Staple Fiber from the People's Republic of China: Verification of Ningbo Dafa Chemical Fiber Co., Ltd., dated March 1, 2007 ("Ningbo Dafa Verification Report"); Memorandum to the File, from Bobby Wong and Nina Horgan, Case Analysts, through Alex Villanueva, Program Manager, Investigation of Certain Polyester Staple Fiber from the People's Republic of China: Verification of Zhaoqing Tifo New Fiber Co., Ltd., dated March 5, 2007 ("Tifo Verification Report"); Memorandum to the File, from Paul Walker, Senior Case Analyst, through Alex Villanueva, Program Manager, Investigation of Certain Polyester Staple Fiber from the People's Republic of China: Verification of Jiaxing Fuda Chemical Fibre Factory, dated March 7, 2007("Fuda Verification Report"); Memorandum to the File, from Michael Holton, Senior Case Analyst, through Alex Villanueva, Certain Polyester Staple Fiber from the People's Republic of China ("PRC"): Verification of Sales and Factors of Production of Far Eastern Industries (Shanghai) Ltd. and Far Eastern Polychem (Bermuda) Industries Ltd., dated March 7, 2007 ("Far Eastern Verification Report"); and Memorandum to the File, from Michael Holton, Senior Case Analyst, through Alex Villanueva, Certain Polyester Staple Fiber from the People's Republic of China ("PRC"): Verification of Sales and Factors of Production of Cixi Jiangnan Chemical Fiber Co. Ltd., dated March 9, 2007 ("Cixi Jiangnan Verification Report").

[3] Dak Americas LLC, Nan Ya Plastics Corporation America, and Wellman, Inc.

[4] ITI, Ashley and Fibertex are interested parties who are U.S. importers of PSF. Ashley and Fibertex submitted a joint case brief.

**DISCUSSION OF THE ISSUES:**

## I. General Issues

### Comment 1: Zeroing/Targeted Dumping[5]

Petitioners note that the Department has indicated in this proceeding that it intends to change its longstanding policy of setting non-dumped sales to zero (i.e., "zeroing") when calculating dumping margins for purposes of its final determination. See the Department's December 28, 2006 Letter To The File at 1; see also Antidumping Proceedings: Calculations of the Weighted-Average Dumping Margin During in Antidumping Investigations; Final Modification, 71 FR 77722 (December 27, 2006) ("Zeroing Final Determination"). Petitioners argue that, other than to say that it is implementing the World Trade Organization's ("WTO") decision in United States - Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing"), WT/DC294/AB/R (October 31, 2005), the Department has provided no discussion or explanation for its policy change or whether this new policy is consistent with U.S. law. Moreover, Petitioners claim that public statements by the Executive Branch, including the U.S. Trade Representative, make clear that the Administration not only disagrees with the decision, but has found the WTO's decision to be "devoid of legal merit." See U.S. Statements at the WTO Dispute Settlement Body Meeting, conducted on February 20, 2007.

Petitioners argue that if the Executive Branch does not believe that U.S. law authorizes the administering authority to calculate dumping margins without zeroing or if, at a minimum, it cannot explain this policy but nevertheless implements a new policy that is not authorized under U.S. law simply and solely to comply with the WTO's decision, then the Executive Branch will be engaging in unconstitutional legislative action. According to Petitioners, the U.S. Constitution separates the powers of the government and has given legislative power to Congress, not the Executive Branch. See U.S. Const., Art. 1, § 1 ("all legislative powers" are in "a Congress"). Petitioners assert that, based upon the basic separation-of-powers principle, any changes to the U.S. antidumping law should be made by Congress, not the Executive Branch, in response to WTO decisions. Accordingly, Petitioners argue that to ensure that the Department does not improperly usurp the legislative function, the Department should not implement the WTO's decision, but should defer any decision in this regard to Congress so that Congress can make any necessary changes to the antidumping law.

Citing several U.S. Court of International Trade ("CIT") rulings, Petitioners contend that a U.S. government agency must provide a rational basis for its decisions so that parties to the proceeding can understand the reasoning behind it and then either accept the new decision or challenge it, which the Petitioners argue, the Department has not done. See Ta Chen Stainless

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[5] We note that Petitioners raised this comment in the case brief for Ningbo Dafa and not in Petitioners' other case briefs. However, because the language of the argument does not specifically limit itself to Ningbo Dafa, we have considered it to be applicable to all Respondents.

Steel Pipe v. United States, 25 CIT 1349, 1351 (2001) ("Ta Chen"); NTN Bearing Corp. of America v United States, 295 F.3d 1263, 1269 (Fed. Cir. 2002) ("NTN"); British Steel PLC v. United States, 127 F.3d 1471, 1475 (Fed. Cir. 1997) ("British Steel").

Petitioners assert that in Activated Carbon, the Department did not attempt to explain why its new zeroing policy was consistent with U.S. law, but instead sought to justify its actions by noting that the Courts have not found that zeroing was mandated by the statute. See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007) ("Activated Carbon") at 9510. Petitioners argue that the Courts have consistently upheld the Department's zeroing practice and that zeroing "legitimately combats the problem of masked dumping." See Timken Co. v. United States, 354 F.3d 1334, 1343 (Fed. Cir. 2004) ("Timken"). Petitioners contend that a decision not to zero, however, does not combat the problem of masked dumping. Petitioners assert that the Department has disregarded the U.S. Judicial Branch's decisions in favor of the WTO's erroneous decision. Therefore, Petitioners argue, the Department should not apply a new zeroing policy because it violates U.S. law and must, at a minimum, explain why the Department has adopted this new policy so that all parties can understand the reasoning behind its decision.

Petitioners argue that should the Department go forward with a new zeroing policy in future cases, it would be unlawful to apply this policy retroactively to this case. Petitioners assert that in Activated Carbon the Department sought to justify the retroactive application of its new policy by noting that the Zeroing Preliminary Determination was not "a final announcement of the Department's final modification." See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation, 71 FR 11189 (March 6, 2006) ("Zeroing Preliminary Determination"). Petitioners argue that this notice provided a clear and unambiguous statement that the Department would only apply a new zeroing policy to cases initiated after the "final" decision. Id. Petitioners charge that their right to due process was violated when the Department reneged on this statement. Moreover, Petitioners contend that they have a right to ensure that the dumping margin is calculated accurately in a manner that would not mask Respondents' dumping. Thus, Petitioners claim the retroactive change of eliminating zeroing will result in a final decision that masks dumping.

Moreover, Petitioners argue that the Department's retroactive change to its zeroing policy requires that Petitioners make a targeted dumping allegation if Petitioners believe that the new zeroing methodology will not adequately compensate for masked dumping. Petitioners contend that if the Department imposes its new zeroing policy, and rejects Petitioners' targeted dumping allegations, the Department has thereby, increased Petitioners' liability and has imposed sanctions on Petitioners for not raising the targeted dumping allegation earlier in this proceeding. Petitioners assert that prejudice is suffered when margins are lower than they would have otherwise been if the Department would have used the regular zeroing methodology, or if the Department would have used a targeted dumping methodology. According to Petitioners, retroactivity is not favored in the law and, therefore, "congressional enactments and administrative rules will not be constructed to have retroactive effect unless their language requires this result." See Princess Cruises, Inc. v. United States, 397 F.3d 1358, 1362 (Fed. Cir.

2005), quoting Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988). Therefore, given this general presumption against retroactivity, and given the clear prejudice that this decision has on Petitioners in this investigation, Petitioners assert that the Department should not apply its new policy to this investigation.

Petitioners note that in Activated Carbon the Department stated that it would not consider evidence related to an untimely allegation of targeted dumping. See Activated Carbon, 72 FR at 9511. Petitioners also note that their targeted dumping allegation was not made within the regulatory time frame of this investigation. See Petitioners' February 21, 2007, submission at 6. Petitioners argue that this is a regulatory, not a statutory deadline, and that the Department has the discretion to accept a targeted dumping allegation and could even self-initiate a targeted dumping analysis. In addition, Petitioners assert that prior to the Department's December 28, 2006, letter, Petitioners believed that targeted dumping would be properly taken into account by the Department's existing zeroing methodology however, once this longstanding methodology was discarded, Petitioners argue, a targeted dumping analysis became relevant. Moreover, Petitioners argue that zeroing and targeted dumping are alternative calculation methodologies to one another. Petitioners contend that if a party was not satisfied with one methodology it would raise a claim that the other methodology should be used because the two methodologies cannot be used simultaneously, but only in the alternative.[6] Thus, for purposes of the final determination, Petitioners urge the Department to calculate the final margins using a targeted dumping methodology.

Cixi Jiangnan and Ningbo Dafa note that the Department recently terminated its practice of zeroing negative margins in ongoing investigations, conclusively rejecting legal and equitable arguments made by Petitioners. See Activated Carbon at Comment 4. According to Cixi Jiangnan and Ningbo Dafa, the Department defended its conclusion to implement the WTO decision in banning zeroing in ongoing investigations and deemed that the case law cited by petitioners was inapposite and their reasoning unpersuasive. Id. Thus, Cixi Jiangnan and Ningbo Dafa argue that the Department should terminate zeroing for the purposes of this investigation. Cixi Jiangnan and Ningbo Dafa contend that despite significant differences in the operations and accounting of the mandatory recycling respondents, price/cost ratios do not generate significant margins per CONNUM in either direction (indicating the global market competitiveness of this industry), therefore, Petitioners argue, the termination of zeroing will have a great impact on the outcome.

In their rebuttal brief, Cixi Jiangnan and Ningbo Dafa argue that the Department should reject Petitioners' claim as the Department is simply bringing its zeroing practice into international compliance. Moreover, Cixi Jiangnan argues that the Department should not commence Petitioners' request for a targeted dumping investigation of Cixi Jiangnan since it first appeared

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[6] Petitioners claim that the interconnection between these two methodologies helps explain why targeted dumping allegations in the past have been non-existent, save one test case, and is further confirmed by the Courts' decisions that have found that zeroing properly protects against masked dumping. See Timken, 354 F.3d at1343.

in Petitioners' case brief concerning Ningbo Dafa. Therefore, Cixi Jiangnan argues that Petitioners' request to continue zeroing and for a targeted dumping investigation should be denied.

**Department's Position:**

As we recently concluded in Activated Carbon, we determine that it is appropriate to apply the methodology described in the Zeroing Final Determination to this investigation. We disagree with Petitioners' argument that the Department cannot apply its new methodology to investigations pending as of February 22, 2007. Petitioners rely heavily on the Department's statements in the Zeroing Preliminary Determination that it intended to apply the modification to new investigations initiated on or after the effective date of the Zeroing Final Determination. Section 123(g)(1)(c) of the Uruguay Round Agreements Act ("URAA"), however, provides that prior to implementing a WTO report finding "a regulation or practice of a department or agency of the United States is inconsistent with any Uruguay Round agreement," the Department will "provide an opportunity for public comment by publishing in the Federal Register the proposed modification and the explanation for the modification." See section 123(g)(1)(c) of the URAA (19 U.S.C. 3533(g)(1)(c)). Consequently, on March 6, 2006, in response to the WTO dispute settlement panel report in United States-Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") (WT/DS294), the Department published a notice in the Federal Register proposing that it would no longer make average-to-average comparisons in investigations without providing offsets for non-dumped comparisons, and requesting comments on the proposal. See Zeroing Preliminary Determination, 71 FR 11189. The Zeroing Preliminary Determination was not a final announcement of the Department's final modification.

As the Department explained in the Zeroing Final Determination, section 123 of the URAA states that a final modification cannot go into effect before the end of the 60-day period after the consultations described in section 123(g)(1)(E) begin, unless the President determines that an earlier effective date is in the national interest. See section 123(g)(1)(c) of the URAA (19 U.S.C. 3533(g)(1)(c)). However, section 123 of the URAA does not specify whether final modifications must apply only to new segments of proceedings initiated after the effective date. Nor does the Statement of Administrative Action ("SAA") provide more specific guidance on this issue. See SAA accompanying the URAA, H.R. Doc 103-316, Vol.1, 103d Cong. at 1021 (1994). By contrast, section 129 of the URAA provides that any new determination made under section 129 to implement a WTO report applies to entries made on or after the date on which USTR instructs Commerce to implement the new determination. See section 129(c)(1) of the URAA (19 U.S.C. 3538(c)(1)). As the Department previously noted, section 123 of the URAA uses the term "go into effect," which does not preclude applying a modification in an ongoing proceeding, even if it affects entries made prior to the announcement of that change. See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69196 (November 15, 2002). Indeed, the Department has on occasion adopted a change in statutory interpretation that applied to all segments pending as of the date of the change. See, e.g., Basis for Normal Value When Foreign Market Sales Are Below Cost, Policy Bulletin 98.1 (February 23, 1998);

Treatment of Inventory Carrying Cost in Constructed Value, Policy Bulletin 94.1 (March 25, 1994). Accordingly, the Department has the authority to apply a new statutory interpretation to pending investigations.

In this regard, the U.S. Court of Appeals for the Federal Circuit has held that where the Department has the authority to interpret the statute, the Department may occasionally reassess its policies, and apply a new policy to a pending case. See SKF USA, Inc. v. United States, 254 F.3d 1022, 1029-30 (Fed. Cir. 2001). Here, the Federal Circuit has repeatedly held that the Department's treatment of non-dumped sales is not required by statute, but is instead a result of the Department's interpretation of the statute. See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005); Timken 354 F.3d at 1341-42. As the Federal Circuit has also repeatedly held, the Department may reasonably change its interpretation of the statute at any time, so long as it provides an explanation for that change. See NTN, 295 F.3d 1263, 1269 (Fed. Cir. 2002); British Steel, 127 F.3d 1471, 1475 (Fed. Cir. 1997). The reasons for the Department's change are well explained in the December 27, 2006, notice and the Department continues to stand by those reasons.

Moreover, this is not an unlawful retroactive application of a new rule. A rule does not operate retroactively merely because it is applied to conduct occurring before the rule's existence, or it upsets expectations based on a prior rule. See Landgraf v. USI Film Prods., 511 U.S. 244, 269 (1994). Rather, to have retroactive effect, the rule must impair the rights a party possessed when it acted, increase liability for past conduct, or impose new duties or sanctions with respect to transactions that have already occurred. Id. at 280.

First, the application of the Department's Zeroing Final Determination does not impair any rights Petitioners possessed at the time of the filing of the petition. As stated above, the Department's treatment of non-dumped sales was not a statutory requirement, but a result of the Department's interpretation of the statute. Because the Department could reasonably change its interpretation of the statute, Petitioners cannot be said to have any right to have the weighted-average dumping margin calculated without the provision of offsets. Second, the Department's change in statutory interpretation does not increase any party's liability for past conduct. Finally, the change in statutory interpretation does not impose any new duties or sanctions on past transactions. Accordingly, the application of the Zeroing Final Determination to this investigation is not an impermissible retroactive application of a new rule.

We also disagree with Petitioners' argument that they are prejudiced because, had they been aware that the Department intended to apply the new methodology to this proceeding, Petitioners would have raised different arguments during the course of this investigation, including a timely allegation of targeted dumping under section 777A(d)(1)(B) of the Tariff Act of 1930, as amended ("the Act"). With regard to a targeted dumping allegation, we note that section 777A(d)(1)(B) of the Act is an independent provision of the antidumping law, unrelated to the Department's modification of its methodology of calculating weighted-average dumping margins. Indeed, Petitioners were in no way prevented from making a targeted dumping

allegation in a timely manner, even if they believed the Department's modified methodology would not apply to pending investigations. The Department's regulations state that an allegation of targeted dumping must be made "no later than 30 days before the scheduled date of the preliminary determination." See 19 C.F.R. 351.301(d)(5). Thus, as Petitioners concede, this deadline has passed and Petitioners are precluded from making a targeted dumping allegation. Therefore, the Department will not consider evidence related to an untimely allegation of targeted dumping. Because Petitioners were not prevented from making a timely allegation of targeted dumping, but rather chose not to make such an allegation, the Zeroing Final Determination is not prejudicial.

Hence, for the reasons stated above, we determine that it is proper under U.S. law to apply the Department's Zeroing Final Determination to this investigation.

**Comment 2: Adjustments to Market Economy Purchases-Foreign Inland Freight**

Petitioners argue that market economy inputs whose prices are reported on a CFR/CNF (cost and freight but no insurance), or CIF (cost, insurance and freight) basis, the Department must add a cost of delivery (truck freight) from the Chinese port to the factory.

Respondents did not comment on this issue.

**Department's Position**:

It is the Department's practice not to adjust market economy purchases for inland freight if the market economy purchase price is a delivered price. See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 12762 (March 19, 2007) at Comment 8. In this investigation there is record evidence, based on delivery terms, that foreign inland freight is not included in the market economy purchase price. Thus, we have added foreign inland freight based on a surrogate value for truck freight to the market economy purchases.

**Comment 3: Adjustments to Market Economy Purchases -Foreign Brokerage & Handling**

Petitioners assert that for market economy inputs whose prices are reported on a CFR/CNF or CIF basis, the cost of foreign brokerage and handling ("B&H") at the Chinese port to the factory must be calculated based on a surrogate value. According to Petitioners, the Department should use the surrogate value from the Preliminary Determination.

Ningbo Dafa asserts that the Department did not verify freight or B&H related to market economy purchases and that the Department has not investigated B&H on imports in India or afforded parties an opportunity to submit surrogate value comments on this issue. Ningbo Dafa argues that if the Department includes B&H charges it may be double counting them as they may be included in the reported freight expenses. Further, Ningbo Dafa argues that other fees and

taxes may not apply and, therefore, the Department should decline to make this adjustment for any Respondent.

Far Eastern argues that its B&H charges are in its freight expense, which the Department verified. Specifically, Far Eastern argues that the cost of loading and unloading were included in its freight expense that Far Eastern reported to the Department. In addition, Far Eastern argues that Petitioners are unable to point to any record evidence showing that they incurred brokerage and handling, and any addition of the costs would result in double counting these expenses.

**Department's Position**:

Petitioners argue that the Department should increase the cost of Respondents' market economy purchases imported into the PRC by the amount of the B&H charges Respondents would incur for such imports in order to reflect actual cost for the imported input. In a recent determination, the Department added B&H charges to certain inputs because brokerage and handling expenses were incurred in the importation of these inputs. See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 13239 (March 21, 2007) at Comment 6. In that case, during verification, the Department found that the Respondent did not report B&H expenses incurred on imported inputs. In this case, there is no record evidence that Respondents incurred B&H expenses on imported inputs. Absent information to the contrary, the Department cannot adjust the market economy purchase prices for B&H. Therefore, we have not added B&H charges to any market economy purchases.

**Comment 4: Adjustments to Market Economy Purchases-Application of PRC Duties**

Petitioners argue the Department discovered at verification that Ningbo Dafa made claims to the PRC government for duty exemptions on some of its purchases from market economies. In addition, Petitioners note that Ningbo Dafa admitted that many of its inventory slips did not have duty-free codes because, "while Ningbo Dafa is awaiting receipt of a code from PRC Customs, gross flake is imported without a code and Ningbo Dafa is required to pay the duty for those shipments of gross flake." See Ningbo Dafa's Verification Report at 13. Petitioners assert that Ningbo Dafa's claim that its inventory slips evidence the waiver of duties is not credible. According to Petitioners, customs authorities around the world require that importers exercise a reasonable level of care, and maintain specific records regarding importations, precisely to document claims related to taxation and duty drawback. Therefore, Petitioners argue that, given that Ningbo Dafa admitted it paid duties on many material imports and could not document the exemption for remaining imports, the Department should apply the Chinese import duty for polyethylene terephthalate ("PET") flake to all market economy prices paid, following the findings in NSK. See NSK Ltd. v. United States, Slip Op. 05-1296 (Fed. Cir. 2007).

According to Petitioners, the WTO-compliant PRC duties are levied on market economy values, and, should therefore, be included on market economy purchases. Petitioners contend that just as

all costs between the customer and factory, including insurance, freight and duties, are accounted for in calculating the net U.S. price, costs including duties must be included to arrive at the delivered value of market inputs for the PRC factory. Petitioners claim that for all PET flake entering under Harmonized Tariff Schedule ("HTS") 3915.90.42 (waste parings scrap of PET bottles), the tariff was 9.7 percent in 2005 and 8.6 percent in 2006. See Petitioners' Letter to the Department Submitting Surrogate Values November 9, 2006, at 25 and Attachment 43.

Petitioners argue that Far Eastern reported that it "uses two regimes" for imported raw materials, either importing "free of import duties" on condition that the finished product will be exported or "normal trade," where Far Eastern pays the import duties. Petitioners contend that there is no indication on the record that Far Eastern imported its market economy inputs duty-free.

Ningbo Dafa argues that the Department should not add import duties that were exempted for raw materials used in the production of PSF for export. Far Eastern argues that it pays no import duties for inputs used for its exported products under China's inward processing trade procedures, similar to duty drawback. Far Eastern also argues that the Department verified the inward processing procedure showing that it did not pay customs duties.

**Department's Position**:

We note that record evidence shows that PRC entities would pay for import duties on their market economy inputs. With respect to Ningbo Dafa, at verification, we examined its purchases of PET flake, its only market economy purchased input for the months of December 2005 and January 2006. Specifically, we reviewed vouchers, inventory-in slips, ledgers and other financial documents. Ningbo Dafa produces PSF in two separate plants; one for export products and one for domestic products. See Ningo Dafa's October 12, 2006, submission at 4. During verification we examined documents for the plant that produces products for export. We noted that in the months of December 2005 and January 2006, all of the inventory and other financial documents contained a PRC customs duty exemption code showing that Ningbo Dafa did not pay duties for their PET flake imports. See Ningbo Dafa's Verification Report, at Exhibits 34 & 37. There is no evidence on the record that Ningbo Dafa incurred the import duties on its PET flake purchases and, therefore, we will not adjust Ningbo Dafa's PET flake value for import duties.

With respect to Far Eastern, we note that it provided evidence during verification that its market economy purchases, when used for exported product, were not assessed the import duty. See Far Eastern Verification Report, Exhibits CC and GG. Therefore, we will not adjust Far Eastern's market economy purchases for import duties.

**Comment 5: Surrogate Value for Brokerage & Handling**

Respondents note that for the Preliminary Determination the Department valued B&H by using a simple average of the publicly summarized B&H expenses reported in the U.S. sales listings in

Essar Steel Ltd.'s ("Essar") February 28, 2005, submission in the antidumping duty review of certain hot-rolled carbon steel flat products from India, and the March 9, 2004, submission from Pidilite Industries Ltd. ("Pidilite") in the antidumping duty investigation of carbazole violet pigment 23 from India. However, Respondents also note that in recent cases the Department did not include Pidilite in its calculation of B&H, but instead used an average of Essar and the submission from AgroDutch Industries Limited ("Agro Dutch"), dated May 24, 2005, in the antidumping duty administrative review of certain preserved mushrooms from India.[7] See Cixi Jiangnan and Ningbo Dafa's February 5, 2007, submissions at Appendix 1. Respondents argue that Pidilite is less contemporaneous than other B&H data on the record and the Pidilite B&H value is not specific to PSF.

According to Cixi Jiangnan and Ningbo Dafa, Indian customs B&H is charged on a container basis. Id. Cixi Jiangnan and Ningbo Dafa argue that B&H for a 40 foot container in India incurs the least amount of cost on a per unit basis and that partial containers incur the greatest cost. Id. Cixi Jiangnan and Ningbo Dafa contend that Indian exporters seeking to export partial containers ship their merchandise to the port, where the port is responsible for consolidating containers with port labor at added costs to the exporter and that partial loads might cost that exporter less overall than a full container, but the per kilogram cost of each shipment is indeed much higher. Id. Cixi Jiangnan and Ningbo Dafa assert that the Pidilite B&H surrogate value was based on very small quantities, ranging from 450 kilograms to 1,764 kilograms, which were shipped in partial containers, making the surrogate value (rupees per kilogram) extremely high. Cixi Jiangnan and Ningbo Dafa note that the Pidilite average B&H charge was 6.97 rupees per kilogram, almost 39 times higher than the B&H charge for Essar. Cixi Jiangnan and Ningbo Dafa contend that their questionnaire responses indicate that they shipped PSF in fully loaded 40-foot containers (weighing approximately 20,000 kilograms) and that they were charged B&H expenses on a container basis, which the Department verified. Cixi Jiangnan and Ningbo Dafa assert that Essar and Agro Dutch's shipments were also made in fully loaded containers. Therefore, Cixi Jiangnan and Ningbo Dafa argue that given the information on the record concerning B&H expenses in India, the Department should reject Pidilite as a source for B&H. Cixi Jiangnan and Ningbo Dafa, as well as Far Eastern, argue that the Department should use contemporaneous B&H values which are more specific to PSF, such as an average of Essar, Agro Dutch and Kejriwal.[8]

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[7] Respondents placed surrogate value memorandums on the record of this investigation from the following cases: Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) ("Lined Paper"); Activated Carbon; Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Reviews and Notice of Partial Rescission, 72 FR 06201 (Feb. 9, 2007) ("Bedroom Furniture"); and Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review, 72 FR 10689 (March 9, 2007) ("Vietnamese Shrimp").

[8] Respondents note that they have placed on the record of this review many affidavits and price quotes which corroborates the Essar, Agro Dutch and Kejriwal B&H surrogate values (and to demonstrate that Pidilite was aberrant). See the Respondents' February 5, 2007 submission, see also Far Eastern's February 5, 2007 submission.

Petitioners argue that the Pidilite data are not significantly outdated and are not aberrational. Petitioners argue that contemporaneity is only one of the criteria the Department will examine in selecting surrogate values. According to Petitioners, in past cases the Department has determined that specificity and/or representativeness are more critical than contemporaneity. Petitioners assert that the Courts have upheld the Department's right to judge differing factors when selecting surrogate values. See Hangzhou Spring Washer Co., Ltd. v. United States, Slip Op. 05-80 at 23-24 (July 6, 2005) (since neither the statute nor the regulations speak to the issue of contemporaneity versus specificity, and case law had not delineated a bright line to rule on the matter, the Department has the statutory authority to give greater weight to one over the other).

Petitioners assert that a careful review of the container loads of Cixi Jiangnan, Far Eastern and Ningbo Dafa show that Respondents ship PSF in partially filled containers. Petitioners argue that because the Pidilite data are representative of the Respondents' actual POI commercial activities in terms of economies of scale, the Department should include the Pidilite data in any calculation for the B&H surrogate value. In addition, Petitioners argue that the Agro Dutch data are based on a single sample calculation for only one sales observation of 13 metric tons. According to Petitioners, it cannot be known how representative this single sample is of the B&H experience of Agro Dutch. Petitioners claim that the Department generally prefers broad categories of data over one sample source of data and thus, should not include Agro Dutch in the B&H surrogate value. Therefore, Petitioners argue that the Department should value B&H by averaging the Pidilite, Essar and Kejriwal data.

In rebuttal, Cixi Jiangnan and Ningbo Dafa argue that the B&H price quotes placed on the record by Far Eastern are specific to Far Eastern and should not be used for Cixi Jiangnan and Ningbo Dafa.[9] Cixi Jiangnan and Ningbo Dafa reiterate their argument that the Department should use a simple average of the values from Essar Steel, Agro Dutch and Kejirwal to value B&H.

**Department's Position:**

The Department's practice when selecting the "best available information" for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are publicly available, product-specific, tax-exclusive and contemporaneous with the POI. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision Memorandum, at Comment 2 ("PRC Canvas"); see also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006) and accompanying Issues and Decision Memorandum at Comment 3A. The Department undertakes its analysis of valuing the factors of production ("FOPs") on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) and

[9] We note that Far Eastern did not argue that B&H should be valued using the price quotes it placed on the record.

accompanying Issues and Decision Memorandum, at Comment 1 ("Glycine"). There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input. See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) at Surrogate Value Information - Introduction.

The Department's preference would be to use an Indian brokerage and handling value specific to PSF. However, as there is no acceptable B&H value that is specific to PSF brokerage and handling, the Department must evaluate the data without consideration of this factor to determine the best surrogate value. However, since there are no PSF-specific brokerage and handling values on the record, the Department finds, when considering the quality and specificity of the data on the record, that using a simple average of Essar, Agro Dutch and Kejirwal values achieves the most representative value. Using an average of these three values represents the broad spectrum of values that are available for a wide range of products and minimizes the potential distortions that might arise from a single price source. Given that all B&H surrogate values on the record are from public versions of data submitted in other antidumping duty proceedings, we find that they are all equally publicly available. See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision Memorandum at Comment 2. With respect to contemporaneity, however, we find that the data from Pidilite is less contemporaneous than the B&H data from Essar Steel, Agro Dutch and Kejirwal. Therefore, we will only include the B&H data from Essar Steel, Agro Dutch and Kejirwal in our calculation of the surrogate B&H expense because they represent the best available information on the record.

**Comment 6: Surrogate Value for Waste Inputs[10]**

Far Eastern explains that in the Preliminary Determination the Department erroneously included finished PSF (HTS 5503.20.00 - Staple Fibres of Polyester not crd/cmbd) to value its Poly waste, PSF waste and scrap by-product. Far Eastern claims that the use of the three separate HTS[11] categories is not supported by the Department's standard practice to use: (1) an average non-export value; (2) most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive information for the surrogate value. See, e.g., Activated Carbon, 72 FR 9508 (March 2, 2007) at Comment 16. Far Eastern also contends that the Department's standard practice is to consider the quality, specificity and contemporaneity of the data. See Notice of Final Results of

[10] The Department notes that there are several different types of waste inputs used by Respondents. These inputs include PSF waste, Poly waste, scrap, fiber waste, white popcorn, white lump, green lump, green popcorn, x-ray film, PP waste and PET waste, all of which, except x-ray film, are wastes generated during the production of PSF or other polyester material. For a visual description of the various wastes, see Cixi Jiangnan Verification, Exhibit ZZ.

[11] HTS 3915.90.90 (Waste Parings & Scrap of other Plastic NES), 3915.90.42 (Waste Parings Scrap of PET Bottles) and 5503.20.00 (Staple Fibres of Polyester not crd/cmbd).

Antidumping Duty New Shipper Review: Honey from the People's Republic of China, 68 FR 62053 (October 31, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

Cixi Jiangnan argues that its fiber waste is less valuable than the bottle flake it uses because its intrinsic viscosity ("IV") is significantly lower than the bottle flake. Moreover, Cixi Jiangnan argues that PET waste experiences a loss in IV of at least .03 with each processing, which is why the popcorn has a lower IV value than the bottle flake. See Cixi Jiangnan's Surrogate Value submission at Exhibit 3 (February 5, 2007) (Scheirs, Chaper. 4, p. 135) ("{A} polymer with an initial IV of 1.05 may lose 0.07 IV units while a polymer of IV 0.5 will generally lose only 0.03."). Given this significant drop in IV and the need to dedicate energy and labor to process the fiber waste into popcorn, Cixi Jiangnan argues that the Department should not use the bottle flake value to value its waste inputs. Cixi Jiangnan argues that the lower prices of its fiber waste, bottle flakes, and popcorn waste are confirmed by both its market purchases of bottle flake and the Indian WTA value for PET bottle.

Furthermore, Respondents argue that they established that finished PSF would never be used as an input in regenerated PSF production because the IV is too low and finished PSF has a market value tied to completely different end uses such as "fiber for fill." Respondents argue that the cost of finished PSF in no way informs the price of fiber waste on the market; cost alone does not equal price. See, e.g., Affidavit of R. Kenney at ¶ 22 (February 5, 2007 submission, at Attachment 1) ("Kenney Affidavit").

Respondents argue that the Department's preliminary methodology to use finished PSF, PET Bottle, and Plastic Scrap to value all waste was not explained and is not supported by the record. Cixi Jiangnan asserts that the fiber waste it purchases is not subject merchandise and the Indian HTS for finished PSF is not specific to its inputs.

Respondents argue that any assumption that fiber waste, lump, or popcorn is further processed than the PET bottle flakes and must have a higher market value is without record support. Respondents argue that its Kenney Affidavit explains that "the waste value is generally valued at zero and any re-use or income from its sale is a variance contribution to margin." See Respondents' February 5, 2007, submission, at Attachment 1, ¶26. Given the lower IV, Respondents argue that the need for further processing, and issues of color contamination raised by introducing this waste into production dominated by PET bottle flakes, the market price of these materials shipped to India has nothing to do with the value of finished PSF fiber for fill and only a relationship as an inferior input as compared to bottle flake.

Cixi Jiangnan argues that Polymer Recycling: Science, Technology and Application, by John Scheirs explains how IV is a critical factor for the valuation of raw materials intended for re-utilization in the production of regenerated/recycled PSF. See Cixi Jiangnan and Ningbo Dafa's February 5, 2007 submissions, at Exhibit 3. Cixi Jiangnan also argues that the book also demonstrates that the PET bottle flakes, which have higher IV, are better raw materials for PSF production than popcorn, lump, fiber waste, and x-ray film, which have been further processed

and thus have lower IV. Cixi Jiangnan argues that it could not even theoretically make PSF solely out of the other PET waste materials such as popcorn, lumps or x-ray film pieces.

Cixi Jiangnan and Ningbo Dafa complain that it is unreasonable to value intermediate polyester polymer waste at the mid-point between PET bottles (the basic unprocessed recycling material) and finished PSF (the most processed recycling material), and object to the inclusion of the finished PSF import value HTS category as a component of the preliminary calculation mainly because Respondents' waste fiber input is not subject merchandise.

ITI argues that the Department should determine the dumping margins as accurately as possible by not including the HTS number for finished PSF in its surrogate value for waste. ITI argues that the use of the finished PSF in the Preliminary Determination was contrary to the Department's practice and court precedent. ITI argues that finished PSF is not the most product-specific HTS for Respondents' waste inputs.

Petitioners argue that the Department's preliminary determination surrogate value for waste was consistent with Respondents' actual experiences. Petitioners contend that the Department's preliminary surrogate value for polyester waste properly averaged three separate benchmarks; (1) non-PET plastic scrap under HTS 3915.90.90; (2) PET bottles under HTS 3915.90.42 and; (3) finished PSF under HTS 5503.20, resulting in an average value of 31.92 rupees per kilogram, or US$712 per metric ton. Petitioners argue that this value is extremely close to market benchmarks for polyester waste materials, and therefore it accurately captures the surrogate costs. Petitioners contend, however, that the Department should exclude the surrogate value (Rs. 11.24/kg.) for non-PET HTS category 3915.90.90, to derive a more accurate calculation for Far Eastern. Petitioners also contend that it is more accurate to exclude HTS 3915.90.90 because it was confirmed at verification that Far Eastern's raw material inputs were overwhelmingly from end-stage manufacturing of finished PSF made from virgin petrochemicals.

Petitioners contend that inclusion of finished PSF as one of three values to obtain an average surrogate value is reasonable. Petitioners allege that the finished PSF value is reasonable because virgin PSF waste fibers, i.e., damaged or slightly off-spec virgin PSF fibers before or after crimping and before or after drying, are sold as waste fibers. Petitioners explain that Cixi Jiangnan has no supporting documentation to support the claim that none of its fiber waste purchased was subject merchandise.

Petitioners also contend that Respondents' argument that they or any recycling or regenerated production do not use finished PSF is based on the careful wording of their expert witness. See Cixi Jiangnan February 5, 2007, Polyester Expert Testimony Letter at Attachment 1. Petitioners claim it would have been more accurate for the expert to explain that it is unlikely for "any recycling or regenerated producer" to use its own finished PSF. Petitioners further rebut Respondents' argument that they do not use finished PSF in the production process, by claiming that Cixi Jiangnan and Ningbo Dafa purchase fiber waste inputs from outside parties – specifically virgin producers – to obtain high-grade, virgin polymer fiber waste.

Petitioners assert that Far Eastern's verification confirmed that a very significant amount of Far Eastern's waste product is sold to recyclers like Cixi Jiangnan and Ningbo Dafa, particularly where (as in Far Eastern's case) the waste is (1) comprised of virgin polymer and (2) white in color. Petitioners also claim that Far Eastern confirmed that the majority of the recyclable scrap is not spun polymer, but actual PSF fibers that are rejected as finished product and sold as waste to recyclers after the spinning stage (i.e., in the fiber take-up, crimping and drying stages of production). See Far Eastern Verification Report at 12-13. According to Petitioners, these findings are critical and confirm the use of semi-finished or finished PSF fibers in recycled/regenerated operations.

Petitioners further claim that Cixi Jiangnan, Ningbo Dafa and all recyclers, however, purchase virgin polyester waste from outside sources precisely because it is quality material and there is no IV problem. Petitioners argue that both Cixi Jiangnan and Ningbo Dafa fail to explain that manufacturers can and do optimize waste use by adjusting viscosity, particularly for waste comprised of virgin polymer. Petitioners reject Far Eastern's claim that no virgin producer would purchase finished PSF to be used as an input to produce additional PSF. Petitioners claim that Far Eastern does not need to purchase fiber waste because it has its own supply of finished non-siliconized PSF that comprises ten percent of total fiber waste that it re-introduced from its own factory floor. Petitioners also contend that Ningbo Dafa reported in its section D questionnaire response and supplemental questionnaire that it obtains internally recycled fiber waste at the end of the production cycle, which it then converts. See Ningbo Dafa's December 5, 2006, submission, at 17.

Finally, Petitioners contend that the significant volumes of virgin polyester waste recycled by Far Eastern and additional amounts of regenerated PET-based waste recycled by Respondents are fabricated from waste PSF fibers obtained at the end of the production process. Therefore, Petitioners argue that the Department should continue to include a surrogate value for finished PSF for its surrogate of recycled inputs.

Petitioners argue that Indian regulations for cost accounting require that polyester production, including PSF, should be valued at the cost of production up to the previous stage (such as polymer waste at spinnerets or PSF fibers). See Petitioners' February 15, 2007, Surrogate Value Rebuttal submission, at Attachment 7. Thus, Petitioners allege, if a polymer lump or batch of fibers is used as raw material for a new batch of PSF, the cost should reflect those costs incurred to the point at which it became a recyclable by-product. Furthermore, Petitioners contend that the Indian Excise duty law also recognizes that polyester waste created as a by-product in the manufacturing process is a real manufactured good and should be taxed accordingly. See Petitioners' February 15, 2007, Surrogate Value Rebuttal submission, at Attachment 8.

**Department's Position:**

We find that our Preliminary Determination to average HTS 3915.90.90, 3915.90.42 and 5503.20.00[12] does not represent the best available information for the valuation of Respondents' various waste inputs.

As discussed above in Comment 5, the Department's practice when selecting the "best available information" for valuing FOPs in accordance with section 773(c)(1) of the Act, is to select to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POI. There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.

We find that the values used in the Preliminary Determination were insufficiently product-specific for Respondents' different inputs. First, the Department used "waste parings scrap of PET bottles" to value fiber waste and waste inputs that do not include, or are not made from, PET bottles. Although "waste parings scrap of PET bottles" may reflect a lower middle range value, it is not specific to any of the Respondents' waste inputs. Similarly, we agree with Respondents that the finished PSF market price does not represent or equate to waste values in general. We recognize that fiber waste is generated at various stages of the production process. Whether it is at the earlier stage of the production process or at the final stage, the waste is not finished PSF and, thus, should not be valued as such in accordance with section 773(c)(1) of the Act. Furthermore, we agree with Respondents that popcorn, lump, and x-ray film waste inputs do not represent the best quality waste and should be valued accordingly.

We disagree with Petitioners that we should use the value from the Preliminary Determination because it accurately captures the surrogate of polyester waste materials. We find that PET bottles or finished PSF are not product-specific. Neither PET bottles nor finished PSF represents any of Respondents' waste inputs. We also do not find it reasonable to assume virgin PSF waste fibers, i.e., damaged or slightly off-spec virgin PSF fibers before or after crimping, and before or after drying, command the same price as finished fibers. Furthermore, we disagree with Petitioners' contention that India's cost accounting system is relevant to the market-price of fiber waste and other waste inputs. Whether Indian PSF firms account for the cost through the final production stage for PSF does not indicate that a company can obtain a higher price for the waste. Furthermore, there is no record evidence that waste produced at the beginning of the production process is more available than waste produced later in the production process. Because it is the Department's practice to use product-specific information, we find that the values used in the Preliminary Determination for various waste inputs did not represent the best available information, or were insufficiently product-specific. For the final determination, we have determined to use HTS 5505.10 (waste of synthetic fibers) to value Cixi Jiangnan and

[12] Because of the order on PSF from Taiwan, we excluded imports of PSF from Taiwan for this HTS number.

Ningbo Dafa and Far Eastern's polymer PSF waste. In addition, we have determined to use HTS 3915.90.90 (Waste Parings & Scrap of other Plastic NES) to value Respondents' lump, popcorn, x-ray film and scrap waste by-product. Our reasoning for the surrogate value for these various waste inputs is discussed in detail below in Comments 7, 8 and 9.

**Comment 7: Surrogate Value for Polymer Polyester Staple Fiber Waste[13]**

Cixi Jiangnan argues that the Department should value its white fiber waste input use by using its market economy price for its mixed fiber waste. Cixi Jiangnan contends that it had market economy purchases of white fiber waste from the same source as its mixed fiber waste purchase just prior to the POI. Cixi Jiangnan also asserts that the prices for the mixed fiber waste purchased during the POI and the white fiber waste purchased prior to the POI are the same. Cixi Jiangnan argues that these prices are the best available information for valuing its white fiber waste.

If the Department does not use Cixi Jiangnan's market economy price for mixed fiber waste, Cixi Jiangnan argues, the Department should value waste fiber according to the Indian HTS classification 5505.10 (Waste of Synthetic Fibers), which is specific to fiber waste. Cixi Jiangnan contends that it provided its import documents that showed they used the same HTS classification 5505.10 when it imported both the mixed and white fiber waste. See Cixi Jiangnan Case Brief at Exhibit 2. Cixi Jiangnan argues that there is no record evidence to suggest that the Indian HTS 5505.10 undervalues the particular fiber waste consumed by Cixi Jiangnan.

Far Eastern contends that the Department should select a surrogate value that most closely represents its Poly waste and PSF waste. Far Eastern claims that its Poly waste and PSF waste are substantially different in form and composition than the finished PSF. Far Eastern states that the Poly waste and PSF waste take various forms and colors, ranging from hard plastic blocks to fiber remnants. Far Eastern contends that the Poly waste and PSF waste cannot be sold as finished PSF waste. Nor can the Poly waste and PSF waste command a price similar to finished PSF. Far Eastern claims that no producer would ever purchase finished PSF and use it to produce additional PSF. Additionally, Far Eastern argues that the Department should value its Poly waste and PSF waste by using one or more of the values for HTS 5505.20.00 (Waste of Artificial Fibers), HTS 3915.1000 (Waste Parings & Scrap of polymers of Ethylene), HTS 5505.10.10 (Waste Etc. Of Acrylic Synthetic Fabrics"), HTS 5505.10.90 (Waste Etc of Other Synthetic Fabrics) and HTS 3915.90.90 (Waste Parings & Scrap of other Plastic NES).

Far Eastern also argues that the Department should reject Petitioners' waste price quotes. Specifically, Far Eastern contends that the price quotes are selective and should be disregarded because they are from Pakistan, rather than the surrogate country, India. Far Eastern explains that it is the Department's preference to use publicly-available import statistics unless there is evidence that the data do not represent the best available information. See Notice of Final

[13] Polymer PSF waste includes the following descriptions: poly waste, PSF waste and fiber waste.

Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China, 69 FR 20594 (April 16, 2004) and the accompanying Issues and Decisions Memorandum at Comment 13 ("CTVs"); PRC Canvas, 71 FR 16116, and the accompanying Issues and Decisions Memorandum at Comment 4. Far Eastern contends that there is no record evidence that the price quotes are the best available information and that the price quotes are unusually high, when compared to the actual sales value of the waste sold.

Petitioners contend that Respondents' recommended HTS 5505.10 and 5505.20 classifications generally do not include polyester waste, and, as such, should not be relied upon by the Department. Petitioners also note that Respondents present contradictory arguments in describing the proper HTS categories for surrogate waste values. For example, Far Eastern, unlike either Cixi Jiangnan or Ningbo Dafa, provided data for subcategory 5505.10.90 (Waste etc. of Other Synthetic Fabrics) while also providing data for the more fiber-specific category 5505.20 (Waste of Artificial Fibers). Petitioners acknowledge that Cixi Jiangnan's surrogate value submissions claim that the most accurate import category for polyester waste fibers was HTS 5505.10 (waste of synthetic fibers) based on its commercial experiences.

In their rebuttal, Petitioners state that Respondent's argument that Cixi Jiangnan's market economy purchases of PET bottle flakes reflect a benchmark is inaccurate because Petitioners believe that Cixi Jiangnan's market economy purchases are understated due to the exclusion of market economy purchases incorrectly assumed to be subsidized. Petitioners contend that HTS 5505.10 (Waste of Synthetic Fibers) covers every possible type of man-made fabric and fiber waste, as observed in its subcategories. Petitioners allege that the import data collected for specific entries by IndiaInfoDrive for this category contain synthetic fabric wastes of acrylic, viscose and rayon, not PSF, because it subsumes HTS 5505.10.10 (Waste etc of Acrlyic Synthetic Fabrics). See Petitioners' February 15, 2007, Surrogate Value Rebuttal Data at Attachment 2. Similarly, however, Petitioners contend that HTS 5505.10.90 (Waste etc of Other Synthetic Fabrics) also captures all other synthetic wastes, including polyester, but is not polyester or PET specific, nor does it account for color. Petitioners argue, however, that HTS 5505.10.90 is at least more specific and accurate than using the entire category HTS 5505.10 (Waste of Synthetic Fibers) as proposed by Respondents, which subsumes the non-applicable subcategory 5505.10.10. Although Far Eastern reported the average value for HTS 5505.20, which pertains to "Waste of Artificial Fibers," Petitioners claim that the data are not polyester-specific.

In contrasting the various HTS classifications, Petitioners explain that it is important to note that not all plastic HTS categories include polyester. Petitioners allege that the values Respondents propose are based on basket HTS categories that do not include polyester but rather cover items such as high-density polypropylene (HDPP), PVC, viscose, acrylic.

Petitioners add that they provided two general fiber waste values for all colors of fiber waste on this record that are polyester-specific. The first value, Petitioners assert, is the sale of virgin fiber

waste from the Indian producer Reliance, which sold its fiber waste for a value of Rs. 28.30/kg or 631 USD/MT. Petitioners contend that Reliance's value represents all polyester fiber waste from PSF and polyester yarn that Reliance manufactured in one year for all colors. See Petitioners' November 20, 2006, Surrogate Value Letter at 6-7. The second potential surrogate value, Petitioners assert, is the average fiber waste purchases by the Indian polyester producer and PET recycler Ganesh Polytex Ltd ("Ganesh"), which purchased 64,579 kilograms of synthetic fiber waste for Rupees 1,973,201, or 30.56 Rupees per kilogram.

Petitioners explain that they provided a February 2007 price quote of US$ 700/MT for white polyester fiber waste (with an IV of 0.56 to 0.61 DI/Gm). See Petitioners' February 15, 2007, Surrogate Value Rebuttal Letter at Attachment 4A. In addition, in July 2006, immediately prior to the POI, Petitioners contend that white (crimped) polyester fiber waste was being sold at US$ 900/MT. Petitioners' February 15, 2007, Surrogate Value Rebuttal Letter at Attachment 4A. Petitioners also assert that the market price for the crimped white PSF is the highest 2006 waste value on the record of this case from any public source and it confirms precisely the value placed by the market at large on this raw material.

Should the Department reconsider its Preliminary Determination to use an average of HTS categories to value the white fiber waste, Petitioners contend that the resulting surrogate value should incorporate seven values on this record. First, Petitioners allege that the Department should, for any fiber waste (unknown mix of white and color waste fibers) replace the non-polyester subcategory with the (1) HTS category for PET materials, 3915.90.42 ("Waste, Parings, Scrap of PET Bottles") which is comprised overwhelmingly of PET bottles in bales of all colors, a commodity to which the value-added processes of color sorting, polypropylene and paper removal and chipping into flakes has not been undertaken.

Furthermore, Petitioners allege that the Department should also include (2) the non-acrylic synthetic fabric waste imports under 5505.10.90 which include at least some polyester fiber waste (see Petitioners' February 15, 2007 Surrogate Value Rebuttal Data at Attachment 2); (3) imports under 5505.20 which include polyester fibers; (4) the domestic Indian value of all colors of fiber waste reported by Indorama; (5) the domestic Indian value of all colors of fiber waste reported by Ganesh; and (6) the value of finished PSF can be and is recycled. Furthermore, Petitioners allege that the Department should also include in the average the white polyester fiber quote from Vedal's 2006 sale of PSF waste for Respondents' white fiber waste. If the Department reconsiders its preliminary surrogate value for fiber waste and determines to exclude finished PSF and baled PET bottles from its average calculation, then Petitioners argue that the Department should average the remaining five values.

Because Respondents maintain that, all things being equal, fiber waste should be valued lower than their market economy purchases of PET flakes, Petitioners acknowledge that the Department may also consider valuing white fiber waste based on POI purchases of similar white inputs. See Ningbo Dafa and Cixi Jiangnan Joint Case Brief, at 21. Petitioners add that Cixi Jiangnan reported market economy purchase values for both the high and low end of similar

white inputs, namely white bottle flake and white lump. Nevertheless, Petitioners contend that the average market economy purchases value of white bottle flake and white lump is a low value compared to other benchmarks, and is likely comprised of non-virgin lump material. Consequently, this valuation for white waste would be extremely conservative.

Petitioners note that Far Eastern did not report any market economy purchase for any type of polyester waste. Instead, Petitioners acknowledge that Far Eastern reported the usage of white virgin WASTEPOLYIN and WASTEPSFIN from its own production of waste, while selling its dirty waste fibers. Petitioners assert, however, that a market economy purchase value may be calculated from the market economy purchases of Cixi Jiangnan and Ningbo Dafa, since the Department can and does calculate values for respondents using the average of two or more other respondents' proprietary data.[14] Thus, Petitioners contend that the Department should use the average value of Cixi Jiangnan's market economy purchase value of white waste fiber and Ningbo Dafa's market economy purchase value of white waste fiber for Far Eastern's WASTEPOLYIN and WASTEPSFIN inputs.

Petitioners argue that the Department has averaged import values *and* domestic values for the same input where the inclusion of additional observations made the calculation more accurate. See Synthetic Indigo From the People's Republic of China, 68 FR 53712 (September12, 2003) at Comment 3. In this case, Petitioners argue that the HTS 5505.10.90 and HTS 5505.20 contain significant amounts of non-polyester, fibrous waste of various colors. In addition, Petitioners argue that HTS 3915.90.42 is PET-bottle-specific but also covers many colors.

Petitioners contend that by using an average across a larger number of applicable sources, a more representative value is obtained by lessening the potentially aberrational value of any single source. On this general principle, Petitioners argue that Far Eastern is in agreement with Petitioners, having stated that an average of HTS categories is particularly suitable because the range of products accurately reflects the various forms of the by-product/input being valued. See Far Eastern's Case Brief, at 5. Petitioners contend, however, that Far Eastern and the other Respondents are simply incorrect in their selection of applicable HTS categories, which appear to be selected by respondents based on low values, rather than as accurate surrogates.

Finally, Petitioners argue that the record shows that high-quality, white inputs were used to make PSF and therefore, the surrogate value selected must reflect appropriate market values for comparable merchandise.

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[14] Use of an average is the basis for the alternate calculation of profit for constructed value under section 773(e)(2)(B)(ii) of the Act. Subsection (ii) provides that profit may be calculated based on the average of the actual amounts incurred and realized by other exporters or producers that are subject to the investigation or review. Under subsection (iii), the Department has even gone back to prior segments of the proceeding to obtain the actual amounts realized by other parties. Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy, 71 FR 45017, 45021 (August 8, 2006).

Cixi Jiangnan argues that Far Eastern's alternative argument to use a basket tariff heading (to value its PET waste) does not apply to Cixi Jiangnan's particular waste consumption as a producer of recycled and regenerated PSF. Cixi Jiangnan argues that there is a specific HTS not cited by Far Eastern that describes Cixi Jiangnan's fiber waste and corresponds to the HTS number Cixi Jiangnan consistently used to import it: HTS 5505.10.00. Cixi Jiangnan asserts that this HTS actually overvalues such fiber waste; thus, if the Department does not accept Cixi Jiangnan's consistently uniform market purchases, the Department should downwardly adjust the HTS 5505.10.00 value for fiber waste.

**Department's Position:**

We determine that record evidence supports the use of HTS 5505.10 (Waste of Synthetic Fibers) to value Respondents' fiber waste in this investigation. As discussed above in Comment 5, the Department's practice when selecting the "best available information" for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POI. There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.

In this case, however, other than certain price quotes and market economy purchases outside the POI, there are no specific white fiber waste values on the record. Therefore, we determine that HTS 5505.10 is the most product-specific and accounts for the best available information of all values whether specific to white or colored waste. In addition, we note that we have record evidence that Cixi Jiangnan imports its fiber waste using HTS 5505.10. Because Cixi Jiangnan's importation documents include the description of white PET fiber waste and mixed PET fiber waste (green, blue, white, red, etc.), we recognize that HTS 5505.10 is not color specific.

We disagree that we should average five different HTS numbers, two of which are included in the HTS 5505.10, to value Far Eastern's Poly waste and PSF waste. HTS 5505.10 covers fiber waste, which we have determined best represents Far Eastern's Poly waste and PSF waste inputs and outputs. Therefore, we find that it is not necessary to average five different HTS numbers.

Petitioners recommend that we use several different values to obtain a surrogate value for white fiber waste. To obtain the white surrogate value for fiber waste, Petitioners argue that we should include a price quote for white fiber waste. When other usable and reliable information is available, it is the Department's practice to not use price quotes to value FOPs. See Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003) at Comment 1. Furthermore, the price quote does not represent a broad market average of the prices for fiber waste.

In addition, Petitioners recommend that we include in the average surrogate value for white fiber waste the domestic Indian value of all colors of fiber waste reported by Indorama and Ganesh. When other usable, reliable information is available it is the Department's practice not to use a single company specific experience when calculating a surrogate value. In this case, there is other usable and reliable information available that represents a broad market average. Therefore, in this case, the domestic Indian value of all colors of fiber waste reported by Indorama and Ganesh do not represent the best available information.

As discussed in comment 6 above, the Department has determined that using HTS 3915.90.42 (Waste Parings Scrap of PET Bottles) and 5503.20.00 (Staple Fibres of Polyester not crd/cmbd) for the valuation of Respondents' various waste inputs are not product-specific and do not represent the best available information. Therefore, the Department disagrees with Petitioners' recommendation to use the PET bottle scrap and finished PSF in the valuation of the surrogate value for fiber waste.

Thus, the only values remaining for consideration are Petitioners' HTS 5505.10.90 (Waste etc of other synthetic fabrics) and HTS 5505.20 (waste of artificial fibers). While Petitioners rebut Far Eastern's recommendation to include HTS 5505.20.00 by claiming it is not polyester specific, Petitioners nevertheless, recommend that the Department include HTS 5505.20.00 to obtain a surrogate value for Respondents' white fiber waste. We disagree with Petitioners that HTS 5505.10.90 is more representative based on InfodriveIndia data. There is no record evidence that InfodriveIndia contains all imports or accounts for mis-classifications at the time of import that may be corrected later in MSFTI. See Monthly Statistics of the Foreign Trade of India ("MSFTI") for the POI, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India.[15]

Finally, we reject Petitioners' third recommendation that we should use the average of Cixi Jiangnan's market economy price for white bottle flake and white lump because it is not product-specific and does not represent the best available information on the record. Therefore, for the final determination the Department will value Cixi Jiangnan's fiber waste inputs using only data from HTS 5505.10.

**Comment 8: Surrogate Value for Lump, Popcorn or X-ray Film**

Cixi Jiangnan argues that the relative values of PET bottle scrap and finished PSF demonstrate the unreasonableness of the Preliminary Determination methodology. Cixi Jiangnan argues that the tariff heading for plastic scrap, which includes lump, popcorn and X-ray film ("waste inputs") is 11.14 INR. Cixi Jiangnan claims that its import documentation shows that Cixi Jiangnan classified these materials as plastic scrap upon import and even Cixi Jiangnan's suppliers refer to

[15] The same import prices are also available from the World Trade Atlas ("WTA"), published by Global Trade Information Services, Inc., which is a secondary electronic source based upon the publication Monthly Statistics of the Foreign Trade of India. Volume II: Imports. See http://www.gtis.com/wta.htm.

these materials as "plastic scrap" or "recycled plastic." See Cixi Jiangnan Supplemental Section D Response at Exhibit SD1-3.

Cixi Jiangnan argues that the value the Department used at the Preliminary Determination for the waste inputs was higher than its most expensive input, white clean bottle flake, for which it had market economy purchases. Cixi Jiangnan argues that colored materials are of lower value because they will result in the color quality decrease in the finished PSF. Cixi Jiangnan contends that its U.S. selling prices corroborate the record evidence that the prices of colored raw materials are generally much lower than those of the white materials. Cixi Jiangnan states that the whiter the finished PSF, the less limitations are placed on its end-use.

Cixi Jiangnan argues that the WTA HTS for plastic scrap will contain some items that are higher and some lower than the average price mirroring the experience of the PSF industry. Cixi Jiangnan contends that there is no persuasive record evidence suggesting that the WTA HTS 3915.90.90 is not representative of the totality of nonmarket acquired PET materials, including waste inputs, with their range of colors, qualities, and values.

Cixi Jiangnan argues that the Department's practice is to prioritize use of the most specific Indian HTS import data to value FOPs because they are product specific, contemporaneous, country wide, and net of tax. Cixi Jiangnan asserts that HTS 3915.90.90 (Waste Parings & Scrap of Other Plastic) is on the record, supported by Cixi Jiangnan's own import documents for specificity, and meets all the other criteria for prioritization. Cixi Jiangnan argues that the HTS description of lump and X-ray film is "Plastic scraps" or "Recycled Plastic." See Cixi Jiangnan's Supplemental Section D submission (December 4, 2006) at Exhibit SD1-3. As a further example, Cixi Jiangnan argues that X-ray film is classified by Cixi Jiangnan upon import under HTS 3915.90 and described as "blue X-ray film scrap." Id. Cixi Jiangnan explains that the Chinese tariff schedules are different from the Indian tariff schedules and the world-harmonized six digit level. Cixi Jiangnan alleges that the Department found in its Preliminary Determination that Indian HTS 3915.90.90 category is the most specific Indian tariff subheading for these PET waste materials for which there is data.

Cixi Jiangnan states that the Department noted Cixi Jiangnan's comment that HTS 3915.90.90 is a basket category that contains some waste not suitable for PSF production. See Cixi Jiangnan Verification Report, at 13. Cixi Jiangnan contends, however, that the Department routinely selects surrogate values from basket tariff categories. See Polyethylene Retail Carrier Bag Comm. v. U.S., Consol. Ct. No. 04-00319, Slip Op. 05-157 at 49-50 (CIT 2005) Cixi Jiangnan adds that because there is no specific pricing on the record, the fact that the correct tariff heading is a basket category does not in any way detract from its status as the "best available information." In fact, Cixi Jiangnan alleges that some waste items may be worth more and some worth less, making the HTS 3915.90.90 all the more an appropriate average measure of the values.

Petitioners contend that while white PET flakes are intrinsically more valuable than green or brown flakes, white fiber waste, white popcorn and white lump are more valuable than green

fiber waste, green popcorn and green lump. Petitioners acknowledge, however, that Respondents' expert testimonial explained that the "selection of waste to be included is determined by its price, color, clarity and IV." See Cixi Jiangnan et al. February 5, 2007, Polyester Expert Testimony Letter, at Attachment 1.

In order to find the most applicable surrogate value match for polyester fiber waste used for white, green, and brown PSF, Petitioners contend that the Department should use waste values specific to polyester material with, at a minimum, white fiber waste separated from color fiber waste. Petitioners contend that the prices at which Far Eastern sells brown polyester waste provide a valuable benchmark, which is also higher than the general plastic scrap HTS 3915.90 that Far Eastern proposed for valuing the waste reintroduced into its production. See Far Eastern's December 4, 2006 submission at Exhibit SD55(vi). Petitioners contend that white popcorn should not be valued at anything less than the white fiber waste.

In contrasting the various HTS classifications, Petitioners argue that it is important to note that not all plastic HTS categories include polyester. Petitioners allege that the values Respondents propose are based on basket HTS categories that do not include polyester, (but rather cover items such as high-density polypropylene (HDPP), PVC, viscose, acrylic. Petitioners add that they provided two general waste input values for all colors of fiber waste on record that are polyester-specific. The first value, Petitioners assert, is the sale of virgin fiber waste from the Indian producer Reliance, which sold its fiber waste for a value of 28.30 Rupees/kg or 631 USD/MT. Petitioners contend that Reliance's value represents all polyester fiber waste from PSF and polyester yarn that Reliance manufactured in one year for all colors. See Petitioners' November 20, 2006, Surrogate Value Letter, at 6-7. The second potential surrogate value, Petitioners assert, is the average fiber waste purchases by the Indian polyester producer and PET recycler Ganesh, which purchased 64,579 kilograms of synthetic fiber waste for Rupees, 1,973,201, or 30.56 per kilogram. Petitioners contend that colored (crimped) polyester fiber waste was being sold at US$ 650/MT. Petitioners' February 15, 2006, Surrogate Value Rebuttal Letter at Attachment 4.

Should the Department reconsider its Preliminary Determination to use an average of the three HTS categories to value colored waste inputs, Petitioners contend that the resulting surrogate value should incorporate the seven values on this record. First, Petitioners allege that the Department should, for any fiber waste (unknown mix of white and color waste fibers) replace the non-polyester subcategory with the (1) HTS category for PET materials, 3915.90.42 which Petitioners claim is comprised overwhelmingly of PET bottles in bales of all colors, a commodity to which the value-added processes of color sorting, polypropylene and paper removal and chipping into flakes has not been undertaken.

Furthermore, Petitioners allege that the Department should also include (2) the non-acrylic synthetic fabric waste imports under 5505.10.90 which include at least some polyester fiber waste (see Petitioners' February 15, 2007, Surrogate Value Rebuttal Data at Attachment 2); (3) imports under 5505.20 which include polyester fibers; (4) the domestic Indian value of all colors of fiber waste reported by Indorama; (5) the domestic Indian value of all colors of fiber waste

reported by Ganesh; and (6) the value of finished PSF can be and is recycled. Furthermore, Petitioners allege that the Department should also include in the average the white polyester fiber quote from Vedal's 2006 sale of PSF waste for Respondents' colored fiber waste.

If the Department reconsiders its value from the Preliminary Determination for lump, popcorn and waste inputs and determines to exclude finished PSF and baled PET bottles from its average calculation, then Petitioners argue that the Department should average the remaining five values.

Because Respondents maintain that waste inputs should be valued lower than its purchases of bottle PET flakes, Petitioners acknowledge that the Department may also consider valuing the waste inputs based on POI purchases of similar inputs. See Ningbo Dafa and Cixi Jiangnan Joint Case Brief at 21. Petitioners add that Cixi Jiangnan reported market economy purchase values for both the high and low end of similar waste inputs. See Cixi November 3, 2006 submission at Exhibit D-2. Nevertheless, Petitioners contend that the average value of Cixi Jiangnan's market economy purchases is low compared to other benchmarks.

For x-ray film Petitioners recommend that the Department use its Hong Kong price quotes. In the alternative, however, Petitioners argue that x-ray film should be valued by averaging (1) the HTS category for PET materials, 3915.90.42, (2) the non-acrylic synthetic fabric waste imports under 5505.10.90, which include at least some polyester fiber waste (see Petitioners' February 15, 2007 Surrogate Value Rebuttal Data at Attachment 2); (3) imports under 5505.20 which include polyester fibers; (4) the domestic Indian value of all colors of fiber waste reported by Indorama; (5) the domestic Indian value of all colors of fiber waste reported by Ganesh; (6) the value of finished PSF, which can be and is recycled; and (7) the Hong Kong x-ray film price quotes.

If the Department reconsiders its preliminary surrogate value for x-ray film inputs and determines to exclude finished PSF and baled PET bottles from its average calculation, then Petitioners argue that the Department should average the remaining five values.

Petitioners also argue that the Department should alternatively consider valuing the x-ray film based on POI purchases of similar inputs. See Ningbo Dafa and Cixi Jiangnan Joint Case Brief at 21. Petitioners add that Cixi Jiangnan reported market economy purchase values for both the high and low end of similar x-ray film inputs. See Cixi November 3, 2006, submission at Exhibit D-2. Nevertheless, Petitioners contend that the average value of Cixi Jiangnan's market economy purchases is low compared to other benchmarks.

Finally, Petitioners argue that the Department has averaged import values and domestic values for the same input where the inclusion of additional observations made the calculation more accurate. See Synthetic Indigo. In this case, Petitioners argue that the HTS 5505.10.90 and HTS 5505.20 contain significant amounts of non-polyester, fibrous waste of various colors. In addition, Petitioners argue that HTS 3915.90.42 is PET-bottle-specific but also covers many colors.

Petitioners contend that by using an average value across a larger number of applicable sources, a more representative value is obtained by lessening the potentially aberrational value of any single source. On this general principle, Petitioners argue that Far Eastern is in agreement with Petitioners, having stated that an average of HTS categories is particularly suitable because the range of products accurately reflects the various forms of the by-product/input being valued. See Far Eastern's Case Brief at 5. Petitioners contend, however, that Far Eastern and the other Respondents are simply incorrect in their selection of applicable HTS categories, which appear to be selected by Respondents based on low values, rather than as accurate surrogates.

Cixi Jiangnan's argues that for its PET waste (lump, popcorn, and X-ray film), Far Eastern's alternative solution is less specific and inappropriate. According to Cixi Jiangnan, these materials are waste materials that should be classified under HTS heading 5505.00 due to the IV designation and other aspects of contamination. Moreover, Cixi Jiangnan argues that these materials do not have the value equivalent to finished fiber or even PET bottle. Cixi Jiangnan claims that its own suppliers describe the PET waste as plastic scrap and, therefore, HTS 3915.90.90 is the most accurate tariff heading for Cixi Jiangnan's PET waste. Cixi Jiangnan notes that its market purchases of these types of waste suggest the value is much closer to the value reflected in HTS 3915.90.90 than the value reflected in 3951.90.42 (Waste Parings of Scrap of PET Bottle). Therefore, Cixi Jiangnan argues, it would also be inappropriate for the Department to average the values in HTS 3915.90.42 and 3915.90.90.

**Department's Position:**

We determine that record evidence supports the use of HTS 3915.90.90 (waste parings & scrap of other plastic to value Respondents' waste inputs in this investigation. As discussed above in Comment 5, the Department's practice when selecting the "best available information" for valuing FOPs in accordance with section 773(c)(1) of the Act, is to select to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POI. There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input. In addition, with the exception of unusual circumstances, we prefer to select the single best value and not averaging multiple values as Petitioners request.

In this case, we have record evidence that Cixi Jiangnan's waste inputs of lump, popcorn and x-ray film are described as waste scrap and are most similar to HTS 3915.90.90 (Waste Parings & Scrap of Other Plastic) for MSFTI purposes. See Cixi Jiangnan's Supplemental Section D submission, at Exhibit SD1-3. We determine that it is the most product-specific and accounts for the best available information because lump and popcorn are PET fibers which have been processed into PET nuggets. We also recognize that HTS 3915.90.90 is not color specific; however, other than certain price quotes and out-of-POI market economy purchases, there are no color specific waste input values on the record. HTS 3915.90.90 is also the HTS number used by

Cixi Jiangnan to import the waste inputs. Therefore, we determine that HTS 3915.90.90 is the most product-specific and accounts for the best available information of all values whether specific to white or colored for the waste inputs.

Similar to waste fiber at Comment 7 above, the Department has rejected the price quotes, Indorama value, Ganesh value, PET bottle scrap value and finished PSF value, and Cixi Jiangnan's market purchases. Thus, Petitioners' only remaining recommendations are HTS 5505.10.90 (Waste Etc. of Other Synthetic Fabrics) and HTS 5505.20 (Waste of Artificial Fibers). In this case, it is clear that neither HTS number includes lump, popcorn and x-ray film because lump, popcorn and x-ray film are not fiber or fabric. Furthermore, the Department recognizes that HTS 3915.90.90 is not color specific and that color affects the price of the inputs. However, there are no publicly available surrogate prices, except quotes, that are specific to color. Therefore, the Department will value Respondents' waste inputs by using data from HTS 3915.90.90.

**Comment 9: Surrogate Value for Scrap Waste By-Product**

Cixi Jiangnan and Far Eastern contend that the Department should use HTS 3915.90.90, the same HTS used to import the material, to value its scrap waste by-products.

Petitioner argue, however, that should the Department reconsider its Preliminary Determination to use an average of HTS categories to value the scrap waste by-products, then the resulting surrogate value should incorporate six values on this record. Petitioners allege that the Department should use (1) HTS 3915.90.42 for PET bottle scrap materials; (2) the non-acrylic synthetic fabric waste imports under HTS 5505.10.90; (3) imports under HTS 5505.20; (4) the domestic Indian value of all colors of fiber waste reported by Indorama; (5) the domestic Indian value of all colors of fiber waste reported by Ganesh; and (6) the value of finished PSF.

If the Department reconsiders its value from the Preliminary Determination for fiber waste and determines to exclude finished PSF and PET bottles scrap from its average calculation, then Petitioners argue that the Department should average the remaining four values.

**Department's Position:**

We determine that record evidence supports the use of HTS 3915.90.90 (Waste Parings & Scrap of Other Plastic) to value Respondents' scrap waste by-products in this investigation. As discussed above in Comment 5, the Department's practice when selecting the "best available information" for valuing FOPs in accordance with section 773(c)(1) of the Act, is to select to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POI. There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input. In addition, with the exception of

unusual circumstances, we prefer to select the single best value and not averaging multiple values as Petitioners request.

As discussed above in Comment 8, we have record evidence that Cixi Jiangnan's waste inputs are described as waste scrap and are most similar to HTS 3915.90.90 (Waste Parings & Scrap of Other Plastic) from the Indian import data. See Cixi Jiangnan's December 4, 2006 submission, at Exhibit SD1-3. Furthermore, because Far Eastern's and Cixi Jiangnan's scrap waste by-products are most similar to the waste inputs and because neither Far Eastern nor Cixi Jiangnan reintroduce their scrap waste into production, we find that the surrogate value should be most similar to the waste inputs or HTS 3915.90.90. Furthermore, Cixi Jiangnan explained that its scrap waste by-product is included in HTS 3915.90.90. See Cixi Jiangnan Verification Report at 13.

As discussed above in Comment 8, the Department has rejected the price quotes, Indorama value, Ganesh value, PET bottle scrap value and finished PSF value, and Cixi Jiangnan's market purchases. Thus, Petitioners only remaining recommendations is HTS 5505.10.90 (Waste etc of Other Synthetic Fabrics) and HTS 5505.20 (Waste of Artificial Fibers). In this case, it is clear that neither HTS number includes scrap waste because the inputs are not fabric or used in the production of PSF. Therefore, the Department will value Respondents' waste inputs by using data from HTS 3915.90.90.

**Comment 10: Surrogate Value for Labor**

Respondents argue that the Department's labor wage rate has been inflated by including economies that are not comparable to the PRC in the calculation, and excluding economies that are comparable to the PRC. Respondents contend that the Department's own data for India and Bangladesh, which are often the sources for all other surrogate values, demonstrate that the wage rate selected for the PRC is significantly inflated, and is subject to multiple ongoing litigation at the CIT. See Taian Ziyang Food Co. et al v. United States, Consol. Ct. No 05-0399 (January 31, 2007), citing Dorbest Ltd. v. United States, Slip Op. 06-160 October 31, 2006.

Respondents note that the Act requires the Department to select the "best available information" in a market economy country, or countries, to assign surrogate values to non-market economy ("NME") inputs in a NME investigation. See 19 U.S.C. 1673b(c)(1). Respondents further note that Congress added a further condition that the administering authority, in valuing FOPs under subparagraph (1), shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are at a level of economic development comparable to that of the NME country. See 19 U.S.C. 1673b(c)(4)(A). Moreover, Respondents note that the Department's regulations stipulate that it will use regression-based current wage rates reflective of the observed relationship between wages and national income in market economies each year. See 19 C.F.R. 351.408(c)(3). Thus, Respondents assert, the requirement to use comparable economies to value data for the FOPs in general applies equally in law and logic to the regression analysis used for labor wage rates.

Respondents note that the Department published a revised wage rate for 2006, which is contemporaneous with the POI for PSF from the PRC. See Expected Non-Market Economy Wages: Request for Comments on 2006 Calculation, 72 FR 949 (January 9, 2006). Therefore, the Respondents argue that this information represents the "best available information" to the Department on contemporaneous wage rates and should be used for the final determination.

Petitioners argue that the Department should continue to apply its current regression analysis to include as many market economy countries with reported wage and gross national income ("GNI") data. Petitioners assert that if the Department were to exclude countries whose wage rates were too high, the Department would also have to exclude countries whose wage rates were too low, and either exclusion would be difficult and largely arbitrary. Moreover, the Petitioners argue that the 0.83 labor rate suggested by Far Eastern is based on data for 2004, while the POI in this case is October 2005-March 2006, therefore, Petitioners contend, if the Department uses a pre-POI wage rate, it should be adjusted to reflect inflation based on consumer price index ("CPI") data for India.

**Department's Position:**

The Department has reconsidered the data set used in the calculation of the surrogate value for wage rates and, as more fully described below, has determined to include all data that meet the Department's suitability requirements, and that were available at the time the wage rate was calculated. See Dorbest, Slip Op. 2006-160 at 73. Therefore, the Department will use the revised wage rate for 2006.

The Department is not required by statute to limit its data set in its regression analysis to economically comparable countries; however, the Department considered this option. See Antidumping Methodologies: Market Economy Inputs, Expected Non- Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006). The Department found that restricting the basket of countries to include only countries that are economically comparable to each NME is not feasible and would undermine the consistency and predictability of the Department's regression analysis. A basket of "economically comparable" countries could be extremely small. For example, there are only three countries with GNI less than US$1,000 in the Department's revised 2004 expected NME wage rate calculation and many NME countries' GNI are around this range. A regression based on an extremely small basket of countries would be highly dependent on each and every data point.

Moreover, relative basket size would not be such a critical factor if there were a perfect correlation between GNI and wage rates. If this were the case, data from only two countries would be sufficient to calculate a precise regression line. However, as the Department has noted repeatedly, while there is a strong worldwide relationship between wage rates and GNI, there is nevertheless variability in the data. For example, in the data relied upon for the Department's revised 2004 calculation, observed wage rates did not increase in lockstep with increases in GNI

in the five countries with GNI less than US$1,000, for example: Nicaragua, with a GNI of US$720, had reported a wage rate of US$0.94 per hour while Sri Lanka, with a GNI of US$850, had reported a wage rate of US$0.33 per hour. See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 8C.

This inevitable variability in the underlying International Labor Organization ("ILO") data is especially true in the case of countries with a lower GNI where wage rates can be so low that even a difference of a few cents can appear to be enormous if represented in percentage terms. Because reliable wage rate data is available and there exists a consistent relationship between wage rates and GNI over time, the Department is able to avoid periodic variability through the use of a regression-based methodology for estimating wage rates. The Department calculates, in essence, an average wage rate of all market economies, indexed to each NME's level of economic development via its GNI. Using the Department's regression methodology, the value for labor in a particular country remains consistent despite the possible selection of different surrogate countries. This enhances the fairness and predictability of the Department's calculations.

Moreover, the Department's regression methodology is superior to a single country's wage rate because the regression methodology ameliorates any country-specific distortion that would cause variation in the data, ties the estimated wage rate directly to each NME's GNI, and provides predictable results that are as accurate as possible. The Department finds that the regression-based methodology does not distort or systematically overestimate wage rates in general; rather, the regression line serves to smooth out the differences in the reported wage rates. By ensuring the data in the regression includes all earnings data that best reflect the dynamics of contemporaneous labor markets and represents both men and women in all reporting industries, the Department is able to minimize many potential distortions. Therefore, using a large basket of data is less susceptible to both the country-by-country, as well as the year-on-year, variability in data and enables the Department to arrive at the most accurate, predictable, and fair surrogate value for labor.[16]

For these reasons, consistent with the regulations and the statute, the Department's revised wage rate calculation applied to this investigation relies on a significantly larger basket of countries than was used in the Preliminary Determination. A larger basket maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the basket, and provides predictability and fairness. Importantly, the Department notes that economic comparability is established in the regression calculation through the GNI of the NME in

[16] The Department cannot purport to produce perfect wage rates with its regression methodology, as no estimate ever can claim such precision. However, there is no inherent distortion in the model that would lead to systematic overestimation or underestimation of wages. The Department acknowledges that its regression line provides only an estimate of what an NME's hourly wage rate would be within a mathematically derived margin of error based on the wage rates and GNI data from market economies. As with any estimate based on a pool of data, some data will fall above the estimate and some data will fall below the estimate.

question, which ensures that the result represents a wage rate for a country economically comparable to the NME. Using the revised data set, the recalculated wage rate for India in this investigation is US $0.83. Finally, although Petitioners are correct that the labor data are from 2004, it is not the Department's practice to inflate this value as it is based on multiple countries' data. Therefore, it would be inaccurate to adjust it to reflect inflation based on CPI data for India as Petitioners suggest.

**Comment 11: Surrogate Value for Alkali Flake**

Petitioners, Cixi Jiangnan and Ningbo Dafa argue that alkali flake is sodium hydroxide and should be valued using data from HTS 2815.11.10 (sodium hydroxide in solid form).

**Department's Position:**

We agree with Cixi Jiangnan, Ningbo Dafa and Petitioners that alkali flake should be valued using data from HTS 2815.11.10, as the record evidence shows this factor is actually sodium hydroxide in solid form, as described in the HTS.

**Comment 12: Calculation of Surrogate Financial Ratios**

Cixi Jiangnan and Ningbo Dafa note that the Department generally calculates surrogate values for selling, general and administrative costs ("SG&A"), overhead expenses ("OH"), and profit in NME cases using ratios derived from financial statements of one or more companies producing comparable merchandise in the surrogate market economy country. See Shanghai Foreign Trade Enters. Co. v. United States, 318 F. Supp. 2d 1339, 1341 (CIT 2004). Cixi Jiangnan and Ningbo Dafa contend that although the Department generally prefers to use more than one financial statement to derive the financial ratios, it does not arbitrarily use all financial statements in the administrative record when valuing financial ratios if the facts do not support such an application. See Glycine, 70 Fed. Reg. 47176 (Aug. 12, 2005).

Cixi Jiangnan and Ningbo Dafa argue that the Department has recognized in past cases differences in the Respondents' production experience in an attempt to match the financial ratio sources to that experience when the record permits. Cixi Jiangnan and Ningbo Dafa assert that Garlic from the PRC the Department has previously matched financial statements with producers according to whether or not they were vertically integrated, recognizing that companies with different production experiences likely have significantly different overhead and SG&A expenses. See Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) at Comment 4.

Cixi Jiangnan and Ningbo Dafa contend that, though they also appear to be large exporters due to the fact that they ranked sufficiently high to be selected as mandatory respondents, Cixi Jiangnan and Ningbo Dafa are very small companies that produce recycled PSF when compared to the large multinational corporations that produce virgin PSF such as Far Eastern, Reliance and

Indorama. According to Cixi Jiangnan and Ningbo Dafa, the Department verified that factory layout, equipment and processing are dictated by the fact that Cixi Jiangnan and Ningbo Dafa purchase various forms of plastic rubbish and recycle them into recycled and/or regenerated PSF. Cixi Jiangnan and Ningbo Dafa note that they have few extruding/crimping lines for U.S. production, in stark contrast to the size and production capacity typical of large multinationals. Thus, Cixi Jiangnan and Ningbo Dafa argue, the "best available information" as to the OH, SG&A and profit experience for Cixi Jiangnan and Ningbo Dafa is the financial statement of Ganesh, a regenerated PSF producer.[17] See Cixi Jiangnan's and Ningbo Dafa's February 5, 2007 submissions at Exhibit 4.

Cixi Jiangnan and Ningbo Dafa contend that should the Department choose to not use Ganesh's financial statement to calculate surrogate financial ratios, as an alternative, the Department should average the financial ratios of Ganesh and Indorama, excluding the financial statement of Reliance. According to Cixi Jiangnan and Ningbo Dafa, Reliance is a huge conglomerate and only a small proportion of its operations, and hence its financial ratios, are attributable to the production of subject merchandise.

Petitioners argue that the Department's practice is to use the financial statements of a surrogate manufacturer of identical merchandise unless those financial statements can be shown to be inaccurate or otherwise distorted. See CTVs, at Comment 14. Petitioners further assert that in CTVs the Department noted that PRC Respondents are not homogeneous in terms of size or structure, and that it is not the Department's practice to attempt to match individual Respondents to the most representative Indian producers because such an action would add a degree of complexity to this process without adding additional accuracy. Id. Thus, Petitioners argue that the Department should average Reliance, Indorama and Ganesh when calculating surrogate financial ratios.

**Department's Position:**

Ningbo Dafa and Cixi Jiangnan produce PSF using a recycled/regenerated material input process (PET bottle flakes, waste fiber, lump, popcorn, x-ray, etc.), while Far Eastern produces PSF from chemicals (also known as a virgin PSF producer). At the Preliminary Determination, the Department based its surrogate financial ratios calculation using the financial statements from Reliance and Indorama, both Indian virgin PSF producers. Since the Preliminary Determination, Respondents placed on the record a financial statement from Ganesh, an Indian recycled PSF producer.

At the onset, we note that all three financial statements are sufficiently contemporaneous, publicly available and from producers of PSF. However, in evaluating financial statements for use in calculating the surrogate financial ratios "it is the Department's preference to match the

[17] Cixi Jiangnan and Ningbo Dafa also assert that the use of a single financial statement would not distort the financial ratios because Ganesh's ratios are within the range of the ratios calculated for Indorama and Reliance.

surrogate companies' production experience with Respondents' production experience." See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, ("China Shrimp") 69 FR 70997 (December 8, 2004) and accompanying Issue and Decision Memorandum at Comment 9(D).[18] In this case, we find that Ganesh is most similar to the PSF production process of Ningbo Dafa and Cixi Jiangnan because Ganesh, like Ningbo Dafa and Cixi Jiangnan, is a producer of recycled PSF. Including Indorama or Reliance with Ganesh in the calculation would result in a less accurate calculation given the difference in production processes between recycled PSF as compared to virgin PSF, which will necessarily impact the financial ratios. Therefore, we find that Ganesh is the best available information for calculating the financial ratios of Ningbo Dafa and Cixi Jiangnan.

However, with respect to Far Eastern, we find that Indorama's PSF production process is most similar to Far Eastern because both produce PSF using chemicals, not recycled/regenerated inputs. Although Reliance is also a virgin PSF producer, Reliance's business operations are primarily focused on refining petroleum. Thus, we find that Reliance is not as representative as to companies such as Indorama, which primarily produce PSF. Therefore, we are not including Reliance in the calculation of financial ratios for Far Eastern.

**Comment 13: General Export Subsidy Countries and Market-Economy Inputs**

Petitioners argue that the Department should include all market economy purchases because they demonstrate that flake or fiber waste inputs were sold at higher world market price levels than Respondents wish to acknowledge. Petitioners contend that Cixi Jiangnan's benchmark flake values are based on the improper exclusion of purchases from countries identified by the Department to have generally available export subsidies (e.g., Indonesia, Thailand or South Korea). Petitioners contend that the average market economy purchase value for all other white clean PET bottle flakes from countries which might have general subsidies is 8.8 percent higher than the prices from non-subsidized countries. Therefore, Petitioners contend that the value of such imports produced in countries with general export subsidies were made at market prices and should be included in establishing the parameters for accurate surrogate values.

Similarly, Petitioners contend that the average market economy purchase value for all other green and brown clean PET bottle flakes from countries which have general export subsidies is 11 percent and 2.2 percent, respectively, higher than the prices from non-subsidized countries. Therefore, Petitioners contend that the value of such imports produced in general export subsidies countries were made at market prices and should be included in establishing the parameters for accurate surrogate values.

Given the higher prices from countries with generally available export subsidies, Petitioners contend the prices in question show no evidence of such subsidies. In addition, Petitioners argue

[18] In China Shrimp, the Department calculated separate financial ratios for fully-integrated companies (growing and processing shrimp) from companies who were only purchasing shrimp. Id.

that exclusion of the purchases is significant. Petitioners allege that the exclusion of the general exports subsidy countries would understate the expected valuation of raw material inputs in general, and depresses the expected value of similarly colored waste fiber, lump, and popcorn.

Petitioners argue that the Department should consider reversing the exclusion of ostensibly subsidized market economy purchase values given the facts on the record. Petitioners contend that the values cannot be rejected unless there is reasonable cause to believe or suspect that the materials in question were subsidized and that therefore the values were "distorted." 19 U.S.C. § 1677b; see also Fuyao Glass Industrial Group Co. v. United States, Slip Op. 05-06 (January 25, 2005), at 10. In this case, Petitioners allege, there is an absence of evidence that subsidies existed related to these physical inputs.

Respondents did not comment on this issue.

**Department's Position:**

The Department's practice is to disregard prices from countries that maintain broadly available, non-industry-specific export subsidies (i.e., Indonesia, South Korea, and Thailand). See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2006 Administrative Review and Preliminary Intent to Rescind 2004/2006 New Shipper Review Friday, 72 FR 10645 (March 9, 2007). Moreover, Petitioners have placed no information on the record demonstrating that the inputs in question exported from countries with generally broadly available export subsidies were not, in fact, subsidized. Therefore, the Department will continue to exclude Respondents' market economy purchases from countries that maintain broadly available, non-industry-specific export subsidies.

**Company Specific Comments - Cixi Jiangnan**

**Comment 14: Cixi Jiangnan's Sales to Trading Companies**

Cixi Jiangnan contends that its sales to other unaffiliated trading companies should be excluded from its U.S. sales file for purposes of the antidumping duty calculation. When it reported its U.S. sales for the POI, Cixi Jiangnan explained that it reported all sales of certain PSF where it knew the ultimate destination of the sales was to a U.S. customer, even if it sold it first to a trading company. Cixi Jiangnan contends that it was not responsible for the key decision that would determine whether the merchandise was sold at less than fair value in the United States. Therefore, Cixi Jiangnan maintains that the limited trading company sales are not subject merchandise sold by Cixi Jiangnan to the United States and should be excluded from its margin calculation for the final determination. Cixi Jiangnan argues that the Act requires the Department to determine "whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value." See 19 U.S.C. 1673d(a)(1). Cixi Jiangnan contends that it sold the subject merchandise to unaffiliated trading companies, which then sold the

merchandise under consideration in the United States. Cixi Jiangnan claims to have only shipped the merchandise to the United States at the direction of the trading companies.

Cixi Jiangnan argues that it is reasonable to infer that these unaffiliated trading companies increased the U.S. price to cover their expenses and a reasonable profit. Cixi Jiangnan claims that the Department may remove them under its sampling authority in the interest of calculating a more accurate and representative margin for Cixi Jiangnan. Because the trading companies' sales represent only a small fraction of the sales, Cixi Jiangnan argues that the sales could be characterized as outside the ordinary course of trade. Cixi Jiangnan claims that excluding the sales to the trading companies provides the Department with a statistically valid sample.

Petitioners argue that while Cixi Jiangnan concedes that these sales were destined for the United States, Cixi Jiangnan fails to provide a valid reason for disqualifying these sales from Cixi Jiangnan's U.S. sales database. Petitioners contend that Cixi Jiangnan is responsible for these sales to trading companies because Cixi Jiangnan was involved in this commercial practice and knew these sales were destined for the United States. Accordingly, Petitioners argue that these sales should be included in the Department's calculation of Cixi Jiangnan's U.S. price for the final determination.

Additionally, Petitioners argue that Cixi Jiangnan's argument that these trading company sales should be treated as sample sales is without merit. Specifically, Petitioners argue that these are not sample sales because these are not sales where there was no remuneration.

**Department's Position:**

Section 772(a) of the Act defines export price as the price at which the subject merchandise is first sold before the date of importation by a producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. This definition permits us to use the price of the subject merchandise at the time it is first sold by a producer or exporter outside the United States to another unaffiliated purchaser that subsequently exports the merchandise to the United States. We have interpreted the relevant price in such a sales situation to be the price at which the first party in the chain of distribution who has knowledge of the U.S. destination sells the merchandise.

A respondent passes the knowledge test if the "producer knew or had reason to know at the time of the sale that the goods were for export to the United States." See Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 39299 (July 12, 2006) at Comment 1. In Wonderful Chemical Indus., Ltd. v. United States, F. Supp. 2d 1273 (CIT 2003), the Court affirmed the manner in which the Department administered this "knowledge test" in Synthetic Indigo from the People's Republic of China, Final Determination of Sales at Less than Fair

Value, 65 FR 25706 (May 3, 2000).[19] In this case, there is no question that Cixi Jiangnan knew that its sales to unaffiliated trading companies were destined for the United States because Cixi Jiangnan acknowledged this fact. Therefore, as the CIT has concluded in past cases, inclusion of these sales in calculating Cixi Jiangnan's margin is appropriate.

**Comment 15: Cixi Jiangnan's International Freight for its U.S. Sales**

Cixi Jiangnan's argues that the Department should accept its market economy prices for international freight on its CNF (cost freight) sales. Cixi Jiangnan claims that the Department determined at verification that Cixi Jiangnan paid a PRC agent in U.S. dollars for the market economy freight on a few of its sales that were not on an FOB basis. Cixi Jiangnan argues that it would not have paid U.S. dollars if this were in fact a PRC transaction with a NME provider. Cixi Jiangnan claims that the PRC agent was acting at the behest of the market economy shipping line. Cixi Jiangnan asserts that it provided the Department with a statement from the PRC agent that confirmed that the U.S. dollar amounts were passed along to the shipping line, in response to the Department's question concerning what the broker does with the payment. See Cixi Jiangnan Verification Exhibit LLL.

Petitioners contend that Cixi Jiangnan's argument that the Department should accept the price it paid its NME freight forwarder violates the Department's criterion for relying upon market economy prices. According to Petitioners, the Department will rely upon a market economy price only when the entity is a market economy agent. Therefore, because Cixi Jiangnan conceded that the freight forwarder is from a NME, Petitioners conclude that the Department should apply a surrogate value for these and any other PRC NME transaction.

**Department's Position:**

The Department will continue to use Cixi Jiangnan's reported market economy international freight expense. It is the Department's practice to value the international freight when the freight is from a market economy supplier and paid for in a market economy currency. See 19 C.F.R. 351.408(c)(1). In this case, Cixi Jiangnan contracted the freight services directly with the market economy supplier and the PRC freight forwarder, hired by the market economy supplier, was acting on behalf of the market economy supplier. See Cixi Jiangnan's Verification Report, at 18

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[19] In determining whether the producer knew or should have known that the subject merchandise would be exported, the CIT has held that the Department need not find that the producer had actual knowledge of the final destination of its exports. Allegheny Ludlum Corp. v. United States, 24 CIT 215 F. Supp. 2d 1322, 1331 (CIT 2000). This is because, " under those circumstances, it would be extremely difficult for Commerce to ever conclude that a respondent knew sales were for export{.}...The only way to determine actual knowledge is through an admission of the respondent." Id. at 1332 (quoting INA Walzlager Schaeffler KG, 21 CIT 110, 125, 957 F. Supp. 251, 263-64 (1997)). A requirement of the producer's actual knowledge would "eviscerate the acknowledge standard." Allegheny Ludlum, 215 F. Supp. at 1322. Thus, constructive knowledge has been held sufficient to satisfy the knowledge test. GSA, S.r.l. v. United States, 23 CIT 920, 77 F. Supp. 2d. 1349, 1355 (1999).

and Exhibit LLL. Moreover, Cixi Jiangnan's freight payment to the PRC freight forwarder was collected on behalf of the market economy supplier. The Department will, however, continue to use a surrogate value for inland freight and brokerage and handling on each of these sales because there is no record evidence that either of these services was provided by a market economy supplier and paid for in a market economy currency.

**Comment 16: Cixi Jiangnan's Indirect Labor**

Cixi Jiangnan notes that the Department required it to report the labor of every single manager and administrative employee not previously reported as direct or indirect labor in its Section D database. Cixi Jiangnan argues that this "double-counts" the management and administrative labor normally captured in the G&A ratios of the Indian surrogate financial statements. Specifically, Cixi Jiangnan contends that, at page 20, Schedule 15, the Ganesh 2006 Annual Report breaks out administrative labor or "Managerial remuneration." Therefore, Cixi Jiangnan argues that the Department should segregate this labor in its SG&A calculation by including Schedule 14 in the denominator and Schedule 15 in the numerator and then delete indirect labor (INDIRLABO) from Cixi Jiangnan's FOP file for the final determination to ensure that there is no double counting.

The Petitioners argue that the Department should include Cixi Jiangnan's indirect labor (INDIRLABO) in its calculation of normal value. Although Cixi Jiangnan argues that this would result in an overlap of SG&A, Petitioners note that Reliance's, Indo Rama's, and Ganesh Polytex's surrogate financial ratios show that wages, salaries, and benefits were not included in the denominator for SG&A. These items were included in the denominator for materials, labor and energy, which includes labor costs, Petitioners contend, for administrative management, drivers, and other staff that expend indirect labor hours.

**Department's Position:**

We agree with Petitioners that the indirect labor reported by Cixi Jiangnan should be included in the calculation of normal value. In the calculation of financial ratios, all labor types are included in the denominator for materials, labor and energy expenses, not in the numerator for the SG&A ratio. See Investigation of Certain Polyester Staple Fiber from the People's Republic of China: Surrogate Values for the Final Determination Memorandum, dated April 10, 2007. Therefore, there is no double counting of Cixi Jiangnan's indirect labor with the surrogate SG&A financial ratio.

**Comment 17: Insurance for Cixi Jiangnan's Market-Economy Purchases**

Cixi Jiangnan argues that in the Preliminary Determination, the Department applied a surrogate value for marine insurance on Cixi Jiangnan's market economy purchased raw material inputs in the absence of any affirmative record evidence, despite the terms of sale being "CNF" (cost, insurance and freight) that marine insurance was, in fact, paid on such purchases. Cixi Jiangnan

contends that it does not insure any of the recycling/regenerating inputs it uses for PSF for either ocean freight or inland trucking. Cixi Jiangnan argues that the Department reviewed its insurance accounts and vouchers at verification confirms that Cixi Jiangnan did not pay insurance on the purchase of market economy supplied raw materials. See Cixi Jiangnan Verification Report, at 27.

Petitioners argue that the Department should apply insurance costs on all market economy purchases for major inputs by Cixi Jiangnan and other Respondents. According to Petitioners, PET flakes, which are the primary input used to produce PSF, are most likely insured against loss in market economies. Therefore, the Department should calculate surrogate insurance costs on this and other major inputs for Cixi Jiangnan and the other Respondents.

**Department's Position:**

We agree with Cixi Jiangnan that the Department should not include insurance on its ocean freight or inland freight for its market economy input purchases. At verification, the Department found no evidence that Cixi Jiangnan actually incurred any insurance costs on its ocean freight or inland freight for its market economy input purchases, despite terms of sale that suggested otherwise. See Cixi Jiangnan's Verification Report, at 27. As there is no record evidence demonstrating that these expenses were in fact borne by Cixi Jiangnan, we will exclude insurance from Cixi Jiangnan's market economy price calculations.

**Company Specific Comments - Far Eastern**

**Comment 18: Far Eastern's Critical Circumstances**

Respondents argue that Petitioners' choice of dates to set the critical circumstances window is suspect, given that rumors have circulated for some years about a possible PSF petition. Respondents, as well as Far Eastern, contend that the specific circumstances of Far Eastern's sales explain the perceived surge in U.S. imports, and demonstrate that it is not related to the time-window promoted by Petitioners.

Ningbo Dafa, Cixi Jiangnan and Far Eastern, assert that the "surge" of Far Eastern's sales of PSF was dictated by pre-existing orders placed prior to the filing of the petition, i.e., demand driven by the end-users of PSF rather than by the filing of the antidumping petition, rumored or actual. Respondents, as well as Far Eastern, adopt the positions of Ashley Furniture's ("Ashley") case brief for the purposes of the final determination. Ashley asserts that the Department should follow the normal regulatory critical circumstances period of comparison for Far Eastern. Ashley asserts that the Department's regulations state that the analysis of imports begins on the date the proceeding begins, and ends three months later, compared with imports during an immediately preceding period of comparable duration unless the Department finds that importers, exporters or producers had a reason to believe at some time prior to the beginning of the proceeding that an antidumping proceeding was likely. See 19 C.F.R. 351.206(i) of the Department's regulations.

Ashley also argues that should the Department find such knowledge, the Department may consider a time period of not less that three months from that earlier time and that the Department considers imports to be massive if they have increased during the comparison period by 15 percent or more over the base period. See 19 C.F.R. 351.206(h)(i) of the Department's regulations.

According to Ashley, the Department points to no evidence that Far Eastern or any of its importers had reason to believe that the filing of the PSF petition was imminent. Ashley argues that in its critical circumstances memo, the Department points to a meeting sponsored by the Chinese Ministry of Commerce ("MOFCOM") in Cixi City and a comment on Ningbo Dafa's website as evidence that Far Eastern had knowledge of a possible antidumping investigation. See Memorandum from James C. Doyle, Office Director, to Stephen J. Claeys, Deputy Assistant Secretary, Preliminary Affirmative Determination of Critical Circumstances, (December 15, 2006) ("Critical Circumstances Memo") at 5. Ashley contends there is no record evidence that Far Eastern had knowledge of this meeting or the contents of Ningbo Dafa's website.

Ashley argues that the Department's Critical Circumstances Memo confirms that Far Eastern had no knowledge of the petition. Ashley argues that the Critical Circumstances Memo states that the antidumping duty margin for Far Eastern did not support a finding that there is a reasonable basis to believe or suspect that the importers knew, or should have known, of likely material injury by reason of sales at less than fair value. See Critical Circumstances Memo, at 3. Therefore, Ashley contends, because the Department has no basis on which to impute knowledge to Far Eastern or any of its importers, the Department must rely on its regulatory definition of "relatively short period" and compare three months before and after the filing of the petition in making its massive imports determination (April 2006-June 2006 compared to July 2006 to September 2006). According to Ashley, the use of a three (or even six) month comparison period shows that Far Eastern's imports did not increase by more than 15 percent.

Ashley argues that in past cases the Department has suggested that it would disregard imports made based on a pre-petition relationship between the exporter and importer. See CTVs, 69 FR 20594 (suggesting that it might be appropriate to exclude shipments made under long-term contracts under certain circumstances). Ashley contends that the record contains evidence that Ashley's imports from Far Eastern increased during this time because Ashley had just selected Far Eastern as one of its main suppliers of PSF before the supposed date of knowledge of the petition and that this relationship has nothing to do with the antidumping case. See Ashley's January 19, 2007, submission. Ashley claims that it is a large company and has increased its purchases as a percentage of Far Eastern's output, based on pre-existing orders, from the base period to the comparison period.

Moreover, Ashley argues that Fibertex has made similar arguments to Ashley regarding its purchases of PSF from Far Eastern. See Fibertex's January 19, 2007, submission. Therefore, Ashley argues, the Department should disregard Ashley's imports for the purposes of making its critical circumstances determination.

In their rebuttal brief, Petitioners argue that Ashley's argument that the Department should make a negative critical circumstances determination because the Department must find actual knowledge of an impending petition, is without merit. Petitioners contend that, contrary to Ashley's argument, the antidumping duty law directs the Department to either find (1) that there is a history of dumping or material injury or (2) that importers knew or should have known that the exporter was selling at less-than-fair value. Additionally, Petitioners note that, in this case, the Department found in the Critical Circumstances Memo that the antidumping duty law does not require actual knowledge of material injury. See Critical Circumstances Memo, at 2-3.

While Ashley argues that the Department must prove that Far Eastern and its importers had actual knowledge, Petitioners contend that the Department may find that parties had knowledge based on an increase of imports in the relatively short period. Petitioners assert that section 351.206(i) of the Department's regulations stipulates, with respect to the "relatively short period," that parties "had reason to believe." Accordingly, Petitioners argue that, based on the language of section 351.206(j) of the Department's regulations, the Department need only find that parties "had a reason to believe" and not actual knowledge of the impending petition. Furthermore, Petitioners assert that Webster's Ninth Collegiate dictionary defines "believe" as to "think," thus, the Department must only find that parties "thought," rather than find "knowledge" that the petition was impending.

Petitioners claim that Ashley's argument that Far Eastern did not have knowledge of MOFCOM's meeting of the impending petition, does not provide the Department grounds for making a negative critical circumstances determination. Specifically, Petitioners contend that the fact that MOFCOM coordinated an effort to respond to the impending petition demonstrates that PRC producers and exporters did have knowledge of this proceeding.

Petitioners also argue that Ashley's argument that the Department should disregard certain imports in the Department's critical circumstances analysis due to Ashley's long-term relationship with Far Eastern, is without merit. Petitioners assert that in CTVs the Department rejected the argument of disregarding certain imports. See CTVs at Comment 3. Petitioners contend that, pursuant to section 351.206(h) of the Department's regulations, there is no language that permits the Department to exclude imports from the calculation of whether overall imports are "massive," instead the Department is required to aggregate imports without regard to the circumstances.

Petitioners assert that the proposal made by Ashley that the Department should inquire of every importer whether they purchased from the exporter because the price was low or for other reasons, was preliminarily rejected by the International Trade Commission ("ITC"). According to Petitioners, the subjective intent of an importer is irrelevant to the Department's critical circumstances analysis because the domestic industry may suffer material injury regardless of the importer's intent for purchasing the subject merchandise.

Petitioners claim that Ashley's testimony at the ITC demonstrates that Ashley was importing ample quantities of subject merchandise from Far Eastern during the period of the Department's critical circumstances analysis. Therefore, for these final results, Petitioners conclude that the Department should continue to make an affirmative finding of critical circumstances for Far Eastern.

**Department's Position:**

Sections 735(a)(3)(A)(i) and (ii) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and there have been massive imports of the subject merchandise over a relatively short period, pursuant to section 735(a)(3)(B) of the Act.

Section 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 351.206(i) defines "relatively short period" as normally being the period beginning on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

For the final determination, we continue to find that critical circumstances exist for Far Eastern. Based on allegations contained in Petitioners' September 29, 2006, submission we initiated an investigation to determine whether critical circumstances existed in this case. As a result, we obtained information regarding the volume and value of shipments, by month, for the period January 2003 through December 2006 from all mandatory respondents in this investigation. At the Preliminary Determination, we analyzed this information for the three mandatory respondents and found that imports were massive only for Far Eastern because its volume of exports over the base period was greater than 15 percent. Based on this analysis, we found that critical circumstances existed for Far Eastern an exporter of PSF from the PRC.

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 735(a)(3)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition

(i.e., the "base period") to a comparable period of at least three months following the filing of the petition (i.e., the "comparison period"). It is our normal practice to include in our analysis data concerning the respondents' imports of subject merchandise up to the date of the preliminary determination, where such data are available. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Silicon Metal From the Russian Federation, 67 FR 59253, 59256 (September 20, 2002), (which remained unchanged in the final determination), see Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal from the Russian Federation, 68 FR 6885, 6888 (February 11, 2003) ("Silicon Metal from Russia"), Section 351.206(i) of the Department's regulations.

The Department finds Far Eastern knew or had reason to know of the initiation of this proceeding because record evidence demonstrated that PRC PSF producers knew as early as March 4, 2006, that an antidumping case might be initiated. See Critical Circumstance Memo at 5. In determining whether imports of the subject merchandise have been massive, we have based our analysis on shipment data for the comparable nine month periods preceding and following the filing of March (knowledge month) in accordance with our practice in Silicon Metal from Russia, in this case, the Department has all the shipment data up to the date of the preliminary determination and will use such data in our final critical circumstances analysis. At the Department's request, Cixi Jiangnan, Ningbo Dafa and Far Eastern submitted additional critical circumstances data for the months of October, November and December 2006. In determining whether imports during this period were massive under 19 C.F.R. 351.206(h), we have considered the comparable month period and found the volume of exports over the base period was greater than 25 percent.

We disagree with Ashley's arguments that its imports from Far Eastern should be disregarded from the critical circumstance analysis because it had pre-existing orders. Although the Department has acknowledged in prior cases that the purpose of the critical circumstances provision is to prevent attempts to circumvent the imposition of antidumping duties, in those cases we did not state that all shipments made pursuant to long-term contracts should be excluded. As in other cases, in this case, a general finding would be inappropriate because under the terms of many long-term contracts, including those examined in this investigation, respondents have the flexibility to increase shipments prior to the suspension of liquidation, thereby circumventing the imposition of antidumping duties. See CTVs at Comment 3, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value, 68 FR 37116 (June 23, 2003) ("Fish Fillets from Vietnam"), Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Socialist Republic of Romania: Notice of Final Determination of Sales at Less Than Fair Value, 52 FR 17433, 17438 (May 8, 1987). Therefore, we have continued to include these shipments in our analysis.

**Comment 19: Far Eastern's Reported Scrap Offsets**

Petitioners argue that the Department noted at Far Eastern's verification that scrap offsets had been overstated because the reported scrap sales exceeded the actual scrap generated. See Far Eastern's Verification Report, at 34 and Exhibit EE. Accordingly, Petitioners assert that the reported scrap offset should be adjusted downward and, therefore, the Department should adjust Far Eastern's reported scrap by-product.

Far Eastern argues that the scrap offset during the POI is based on a misunderstanding provided in Far Eastern's questionnaire and verified by the Department. Far Eastern contends that the Department mistakenly understated the total scrap produced during the POI as a result of Far Eastern's reporting. Far Eastern argues that both the Department and Petitioners overlooked the fact that scrap sold during the POI included various types of scrap, which included more than what the Department reported in the verification report.

**Department's Position:**

We agree with Far Eastern that during verification we overlooked some scrap produced and sold during the POI. See Far Eastern's Verification Report, at 34 and Exhibit EE. However, even after considering all types of scrap, Far Eastern still sold more scrap than it produced. Therefore, consistent with our practice, we will cap Far Eastern's by-product offset at the amount of scrap produced during the POI. See Frozen Fish Fillets from Vietnam, 68 FR 37116 at Comment 12.

**Comment 20: Far Eastern's Bank Charges**

Petitioners argue that Far Eastern acknowledged that it incurred bank charges which have not been included in the U.S. sales listing. Petitioners explain that for the Preliminary Determination, the Department did not take bank charges into account in calculating the net U.S. price. Petitioners explain that they recognize that the Department may consider certain selling expenses to be covered by the surrogate general and administrative expenses in normal value. However, Petitioners argue that any bank charges in the surrogate general and administrative expenses usually represent a simple reduction in the exporter's revenue rather than a separate expense. Petitioners argue that these bank charges should be deducted from the gross U.S. price.

Far Eastern argues that because bank charges are selling expenses, the Department would normally treat such expenses as a cost of sales ("COS") adjustment to the normal value. However, in NME cases, Far Eastern argues that it does not make COS adjustments because it cannot make equivalent adjustments to the normal value. In addition, Far Eastern argues that selling expenses are accounted for in the calculation of the surrogate general and administrative expenses value. Furthermore, Far Eastern argues that it is the Department's normal practice to reject bank charges, including those paid in market economy currency. See Honey From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review, 69 FR 25060 (May 5, 2004), at Comment 7B.

**Department's Position:**

The Department agrees with Far Eastern that bank charges should not be deducted from the gross U.S. sales price. It is the Department's practice in NME cases to treat bank charges, including those paid in a market economy currency, as a selling expense because it is an expense incidental to delivering the merchandise to the customer. See Final Results of the Administrative Review of Cut-to-Length Carbon Steel Plate from Romania 66 FR 2879 (January 12, 2001) and accompanying Issues and Decisions Memorandum at 7b. Furthermore, we have accounted for the selling expenses in the calculation of SG&A included in the normal value. Therefore, the Department will continue to not deduct bank charges from Far Eastern's gross U.S. sales prices.

**Comment 21: Far Eastern's Market Economy Price for Ethylene Glycol ("EG")**

Far Eastern contends that the Department should continue to value EG using the market economy purchase prices from its affiliated producer because the input was purchased from a market economy supplier and paid for in a market economy currency. See 19 C.F.R. 351.408(c)(1). Far Eastern contends that although an affiliated party produced the EG, the price was determined by an arm's-length transaction. According to Far Eastern, it is the Department's normal practice to disregard a market economy purchase only when the transaction was not at arm's length or is less than the cost of producing the input.

In this case, Far Eastern contends that it was an arm's-length transaction because the price was above cost from the affiliated supplier (i.e., cost plus reasonable return). Furthermore, Far Eastern alleges that the price it paid was consistent with the weekly International Chemical Information Service ("ICIS"), an independent spot price reporter. Far Eastern also contends that the prices it paid for the EG that were produced by the affiliated supplier are also consistent with the purchase of EG from a non-affiliated provider.

Petitioners contend that the Department should reject Far Eastern's market economy purchase prices of EG and use either Indian import statistics or, alternatively, world market prices for EG. Specifically, Petitioners argue, the market economy prices reported by Far Eastern should be rejected because they are transfer prices from Far Eastern's affiliated supplier and are not conducted at arm's length. See, e.g., CTVs, at Comment 8, ("our practice is to rely on transfer prices charged by affiliated parties only where those prices are at arm's length."); see also Notice of Preliminary Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs From the People's Republic of China, 66 FR 60185 (December 3, 2001) ("It is not the Department's practice to reject actual prices paid in market economy currencies to market economy suppliers, unless they are not at arm's length or if the amount purchased was insignificant" ).

Petitioners also contend that even if Far Eastern and Company Z[20] are unaffiliated, the Department should not accept the EG price because the upstream price to Company Z is still suspect given that the affiliated producer knows that the ultimate buyer is Far Eastern. Petitioners claim that in a somewhat analogous circumstance, the Department found a supposed unaffiliated middleman in a transaction chain involving affiliates on either end was not sufficient to render it an arm's length transaction. See Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, From Japan, 62 FR 24394, 24403 (May 5, 1997) (" . . . where the trading company acts as the foreign producer's selling agent . . . the foreign producer and trading company would be considered affiliated by virtue of their principal-agent relationship").

Petitioners allege that Far Eastern admitted that the EG is produced by Far Eastern's affiliate and the price negotiations were conducted by Company Z and Company X with the price – along the entire chain – being identical on all invoices from Company X through Company Z to Far Eastern. See Far Eastern's Verification Report, at 28. Petitioners argue that at verification the Department noted that the EG that Far Eastern purchased through Company Z was supplied by Far Eastern's affiliated producer and that the director of Company Z is also manager for Far Eastern Textiles Limited ("FETL"). Id. Petitioners also allege that Far Eastern stated that Company Z and Company X communicate with Far Eastern for approval during the purchase negotiations, indicating that Company Z is not reasonably considered an independent reseller who just happens to sell EG to Far Eastern that was produced by Far Eastern's affiliate.

Petitioners allege that Far Eastern knew that Company Z was an affiliate, but intended to convey the contrary impression by claiming the companies had no shared officers. As a consequence, Petitioners contend that Far Eastern failed to act to the best of its ability to "put forth its maximum effort to provide Commerce with full and complete answers to all inquiries" in this investigation. See NSK Ltd. v. United States, Slip Op. 05-1296 (Fed. Cir. Mar. 7, 2007) at 8, citing Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003). Further, as a result of its non-cooperation, Petitioners argue that Far Eastern allowed the Department's Preliminary Determination to understate the price of EG. Therefore, Petitioners argue that the Department should use adverse-facts-available ("AFA") for the EG value in the final determination.

Specifically, Petitioners argue that the Department should use India's Chemical Weekly to value Far Eastern's EG consumption because the prices Far Eastern paid for EG were not at arm's length. Petitioners contend that the record does not contain sufficient information to test the prices against other suppliers' market prices and cost of production. Petitioners claim to have provided a representative Indian surrogate value for EG of 54.72 Rupees per kilogram, derived from India's Chemical Weekly and is contemporaneous with the POI. See Petitioners' Surrogate

[20] The name of Company Z and Company X are proprietary. Please see Far Eastern's Verification Report or Far Eastern's Analysis Memo for the details.

Value Letter to the Department (November 9, 2006), at 3 and Attachment 4. Petitioners note, however, that the above value amounts to neutral facts available, and at this late date the Department has no way of knowing if actual market prices would have been higher. Thus, Petitioners contend that the Department should increase this value by adding an amount for SG&A and profit for Company Z as an adverse inference.

Petitioners also argue that the single market price from a non-affiliated supplier on the record is not representative of market prices during the POI, and cannot be considered as an adequate benchmark for the entire POI. Petitioners contend that although the price was higher than the transfer prices reported in the same month, the one market price in the one month is not an adequate comparison.

Far Eastern rebuts Petitioners' argument that it failed to act to the best of its ability by explaining that it has been forthright from the beginning with the Department regarding the affiliated supplier chain for its purchases of EG. Far Eastern contends that the facts fully establish that the EG purchased by Far Eastern was produced and sold by an affiliated supplier through a chain of affiliated companies. Far Eastern argues that the Department disregards affiliated transactions only if the price of such inputs is not consistent with arm's-length prices or is less than the cost of producing the input. See 19 U.S.C. 1677b(f)(2) and (3). Therefore, in this case, Far Eastern rebuts Petitioners' contention that the transactions were not at arm's-length by arguing that the price was above all the costs of the affiliated producer and the price was consistent with the weekly ICIS report.

In rebuttal, Petitioners allege that Far Eastern had ample opportunity over several months to provide cost and market price data in the context of its questionnaire responses. According to Petitioners, rather than simply admitting from the start that its market economy EG prices were affiliated transfer prices and reporting complete cost of production and arm's-length market pricing data, Far Eastern instead sought to downplay its use of transfer prices by portraying them as arm's length. As a result, Petitioners argue that the Department should find that Far Eastern's reported prices for EG were transfer prices and thus not acceptable as market economy prices. Moreover, Far Eastern's untimely explanations and unsupported cost and price worksheets do not satisfy the Department's requirements for submission at verification and are not sufficient to support the use of the reported transfer prices. Therefore, Petitioners argue that the Department should use its reported Indian import statistics to value this input.

**Department's Position:**

When an NME producer purchases inputs from market economy suppliers and pays in a market economy currency, the Department normally uses the average actual price paid by the NME producer for these inputs to value the input in question, where possible. See 19 CFR 351.408(c)(1); see also Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271, 55274-75 (October 25, 1991). However, when a portion of that input is purchased from a NME supplier, the

Department will normally use the price paid for the input sourced from market economy suppliers to value all of the input, provided that the volume of the market economy input as a share of total purchases from all sources is "meaningful," a term used in the Preamble to the Regulations but which is interpreted by the Department on a case-by-case basis. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997); see also Shakeproof v. United States, 268 F.3d 1376, 1382 (Fed. Cir. 2001) ("Shakeproof"). Such market economy input purchases must also constitute arms-length, bona fide sales. See Shakeproof, 268 F.3d at 1382-83.

In this case, Far Eastern had no EG purchases from a NME supplier during the POI. Therefore, in this case, the Department has determined that its market economy purchases of EG were meaningful or significant during the POI. In addition, however, we also find that Far Eastern is affiliated with all parties within the supply chain for its purchases of EG from its affiliated supplier. See Section 771(33) of the Act. In this case, record evidence exists that shows that there is an employee and employer relation between the director of Company Z and FETL, Far Eastern's parent. Furthermore, Far Eastern also explained that Company X was responsible for setting the final price to Far Eastern. Therefore, it is not controverted that Far Eastern's purchases from Company Z and its affiliated producer are transactions between affiliated parties.

Section 773(f)(2) of the Act states that:

> A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration.
>
> If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are affiliated.

Since Far Eastern purchased EG from an affiliated supplier, the Department must determine whether the EG price paid by Far Eastern to its affiliated supplier is an amount usually reflected in the sales of merchandise under consideration. Therefore, we compared Far Eastern's price from its affiliated supplier to the price paid to the unaffiliated supplier during the POI and find that Far Eastern's price to its affiliate is lower, and consequently does not fairly reflect the amount usually reflected in the sales of EG. To further corroborate this finding, we compared the average POI price Far Eastern paid to its affiliate with the average POI price from ICIS, a London-based world chemical index that is on the record of this investigation. A comparison of the POI averages from Far Eastern and ICIS is appropriate in order to capture a price reflective of the market during the entirety of the POI. We find that Far Eastern's average POI price to its affiliate is also lower than the average POI price from ICIS. As a result, the Department is

disregarding the volume and value of the EG purchased by Far Eastern from its affiliate in its surrogate value analysis.

Although the Department recognizes that Far Eastern's EG purchases were from its affiliated market suppliers were paid for in a market economy currency and accounted for a meaningful[21] amount of its EG purchases during the POI, they are, as discussed above, not appropriate for valuing EG. The remaining volume and value of Far Eastern's EG purchases from its unaffiliated supplier is not meaningful[22] when determining whether to value Far Eastern's EG input using a surrogate value or the market economy price paid to its unaffiliated supplier. We find that because the majority of Far Eastern's EG purchase have been disregarded pursuant to section 773(f)(2) of the Act, it would be inappropriate to value all of Far Eastern's EG using the price paid to its unaffiliated supplier as it only represents a small volume of the useable purchases during the POI. Therefore, for this final determination, we valued Far Eastern's EG input purchased from its affiliated supplier with the surrogate value from Chemical Weekly.

**Comment 22: Far Eastern's Market Economy Price Adjustments for PTA**

Petitioners contend that at Far Eastern's verification the Department found that the reported price adjustments to Far Eastern's PTA purchases were not made until after it was generally known in the PRC that a U.S. antidumping petition would be filed. Petitioners allege that downward price revisions do not reflect reality when PTA prices were steadily rising throughout the investigation period due to an increase in the price of crude oil. Petitioners contend that the reported PTA prices should be adjusted to reflect the prices originally agreed upon by Far Eastern and its PTA supplier.

Petitioners state that the antidumping petition in this proceeding was filed in June 2006, and Petitioners have demonstrated that exporters in the PRC were aware of the filing months in advance.[23] Petitioners allege that verification revealed that the price changes that reduced PTA purchase costs were not based on pre-existing agreements.[24] Petitioners also contend that the verification revealed that the price revisions occurred at or after the time that exporters were well aware of the impending dumping petition. Petitioners allege that for a particular supplier the first

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[21] "Meaningful" is a term used in the Preamble to the Department's regulations but which is interpreted by the Department on a case-by-case basis. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997) ("Final Rule"); see also Shakeproof v. United States, 268 F.3d 1376, 1382 (Fed Cir. 2001).

[22] See Far Eastern's Analysis Memo.

[23] See Petitioners' Letter to the Department, dated August 30, 2006, in which Petitioners provided (at Attachments 2A and 2B of that letter) evidence of published reports of exporters and MOFCOM were actively preparing "themselves for giving answers" to the Department in early March 2006, suggesting that knowledge of an impending petition was gained sometime before March 2006.

[24] The sales contract with the supplier only indicates that an adjustment of plus or minus half a percent to cover the buyer's additional delivery-related costs. See Far Eastern's Verification Report, at Exhibit GG and 4.

PTA rebate was dated on or after the industry website, www.fibre2fashion.com, reported that PSF producers were already in the process of preparing "themselves for giving answers" to the Department.

Petitioners contend that the Department's policy is to consider with great skepticism adjustments to prices and costs that occur after there is knowledge of an antidumping proceeding. Petitioners argue that the Department regularly rejects price adjustments that are made after the filing of a petition because of the potential for manipulation. See Notice of Final Determination of Sales at Less Than Fair Value; Certain Frozen and Canned Warmwater Shrimp from Ecuador, 69 FR 76913 (December 23, 2004) ("Ecuador Shrimp") and the accompanying Issues and Decisions Memorandum at Comment 11 (the Department accepted post-petition price adjustments established prior to the filing of the petition and rejected post-petition adjustments in the absence of contemporaneous evidence, as opposed to declarations of interested parties, that the price adjustments were made pre-petition); see also Notice of Final Determination of Sales at Less Than Fair Value; Large Newspaper Printing Presses from Germany, 61 FR 38166 (July 23, 1996) ("German Presses") (Department's standard practice is not to accept price adjustments instituted after the filing of a petition; the Department rejected a price amendment and relied on original contract price). Petitioners also contend that the Courts have upheld the Department's discretion in disregarding price adjustments made after a petition is filed. See, e.g., Koenig & Bauer Albert AG v. United States, 15 F. Supp. 2d 834 (CIT 1998) (Department's decision to reject price amendments that had the potential to manipulate price is supported by substantial evidence and permitted under 19 U.S.C. §1677a(a) & (b)); Dastech Int'l Inc. v. ITC, 963 F. Supp. 1220, 1229 (CIT 1997) ("post-petition price changes may be suspect because of the possibility of posturing to promote the outcome a party desires").

Petitioners allege that PTA price data gathered by the ITC shows that PTA prices increased linearly throughout the entire three-year period 2004-2006 due to "the significant increase in the price of crude oil" which increased the cost of producing "virgin PSF." Petitioners contend that Far Eastern's claim that its PTA supplier agreed to lower its contractual prices and provide rebates to Far Eastern due to "market conditions" is not supported by record evidence. Therefore, Petitioners contend that the Department should reject Far Eastern's adjusted market economy prices for PTA and, for the final determination, recalculate the average price without regard to the price adjustments.

Far Eastern contends that it provided a reconciliation of PTA upward and downward purchase price adjustments with the monthly total adjustments at verification. Far Eastern argues that the information shows that downward adjustments were not limited to March 2006, but also occurred in December 2005 and January 2006, well before the "imputed knowledge" month. In fact, Far Eastern alleges that the record shows that the price adjustments in December 2005 and January 2006 were larger than March 2006. Far Eastern also contends that the prices were also adjusted upward in several months of the POI, including the beginning of March 2006.

Far Eastern argues that the weighted-average PTA price that Petitioners show increasing from year-to-year does not take into account monthly or transaction specific fluctuations that may have occurred during the period. Therefore, Far Eastern argues that the record evidence does not support Petitioners' allegations that Far Eastern is trying to manipulate its prices through price adjustments.

**Department's Position:**

The Department reviewed Far Eastern's upward and downward price adjustments at verification based on market fluctuations. See Far Eastern Verification Report, at 27. We disagree with Petitioners that the increasing prices over three years is indicative of the price or the adjustments between Far Eastern and its supplier because the increasing price trend is not specific to the daily, weekly or monthly market fluctuations that may have existed during the POI or to Far Eastern in particular. We agree with Far Eastern that in many of the months it had both increasing and decreasing adjustments to the price.

Because none of the authority Petitioners cite are specific to market-economy purchases in a NME case, we also disagree with Petitioners that there is precedent to reject market economy price adjustments in this case. In Ecuador Shrimp, German Presses, Koenig, and Dastech, the price adjustments in question were for home market sales of the subject merchandise. In these cases, the Department reviewed the price adjustments that Respondents made on sales after the petition had been filed. Furthermore, in each case the Department only rejected the price adjustments when they occurred after the filing of the petition. We determine that Ecuador Shrimp is most applicable. Therefore, as in Ecuador Shrimp, we determine that Far Eastern's price adjustments were established prior to the filing of the petition and prior to the knowledge month in the critical circumstances allegation.

**Comment 23: Far Eastern's Brokerage and Handling Expenses**

Far Eastern claims that the Department doubled-counted B&H expenses in the Preliminary Determination. Specifically, Far Eastern contends that the majority of its brokerage and handling expenses were already paid to the market economy supplier and included in its reported international freight expense. Therefore, Far Eastern contends that the Department should not apply a surrogate value for the brokerage and handling expenses it paid to its market economy supplier.

Furthermore, Far Eastern contends that it incurred limited B&H expenses for its FOB sales of PSF. Specifically, Far Eastern argues that it incurred only minor charges: the documentation fee, the customs declaration fee and the booking fee. Far Eastern argues that these fees were not included in its reported international freight and were paid to the NME supplier for both the CIF and FOB sales. Therefore, Far Eastern contends that because these three fees represent the full-extent of its B&H expenses, it would be inappropriate to apply the full value of the surrogate to its sales.

Specifically, Far Eastern contends that its market economy freight supplier provides each charge that is included in the B&H expense separately. Far Eastern contends that the individual items are also typical to Indian freight contracts. See Far Eastern Surrogate Value submission, dated February 5, 2007, at Exhibit 1. Far Eastern argues that the documentation fee, the customs declaration fee and the booking fee account for less than 15 percent of the total B&H expenses normally incurred, when compared to the market economy supplier's B&H charges. Therefore, Far Eastern contends that the Department should adjust the surrogate value for B&H by multiplying the percentage of the B&H services that Far Eastern paid (i.e., the documentation fee, the customs declaration fee and the booking fee). According to Far Eastern, failure to not exclude the expenses it did not pay or were paid to the market economy supplier would overstate the B&H expenses.

Petitioners contend that Far Eastern's argument that clarified certain B&H expenses as market economy purchases, is incorrect. Citing the verification report, Petitioners argue that although Far Eastern submitted a minor correction at the beginning of verification, the Department observed that some of the B&H fees were actually paid in renminbi ("RMB"). Further, Petitioners argue that because the ultimate provider of the service was a PRC company, the entire transaction was not reported correctly. Therefore, the Department should use a surrogate value for Far Eastern' B&H expenses.

**Department's Position**

As discussed in Comment 5 above, the Department calculated a simple average using the data from Essar Steel, Agro Dutch and Kejirwal to value the B&H expenses incurred by Respondents. Far Eastern provided evidence of its market economy payment and NME payment for its incurred B&H expenses on its sales to the United States. We disagree, however, with Far Eastern that we should adjust the B&H surrogate value based on Far Eastern's market economy and NME B&H expenses.

Although there is record evidence that certain B&H expenses incurred by Far Eastern are similar to an Indian freight contract provided by Far Eastern, there is no evidence that Essar Steel, Agro Dutch and Kejirwal contain the same expenses that Far Eastern alleges. In fact, without record evidence of what B&H expenses are included within the Essar Steel, Agro Dutch and Kejirwal data, the Department is unable to conclude that the very NME B&H expenses that Far Eastern paid are not represented by the Essar Steel, Agro Dutch and Kejirwal data. Therefore, we disagree with Far Eastern that we should adjust the B&H surrogate for its U.S. sales.

**Company Specific Issues: Ningbo Dafa**

**Comment 24: Ningbo Dafa's Consumption of Oils**

According to Petitioners, Ningbo Dafa calculated and reported the consumption of all silicone oil over all siliconized products, non-silicone fiber oil over all non-siliconized products, and

antistatic oil over all production. Petitioners contend that at Ningbo Dafa's verification the Department found that for one customer, the purchase orders corresponding to certain observations stated that Ningbo Dafa would be required to make certain changes in the use of silicone oil, fiber oil and antistatic oil in producing PSF in order to produce very slick product. See Ningbo Dafa's Verification Report, at 19. Petitioners argue that Ningbo Dafa officials claimed that this was unnecessary because the products shipped ostensibly met or exceeded the target quality samples however, the verification report mentions no evidence or documentation that this was the case, such as letters from the customer, modified contracts, change orders, etc. Petitioners argue that they were unable to find any such cancellation instructions in any documents in the verification exhibits. According to Petitioners, if the customer dropped these requirements because the first shipment proved that the conditions were unnecessary, it is illogical that each successive purchase order repeated the requirements. Petitioners argue that for one particular sale to this customer, the commercial invoice actually documented that the production required an even stricter specification. Petitioners argue that under the standard recently re-affirmed by the Federal Circuit, Ningbo Dafa is required to do "the maximum it is able to do to provide Commerce with full and complete answers." See NSK, Slip Op. 05-1296 at 8; Nippon Steel 33F F.3d at 1382. Therefore, Petitioners argue, as partial facts available, all sales to this particular customer should have the silicone oil, fiber oil and antistatic oil adjusted. Thus, Petitioners argue that Ningbo Dafa's factor usage ratios for silicone, antistatic and fiber oils should be adjusted based on information found on certain purchase orders for a single customer.

Ningbo Dafa argues that the Department verified that Ningbo Dafa's consumption of silicon oil and antistatic oil was allocated evenly across all products consuming these inputs. Ningbo Dafa asserts that it did not apply any extra oils to specific production runs, nor did Ningbo Dafa make special withdrawals from inventory in order to add extra oils to its finished product. Moreover, Ningbo Dafa contends that the purchase orders in question are boilerplate language. Ningbo Dafa argues that should the Department apply an extra usage ratio to the consumption of silicon and antistatic oil to its FOPs for sales to a certain customer, the Department must adjust the usage ratios for other customers downward, as the FOPs were reported equally across all products.

**Department's Position**:

We note that the Department required Respondents to "calculate the per-unit factor amounts based on the actual inputs used by your company during the POI as recorded under your normal accounting system." See Department's Original Antidumping Duty Questionnaire, dated September 20, 2006 at D-1. At Ningbo Dafa's verification, the Department examined Ningbo Dafa's accounting system and its calculation of oils consumed in the production of PSF and found no discrepancies. See Ningbo Dafa's Verification Report, at 24-26. Thus, the Department found no evidence that Ningbo Dafa adjusted its consumption of oils based upon purchase orders. Therefore, the Department will continue to use Ningbo Dafa's factor usage ratios for silicone, antistatic and fiber oil without making any adjustments.

**Comment 25: Ningbo Dafa's Market Economy Purchases and Factor Usage of PET Flake**

Petitioners allege that Ningbo Dafa submitted, and in the Preliminary Determination the Department relied on, a single, weight-average market economy price ("MEP") for all colors of PET flake. Petitioners argue that Ningbo Dafa, after explaining that its purchase records simply do not permit it to reconstruct every market economy purchase, stated that:

> The color may be displayed on the purchase contract, supplier invoice or the suppliers' packing list. However, as stated above, many of these documents do not show any color at all. Ningbo Dafa maintains no other documents that might show the color. No such documents are electronic documents. As Ningbo Dafa's purchases are based upon samples provided for its inspection, it has found no need to record the colors (assuming they could be meaningfully recorded for rough flake) in Ningbo Dafa's normal course of business.

See Ningbo Dafa's February 7, 2007, submission at 10. Petitioners assert, however, that Ningbo Dafa's records showed that Ningbo Dafa could have reconstructed color-specific PET flake purchases, at least from some vendors, and perhaps for all. According to Petitioners, the record of this investigation does not disclose any occasion or effort by Ningbo Dafa to try to reconstruct the color-specific purchase records requested by the Department.

Petitioners contend that at Ningbo Dafa's verification the Department made several findings with respect to Ningbo Dafa's purchases of PET flake. First, Petitioners allege that in conducting the cost reconciliation, the Department found evidence that Ningbo Dafa allocated its direct material costs (i.e., its cost to purchase PET flake, using "market price ratios" based on the colors of PSF produced by Ningbo Dafa). Petitioners contend that the market price ratios match the MEPs which Ningbo Dafa paid for PET flake of different colors. See Ningbo Dafa's Verification Report, at 20. Second, Petitioners allege that at verification Ningbo Dafa officials admitted that they were aware of price differences for different color PET flake and knew that the market price for green PET flake was below the price for comparable white PET flake, and that the market price for brown flake was even lower. Id. at 21. Finally, Petitioners argue that during the verification of white PSF production, the Department noted that the vast majority of PET flake input, at least 90 percent, was immediately recognizable as pure white PET flake with a minority being blue PET flake. Id. at 12. Petitioners assert that the Department noted, but did not quantify, the trace amounts of green PET flake observed in a few of the feedstock bags. Petitioners contend that Ningbo Dafa demonstrated that the total trace amount of green PET flake introduced to make white PSF, as evidenced on their production paddle, is extremely small. Therefore, Petitioners argue that no PSF producer would, or could, use five percent green PET flake or brown PET flake, or even two percent green or brown PET flake, in the production of white PSF.

According to Petitioners, PET flake is the single largest raw material input in the production of recycled PSF. Petitioners argue that the single weighted-average PET flake MEP provided by

Ningbo Dafa: (1) introduced a significant distortion in the Department's analysis, (2) was an "average" value that mixed all PET flake purchases regardless of color or purity level, and was not "as specific" as was possible under the company's existing records, and (3) was inconsistent with records kept, and color-specific PET flake purchases reported, by other PRC producers and other producers in the PSF industry generally.

Petitioners contend that Ningbo Dafa has admitted that "white PSF has a very small acceptable color range" in terms of non-white polymer contaminants, irrespective of what "shade" of white may be produced. Id. at 14. Therefore, Petitioners assert that a single weight-average MEP for PET flake (inclusive of all colors) significantly distorts the Departments margin calculation because a small (even one percent) MEP purchase of green PET flake, by volume, will significantly undervalue the production cost of white PSF.

According to Petitioners, PRC and other PSF producers do not blend PET flake colors to achieve PSF colors, they use white PET flake to produce white PSF, green PET flake to produce green PSF, and brown PET flake to produce brown PSF. Petitioners assert that Ningbo Dafa has claimed that it cannot provide color specific MEPs for the PET flake consumed, but instead has provided a single, weight-average PET flake MEP for all colors, implying that Ningbo Dafa "blends" all PET flake colors in the production of white, green and brown PSF. Petitioners contend that, in order to justify its failure to comply with the Department's requests for PET flake purchase information by color, Ningbo Dafa stated that there is no precise recipe for any particular PSF color and that PET flake is sold in a wide variety of quality and colors, such that it is difficult to know exactly what shade or shades of color were used to make any given batch of PSF. See Ningbo Dafa's February 7, 2007, Second Supplemental Section D Questionnaire Response ("SSDQR") at 7-9. Petitioners argue that the Department's CONNUMS differentiate among white, green and brown PSF and the Department did not require or allow the reporting of shades or gradations of white or green PSF such as "super bright white," "yellowish-white," "lime-green," "emerald green" or any other sub-specification of color. See Petitioners' February 20, 2007, submission at 16. According to Petitioners, at the request of Cixi Jiangnan, the Department used only three colors in its matching hierarchy (white, green, and brown) and as Ningbo Dafa purchased different colors of PET flake, specifically green and white, at different MEPs, Ningbo Dafa should have reported its PET flake consumption for the colors it reported for its control number designation of sales and costs as did Cixi Jiangnan. See Ningbo Dafa's December 12, 2006, submission.

Petitioners argue that Ningbo Dafa never provided any evidence of Chinese national generally accepted accounting principles ("GAAP") to support its argument that it was permissible for it to not maintain records of its most significant raw material input purchases. According to Petitioners, Ningbo Dafa's claim that it maintains "no records" rests on an assertion that Ningbo Dafa relies on its managers to subjectively coordinate PET flake usage by rote memory and glances at PET flake inventory. Petitioners argue that the Department's non-specific and inaccurate use in the Preliminary Determination of a single MEP for PET flake for all PSF colors, does not reasonably reflect the cost of production differences that Ningbo publicly acknowledged range from US$ 400 to $750 of PET input based solely on differences in color.

See Ningbo Dafa's December 12, 2006, submission. Petitioners argue, under any GAAP standard, a price difference of $350 in the most significant and costly raw material input must be considered significant and material to the recording of costs in the production of PSF. Therefore, according to Petitioners, Ningbo Dafa has attempted to avoid the statutory requirements of section 773(f)(1)(A) of the Act, requiring compliance with GAAP and that costs reasonably reflect actual production costs, by failing to provide requested data and arguing that it cannot be expected to produce information that it does not maintain in the normal course of business.

Petitioners argue that section 773(f)(1)(A) of the Act requires that, at a minimum, production data be based on records "kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) . . . ." See 19 U.S.C. 1677b(f)(1)(A). Petitioners further argue that section 773(f)(1)(A) of the Act requires that the reported data "reasonably reflect the costs associated with the production and sale of the merchandise." Moreover, Petitioners argue that the Department's regulations extend these statutory requirements by requiring that reported costs and prices reasonably reflect actual costs/prices, and by requiring that allocations and price adjustments: (1) do not cause inaccuracies or distortions; (2) are calculated on an as-specific basis as is feasible; and (3) in determining what is feasible, the Department will consider the records maintained by respondent as well as the normal accounting practices in the country and industry in question. See 19 C.F.R. 351.401(g).

According to Petitioners, in the twelfth administrative review of bearings from Japan, the respondent NTN, allocated freight costs by sales value, rather than provide transaction-specific freight costs or allocating its costs by weight. Petitioners argue that the Department applied AFA to NTN, finding that NTN failed to cooperate to the best of its ability in failing to explain why its allocation method was not distortive or inaccurate, or why its allocation was the most specific method feasible. See NSK Slip Op. 05-1296 at 6-7. Petitioners contend that in upholding the Department's decision, the Court recognized that the Department may apply AFA when a respondent has failed to cooperate to the best of its ability, which requires a respondent to put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation. See NSK citing Nippon Steel 337 F.3d at 1382. In addition, Petitioners contend that the Court stated that, while that standard does not require perfection, it "does not condone inattentiveness, carelessness, or inadequate record keeping. Id. Thus, Petitioners argue that at a minimum, NSK and Nippon Steel require that the Department not allow a respondent to profit as a result of carelessness or inadequate record keeping.

Petitioners argue that Ningbo Dafa has provided contradictory statements regarding its purchase of PET flake. Petitioners assert that, at verification, Ningbo Dafa claimed that it discarded all documents for samples of the PET flake that it received from its suppliers, stating that "they receive samples of gross flakes when they first begin their relationship, but that they do not keep them once they know the quality of the flake which can be supplied." See Ningbo Dafa's Verification Report at 22. Petitioners contend that this claim contradicts Ningbo Dafa's position on why it could not report the type of PET flake each supplier sent, stating "that they do not receive regular shipments from suppliers for certain colors of flake, that colors of gross flake are

ordered on an as needed basis." Id. at 21-22. According to the Petitioner, if Ningbo Dafa discards the sample documentation after initial consultation with a vendor, because that firmly establishes the quality and color of the PET flake, then Ningbo Dafa should be able to report the type of PET flake purchased from the vendor. Moreover, Petitioners assert that Ningbo Dafa's attempts to avoid complying with the Department's request for information by claiming that the immediate sales documents may not show the color of PET flake purchased is undermined by the fact that the secondary documents contain sufficient information that would have allowed Ningbo Dafa to obtain and provide the necessary information. Petitioners claim that a careful review of Ningbo Dafa's contractual documents show that certain vendors identify the type of PET flake sold. See Ningbo Dafa's SSDQR at Exhibit 3. Thus, Petitioners argue, given that Ningbo Dafa could have responded to the Department's request for color information by providing its cost ledger data, or these secondary documents, and given that Ningbo Dafa failed to provide this information, the Department should conclude that Ningbo Dafa has failed to cooperate to the best of its ability.

According to Petitioners, the Court permits the Department to make an adverse inference under section 776(b) of the Act, without any determination that the failure to cooperate was willful or below the level of cooperation of a reasonable company. Petitioners argue that Ningbo Dafa's calculation of a single, weight-average MEP for brown, green and white PET flake did not reflect a legitimate attempt to provide the Department with a "full and complete," non-distortive allocation methodology on the "most specific basis feasible." See NSK Slip Op. 05-1296 at 8-9. Petitioners contend that it does not matter whether Ningbo Dafa did not maintain color-specific PET flake records if the Department finds that Ningbo Dafa failed to cooperate by failing to exert its maximum efforts to provide the Department with more specific, more accurate PET flake values. Moreover, Petitioners assert that in NSK the Court stated that the Department need not determine whether Respondent intentionally withheld documents, or even that a reasonable respondent would have maintained these documents. Therefore, Petitioners assert, if the Department determines that Ningbo Dafa did not make a legitimate effort to provide a "full and complete" account of the accuracy and non-distortive nature of its single PET flake value, or due to inadequate record-keeping or carelessness, it may find that Ningbo Dafa did not cooperate to the maximum extent of its ability and resort to AFA for the final determination.

In addition, according to Petitioners, the fact that Ningbo Dafa provided data that do not "reasonably reflect the cost associated with the production and sale of the merchandise" is sufficient to draw an adverse inference. Petitioners contend that if the Department determines that Ningbo Dafa could have provided PET flake purchases by color, or a less distortive valuation of PET flake, then the Department must conclude that Ningbo Dafa failed to cooperate to the maximum extent it was able and make an adverse inference for the final determination. Petitioners argue that the Department was not just interested in supplier-provided documents, and Ningbo Dafa did not qualify its statement when it said it maintained "no documents" that would enable it to value PET flake purchases by color. Petitioners contend that, as the NSK and Nippon Steel cases make clear, the issue is not what records Ningbo Dafa actually maintained, but whether Ningbo Dafa expended the maximum effort possible to provide full and complete answers, a standard which "does not condone inattentiveness, carelessness, or inadequate record

keeping." Therefore, Petitioners argue, the disclosure at verification of the direct material cost ledgers indicates that Ningbo Dafa did not exercise its maximum effort to cooperate and did not allocate market economy purchases as specifically as was possible, or even in accordance with records it maintained in the ordinary course of business. Therefore, Petitioners argue that the Department must resort to AFA to value all of Ningbo Dafa's PET flake purchases for all products produced by Ningbo Dafa using the highest documented MEPs, not including subsidized markets. See Ningbo Dafa's SSDQR at Exhibit 2, page 41.

As an alternative, Petitioners argue that should the Department elect to apply partial facts available without an adverse inference, it should rely on the best available information on the record, (i.e., documentation in Ningbo Dafa's February 7, 2007, submission, using the white and green MEP values contained therein). Petitioners argue that the Department should weight average Ningbo Dafa's invoice and contract prices for white PET flake. See Ningbo Dafa's February 7, 2007, submission. In addition, Petitioners argue that the Department should value Ningbo Dafa's green PET flake using the weighted–average invoice value for green PET flake, taking into consideration the physical differences in composition. Id. Finally, Petitioners argue that the Department should value all other colors of Ningbo Dafa's PET flake using the weighted-average price of all PET flake for which no color documentation was provided. See Petitioners' February 20, 2007, submission, at Attachment 2.

In its rebuttal brief, Ningbo Dafa argues that there are substantial factual differences between this case and NSK and Nippon Steel. Ningbo Dafa asserts that Nippon Steel is a large mega-corporation and one of the world's most sophisticated steel producers. According to Ningbo Dafa, Nippon Steel and NSK have participated in at least twelve Department proceedings. Ningbo Dafa contends that Nippon Steel and NSK produce highly sophisticated products and keep highly sophisticated records. Ningbo Dafa argues that, in contrast, Ningbo Dafa keeps very simple records and before the PSF investigation had no reason to question the effectiveness of its own record keeping. Ningbo Dafa asserts that the Court has held that it is unreasonable for the Department to require respondents to keep their financial records in particular form for the purposes of an antidumping investigation. See Atlantic Sugar, Ltd. v. United States, 744 F.2d 1556, 1561 (Fed. Cir. 1984).

In addition, Ningbo Dafa contends that the CIT has held that a party cannot be required to use a different accounting system nor supply information that it does not posses. See Borden, Inc. v. United States, 4F. Supp. 2d. 1221, 1246-47 (CIT 1998) ("Borden"). Ningbo Dafa argues that it has fully disclosed that it uses a variety of different colored flakes, and cannot provide color-specific costs or usage, in the production of white, green and brown PSF. Ningbo Dafa asserts that the Department has verified that Ningbo Dafa cannot provide color-specific costs or usage, that only 7 percent of the applicable invoices list the color of flake and that none of Ningbo Dafa's records (truck weight book, inventory in/out of gross flake) record the color of flake. See Ningbo Dafa's Verification Report, at 8-13.

Ningbo Dafa argues that the facts of NSK do not match that of the instant investigation. According to Ningbo Dafa, NSK was asked twice by the Department for a weight conversion

factor, which it initially did not report, instead reporting it seven days before verification. Ningbo Dafa asserts that at no time has Ningbo Dafa claimed that it did not use white, green or brown PET flake, nor has it contended that these color PET flakes are worth similar amounts. Ningbo Dafa asserts that it has consistently explained that it uses a range of PET flake shades in each PSF production run, which the Department's verifiers witnessed. See Ningbo Dafa Verification Report, at 11-12. Ningbo Dafa argues that its questionnaire responses can be distinguished from NSK in that NSK twice denied possessing certain information whereas Ningbo Dafa's questionnaire responses have been completely accurate from the outset, verified by the Department in an exhaustive review of its inventory procedures and record keeping.

According to Ningbo Dafa, the fact that Cixi Jiangnan keeps its books and records in a different manner and under different circumstances does not mean Ningbo Dafa does not follow an undefined industry standard. Ningbo Dafa contends that a comparison of the verification reports of Ningbo Dafa and Cixi Jiangnan shows that Cixi Jiangnan has a very limited space in which to store PET flake and thus must know exactly what types of flake it has in inventory whereas Ningbo Dafa has a very large space to store PET flake. Ningbo Dafa also asserts that Cixi Jiangnan purchases washed flake, whereas Ningbo Dafa purchases gross (i.e., dirty) PET flake, making it easier for Cixi Jiangnan to track the color of the PET flake purchased. Ningbo Dafa contends that it does not track where specific purchases of PET are stored, thus, if a small amount of supplier invoices did indicate the color, the invoice is not tied to any of the accounting and inventory records as the purchase works its way through production.

Ningbo Dafa asserts that the verification report states that it allocated its direct material costs using "market price ratios" based on the colors of PSF produced by Ningbo Dafa. Ningbo Dafa also asserts that these ratios are based on the market prices of finished PSF. Ningbo Dafa contends that this methodology is based on a top-down methodology, because Ningbo Dafa tracks finished PSF by color, rather than a bottom-up methodology because Ningbo Dafa does not track PET flake by color.

**Department's Position:**

We agree with Petitioners that Ningbo Dafa's failure to report its market economy purchases of PET flake, based on color, necessitates the application of facts available. Section 776(a)(2)(B) of the Act provides that the Department shall apply "facts otherwise available" if an interested party or any other person fails to provide information within the deadlines established, or in the form and manner requested by the Department. In addition, section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, 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.

At the outset we note that there is a direct relation between the sale price of PSF and the color of PET flake price used to produce PSF (i.e., generally, white PET flake is more expensive than green PET flake, and therefore, generally, the sale price of white PSF is greater than that of green PSF). Ningbo Dafa sells PSF produced from white, green, brown and blue, etc., PET flake. A careful review of Ningbo Dafa's Section C database shows that there are higher sales prices of PSF produced for white PSF than green PSF, and that there are higher sales prices for green PSF than brown PSF. See Ningbo Dafa's Section C database. In addition, Ningbo Dafa stated that there are price differences between the colors of PET flake used to produce PSF. For example, white PET flake used to produce white PSF is more expensive than green PET flake used to produce green PSF. See Ningbo Dafa's Verification Report at 21. Therefore, in order to accurately calculate dumping margins in this case, it is important to make identical or similar comparisons between the sales of a specific color of finished PSF and the normal value based on the color of PET flake used to produce the PSF. Thus, the Department requested that Ningbo Dafa report its usage ratios of PET flake based on color and its market economy purchase prices of PET flake based on color.

In response to the Department's original antidumping duty questionnaire, dated September 20, 2006, Ningbo Dafa reported its PET flake usage ratio based on a weight-average usage rate for all colors of PET flake. See Ningbo Dafa's November 8, 2006, submission ("SDQR") at 9 and Exhibit 5. Ningbo Dafa stated that, in its normal course of business, it does not record PET flake consumption on a color-specific basis, stating that the color of the finished PSF is a simple function of the color of the PET flake used. See Ningbo Dafa's December 6, 2006, submission, at 4. However, in its January 31, 2007 submission, Ningbo Dafa provided a sample recipe, based on the color of the PET flake, used to make PSF. See Ningbo Dafa's February 7, 2007, submission, at 7 and Exhibit 1. In addition, the Department observed at verification Ningbo Dafa using one of its recipes to produce white PET in its testing laboratory. See Ningbo Dafa's Verification Report, at 12. Therefore, while Ningbo Dafa declined to provide PET flake usage ratios based on color, arguing that it did not record the consumption of PET flake by color in its books and records, Ningbo Dafa was in possession of, but did not offer, an alternative manner in which to allocate its PET flake usage ratios, i.e., through its recipes.

Regarding Ningbo Dafa's MEPs of PET flake, Ningbo Dafa argues that it does not record the purchases of PET flake based on color. Ningbo Dafa reported that it is extremely difficult to recompose PET flake purchases by color. Similarly, in its Ningbo Dafa stated that although it does order PET flake from its suppliers based on color, it does not track the color of its purchases in its normal course of business. However, Ningbo Dafa provided all POI invoices for PET flake, some of which did provide the color of the PET flake. Therefore, while Ningbo Dafa argues that the purchases of PET flake are not recorded in Ningbo Dafa's books and records according to color, we observed that at least some of the time it was possible for Ningbo Dafa to provide its PET flake purchase prices based on color.

We disagree with Petitioners that total AFA is warranted for Ningbo Dafa in this case. Section 776(b) of the Act provides for the use of AFA when an interested party has failed to cooperate by not acting to the best of its ability. To determine if an interested party has acted to the best of its ability, a case-by-case assessment must be made. In this case, we determine that there are some indications to the contrary. Here, there is insufficient evidence on the record to support a determination of total AFA. However, because Ningbo Dafa failed to provide information in the form and manner requested by the Department and did not suggest alternative forms in which it was able to submit the requested information, the Department, in accordance with sections 776(a)(2)(B) and 782(c)(1) of the Act, has applied partial facts available to Ningbo Dafa's PET flake. As partial facts available, because Ningbo Dafa did have some invoices reflecting white and green PET flake, we have used these prices to calculate a surrogate value for these purchases

of flake. See Ningbo Dafa Analysis Memo. Because Ningbo Dafa's invoices do not reflect a value for brown PET flake, the Department has subtracted the quantities and values contained on the invoices for white and green PET flake from the total quantity and value (excluding Thailand and South Korea) of all Ningbo Dafa's market economy purchases of PET flake.

Moreover, we note that for any future reviews of this proceeding, Ningbo Dafa and all other Respondents must comply with all requests for information by the Department and, therefore, should maintain the appropriate books and records to comply with these requests. If Ningbo Dafa or any other Respondents are unable to comply with such requests, the Department may resort to the use of AFA absent the information on the record that is required by the Department to conduct its proceedings in accordance with section 776(b) of the Act.

**RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date