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MEMORANDUM TO: Jeffrey May
Acting Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Color Television Receivers from Malaysia

Summary

We have analyzed the comments of the interested parties in the antidumping duty investigation of certain color television receivers (CTVs) from Malaysia. As a result of our analysis of the comments received from interested parties, we have made changes in the rate assigned to the sole respondent in this case, Funai Electric (Malaysia) Sdn. Bhd (Funai Malaysia). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from parties.

1. Unreported Sales and Cost Data
2. Returns of Subject Merchandise
3. Date of Sale/Date of Shipment
4. U.S. Billing Adjustments
5. Unreported Sales Discounts
6. U.S. Rebates
7. U.S. Inland Insurance Expenses
8. U.S. Other Transportation Expenses
9. U.S. Customs Duties
10. U.S. Indirect Warranty Expenses/U.S. International Freight Expense
11. Date of Payment/Letter of Credit Sales
12. Calculation of Imputed Credit Expenses
13. U.S. Indirect Selling Expenses
14. Expenses Associated with Sample Sales
15. Reclassification of Foreign Indirect Selling Expenses as G&A
16. Treatment of Indirect Selling Expenses in Malaysia and Japan

17. Home Market Credit Expenses and Commission Offset
18. Clerical Errors in the Preliminary Determination
19. Affiliated Manufacturer of A Major Input
20. Major Input Transfer Price
21. Raw Materials Cost
22. Parent Company General and Administrative Expense Allocation
23. Negative General and Administrative Departmental Expenses
24. Research and Development Costs
25. Short-Term Income Offset to Financial Expenses
26. CV Profit

Background

On November 28, 2003, the Department of Commerce (the Department) published the preliminary determination in the less-than-fair-value investigation of CTVs from Malaysia. See Notice of Negative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Determination of Critical Circumstances: Certain Color Televisions From Malaysia, 68 FR 66810 (Nov. 28, 2003) (Preliminary Determination). The products covered by this investigation are CTVs. Both the petitioners and Funai Malaysia requested a hearing, which was held at the Department on March 11, 2004. The period of investigation (POI) is April 1, 2002, through March 31, 2003.

We invited parties to comment on the preliminary determination. We received comments from the petitioners, Five Rivers Electronic Innovations, LLC, the International Brotherhood of Electrical Workers, and the Industrial Division of the Communications Workers of America, as well as the respondent, Funai Malaysia. Based on our analysis of the comments received, we have changed the weighted-average margins from those presented in the preliminary determination.

Margin Calculations

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

- We revised Funai Malaysia's data based on our findings at verification;

- We revised the reported U.S. indirect selling expenses for Funai Malaysia's U.S. subsidiary, Funai Corporation (Funai Corp.), to include inland freight and handling expenses incurred on returns as well as other information identified at verification. See Comment 2;

- We recalculated Funai Malaysia's reported U.S. inland insurance expenses on a transaction-specific basis. See Comment 7;

- We recalculated Funai Malaysia's imputed credit expenses for EP sales made on a letter of credit basis. See Comment 11;

- We recalculated Funai Malaysia's reported home market credit expenses using information contained in the financial statements of Formosa Prosonic Industries (FPI), a Malaysian producer of printed circuit boards (PCBs) and speaker systems. See Comment 17;

- We offset any commission paid on any U.S. sale by reducing constructed value (CV) by any home market indirect selling expenses, up to the amount of the U.S. commission. See Comment 17;

- We adjusted the calculation of CV profit to account for direct and indirect selling expenses. See Comment 18;

- We revised the company's reported direct materials cost to reflect the actual costs for cathode ray tube (CRT) and PCB components. See Comment 21;

- We revised Funai Malaysia's reported general and administrative (G&A) expenses based on the parent company's company-wide G&A expanses. In addition, we classified certain indirect selling expenses incurred in Malaysia and Japan as G&A. See Comments 15 and 22;

- For Funai Malaysia's Japanese parent company, Funai Electric Co., Ltd. (Funai Electric), we reallocated negative amounts shown for two G&A departments to other SG&A departments. See Comment 24; and

- We revised the company's CV profit ratio to reflect the company-level profit experience of the surrogate company. We also reclassified certain indirect selling expenses as G&A, based on findings at verification. See Comment 26.

Discussion of the Issues

Comment 1: *Unreported Sales and Cost Data*

The petitioners state that Funai Malaysia classified its U.S. sales during the POI into six control numbers (CONNUMs) and reported CV for these models. However, the petitioners note that one of the documents collected by the Department during verification makes clear that Funai Malaysia's U.S. subsidiary, Funai Corp., made sales of a seventh CTV model subject to this investigation. The petitioners contend that, because Funai Malaysia did not report either sales or cost data for this product, the sales and CV databases on the record are incomplete, and the sales and cost reconciliations performed by the Department at verification are meaningless.

The petitioners assert that the Department's verifications further revealed that there were numerous errors and omissions in Funai Malaysia's data, all geared to understate or hide the deductions to Funai Malaysia's reported U.S. prices. As a result, the petitioners contend that the Department should find that Funai Malaysia did not act to the best of its ability in this investigation, and they imply that the Department should resort to total adverse facts available (AFA) to determine Funai Malaysia's margin. Alternatively, the petitioners argue that the Department must, at a minimum, resort to partial AFA. As partial AFA, the petitioners assert that the Department should assign the lowest U.S. price in the U.S. sales listing, and the highest CV in the COP/CV listing, to sales of the seventh model.

Funai Malaysia disagrees that there is any basis for AFA in this case. According to Funai Malaysia, the Department confirmed at verification that Funai Corp. completely reported all U.S. sales of subject merchandise during the POI. Specifically, Funai Malaysia notes that the Department reconciled Funai Corp.'s reported sales quantities and values to its audited financial statements without finding significant discrepancies, and it performed completeness tests to ensure that Funai Corp. properly reported the universe of subject sales during the POI.

Funai Malaysia posits that the petitioners' claim apparently stems from their misunderstanding of the content of a worksheet provided at verification, which includes all products sold by Funai Corp. since 1997. Funai contends that the model numbers for the CTVs in question reveal that these models were produced well before the POI. According to Funai Malaysia, given the age of the models, the rapid turnover of units produced and sold, and the fact that the sales on the worksheet are broader than product sales during the POI, the Department cannot reasonably conclude that these units are unreported subject CTV sales. In any event, Funai Malaysia notes that the Department's verifiers did not draw such a conclusion at verification. Therefore, Funai Malaysia maintains that there is no basis to find that its U.S. sales file is incomplete.

Department's Position:

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

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

2) an interested party or any other person

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

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

> C) significantly impedes a proceeding under this title; or
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> D) provides such information but the information cannot be verified as provided in section 782(i).

We find that Funai Malaysia did not withhold information, fail to provide information to the Department in a timely manner, impede the proceeding, or provide unverifiable information. We agree that Funai Malaysia's initial and supplemental questionnaire responses contain certain inaccuracies and omissions, as noted in our verification reports and/or as discussed below. Nonetheless, we were able to verify the vast majority of the submitted information and are satisfied that adequate information exists on the record of this investigation with which to calculate an accurate dumping margin. Contrary to the petitioners' claim, we have not found Funai Malaysia's data to be inadequate, unreliable, or unverifiable in most instances. As a consequence, we do not find it appropriate to resort to total AFA for Funai Malaysia for purposes of the final determination.

With regard to the issue of unreported sales and cost data, we disagree with the petitioners that Funai Malaysia failed to report significant sales of subject merchandise during the POI.[1] As the CEP verification report makes clear, at verification we fully reconciled Funai Malaysia's reported sales quantities and values to its audited financial statements. Moreover, to ensure that Funai Corp. fully reported all sales during the POI, at verification we also performed various completeness tests. During these tests, we found no evidence that Funai Corp. failed to report any relevant sales. See the January 13, 2004, memorandum to the file from Michael Strollo entitled, "Verification of the Sales Questionnaire Responses of Funai Corporation in the Less than Fair Value Investigation of Certain Color Television Receivers from Malaysia" (CEP verification report) at page 9. Consequently, because: 1) we find no basis to determine that Funai Malaysia's sales are incomplete, and 2) Funai Malaysia reported CV data for all U.S. models, we also find that there is no basis to resort to partial AFA for the final determination.

Comment 2: *Returns of Subject Merchandise*

According to the petitioners, the Department found during the U.S. sales verification that in its sales listing Funai Malaysia had not accounted for returns of subject merchandise to the company's Los Angles Service Center (LASC). The petitioners contend that, because Funai Malaysia did not identify this issue prior to verification and, thus, did not follow the Department's instructions in compiling the U.S. sales listing, the Department should determine that Funai Malaysia failed a portion of the CEP verification.

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[1]As noted in Comment 14, below, however, Funai Malaysia did not report sales of certain sample merchandise during the POI. Nonetheless, Funai Malaysia did disclose the existence of these transactions prior to verification because it classified them as part of U.S. indirect selling expenses.

The petitioners argue that the total quantity of returned merchandise is significant, as evidenced by the fact that the number of returned units of subject CTVs exceeded the combined sales quantity that Funai Malaysia reported as sales to its third-country markets. In addition, the petitioners contend that the failure to account for returns has a significant impact on the overall accuracy of Funai Malaysia's reported U.S. sales data.

Moreover, the petitioners state that Funai Malaysia failed to account for the ultimate disposition of the returned units in its responses, and that several customer names in the verification exhibits were not reported in the company's various responses. Therefore, the petitioners assert that if the original customers returned CTVs to Funai Corp., Funai Malaysia should have excluded the returned units from its U.S. sales listing, in accordance with the Department's questionnaire instructions. Alternatively, if the sales of refurbished units to other customers occurred during the POI, Funai Malaysia should have reported the sales price and expenses associated with the sales of the refurbished units in its U.S. sales listing.

The petitioners also claim that Funai Malaysia failed to fully account for costs associated with the returned merchandise. The petitioners state that if the overwhelming majority of the unreported returned units were refurbished and resold, then Funai Malaysia failed to account for the costs associated with the refurbishing activities performed on these returned units, the costs of handling fees related to the returns, and the freight costs of these returns.

Consequently, the petitioners argue that the Department should reject Funai Malaysia's reported data in its entirety because Funai Malaysia: 1) failed to reconcile the reported data with the data maintained in its accounting system; and 2) understated numerous sales-specific expenses because it included the "returned" units in the denominators of its calculations. Alternatively, the petitioners argue that the Department, at a minimum, must: 1) take into account the cost of these returns in its final determination using AFA, and 2) exclude the highest-priced portion of the U.S. sales totaling the verified quantity of returns. As AFA for the cost of returns, the petitioners contend that the Department should calculate the following costs using the highest data on the record: 1) freight, insurance, and handling, to ship the returned merchandise to the original customers; 2) freight and insurance to ship the returned merchandise back to Funai Corp./Funai Malaysia; and 3) refurbishing and re-sale costs. The petitioners assert that this estimate is conservative, as it is possible that a portion of the returned units could not be repaired or that a portion of the returns could have been sent back to Japan or Malaysia for repair. Regarding this latter point, the petitioners note that the Department found at verification that Funai Malaysia incurred expenses relating to "returns of CTVs originally sold in the United States." The petitioners contend that the Department should account for these costs by either: 1) estimating them as noted above; or 2) increasing Funai Malaysia's foreign inland freight by the difference.

Funai Malaysia asserts that it properly accounted for returns in accordance with the Department's questionnaire instructions, noting that section C, Field 16, of the Department's questionnaire instructs that a "specific shipment or invoice line" be reported "net of returns where possible." Funai Malaysia

contends that the phrase "where possible" signals the Department's recognition that netting of returns is not required if the respondent cannot tie the return to a particular sale, and it notes that the petitioners did not identify any authority which contradicts this position. Further, Funai Malaysia notes that it did, in fact, net out from the sales listing returns which could be tied to specific sales transactions, such as returns due to invoicing errors, wholesale cancellations, short shipments, and defective units sold to primary customers. Funai Malaysia asserts it could not tie LASC returns to particular sales (and it therefore did not adjust its sales listing for these returns) because they occur months after the actual sale, arrive in bulk, and contain commingled merchandise.

According to Funai Malaysia, the Department's practice is to account for all original sales of merchandise, without adjustment for merchandise that is returned and refurbished. As support for this assertion, Funai Malaysia cites Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review, 56 FR 34180, 34185 (July 26, 1991) (TVs from Japan), where the Department ruled that refurbished sales were excluded from the analysis because "{t}he original sales of merchandise which is returned, refurbished, and resold are included on the U.S. sales database." Funai Malaysia notes that, consistent with this practice, it reported its original sales quantity, did not report refurbished sales, and did not adjust for LASC returns (a portion of which will be refurbished).

Funai Malaysia argues that, by capturing all original sales, it provided the Department with the most accurate representation of its POI subject sales. Funai Malaysia claims that, prior to verification, it disclosed the existence of LASC returns when it submitted its quantity and value, and at verification it demonstrated that it could not net LASC returns from specific sales. Therefore, Funai Malaysia argues that the Department should not adjust the reported sales data, nor determine that it failed a portion of the verification. In any event, Funai Malaysia disputes the petitioners' count of total returns, stating that a portion of returns are returns of refurbished units, another portion represents merchandise sold to non-POI customers which was returned during the POI, and still others are returns of samples.

Funai Malaysia asserts that 19 U.S.C. § 1677e(b)[2] requires that a decision to apply adverse facts available must be supported by substantial evidence that a party "failed to cooperate by not acting to the best of its ability to comply with a request for information. Moreover, Funai Malaysia states that this provision has been upheld by the courts, including in Nippon Steel Corporation v. United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (Nippon Steel). Funai Malaysia asserts that, in Nippon Steel, the respondent appealed the Department's finding that it did not cooperate to the best of its ability when it failed to respond the Department's repeated requests for specific data. There the court held that an adverse inference "may not be drawn merely from a failure to respond," and the Department must show "less than full cooperation." Similarly, Funai Malaysia cites China Steel Corporation v. United States, Slip Op. 2004-6 (January 26, 2004), reported at 2004 Ct. Intl. Trade Lexis 5, at *34, where the CIT,

[2] Section 776(b) of the Act.

interpreting Nippon Steel, required that the Department make two findings before resorting to adverse inferences: 1) a "reasonable respondent" would have known to maintain the requested information under the dumping statute; and 2) the respondent failed to produce requested information because it failed to maintain the information or put forth "maximum effort" to acquire the information. Finally, Funai Malaysia notes that courts have held that facts available may not be imposed when information was never requested, and that the statute limits adverse inferences to instances where respondents fail to comply with a request for information. See Ferro Union Inc. V. United States, 44 F. Supp. 2d 1310 (CIT 1999).

Funai Malaysia asserts that the Department never required it to net LASC returns or provide data related to those returns, and that, as discussed above, its questionnaire instructions only require netting of returns "when possible." As a result, Funai Malaysia asserts that it could not be reasonably expected to provide such data. Furthermore, Funai Malaysia contends that, even had the Department requested such information, it is required to offer Funai Malaysia an opportunity to remedy deficient submissions before it may invoke facts available. Funai Malaysia states that, contrary to the petitioners' assertions, it did, in fact notify the Department in its initial sales response that it: 1) did not net all returns from its database; 2) was reporting only the original sale; and 3) did not account for refurbished sales and the associated returns. Funai Malaysia notes that the Department never requested clarification or further data regarding Funai Corp.'s returns or refurbished sales, despite its issuance of multiple supplemental questionnaires.

Funai Malaysia asserts that, even if the Department were to adjust Funai Corp.'s data to account for LASC returns, the adverse adjustment suggested by petitioners is impermissible. Funai Malaysia notes that in F.lli De Cecco Di Filippo Farra S. Martino Sp.A v. United States, 216 F.3d 1027, 1032 (CAFC 2000), the Court of Appeals for the Federal Circuit (CAFC) held that the purpose of AFA is "not to impose punitive, aberrational, or uncorroborated margins" and that Congress did not intend for "Commerce's discretion to include the ability to select unreasonably high rates with no relationship to the respondent's actual dumping margin." Funai Malaysia argues that the methodology proffered by the petitioners is unreasonable as it removes the company's highest sales values and does not attempt to match returns to customer-specific sales. Funai Malaysia states that matching returns to specific customers is possible using data obtained at the CEP verification, whereby the Department could simply deduct the quantity of subject returns for each customer from the total quantity reported for sales to that customer on the file. Funai Malaysia asserts that this would not change the weighted-average unit price, but only the total quantity and associated total value.

Moreover, Funai Malaysia asserts that the majority of the petitioners' proposed adjustment to indirect selling expenses is unwarranted, because much of this data is already accounted for in the U.S. sales listing. First, Funai Malaysia notes that it included all refurbishing costs and replacement units in indirect selling expenses. Second, Funai Malaysia asserts that Funai Corp. did not incur inland insurance on its returns. Finally, Funai Malaysia argues that it completely reported freight and inland insurance expenses on the original subject sales (including merchandise that is later returned to Malaysia) in the U.S. sales

listing. As a result, Funai Malaysia asserts that, were the Department to adopt the petitioners' approach, it would have to: 1) remove LASC returns from the file; and 2) create a proxy for freight and insurance expenses for returned merchandise as LASC returns cannot be tied to specific sales. According to Funai Malaysia, this would be distortive as the Department would be relying on a proxy rather than an actual expense. Regarding freight on returns to Malaysia, Funai Malaysia disagrees with the petitioners' suggestion that these expenses be added to foreign inland freight, because it is inconsistent with the Department's treatment of movement expenses as direct expenses linked to specific transactions. In addition, Funai Malaysia asserts that this suggestion is unfairly punitive because the Department found freight on returns only in one month of the POI. Thus, Funai Malaysia asserts that, at most, the Department should include this freight in the calculation of indirect selling expenses.

Finally, Funai Malaysia agrees that it failed to include handling fees for returns from one customer, as well as freight expense on returned merchandise, in its indirect selling expense calculation. Funai Malaysia concedes that these expenses should be included in indirect selling expenses.

Department's Position:

The accuracy of both the quantity and value of subject merchandise reported in the sales listings submitted to the Department are crucial, as they directly impact the calculation of weighted-average dumping margins. However, as noted above, in the case of returns, the Department has recognized that situations may arise in which it is not possible to tie quantity of returns to the original sales invoice. Specifically, in Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18426 (Apr. 15, 1997) (Cold-Rolled from Korea), the Department held that where it was not possible to trace partial return credit invoices to original sales transactions, the volume of such transactions was not significant, and there was no conclusive way of knowing that the original sales prices for such returns were consistently higher or lower than prices of comparable products in the same period, it was reasonable not to reflect such returns in the sales listing. See Cold-Rolled from Korea, 62 FR at 18426. See also section C, Field 16, of the Department's questionnaire.

In the instant case, due to the volume of merchandise involved, as well as the long lag time between the sale to the ultimate consumer and the return of such merchandise to the warehouse, it was not possible to tie these returns to the original sales which occurred within the POI. Funai Malaysia informed the Department of this fact in its November 21, 2003, quantity and value reconciliation (see exhibits 5 and 6) and we confirmed this at verification. See the CEP verification report at exhibit 7a. Moreover, contrary to the petitioners' claim, we found no evidence that the respondent attempted to mislead the Department or impede the proceeding, as Funai Malaysia referenced LASC returns in its November 21, 2003, supplemental response. See Exhibits 5 and 5C. Accordingly, there is no information on the record to support a finding that AFA is warranted with respect to Funai Corp.'s U.S. sales database, either in its entirety or in relation to Funai Corp.'s cost of returns. Further, we do not find that resorting to a "neutral" facts available methodology is appropriate in this instance. Specifically, we cannot

accurately determine the original sales price associated with any given return, contrary to Funai Malaysia's claim, because Funai Malaysia reported varying sales prices to the same customer of the same model during the POI. Therefore, we find that any methodology which netted both the quantity and value of returns against sales would be unreliable, arbitrary, and potentially distortive.

Regarding the fact that Funai Malaysia did not include sales of refurbished merchandise in its sales listing, we agree that the Department's practice, as set forth in TVs from Japan, is relevant here. In that case, the Department stated that sales of refurbished merchandise:

> should be excluded from the analysis. The original sales of merchandise which is returned, refurbished, and resold are included on the U.S. sales database. Accordingly, the Department will not review two different sales of the same merchandise.

See TVs from Japan, 56 FR at 34185. Because the original sales of the merchandise at issue is included in Funai Malaysia's U.S. sales listing, we find that it properly excluded the subsequent sales of refurbished merchandise.

Regarding costs associated with the returns of subject merchandise, we similarly find no basis to apply AFA. We disagree with the petitioners' suggestion that the Department should increase indirect selling expenses to account for inland freight and insurance costs on shipments to the original customer which were subsequently returned. As noted in Funai Malaysia's original and supplemental questionnaire responses and at verification, Funai Malaysia included these costs on all appropriate sales, and thus we find they have been properly accounted for in the U.S. sales listing. In addition, Funai Malaysia asserts that it did not incur insurance costs on returned merchandise. We note that, as discovered at verification, "U.S. inland insurance expenses are pre-paid to Funai Electric at the beginning of the year based upon estimated total FOB sales value for the fiscal year (January through December)." See the CEP verification report at page 14. Because we found no evidence at verification that Funai Corp. incurred insurance expenses on returns, and, given that Funai Corp. incurs insurance expenses on estimated *sales*, we note that there is no information on the record to support the petitioners' assertion that inland insurance expenses on returned merchandise should be included in Funai Corp.'s indirect selling expenses.

However, we note that, with respect to freight expenses on returns to all customers and handling fees on returns to one customer, Funai Malaysia did not include these costs in its responses. Therefore, we find that adjustments for these two expenses are necessary. Consequently, because we find that Funai Malaysia did not fail to cooperate to the best of its ability, we based the amount of these adjustments on neutral facts available, pursuant to section 776(a) of the Act. Specifically, we note that: 1) omission of these expenses appears to be an inadvertent error; and 2) we did not specifically request this information in a supplemental questionnaire. As neutral facts available, we: 1) calculated freight costs for these return transactions by multiplying the total volume of returned merchandise by Funai Corp.'s average freight cost; and 2) based the handling fees on returns to the one customer by including the

amount found at verification; and 3) included both costs in Funai Corp.'s indirect selling expenses as noted in the CEP verification report at exhibit 7.

Finally, during the sales verification at Funai Electric, we found that Funai Malaysia had failed to account for freight expenses associated with returns of subject merchandise. We agree with the petitioners that these expenses should be accounted for. However, we disagree with the petitioners that these expenses should be included in Funai Corp.'s indirect selling expense calculation. Instead, because these expenses are related to the sale from Funai Electric to Funai Corp., they are not associated with the sale to the first unaffiliated customer. Therefore, we find that it would be improper to include these expenses in Funai Corp.'s indirect selling expense calculation. Rather, because these expenses are related to the sale from Funai Malaysia to Funai Electric, we have included these expenses in Funai Malaysia's indirect selling expense calculation.

Comment 3: *Date of Sale/Date of Shipment*

The petitioners argue that Funai Malaysia misreported the date of shipment and the date of sale for three of the five observations (i.e., 60 percent) examined during verification, resulting in an overstatement of net U.S. price and an understated dumping margin. Additionally, the petitioners contend that such a high error rate reveals that Funai Malaysia did not act to the best of its ability to report its sales and cost data as accurately and completely as possible. Therefore, in reaching the final determination, the petitioners maintain that the corrected dates of sale and shipment should be used for the sales examined during verification, and, as facts available, an additional credit period should be included for 60 percent of Funai Malaysia's reported transactions based on the findings made at verification with respect to the examined sales. The petitioners do not suggest to which 60 percent AFA should be applied, however, nor do they suggest an AFA methodology.

Funai Malaysia agrees that it inadvertently misreported the dates of sale and shipment for three of the five U.S. sales transactions examined at verification, and it concedes that the corrected dates of sale and shipment should be used when calculating the final dumping margin. However, Funai Malaysia disagrees that there is any basis to apply AFA to the credit period for the majority of its U.S. sales.

Funai Malaysia contends that, because the Department conducted a thorough verification without finding significant discrepancies, there is no basis to question the overall accuracy of its reported sales and shipment dates. Specifically, Funai Malaysia notes that, for two of the sales in question, it disclosed the errors in its minor corrections presented at the start of verification. Moreover, Funai Malaysia asserts that there were unique circumstances surrounding the third shipment, in that part of this shipment was lost by Funai Corp.'s freight forwarder. Consequently, Funai Corp. reissued the sales invoice to reflect the actual quantity of merchandise received by the customer. Funai Malaysia notes that, in its U.S. sales listing, it inadvertently relied on the final invoice date, instead of the original invoice date, as the date of shipment and sale.

In any event, Funai Malaysia asserts that not only were its errors minor, inadvertent, and fully disclosed, but they in no way undermine the accuracy of its reported data. Funai Malaysia argues that the Department has long recognized that minor reporting errors occur, given the vast amount of data reported by a respondent. Accordingly, Funai Malaysia maintains that there is no basis to reject the Department's verification results, and consequently, no adverse adjustment to Funai Corp.'s credit period is warranted for the final determination.

Department's Position:

In December 2003, we conducted verifications of Funai Malaysia's data both in the United States (at Funai Corp.) and in Japan (at Funai Electric). Contrary to the petitioners' claim, during those verifications, we examined more than the five sales cited by the petitioners; rather, we examined eight sales during both verifications. We found that, of the eight transactions examined, three contained errors in the reported date of sale and only two contained errors in the reported date of shipment. See the CEP verification report at pages 10-12, and the January 14, 2004, memorandum to the file from Michael Strollo entitled, "Verification of the Sales Questionnaire Responses of Funai Electric Malaysia Sdn. Bhd. and Funai Electric Co., Ltd. in the Antidumping Duty Investigation of Certain Color Television Receivers from Malaysia" (Funai Electric sales verification report) at pages 18-19.

We agree with the petitioners that the corrected dates of sale and shipment should be used when calculating credit expense for the final dumping margin. However, we disagree that AFA is warranted to calculate credit expenses for any other transactions. Specifically, we find that Funai Malaysia did not withhold information, fail to provide information to the Department in a timely manner, impede the proceeding, or provide unverifiable information. With respect to its submitted dates of sale and dates of shipment, while three dates of sales and two dates of shipment were improperly reported, we found that the majority of the data examined was correct. Of the remaining sales, we note that only two of the errors affected the reported credit expenses, both of these were minor, and of these two, one involved anomalous circumstances which may have contributed to the reporting errors. See the CEP verification report at 11 and exhibit 10 for a description of these circumstances. Moreover, because: 1) we were able to verify that the vast majority of the submitted information was reported correctly, and 2) we have corrected information to account for the errors identified at verification, we are satisfied that adequate information exists on the record of this investigation with which to calculate credit expenses accurately.

Consequently, for purposes of calculating our final determination, we have corrected the dates of shipment and/or dates of sale for these three observations.

Comment 4: *U.S. Billing Adjustments*[3]

The petitioners note that the Department found at verification that Funai Malaysia did not account for billing adjustments on sales to certain U.S. customers. Moreover, because Funai Malaysia had similar adjustment agreements with other large U.S. customers for non-subject merchandise, the petitioners reason that Funai Malaysia likely proffered the same agreements to them for subject merchandise. Therefore, for the final determination, the petitioners contend that adjustments should be deducted from Funai Malaysia's reported gross unit price for sales to all large U.S. customers, not only those where the Department specifically found unreported data.

Funai Malaysia agrees that the Department should make a billing adjustment on Funai Corp.'s sales to certain large U.S. customers. In fact, Funai Malaysia notes that Funai Corp. itself identified this adjustment as a minor correction at the start of verification. However, Funai Malaysia argues that there is no basis to apply billing adjustments on sales to other large U.S. customers because the Department thoroughly examined Funai Corp.'s billing adjustment activity at verification and confirmed that Funai Corp. provided adjustments on sales of subject merchandise to one large U.S. customer only. Funai Malaysia notes that the adjustments provided to other large U.S. customers, as the petitioners admit, occurred only on sales of non-subject products.

According to Funai Malaysia, assigning billing adjustments based on speculation would be tantamount to applying adverse facts available, an action for which the petitioners have provided no basis. Given that the record confirms that Funai Malaysia voluntarily disclosed the adjustments in question at the start of verification and the Department verified the accuracy of this data, Funai Malaysia contends that adverse inferences are not warranted here.

Department's Position:

At the start of verification, Funai Corp. identified certain billing adjustments paid on sales to U.S. customers which had not been reported in its U.S. sales listing. See the CEP verification report at page 2. Because we confirmed the accuracy of these adjustments at verification, we have included them in our final margin analysis.

We disagree with the petitioners that it is appropriate to adjust for billing adjustments to other large U.S. customers. At verification, we examined this issue thoroughly and found no evidence that Funai Corp. failed to report similar billing adjustments on these sales. The petitioners' allegation that Funai

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[3] Funai Malaysia has characterized these adjustments as "billing" adjustments because it claimed business proprietary treatment for the specific adjustment program. As a consequence, we have used Funai Malaysia's terminology here. For a description of the actual type of agreements, see pages 69 and 70 of Funai Malaysia's rebuttal brief.

Corp. must be presumed to have granted identical billing adjustments for all merchandise sold, whether subject or non-subject, is based on nothing more than speculation. It is well established that mere speculation does not constitute substantial evidence, and that the latter is the standard for substantiating an agency finding. See Asociacion Colombiana Exportadores de Flores v. United States, 40 F. Supp. 2d 466 (CIT 1999) at 471-472. Therefore, we have not made the adjustment proposed by the petitioners for purposes of the final determination.

Comment 5: *Unreported Sales Discounts*

The petitioners note that Funai Malaysia made EP sales to certain U.S. customers during the POI, and that it did not report any adjustments to U.S. price for these transactions. The petitioners argue that the Department should deduct discounts on these sales because certain of the documents taken at verification indicate that Funai Malaysia paid a sales discount to its U.S. customer. The petitioners contend that, given that this is not the only instance in which Funai Malaysia withheld information about a deduction to its reported U.S. prices, the Department should apply partial AFA and assume that Funai Malaysia paid discounts on EP sales of subject merchandise. The petitioners argue that, as AFA, the Department should express the discount observed at verification as a percentage of total EP sales and then apply the resulting ratio to the gross unit prices reported in the U.S. sales listing.

In addition, the petitioners note that, at the CEP verification, the Department found that Funai Corp. failed to report discounts for early payment granted on sales to one customer. The petitioners contend that the Department should take these discounts into account in the final margin calculations.

Regarding the first issue, Funai Malaysia argues that the two documents referenced by the petitioners do not relate to discounts provided on EP sales of subject merchandise, but rather discounts that Funai Malaysia extended on sales of non-subject merchandise. Consequently, Funai Malaysia contends that the Department should not deduct sales discounts on the company's EP sales of subject merchandise during the POI.

Regarding the second issue, Funai Malaysia agrees that the early payment discounts should be deducted from CEP for the final determination.

Department's Position:

We have reviewed the documents taken at verification and agree that the EP sales discounts in question relate to sales of non-subject merchandise. In addition, we note that we found no unreported discounts on POI EP sales at verification. Consequently, for the final determination, we have not made any adjustment for sales discounts to Funai Malaysia's reported EP sales.

Regarding the CEP sales discount found at verification, we find that Funai Malaysia's failure to report this discount was inadvertent, and the amount minor. Accordingly, we have accounted for these discounts in our final calculations, using the data taken at verification.

Comment 6: *U.S. Rebates*

The petitioners contend that documents examined at the CEP verification reveal the Funai Malaysia failed to report rebates to several U.S. customers, some of which are noted in the CEP verification report and one other which is not. The petitioners contend that this under-reporting of price adjustments is pervasive, given that Funai Malaysia failed to report one type of adjustment or another on three out of the five sales examined at verification. Specifically, the petitioners claim that Funai Malaysia failed to report a rebate to one customer, an early payment discount to another, and an advertising adjustment to a third. (For further discussion of these latter adjustments, see Comments 4 and 5, above.)

The petitioners claim that, given this extraordinary error rate, the Department should find that Funai Malaysia did not act to the best of its ability in reporting its U.S. price adjustments. Therefore, the petitioners argue that the Department should base the amounts of the price adjustments in question on AFA. As AFA, the petitioners contend that the Department should apply the adjustment percentage observed at verification to either: 1) all U.S. sales during the POI for which no rebate was reported; or 2) all sales to the U.S. customers to which Funai Corp. made the sales at issue.

Funai Malaysia argues that, contrary to the petitioners' assertion, it did, in fact, report the rebate in question. Specifically, Funai Malaysia asserts that, in its original section C response, Funai Malaysia included this adjustment in the field ADVERTU. Funai Malaysia contends that it subsequently provided sample documentation demonstrating that it had granted the adjustment, part of which was reviewed by the Department at verification and retained in verification exhibit 20.

Similarly, Funai Malaysia also notes that it initially reported the advertising adjustment cited by the petitioners. However, Funai Malaysia asserts that, in reviewing its records in response to a question in a supplemental questionnaire, it found that the customer had not claimed the advertising rebate and so it revised the sales database to eliminate it. Although the customer did, in fact, claim the rebate after this submission, Funai Malaysia contends that it would be inappropriate for the Department to make adverse assumptions with respect to sales to other customers based on these facts. Funai Malaysia notes that this error can be easily corrected for the final determination.

Finally, with respect to the early payment discount, Funai Malaysia notes that the Department verified that the customer paid the full amount of the invoice. Thus, Funai Malaysia contends that there is no factual basis for a rebate adjustment here either.

Funai Malaysia argues that the petitioners' attempt to extrapolate adverse adjustments to unexamined CEP sales based on a single clerical error is unwarranted. Funai Malaysia maintains that the Department has long recognized that minor errors can and do occur in complex investigations that are conducted on a compressed time schedule. Consequently, Funai Malaysia contends that there is no basis for the application of AFA with respect to its price adjustments.

Department's Position:

We have examined the evidence on the record relating to rebates, advertising adjustments, and early payment discounts and find that there is no basis to apply AFA to account for unreported data. Based on our review of the data, we disagree with the petitioners that Funai Malaysia failed to properly account for rebates and advertising allowances on the sales examined at verification. At page 16 of the CEP verification report, we noted that the customer referenced by the petitioners in their case brief received a rebate and a cooperative advertising adjustment. We further noted that both of the adjustments were reported in the field ADVERTU, which we deducted from gross price in calculating the net U.S. price. Additionally, we confirmed that the rebate percentages for this customer, for actual rebates and for cooperative advertising, were correctly reported in the U.S. sales listing.

Regarding advertising adjustments granted to other customers, we agree with the petitioners that Funai Corp. failed to report these expenses on sales to certain U.S. customers. However, we disagree with the petitioners' contention that Funai Corp. repeatedly failed to report deductions to U.S. price. In this instance, Funai Malaysia initially reported the advertising adjustment in question. However, in response to the August 19, 2003, supplemental questionnaire, Funai Malaysia found that the customer had not claimed the advertising rebate and so it revised the sales database to eliminate it. At verification, we noted that this customer did indeed claim the rebate. See the CEP verification report at page 17. However, based on our findings at verification, we confirmed that Funai Corp. did not grant the rebate to the customer until after its response was received by the Department. We also note that we have the verified amount on the record. See the CEP verification report at exhibit 20. Additionally, as noted in the CEP verification report, we did confirm that Funai Corp. correctly reported rebates to other relevant customers. See the CEP verification report at page 17.

Finally, with respect to the early payment discount, contrary to Funai Malaysia's claim, Funai Corp. could not demonstrate whether it had granted this rebate to the customer based upon the amount agreed upon in the dealer program advisory form. See the CEP verification report at page 17. Therefore, because this customer was entitled to a rebate and there is no information on the record to support Funai Malaysia's conclusion that this customer did not claim the rebate to which it was entitled, we are adjusting sales to this customer to account for the rebate amount listed on the dealer program advisory form.

Accordingly, while we find that Funai Malaysia failed to properly account for rebates to certain U.S. customers in a limited number of instances, given our findings at verification, we do not find that this

failure was so pervasive as to warrant AFA. In addition, we note that, because we have information on the record with which to correct the discrepancies discovered at verification, we have used the price adjustments in question in our final margin analysis. Consequently, for the final determination, we have relied on the rebate information provided by Funai Malaysia, except in those instances identified above.

Comment 7: *U.S. Inland Insurance Expenses*

At the start of the CEP verification, Funai Malaysia informed the Department that Funai Corp. had mistakenly applied the insurance premium rate to 100 percent of the transfer value of the subject merchandise, rather than to 110 percent of this value specified in the relevant insurance contract. The petitioners contend that the Department found significant additional errors in the reported amounts for U.S. insurance, as evidenced by the recalculations shown in the CEP verification report. According to the petitioners, the record does not contain sufficient information for the Department to make an accurate adjustment because the respondent failed to fully disclose the errors concerning its reported U.S. inland insurance; consequently, the Department is authorized to resort to facts available. As facts available, the petitioners contend that the Department should apply the highest rate of understatement found during verification to all of Funai Malaysia's "channel 3" sales. In the alternative, the petitioners contend that Department should apply the simple average of the understatement rate to all of these sales.

Funai Malaysia contends that the formula provided at verification is correct, and that the Department can calculate accurate insurance expenses simply by applying it to the data already reported. As a result, Funai Malaysia argues that there is no basis to apply AFA because the Department has information on the record necessary to calculate an accurate adjustment.

Department's Position:

In its original section C response, Funai Corp. indicated that it calculated U.S. inland insurance expenses by multiplying the FOB value of the merchandise on a model-specific basis by the insurance premium because it could not tie its monthly premiums to particular invoices. See Funai Malaysia's August 6, 2003, section C response at page C-26, Exhibit C-11, and Exhibit C-11-C. During the CEP verification, however, Funai Corp. explained that it improperly calculated U.S. inland insurance expenses based on 100 percent of the transfer value from Funai Electric, rather than 110 percent of the transfer value. See the CEP verification report at page 1. Moreover, Funai Malaysia indicated that these expenses could be calculated on a transaction-specific basis, rather than by model, using the mark-up reported in the U.S. sales listing. Based on these assertions, we recalculated U.S. inland insurance expenses for each of the specific transactions examined at verification, and we set forth these results in our verification report. See the CEP verification report at page 14.

The petitioners presume that, due to the significant differences found in the U.S. inland insurance expenses examined at verification, there must be additional, undisclosed errors in Funai Malaysia's

data. However, we note that U.S. inland insurance expenses were recalculated on a transaction-specific basis by multiplying the gross unit price of each transaction examined during verification, minus the mark-up between Funai Electric and Funai Corp., by the insurance premium. Although this methodological change was not explicitly mentioned in the verification report, it is obvious from the data found elsewhere on the record, including data reported in Funai Malaysia's original section C response. Therefore, while we agree with the petitioners that the differences observed at verification is not solely accounted for by the difference between 100 and 110 percent of the transfer value of the merchandise, we note that the remainder of the differences are attributable to the difference in the bases to which the rate was applied (i.e., the transfer value and the gross unit price less mark-up).

However, for the final determination, we have reevaluated the methodology used in the verification report for recalculating U.S. inland insurance expenses. As stated in its August 6 section C response at page 26 and in the CEP verification report at page 13, Funai Malaysia's expenses for U.S. inland insurance (as well as U.S. customs duties; see Comment 9 below) are calculated on a model-specific basis. However, in the CEP verification report, we recalculated U.S. inland insurance expenses on a transaction-specific basis, using the gross unit price to the customer as the starting price for our revised calculations. Because the gross unit price charged to the customer does not represent the price from Funai Electric to Funai Corp., and thus, the entered value of the subject merchandise, we do not consider the methodology employed in the CEP verification report to be an accurate basis from which to calculate U.S. inland insurance expenses. Moreover, given that the mark-up on individual sales to Funai Corp.'s customers varies by transaction, we have no reasonable or accurate way to estimate it. Therefore, because the gross unit price charged to the customer bears no relation to the transfer value of the merchandise from the foreign seller to the affiliated U.S. reseller, we have reconsidered our finding at verification that it is appropriate to calculate U.S. insurance expenses on a transaction-specific basis. Rather, we have recalculated Funai Corp.'s U.S. inland insurance expenses by applying 110 percent to the figures reported in the most recent U.S. database.

Contrary to the petitioners' claim, we found no evidence of a pattern of misreporting of data nor any indication that the respondent attempted to mislead the Department or impede the proceeding. Accordingly, there is no information on the record to support a finding that AFA is warranted with respect to Funai Corp.'s U.S. inland insurance expenses. Indeed, we note that we confirmed the accuracy of each of the transfer prices reviewed at verification, and we tied these prices to Funai Corp.'s normal books and records without discrepancy. See the CEP verification report at page 13. Therefore, we find that it is appropriate to rely on the expenses reported by Funai Corp., adjusted as noted above, for purposes of the final determination.

Comment 8: *U.S. Other Transportation Expenses*

The petitioners note that, during verification, Funai Malaysia overstated the total units of CTVs transported between its U.S. warehouses for "channel 3" sales. As a result, the petitioners argue that

the unit transportation expenses for the affected sales were understated. The petitioners contend that this error should be corrected in the final determination.

Funai Malaysia admits that it inadvertently understated its U.S. other transportation expenses. Funai Malaysia notes that it calculated this expense based on data submitted in its initial section C sales file; however, Funai Malaysia's revised sales file contained fewer units than the original database. Consequently, Funai Malaysia agrees that it relied on the incorrect denominator to calculate this expense. Nonetheless, Funai Malaysia posits that this insignificant adjustment should be disregarded in accordance with 19 CFR 351.413 because it would barely increase the reported U.S. other transportation expenses for "channel 3" sales of one model and thus it has a negligible impact on total sales value.

Department's Position:

Section 777A(a)(2) of the Act allows the Department to decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise. Section 351.413 of the Department's regulations further defines an "insignificant adjustment" as any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than one percent, of the EP, CEP, or NV.

However, as noted in the preamble to the regulations, "[section] 351.413 give[s] the Department the flexibility to determine, on a case-by-case basis, whether it should disregard a particular insignificant adjustment." See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30664, 30683 (June 8, 1999) at Comment 13; Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment, 61 FR 7308, 7318 (Feb. 27, 1996); see also Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27319- 20 (May 19, 1997). In the instant case, because we have the corrected, verified information with respect to Funai Corp.'s U.S. other transportation expenses on the record of this proceeding, we have used this information for the final determination.

Comment 9: *U.S. Customs Duties*

In comments submitted prior to the preliminary determination and again prior to the U.S. sales verification, the petitioners expressed concern that Funai Malaysia had understated the customs duties reported for certain CTVs. The petitioners note that at verification the Department did not examine the duties reported for the models cited in their comments.

The petitioners again argue that the information on the record strongly indicates that Funai Malaysia under-reported customs duties for a portion of its U.S. sales. The petitioners bolster their conclusion using data obtained at verification regarding the transfer value of the CTVs included in the sales listing. Specifically, the petitioners provide an example illustrating the "correct" customs duties by: 1) deriving

the transfer value using information taken during the verification of U.S. inland insurance expenses; and 2) applying the customs duty rate to this amount. The petitioners then compared this "correct" amount to the amount reported and found that the reported amount was lower. Moreover, the petitioners contend that this comparison is conservative because the "correct" amount does not include any customs fees. As a consequence, the petitioners argue that the Department should adjust the customs duties reported for all of Funai Malaysia's U.S. sales using the combined rate for customs duties and fees.

However, in cases where Funai Malaysia claimed at verification that it over-reported its customs duties, the petitioners argue that the Department should not reduce the reported amounts. The petitioners contend that it is up to U.S. Customs and Border Protection to decide whether to reimburse Funai Malaysia for its alleged overpayments. The petitioners assert that the reported U.S. duties for these sales represent the actual costs incurred and, therefore, the Department should continue to deduct them from the gross unit price in the final determination.

Funai Malaysia argues that the Department thoroughly examined its reported customs duties at verification. Specifically, Funai Malaysia asserts that the Department tied the reported expenses to the relevant customs entry documentation without noting any discrepancies. Therefore, Funai Malaysia argues that, because the Department fully verified the accuracy of the information on the record, the Department has no basis to substitute actual, verified expenses for ones contrived by the petitioners based on inaccurate estimates of transfer prices.

Department's Position:

In its original section C response, Funai Malaysia indicated that it had reported U.S. customs duties on a model-specific basis. See Funai Malaysia's August 6 section C response at C-27-28 and exhibit C-11E. We examined Funai Malaysia's methodology for reporting U.S. customs expenses at verification and confirmed that Funai Malaysia reported the entry value of the merchandise on a model-specific basis, not a transaction-specific basis. Therefore, in calculating U.S. customs duties, Funai Malaysia calculated U.S. customs duties based on the per-unit FOB value of the merchandise entered multiplied by the applicable duty percentage based on the Harmonized Tariff Schedule of the United States. At verification, we examined customs entry and payment documentation for the selected sales and confirmed that the duty amounts listed on the customs entry documentation were the actual amounts paid by Funai Corp. See the CEP verification report at exhibit 13.

We disagree with the petitioners that the record shows that Funai Malaysia significantly under-reported its U.S. customs duties. The "evidence" proffered by the petitioners to demonstrate this point is based on a theoretical "transfer price" between Funai Electric and Funai Corp., derived from calculations set forth in the CEP verification report. However, as noted in Comment 7, above, the "transfer price" is not the actual transfer value, but merely the gross unit price to the customer minus the mark-up on the sale between Funai Electric and Funai Corp. Thus, as we found above, because the gross unit price

charged to the customer (less mark up) does not represent the price from Funai Electric to Funai Corp., and thus, the entered value of the subject merchandise, we do not consider the petitioners' recalculations to be probative.[4]

Therefore, because Funai Malaysia completely reported the U.S. customs duty amounts incurred and paid for the merchandise entered, we disagree with the petitioners that it would be appropriate to make adverse assumptions regarding U.S. customs duties in this case. Rather, we have continued to use Funai Malaysia's reported U.S. custom duty expenses for the final determination.

Comment 10: *U.S. Indirect Warranty Expenses/U.S. International Freight Expense*

The petitioners argue that at the U.S. sales verification the Department found that Funai Malaysia failed to calculate indirect warranty expenses for a number of U.S. sales and misreported international freight expense for one transaction. According to the petitioners, the Department should include indirect warranty expenses incurred by Funai Corp. for these sales based on the Department's verification findings and should use the verified international freight amount in its final determination.

Funai Malaysia agrees that it inadvertently omitted indirect warranty expenses on a small number of sales observations, and it misreported freight for another. However, Funai Malaysia argues that the errors discovered at verification are so small that they should be disregarded under 19 CFR 351.413, because they are insignificant to the company's overall dumping margin.

Department's Position:

As noted in Comment 8, above, the Department does not automatically disregard adjustments pursuant to 19 CFR 351.413 merely because they are small enough to be considered "insignificant." In this case, we have verified information with respect to Funai Corp.'s indirect warranty and international freight expenses on the record of this proceeding. Consequently, we have used this information for the final determination because we find no compelling reason to disregard it.

Comment 11: *Date of Payment/Letter of Credit Sales*

In its U.S. sales listing, Funai Malaysia reported the date of invoice as the date of payment for all sales where payment was based on letter of credit. At verification, we found that the payment date recorded in Funai Electric's accounting records was the date upon which it actually drew from this letter of credit.

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[4] Indeed, we note that the difference between the transfer prices observed at verification and the resale prices to the first unaffiliated customer could be significant. Thus, we are not surprised that the petitioners are unable to duplicate Funai Malaysia's calculations by merely applying the published customs duty rates for particular merchandise categories.

Based on this finding, the petitioners argue that the Department should revise Funai Malaysia's reported payment dates to reflect the payment dates recorded in its accounting records.

The petitioners assert that it is settled Department policy that a respondent's reported data be tied to the same data in the respondent's books and records. As support for this contention, the petitioners cite Stainless Steel Bar from Japan: Final Results of Antidumping Administrative Review, 65 FR 13717 (Mar. 14, 2000) and accompanying decision memorandum at Comment 1 (where the Department stated that it is its intent to use a date of sale that can be tied to the respondent's books and records); and Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal, 67 FR 60219 (Sept. 25, 2002) and accompanying decision memorandum at Comment 2 (where the Department stated that its practice is to rely on data from the respondent's normal books and records where those records are prepared in accordance with home-country generally accepted accounting principles (GAAP) and reasonably reflect the costs of producing the merchandise). Further, the petitioners note that in an antidumping proceeding the respondent bears the burden of demonstrating entitlement to the nature and amount of an adjustment, pursuant to 19 CFR 351.401(b)(1). In this case, the petitioners conclude that Funai Malaysia's claim for credit expenses on the sales in question constitutes an adjustment which is unsubstantiated by Funai Electric's books and records.

Finally, the petitioners maintain that, because the invoice date, the date upon which Funai Malaysia presents the shipping documents to the bank, and the date that Funai Malaysia draws on the letter of credit do not coincide, the reported date of payment is merely theoretical and cannot be relied upon. Further, the petitioners assert that Funai Malaysia's alternative date of payment, the date when Funai Electric presented the shipping documents to the bank (see below), should be rejected by the Department because Funai Malaysia revealed this information after the deadline for the submission of new factual information.

Funai Malaysia argues that it did not incur an imputed credit expense for the sales in question, as the letter of credit constitutes a separate and distinct contract with the issuing bank to receive payment regardless of whether the buyer actually compensates the issuing bank. Funai Malaysia notes that the Department has held in previous cases that an adjustment for credit expenses is not warranted in this situation. As proof of this assertion, Funai Malaysia cites Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, 61 FR 4408, 4410 (Feb. 6, 1996) (TVs from Korea), which stated that "it is not the Department's policy to calculate a credit expense for 'at sight' sales, since generally for these sales, payment by the bank is effected immediately upon presentation of the sales documentation."

Funai Malaysia contends that, should the Department find that the invoice date is not the appropriate date of payment for these sales, the only reasonable alternative would be to use the date upon which Funai Corp. presented the shipping documents to the bank. Funai Malaysia notes that in Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32842 (June 16, 1998) (Korean Pipe), the Department found

that it was proper to adjust the credit period on letter of credit sales using the date on which the respondent presented the required documents to the bank as there was "no reason to believe the letter of credit is actually negotiable upon receipt."

Department's Position:

With respect to sales made pursuant to letter of credit, we note that in Korean Pipe, the Department stated:

> We normally adjust for imputed credit expense to account for the opportunity cost associated with the period of time between shipment and payment. Because payment by the bank is not made until the required documents are presented by Union, an adjustment for imputed credit expense for the waiting period is proper. We have no reason to believe that the letter of credit is actually negotiable upon receipt.

See Korean Pipe, 63 FR at 32842.

We find that this policy is generally consistent with that set forth in TVs from Korea. In that case, the Department determined that: 1) it was not the Department's general policy to calculate a credit expense for "at sight" sales, since generally for these sales, payment by the bank was effected immediately upon presentation of the sales documentation; and 2) documents collected at verification indicated that there was generally only a one day lag between the date of payment and date of shipment. See TVs from Korea, 61 FR at 4410. In the instant case, however, we note that, while we agree with Funai Malaysia that, like in TVs from Korea, payment by the bank is effected immediately upon presentation of the sales documentation to the bank, unlike in TVs from Korea, here there is significantly more than a one day lag between the invoice date and the presentation of the shipping documents to the bank. Because payment by the bank is not made until the required documents are presented by Funai Electric, an adjustment for imputed credit expense for the waiting period is proper.

Furthermore, we disagree with the petitioners' claim that Funai Malaysia included new factual information in its case brief. At verification, we obtained documentation which included the presentation dates for all the EP sales in question. Funai Malaysia correctly noted that the presentation dates for all EP sales were contained in sales verification exhibits 9, 10, and 13. Because Funai Malaysia identified the complete universe of presentation dates for EP sales made on a letter of credit basis at verification, we have accurate information on the record for all of these transactions upon which to calculate credit expenses. Therefore, we have accepted Funai Malaysia's revised payment dates for calculation of credit expenses for EP sales made on a letter of credit basis for the final determination, and, we have recalculated imputed credit expenses accordingly.

Comment 12: *Calculation of Imputed Credit Expenses*

In its preliminary determination, the Department based its calculation of imputed credit expenses for CEP sales on Funai Corp.'s unit price net of early payment discounts. Funai Malaysia argues that the Department should have also deducted rebates and advertising discounts from the unit price.

Funai Malaysia asserts that the Department's practice is to calculate credit expenses on the basis of accounts receivable, as this reflects the opportunity cost of the credit extended to the customer. As support for this assertion, Funai Malaysia cites Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review , 68 FR 41303 (July 11, 2003) and accompanying decision memorandum at Comment 7 (Indian Mushrooms) (where the Department based credit expenses on the sales price, less any discounts or price adjustments granted at the time of sale); and Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, 63 FR 31724, 31731 (June 10 1998) (where the Department calculated credit expenses net of commission and international freight for U.S. sales made through unaffiliated importers). Funai Malaysia notes that Funai Corp. agrees with its customers in advance the amount of the early payment discounts, advertising reimbursements, and rebates that will apply at the time of sale, and memorializes this on a "Dealer Program Form" for each customer which specifies both an invoice cost and a net cost. Funai Malaysia argues that as Funai Corp. never expects payment of the invoice price, credit expenses should be calculated on the basis of the price which it expects to receive (i.e., the unit price less early payment discounts, advertising reimbursements, and rebates).

The petitioners note that Funai Malaysia has characterized advertising reimbursements, like early payment discounts, and rebates, as price adjustments that are agreed upon prior to the sale to the customer. Further, the petitioners note that Funai Malaysia has argued that it does not "incur" advertising expenses, but merely reimburses Funai Corp.'s ultimate customers for the advertising expenses they incur. The petitioners argue that, in the event that the Department agrees with Funai Malaysia regarding the credit base, it should treat Funai Malaysia's reported advertising reimbursements as a price adjustment, not a direct selling expense. Accordingly, the petitioners assert that the Department should remove the field "ADVERTU" from the calculations for the surrogate direct selling expense ratio for CV if the Department continues to apply its preliminary methodology in estimating Funai Malaysia's direct selling expenses for comparison to NV.

Department's Position:

Funai Corp. agrees with its customers in advance of the sale upon early payment discounts, advertising reimbursements, and rebates. However, the invoice price does not reflect these discounts. While the early payment discount is granted immediately upon payment within the specified time period via payment of the reduced price, the customer must apply for advertising adjustments and rebates retroactively. As noted in Indian Mushrooms at Comment 7, "{t}he imputed credit expense represents the opportunity cost to {the corporation} for shipping its asset, the merchandise, to the customer prior

to receiving the customer's payment." In the instant case, the opportunity cost constitutes the invoiced value of the merchandise (minus an early payment discount where appropriate), as the customer is responsible for paying the full invoiced amount. Although a credit for advertising reimbursements and rebates may later be granted, and may even be used to offset the amount of a future invoice, the customer nonetheless remains responsible for the full invoice price. Indeed, we note that this rationale is particularly apposite here, given that we were unable to determine whether such rebates were granted in certain instances. See the CEP verification report at page 17. Therefore, for the final determination, we have continued to calculate imputed credit expenses based on Funai Corp.'s unit price net of early payment discounts, in accordance with our practice.

Comment 13: *U.S. Indirect Selling Expenses*

The petitioners note that the Department found minor errors in Funai Corp.'s reported U.S. indirect selling expense data at verification. For the final determination, the petitioners argue that Funai Corp.'s reported data should be adjusted based on these findings. Specifically, the petitioners argue that Funai Corp. mistakenly deducted all expenses in its "Sales Promotion Expense" account from its U.S. indirect selling expense calculation, thereby understating the indirect selling expenses incurred in the United States during the POI. In addition, the petitioners note that Funai Corp. could not support the offset it claimed in the calculation of indirect selling expenses. Therefore, the petitioners argue that Funai Corp.'s indirect selling expense ratio should be recalculated to include all expenses in the "Sales Promotion Expense" account and to exclude the offset in question.

Funai Malaysia stated that it does not oppose the revisions as described above.

Department's Position:

We agree. For the final determination, we have revised Funai Corp.'s indirect selling expense ratio based on the findings at verification. For the details of this calculation, see the April 12, 2004, memorandum to the File from Mike Strollo entitled, "Calculations Performed for Funai Electric (Malaysia) Sdn. Bhd. (Funai Malaysia) for the Final Determination in the 2002-2003 Antidumping Duty Investigation of Certain Color Televisions from Malaysia."

Comment 14: *Expenses Associated with Sample Sales*

In its questionnaire response, Funai Malaysia included the cost of sample CTVs as part of indirect selling expenses. At verification, we found that these sample products were not provided free of charge to U.S. customers, but rather were sold on a commercial basis. While the majority of these sales were to employees, one transaction was a sale to one of the company's normal customers. Because these transactions were made for consideration, and thus constituted sales, we recalculated Funai Corp.'s indirect selling expenses to remove the cost of these items and set forth the resulting percentage in the CEP verification report. See the CEP verification report at page 21.

The petitioners contend that, if the Department considers these transactions to be "actual sales," it should include them in the U.S. sales listing using neutral facts available. According to the petitioners, given that these sales were made to employees, it is likely that they were made at very low prices, and failure to report them renders Funai Malaysia's U.S. sales listing inappropriately incomplete. As facts available, the petitioners contend that the Department should assign the lowest net price reported in the U.S. sales listing.

Alternatively, the petitioners contend that, if the samples were offered to employees free of charge, the Department must account for the associated cost as part of indirect selling expenses. The petitioners offer no support for their supposition that these samples may have been free.

Funai Malaysia notes that the record in this case clearly demonstrates that the transactions in question were actual sales of samples which were mainly provided to employees for promotional purposes. Funai Malaysia implies that its original treatment of these transactions (i.e., inclusion in indirect selling expenses) was correct. However, it argues that, if the Department erroneously confirms that they were sales, it has the authority to disregard them under its practice of disregarding small, anomalous sales. In support of this assertion, Funai Malaysia cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Belgium, 67 FR 62130 (Oct. 3, 2002) and accompanying decision memorandum at Comment 1 (where the Department allowed a respondent not to report certain further-manufactured products based on the facts that the respondent encountered data collection difficulties and these sales represented less than five percent of the company's overall sales).

Funai Malaysia asserts that including these sales using the petitioners' proposed methodology would be adverse and inappropriate. Moreover, Funai Malaysia contends that this approach is unwarranted because the Department has all the actual information necessary to include these sales in its analysis (i.e., invoices showing price, terms of delivery, and terms of sale).

Department's Position:

As noted above, we examined the circumstances under which Funai Corp. provided sample sets at the CEP verification. We found that in all instances but one Funai Corp. sold the sets in question rather than providing them free of charge. See the CEP verification report at page 21. Therefore, because these sets were provided for consideration, we find that the transactions at issue constitute actual sales during the POI. As such, we find that it would be inappropriate to include the cost of this merchandise in Funai Corp.'s indirect selling expenses.

We agree with Funai Malaysia that the Department has the discretion to disregard a small portion of sales (i.e., usually less than five percent of a respondent's total sales). In Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (Sept. 27, 2001) (Pure Magnesium from the Russian Federation), and accompanying decision

memorandum at Comment 10, the Department excluded two trial shipments made in small quantities from its analysis, noting that,

> "{i}n less than fair value investigations, the Department is not required to examine all sales transactions in the United States. For this reason, our practice has been to disregard unusual transactions when they represent a small percentage (i.e., typically less than five percent) of a respondents's total sales, as is the case here with Greenwich's two trial shipments."

See Pure Magnesium From the Russian Federation, 66 FR 49437 at Comment 10. See also Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 8291 (Feb. 19, 1999)[5], (where the Department determined that further manufactured sales through an affiliated party accounted for less than five percent of total U.S. sales and it disregarded them; and Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Finland, 56 FR 56363, 56371 (Nov. 4, 1991) (where the Department stated that, in less-than-fair-value investigations, it is not required to review every sale and frequently excludes certain sales from its analysis).

Finally, we disagree with petitioners that it is appropriate to include these sales in the U.S. sales listing using facts available. We note that the petitioners' proposed methodology, although characterized as "neutral," in fact requires the Department to make adverse inferences. We find that adverse inferences are not appropriate in this case because: 1) Funai Malaysia did not attempt to conceal these transactions from the Department; and 2) there is no evidence that it attempted to manipulate its dumping margin by not reporting them, given that it included the cost of these transactions in its indirect selling expenses. Under these circumstances, we find that Funai Malaysia reported these transactions in good faith, and as such we have made no adverse inferences with respect to them.

Comment 15: *Reclassification of Foreign Indirect Selling Expenses as G&A*

In its questionnaire response, Funai Malaysia reported indirect selling expenses incurred on U.S. sales by Funai Electric, and by Funai Malaysia itself. Because we found that these expenses were not associated with economic activity in the United States, we did not deduct these selling expenses from U.S. price for purposes of the preliminary determination. The petitioners disagree with this decision, maintaining that Funai Electric's and Funai Malaysia's expenses are directly related to the production and/or sale of subject merchandise, and therefore the Department should make the following adjustments with regard to these expenses for the final determination: 1) it should treat Funai Malaysia's reported indirect selling expenses as G&A expenses and add them to CV; 2) it should reclassify a

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[5] This result was unchanged in the final determination. See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329 (May 6, 1999).

portion of Funai Electric's indirect selling expenses as G&A expenses and add them to CV; 3) it should deduct the remaining portion of Funai Electric's indirect selling expenses from U.S. price; and 4) if the Department determines that Funai Electric's selling expenses are not associated with sales to Funai Corp., then it should add these selling expenses to CV. For further discussion of the second and third/fourth items, see Comments 22 and 16, below, respectively.

Regarding the first issue, the petitioners argue that Funai Malaysia did not incur any indirect selling expenses because this company functions merely as a production rather than a selling entity. Specifically, the petitioners contends that Funai Malaysia not only admitted that this was true, but it further has stated that: 1) it made no home market sales and only a very small volume of third country sales; 2) Funai Electric, not Funai Malaysia, undertakes the selling functions for subject merchandise, including receiving purchase orders from Funai Corp.; and 3) all books and records for the sales are kept in Japan, not Malaysia. The petitioners contend that, because these expenses were incurred by Funai Malaysia to produce CTVs that were sold to the United States, these expenses should be included as part of Funai Malaysia's G&A expenses for purposes of the final determination. Alternatively, at a minimum, the petitioners argue that, because Funai Malaysia is a production entity, royalty expenses incurred by Funai Malaysia should be included as part of G&A expenses rather than selling expenses for the final determination.

With respect to its indirect selling expenses, Funai Malaysia notes that the Department correctly disregarded the petitioners' argument in the preliminary determination that Funai Malaysia's indirect selling expenses should be reclassified as G&A expenses, and, as such, should be added to CV. Contrary to the petitioners' assertions, Funai Malaysia claims that it performs selling activities, including inventory maintenance and warehousing, foreign inland freight and delivery and sales logistics. In addition, Funai Malaysia argues that it incurs indirect selling expenses related to these sales activities, including: 1) arranging finished products for shipment to the port of export, 2) preparing paperwork, and 3) coordinating with the freight forwarder for processing the necessary shipment and export documentation. Funai Malaysia notes that the Department has found these types of activities constitute selling activities and has categorized the relevant expenses as indirect selling expenses, citing Certain Hot-Rolled Carbon Steel Flat Products from India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 68 FR 74209, 74212 (Dec. 23, 2003).

Moreover, Funai Malaysia contends that, regarding its royalty expenses, the Department examined carefully the payment of royalty expenses incurred at Funai Malaysia and verified that the payments were based upon the sale of covered products from Funai Malaysia to Funai Electric, not on production. Specifically, Funai Malaysia argues that the Department tied royalty expenses paid to the number of units sold to Funai Electric, not the number of units produced, citing the Funai Electric sales verification report at page 26. Therefore, Funai Malaysia maintains that royalty expenses are clearly an indirect selling expense, not a G&A expense. Finally, Funai Malaysia asserts that because the Department used a surrogate producer's financial statements to identify the indirect selling expenses appropriately reflected in CV, including Funai Malaysia's selling expenses, in addition to the surrogate's

selling expenses, would lead to double counting. Consequently, Funai Malaysia argues that the Department should not reclassify Funai Malaysia's indirect selling expenses as G&A and include these expenses in CV.

Department's Position:

We agree with the petitioners that certain "indirect selling expenses" incurred by Funai Malaysia should be reclassified as G&A. The expenses in question consist of an allocated portion of the company's: 1) royalties; and 2) total G&A expenses. See the Funai Electric sales verification report at exhibit 22. Regarding both expenses, we note that Funai Malaysia calculated them using the ratio of direct shipping labor to total direct labor. See the Funai Electric sales verification report at page 26 and exhibit 22. Funai Malaysia stated in its responses that segregating indirect selling expenses in this manner was appropriate because it performs limited selling functions, including arranging for shipment of finished products to the port of exportation. These selling activities include: 1) preparation of paperwork, and 2) coordination with the freight forwarder for processing the necessary shipment and export documentation. See Funai Malaysia's August 6, September 9, and October 14 responses at pages C-37, SC-32, and SC2-16, respectively.

We disagree with Funai Malaysia that it is appropriate to allocate a portion of its total G&A expenses to sales operations. We find that Funai Malaysia's explanation (i.e., that these expenses account for shipping-related activities) unpersuasive. Even assuming, *arguendo*, that it is appropriate for Funai Malaysia to treat certain logistics expenses as indirect selling, Funai Malaysia made no attempt to segregate these expenses from the pool of total G&A and then apportion them between movement of finished goods and purchases of raw materials. Therefore, because the expenses at issue are general expenses of the company and recorded in the company's books and records as G&A expenses, we have reclassified them as G&A for purposes of the final determination.

Regarding royalties, we also agree with the petitioners that these expenses are more appropriately classified as G&A expenses. Funai Malaysia contends that, because royalty expenses are incurred on the "sale" between Funai Malaysia and Funai Electric pursuant to the agreement with its licensor, royalty expenses are more appropriately considered indirect selling expenses rather than G&A. However, we find that the manner in which these expenses are incurred is less relevant here than the type of royalty paid. Specifically, we find that this royalty agreement concerns the licensing of certain technology used in the production of the company's CTVs. See the Funai Electric sales verification report at page 26 and sales verification exhibit 21. Thus, we find that it is appropriate to include royalties as G&A expenses, as Funai Malaysia originally reported them, and as we treated them in the preliminary determination. Therefore, for the final determination, we have continued to treat all of Funai Malaysia's royalty expenses as G&A expenses.

Nonetheless, we disagree with the petitioners that all of Funai Malaysia's activities should be reclassified as G&A expenses. We note that any expenses associated with finished goods which were

sold, and then subsequently returned to Funai Malaysia, is related to the company's sales activities, and the petitioners themselves have argued for this treatment elsewhere in their case briefs. See Comment 2, above. Therefore, we have treated any expenses related to returned merchandise as indirect selling expenses, consistent with our practice. For further discussion, see Comment 2.

Regarding Funai Electric, we examined each of the expenses reported by Funai Electric at verification and found that a number certain of them are either administrative or general in nature, rather than sales-related. For this reason, we have treated them as G&A expenses for purposes of the final determination. For further discussion, see Comment 22, below.

Comment 16: *Treatment of Indirect Selling Expenses Incurred in Malaysia and Japan*

As noted in Comment 15, above, the petitioners argue that Funai Electric's indirect selling expenses must be deducted from U.S. price, in accordance with the Department's practice. According to the petitioners, the Department obtained documentation at verification showing that Funai Electric was directly and substantially involved in all economic activity in the United States. Specifically, the petitioners maintain that Funai Electric was clearly involved in overseeing, supervising, and authorizing the activities undertaken by Funai Corp. for sales to unaffiliated customers, given that it: 1) reimburses Funai Corp. for rebates paid to unaffiliated U.S. customers, and thus must have true decision-making authority for rebates; 2) controls all contacts and correspondence with Funai Corp.'s customers by requiring Funai Corp. to report directly on these customer contacts to the president of Funai Electric; 3) attended a trade show in Las Vegas, allowing Funai Electric to meet with CEP customers; 4) arranges and authorizes insurance for the products sold in the United States; 5) provides samples of newly-licensed products to its licensor for testing purposes; 6) shares the cost of returns, given that CEP customers returned a substantial amount of their purchases to Funai Electric; 7) enters into royalty agreements for types of royalties classified as U.S. direct selling expenses; 8) incurred advertising and promotional expenses which were directly aimed at CEP customers; and 9) occasionally permitted visits by CEP customers.

In support of their position, the petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Canada, 67 FR 55782 (Aug. 30, 2002) and accompanying decision memorandum at Comment 3 (Steel Wire Rod from Canada) (where the Department noted that "Under 19 C.F.R. 351.402(b), we deduct indirect selling expenses related to U.S. economic activity "no matter where or when paid") and Oil Country Tubular Goods, Other Than Drill Pipe From Korea: Final Results of Antidumping Duty Administrative Review, 67 FR 12520 (Mar. 19, 2002) and accompanying decision memorandum at Comment 2 (OCTG from Korea) (where the Department stated its position that, when foreign indirect selling expenses relate to the sale to the first unaffiliated U.S. customer, the Department's regulations establish that it is the respondents' burden to document the selling functions relate solely to affiliated party sales). The petitioners note that the Court of International Trade (CIT) has upheld this interpretation, citing Mitsubishi Heavy Industry v. United States, 54 F. Supp. 2d 1183, 1186 (CIT 1999) (Mitsubishi) (where the CIT affirmed the Department's

authority to deduct indirect selling expenses that are associated with the sales of exports in the United States from CEP, whether incurred in the United States or the home market).

Alternatively, if the Department decides not to deduct Funai Electric's indirect selling expenses from CEP, the petitioners argue that selling expenses incurred by Funai Electric should be included in CV as exporter selling expenses, because Funai Electric serves as the exporter of the Malaysian product. According to the petitioners, both the Statement of Administrative Action (SAA) and the Department's Antidumping Manual state that CV must include not only the home market expenses and profit incurred by the producer, but must also include the expenses and profit incurred by the exporter to account for the cost of producing the merchandise. See SAA at 841; see also Antidumping Manual at Chapter 8B ("General Guidelines for the Calculation of Constructed Value"). As additional support for this point, the petitioners cite Final Determination of Sales at Less than Fair Value: Fresh and Chilled Atlantic Salmon From Norway, 56 FR 7661, 7662 (Feb. 23, 1991) (Salmon from Norway) (where the Department combined the costs of production and the exporter's SG&A expenses), and Notice of Final Determination of Sales at Less Than Fair Value; Honey From Argentina, 66 FR 50,611 (Oct. 4, 2001) and accompanying decision memorandum at Comment 3 (Honey from Argentina) (where the Department included a certain G&A and selling expenses of a "middleman" reseller in the calculation of the respondent's cost of production (COP) and CV). The petitioners contend that any expenses incurred by an exporter not otherwise included in the indirect or direct selling expenses for the U.S. sales must be added to CV to ensure a fair comparison; otherwise the U.S. price would be compared to a CV that did not account for a substantial portion of selling expenses. According to the petitioners, if the Department does not treat Funai Electric's indirect selling expenses as expenses that are associated with economic activity in the United States, at a minimum, it must add these expenses to CV (along with Funai Electric's profit, as also required by the SAA, Dumping Manual, and the Department's practice).

With respect to Funai Electric's indirect selling expenses, Funai Malaysia argues that the Department correctly declined to deduct Funai Electric's indirect selling expenses incurred in Japan from CEP. According to Funai Malaysia, in order to determine whether to deduct indirect selling expenses incurred in the foreign market, the Department analyzes the respective roles of the U.S. affiliate and the parent company in the sales process and then discerns whether the foreign company was directly involved in negotiating sales prices, quantities, and terms with U.S. affiliate's unaffiliated CEP customers. Funai Malaysia asserts that this practice is set forth in Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 6716 (Feb. 10, 2003) and accompanying decision memorandum at Comment 2 (Sheet and Strip from Germany) (where the Department deducted indirect selling expenses from CEP, having concluded that, due to the closure of its affiliated resellers, the parent company played an active role in relation to sales to unaffiliated U.S. customers).

Funai Malaysia notes that in this case the Department examined Funai Corp.'s and Funai Electric's respective roles in the selling process for CEP sales at verification and found that Funai Corp.: 1)

exclusively handles all interactions with its large U.S. customers and had full responsibility for its own customers; 2) negotiates sales prices and price adjustments with the unaffiliated customer and has agreements memorializing those negotiations signed by a Funai Corp. salesperson; and 3) negotiates the purchase quantity with the unaffiliated customer and only then sends the purchase order to Funai Electric. In contrast, Funai Malaysia maintains that Funai Electric has no interaction with CEP customers and does not negotiate prices, terms or quantities with these customers. Instead, Funai Malaysia asserts that Funai Electric's commercial role is limited to interaction with, and support for, its sales to Funai Corp. (i.e., processing the orders it receives from Funai Corp., sending those orders to Funai Malaysia and Funai Electric Hong Kong, Ltd. (Funai Hong Kong), Funai Electric's wholly-owned subsidiary, and dictating only the price at which it transfers merchandise to Funai Corp.).

Furthermore, Funai Malaysia maintains that the documents referenced by the petitioners do not demonstrate that Funai Electric was involved in selling directly to Funai Corp.'s customers. Specifically, Funai Malaysia contends that the ultimate decision-making authority for granting rebates rests with Funai Corp., not Funai Electric. In any event, Funai Malaysia asserts that it is irrelevant which party ultimately bore the rebate expense since all adjustments granted to the unaffiliated customer are included in the Department's analysis. With respect to customer contact, Funai Malaysia contends that the petitioners misread an internal memorandum and Funai Corp. is not, in fact, required to report to the president of Funai Electric to seek advice and obtain approval before making decisions on price, rebates, and advertising allowances. Rather, the individual to whom the petitioners refer is instead is an employee of Funai Corp., not Funai Electric.

Regarding Funai Electric's attendance at the Las Vegas trade show, Funai Malaysia notes that this event is the largest in the consumer electronics industry. As such, Funai Malaysia contends that it and other producers participate in order to promote their products world-wide, not just to U.S. customers. Because this trade show is the premier international trade show for the consumer electronics industry, and the selling activities relate to Funai Electric's world-wide marketing efforts for subject and non-subject merchandise, Funai Malaysia argues that Funai Electric bears of portion of Funai Corp.'s costs even though any sales made to the United States at this trade show are made by Funai Corp. Therefore, Funai Malaysia contends that the total amount of reimbursed expenses should not be attributed to Funai Corp.'s U.S. indirect selling expenses incurred on sales to its U.S. customers. Further, Funai Malaysia argues that, because the reimbursed expenses are insignificant, in accordance with 19 CFR 351.413, the Department should disregard this adjustment in its final dumping calculations.

In addition, Funai Malaysia contends that the petitioners' argument with respect to insurance expenses is irrelevant, given that: 1) the cost of insurance has been reported as a direct expense and is included in the Department's analysis; and 2) it is common for companies to negotiate a single world-wide insurance policy rather than negotiate separate policies for each operation in each country. Moreover, Funai Malaysia argues that providing samples for testing purposes is common in the consumer electronics industry and does not constitute evidence that Funai Electric was involved in negotiations,

set price agreements, or otherwise provided services directly to unaffiliated CEP customers. Furthermore, Funai Malaysia notes that the cost of the sample sets in question is minuscule.

Finally, Funai Malaysia dismisses the petitioners' contention that the negotiation and payment of royalty fees by Funai Electric and Funai Malaysia equates to direct involvement in CEP sales, noting that the petitioners provide no support for their "novel" theory. Similarly, Funai Malaysia notes that Department's verification report indicates that the advertising and promotion expenses cited by the petitioners were indirect in nature. Regarding customer visits, Funai Malaysia notes that the Department's verification report indicates that any CEP customers who visit Funai Electric are always accompanied by the Funai Corp. salespeople handling that particular customer's account.

Funai Malaysia argues that the cases cited by the petitioners do not apply here. Specifically, Funai Malaysia contends that in Steel Wire Rod from Canada, the Department found that the respondent received orders directly from unaffiliated U.S. customers, set the sales prices, transmitted order confirmations back to the unaffiliated customers, issued invoices and transferred title directly to the unaffiliated customers, received payment directly from the unaffiliated customers, and arranged for shipment to the customers. See Steel Wire Rod from Canada at Comment 3. Funai Malaysia maintains that none of those facts are similar in this case because Funai Corp., not Funai Electric, performs these activities for CEP sales.

Funai Malaysia also notes that the petitioners rely on Mitsubishi. In that case, the indirect selling expenses at issue consisted of salaries and related expenses, planning expenses, office expenses, consumable stationary expenses, book and printing expenses, insurance, employee education, as well as department, section, and other charges. Funai Malaysia argues that the Department articulated to the CIT in Mitsubishi, that, absent record evidence to the contrary, these expenses cannot be presumed to be incurred on the sale to the unaffiliated customer in the United States. See Mitsubishi, 54 F. Supp. 2d at 1186.

Finally, Funai Malaysia disagrees that OCTG from Korea stands for the proposition that respondents have the burden to show that the selling functions relate solely to affiliated party sales. Funai Malaysia notes that, in that case, the respondent failed to respond to numerous requests from the Department for additional information and, thus, the Department's determination was in part an adverse one. In contrast, Funai Malaysia argues that it has fully complied with all of the Department's requests for information and has adequately demonstrated that Funai Electric does not participate in selling to unaffiliated CEP customers. Thus, Funai Malaysia asserts that the petitioners' reliance on OCTG from Korea is misplaced.

Funai Malaysia also disagrees with petitioners' argument that the Department should include Funai Electric's indirect selling expenses in CV. Funai Malaysia contends that CV serves as a proxy for home market sales price, as explained in the SAA. Given that the home market in this case is Malaysia, not Japan, Funai Malaysia argues that only selling expenses incurred in selling in Malaysia should be

included in the calculation of CV. Further, Funai Malaysia argues that the Department has already accounted for domestic selling expenses incurred in Malaysia by using data from the surrogate producer's financial statements.

Funai Malaysia also asserts that the petitioners' reliance on Honey from Argentina is incorrect. According to Funai Malayisa, in Honey from Argentina the respondents were exporters that purchased the subject merchandise and resold it without further processing. Funai Malaysia notes that, because the home market was not viable, the exporters' prices in Germany formed the basis for normal value, and CV in that case represented a surrogate for the exporters' prices to Germany. Therefore, Funai Malaysia claims that the expenses and profits of both the producers and exporters had to be incorporated in CV to derive a price of the product sold in Germany. In contrast, Funai Malaysia argues that where, as here, CV serves as a surrogate price for sales in the home market, there is no basis for the Department to include expenses incurred in connection with sales to other markets, as these expenses would never be components of a home market price.

Similarly, Funai Malaysia asserts that the Department's analysis in Salmon from Norway is inapplicable, because it was conducted under pre-1995 law which permitted the use of selling expenses associated with U.S. sales in calculating CV and required minimum levels for G&A and profit. Funai Malaysia maintains that, in the current law the Department has rejected the use of U.S. selling and profit experience in calculating CV. To support this assertion, Funai Malaysia cites Shop Towels From Bangladesh; Final Results of Antidumping Duty Administrative Review, 61 FR 55957, 55960 (Oct. 30, 1996) where the Department held that it was inappropriate to calculate profit for CV based on the respondents' U.S. sales.

Department's Position:

Section 772(d)(1) of the Act directs the Department to deduct from CEP the amount of any expenses "incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise." In accordance with the SAA, the Department's practice is to deduct from CEP only those expenses associated with economic activities in the United States. See, e.g., Sheet and Strip from Germany at Comment 2; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825, 11834 (Mar. 13, 1997) (TRBs from Japan).

This practice is clearly explained in TRBs from Japan. In that case, we stated:

> It is clear from the SAA that under the new statute we should deduct from CEP only those expenses associated with economic activities in the United States. The SAA also indicates that "constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers" (see SAA at 823). Therefore, we have deducted from CEP only those expenses associated with commercial

activities in the United States. Our proposed regulations reflect this logic at 351.402(b) ("(t)he Secretary will make adjustments to constructed export price under 772 (d) for expenses associated with commercial activities in the United States, no matter where incurred").

Timken's reference to the SAA to support the proposition that the new law is not intended to change our practice in this regard is misplaced. Timken cites various provisions of the SAA which state that our practice with respect to "assumptions" would not change. The SAA explains that "assumptions" are selling expenses of the purchaser for which the foreign seller agrees to pay (see SAA at 824). Thus, if the home market producer agrees to pay for the affiliated importer's cost of advertising in the U.S. market the Department would deduct such an expense as an "assumption." It should be noted that assumptions are different than selling expenses incurred in the home market in selling to the affiliated importer, which are not incurred "on behalf of the buyer" (i.e., the affiliated importer). Rather, the exporter incurs such expenses on its own behalf, and for its own benefit, in order to complete the sale to the affiliated importer (see AFBs 94-95 at 2124).

In this case, Koyo's reported selling expenses at issue are not specifically associated directly to commercial activity in the United States, such as the subsidiary's activity of selling the merchandise in the United States. Rather, the expenses at issue were associated directly with the sale between Koyo and its subsidiary and were incurred prior to the commercial activity in the United States. Therefore, because Koyo's reported export selling expenses did not represent commercial activities performed in the United States, we did not deduct these expenses from CEP for these final results.

See TRBs from Japan, 62 FR at 11834.

In this case, we have reviewed the types of activities performed by Funai Electric with respect to its export sales. We disagree with the petitioners that the majority of these expenses relate to the sale to the first unaffiliated customer in the United States. Rather, as in TRBs from Japan, we find that these expenses relate to the sale between Funai Electric and its subsidiary, Funai Corp. Indeed, we find that the petitioners' examples of Funai Electric's involvement in the sale to the first unaffiliated customer are tenuous at best. For example, although it may be true that Funai Electric negotiates an insurance contract that covers movement of the finished goods in the United States, we note that: 1) this contract also covers movement to Funai Corp.'s warehouses in the United States; 2) the cost of the contract is the transfer value between Funai Electric and Funai Corp.; and 3) the insurance expenses paid under the contract are reported in Funai Corp.'s U.S. sales listing. See Comment 7. Similarly, the fact that Funai Electric: 1) provides samples to its licensor for testing purposes; and 2) signs royalty agreements, is not linked to the sale to the ultimate customer, but rather is mandated by the terms of its licensing/royalty agreements. Thus, these actions must be undertaken before Funai Electric can sell to Funai Corp., and as a consequence we find no basis to conclude that they are associated with the sale to the first unaffiliated customer.

Moreover, we agree with Funai Malaysia that the petitioners misinterpreted certain documents taken at verification. We have reviewed the memorandum in question and note that it was not signed by a Funai Electric company official, contrary to the petitioners' claim. Further, in reviewing the respective roles of Funai Electric and Funai Corp. in U.S. sales process, we saw no evidence at verification that Funai Electric was involved in the negotiation or approval of prices set with Funai Corp.'s unaffiliated customers. See the CEP sales verification report at pages 4 and 5.

Similarly, we disagree with the petitioners that Funai Electric's acceptance of returned merchandise, granting of rebates to Funai Corp., or allowing customer visits (with or without Funai Corp.'s U.S. customers) provides evidence of anything other than Funai Electric's normal business practices with respect to Funai Corp.[6] In any event, we note that, as Funai Malaysia has correctly pointed out, all rebates and return costs incurred on the sale to the first unaffiliated party have been accounted for in our final determination. See Comments 2 and 6, above.

Nonetheless, we agree with the petitioners that Funai Electric's reimbursement of certain trade show expenses should be accounted for in our calculations, because it does relate to economic activity occurring in the United States. Although we agree with Funai Malyasia that Funai Electric's attendance at this trade show was intended to promote the company's sales world-wide, we disagree that this can be construed as promoting sales to Funai Corp., rather than as sales to unaffiliated customers. Therefore, we have included an allocated portion of these expenses in U.S. indirect selling expenses, and we have deducted them from CEP for purposes of the final determination.

Finally, we find that the petitioners' reliance on OCTG from Korea or Steel Wire Rod from Canada is misplaced. In the former case, the respondent failed to demonstrate that the expenses in question related to the sale to the affiliated party (unlike here), while in the latter, the respondent performed selling activities in Canada that were directed at unaffiliated customers in the United States (also unlike here).

Regarding the petitioners' argument that we should include Funai Electric's indirect selling expenses in CV, we disagree. The Department's preferred method for calculating CV is set forth in section 773(e)(2)(A) of the Act. This section of the Act instructs the Department to use the actual amounts of SG&A and profit

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[6] Regarding the advertising and promotional expenses, we note that we are unable to discuss the nature of these expenses here, given that Funai Malaysia has claimed business proprietary treatment for them. However, we find that these expenses are not only indirect in nature, but they are similarly not of a type which should be deducted from CEP under the Department's practice. For a description of these items, see the Funai Electric sales verification report at pages 27 and 28.

> incurred and realized by the exporter or producer . . . in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country." Emphasis added.

Based on this directive, the Department includes in CV those selling expenses associated with home market sales because these are the expenses that would have been incurred in connection with the production and sale of the foreign like product in the foreign country.

We disagree with the petitioners that it would be appropriate to include U.S. selling expenses incurred by a Japanese reseller in the calculation of CV. We note that these expenses are not home market selling expenses, nor are they expenses associated with selling the foreign like product. Thus, it would be contrary to the Department's practice to include them in CV. See, e.g., Frozen Concentrated Orange Juice from Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 29930, 29932 (June 4, 2001) (where the Department based selling expenses on the expenses incurred by the respondent in a prior fiscal year, rather than on the expenses incurred on U.S. sales in the year under consideration).

We also disagree with the petitioners that either Honey from Argentina or Salmon from Norway applies here. We note that NV in both cases was based on third-country sales. Thus, we find that the inclusion of a portion of the exporters' selling expenses in CV in those cases does not contradict our position here, given that the expenses in those cases were foreign, not U.S., selling expenses.

Finally, we note that the Act contains two provisions to address any differences in levels of indirect selling expenses included in NV and U.S. price: 1) section 773(a)(7)(A), which permits the Department to make a level of trade (LOT) adjustment when differences in levels of trade exist; and 2) section 773(a)(7)(B), which requires the Department to make a CEP offset when no LOT adjustment is possible and the home market is at a more advanced level of trade. In this case, there is insufficient data on the record to determine either the LOT of CV (based on the types of selling activities performed by the surrogate producer, FPI) or whether that LOT is more advanced than CEP, after all selling expenses associated with economic activity in the United States have been deducted. Therefore, we have not adjusted NV under section 773(a)(7) of the Act, consistent with our findings in the preliminary determination. See Preliminary Determination, 68 FR at 66813. We note that the petitioners did not address either of these provisions.

Comment 17: *Home Market Credit Expenses and Commission Offset*

In the preliminary determination, the Department did not deduct home market credit expenses from its calculation of CV, finding that there was inadequate information on the record of the proceeding on which to base such an adjustment.

Funai Malaysia argues that it is the Department's practice to deduct home market credit from CV as a circumstance of sale (COS) adjustment, pursuant to section 773(a)(6)(C)(iii) and (a)(8) of the Act and 19 CFR 351.410. See Mitsubishi Heavy Industries, Ltd. v. U.S., 23 CIT 326, 330-331 (May 26, 1999); remand determination; Mitsubishi Heavy Industries Ltd. v. U.S., Court No. 96-10-00292, December 21, 1998, at 5; Static Random Access Memory Semiconductors From Taiwan; Final Results of Antidumping Duty New Shipper Review, 65 FR 12214 (Mar. 8, 2000) (SRAMs from Taiwan) and accompanying decision memorandum at Summary; and Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 64 FR 56759, 56760 (Oct. 21, 1999). Funai Malaysia contends that the use of CV to calculate NV does not preclude the calculation of home market credit expenses. In support for this assertion, Funai Malaysia cites Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Final Results of Antidumping Duty Administrative Review, 66 FR 11557 (Feb. 26, 2001) and accompanying decision memorandum at Comment 4, where the Department developed a methodology to derive home market credit expenses for the purposes of applying a COS adjustment. According to Funai Malaysia, the record of this case contains adequate information upon which to base such a COS adjustment, and as a consequence the Department should make one for the final determination.

Specifically, Funai Malaysia asserts that, in order to perform the calculation in question, the Department merely needs to have evidence as to the price charged, the short-term borrowing rate, and the number of days of payment outstanding. Funai Malaysia asserts that there is information on the record demonstrating a short-term borrowing rate in Malaysia, that Funai Malaysia has reported the average credit period for its shipments to Funai Electric, and that CV provides the correct surrogate price for calculating home market credit expenses. Further, Funai Malaysia argues that the proper credit period is the length of time between Funai Malaysia's shipment from the plant and its receipt of payment from Funai Electric, as this reasonably reflects Funai Malaysia's opportunity costs of financing its accounts receivable between the date of shipment and the date of payment. In support of its position, Funai Malaysia cites to Preliminary Results of Antidumping Administrative Review: Stainless Steel Plate in Coils from Italy, 67 FR 39677, 39679 (June 10, 2002) (SSPC Prelim), where NV and deductions for home market credit were based on sales to affiliated companies.

In the alternative, Funai Malaysia argues that the Department may calculate credit expenses based on information contained in the financial statements of FPI by calculating the average receivable turnover of FPI. Funai Malaysia cites Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 67 FR 11976 (Mar. 18, 2002) and accompanying decision memorandum at Comment 4, where the Department calculated the credit period based on the average age of accounts receivable when actual payment was unavailable.

Finally, Funai Malaysia argues that, should the Department decline to deduct home market credit expenses from CV, it must not add credit expenses on U.S. EP sales to CV in order to ensure a fair

comparison. In support of this contention, Funai Malaysia cites the Department's remand determination in Mitsubishi Heavy Industries, Ltd. v. United States, where the Department stated "{I}t would be senseless to adjust the U.S. price of LNPP for certain credit expenses incurred by MHI in the U.S. market, while refusing to make the same adjustment to NV." See Mitsubishi at 5.

Similarly, Funai Malaysia argues that the Department must offset commissions paid on U.S. sales in its calculation of CV, noting that 19 CFR 351.410(e) requires the commission offset when commissions are paid in one market and not in the other. Funai Malaysia states that the Department has consistently applied this adjustment by reducing CV by the amount of home market indirect selling expenses. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Notice of Preliminary Results of Antidumping Duty Administrative Review, 66 FR 47163, 47169 (Sept. 11, 2001); see also SRAMs from Taiwan at Comment 3.

The petitioners argue that the financial data of FPI cannot be used to calculate Funai Malaysia's home market credit expenses, and instead, the Department should deduct credit expenses incurred on U.S. sales as the offset, effectively negating any COS adjustment. The petitioners propose a similar methodology for the commission offset claimed by Funai Malaysia, namely that a deduction could be made to CV based on the U.S. commission.

Department's Position:

In the preliminary determination, as noted above, we did not make a COS adjustment for credit based on our determination that it was not possible due to inadequate information on the record of this case. See Preliminary Determination, 68 FR at 66814. However, when calculating CV, the Department's normal practice is to deduct home market credit expenses from CV as a COS adjustment. See 19 CFR 351.410. Therefore, we agree with Funai Malaysia that a COS adjustment should have been made to account for differences in credit expenses in each market.

Funai Malaysia argues that, in calculating home market credit expenses for the COS adjustment to CV, the Department should use the short-term borrowing rate in Malaysia, the credit period on Funai Malaysia's shipments to Funai Electric, and CV as the credit base. Alternatively, Funai Malaysia proposes that the Department calculate credit expenses based on information contained in the financial statements of FPI by calculating its average receivable turnover. The petitioners, in contrast, contend that, because the Department has determined that it is not possible to calculate home market credit expenses based on the information on the record, it should adjust NV by deducting U.S. credit expenses from CV.

We disagree with Funai Malaysia that the credit period between Funai Malaysia and Funai Electric is the most appropriate basis upon which to calculate home market credit expenses. We note that, in SSPC Prelim, the Department determined that the respondent made sales to affiliated parties in the

home market. These foreign market sales passed the arm's-length test, and therefore, were included in the Department's NV calculation. In this case, however, sales by Funai Malaysia were not made in the home market, but instead, to the Unites States via Japan. Therefore, the length of time that Funai Malaysia's accounts receivables with Funai Electric is outstanding does not represent a home market credit period. As a consequence, it does not provide a valid basis on which to impute home market credit expenses.

We also disagree with the petitioners that, as an alternative, we should adjust NV by deducting U.S. credit expenses from CV. The purpose of the COS provision in the Act is to account for differences in selling expenses across markets. For example, section 773(a)(6)(C) of the Act directs the Department to adjust the home market price for differences in the circumstances of sale between it and either EP or CEP. Therefore, we find that using U.S. credit expenses as a surrogate for Funai Malaysia's home market experience would not yield a meaningful adjustment.

Thus, for the final determination, we have calculated home market credit expenses using information contained in the financial statements of FPI. Specifically, we determined FPI's average accounts receivable turnover, applied this to FPI's available short-term interest rate, used CV as the starting price for each transaction, and divided the resulting figure by 365. We note that the use of FPI's financial statements to calculate home market credit expense not only is consistent with our treatment of SG&A and profit for CV in this case, but it also is meaningful in light of the fact that: 1) credit expenses are intended to measure a company's opportunity costs associated with extending credit terms on individual sales; and 2) as a result, they are directly linked to a company's actual financing expenses. Because we included FPI's actual financing expenses in CV, calculating imputed credit expenses using these costs is appropriate in this case.

Finally, we agree with Funai Malaysia that we failed to offset commissions paid on U.S. sales in calculating CV, pursuant to 19 CFR 351.410(e). Consequently, for the final determination, where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on any U.S. sale by reducing CV by any home market indirect selling expenses, up to the amount of the U.S. commission.

Comment 18: *Clerical Errors in the Preliminary Determination*

According to the petitioners, the Department failed to include amounts for both direct and indirect selling expenses in the base to which the profit rate was applied to total COP for purposes of the preliminary determination. Because the petitioners note that the profit rate itself was calculated as a percentage of FPI's total costs (including packing and selling expenses), the petitioners assert that the Department's calculation did not capture Funai Malaysia's fully-absorbed cost. Thus, the petitioners assert that the Department understated the CV profit amount used in the preliminary determination. The petitioners argue that, for its final margin analysis, the Department should revise the CV profit calculation to include all elements of Funai Malaysia's fully-absorbed cost, including selling expenses.

Funai Malaysia did not comment on this issue.

Department's Position:

We have reviewed the margin program for the preliminary determination and agree that: 1) the profit rate was calculated as a percentage of FPI's total costs, including packing and selling expenses; and 2) we failed to include packing and selling expenses in calculating Funai Malaysia's fully-absorbed cost to which the CV profit rate is applied. Consequently, we have adjusted the calculation of CV profit to account for direct and indirect selling expenses for purposes of the final determination.

Comment 19: *Affiliated Manufacturer of a Major Input*

During the POI, Funai Malaysia purchased a major input, PCBs, from an affiliated PCB-board producer in Hong Kong, Funai Hong Kong. This affiliate purchased the raw materials necessary to produce the PCB from both market and non-market economy (NME) suppliers, and then it subcontracted the actual assembly operations with an entity located in the People's Republic of China (PRC). In order to demonstrate that the affiliate's purchases from its PRC suppliers reasonably reflect the costs associated with the production and sale of the merchandise, Funai Malaysia provided the prices it paid to various unaffiliated market economy suppliers of the same parts which showed that the prices recorded in the normal books and records closely approximated market values.

The petitioners claim that Funai Hong Kong is affiliated, within the meaning of section 771(33) of the Act, with the PRC manufacturing plants that assembled the PCBs. The petitioners claim that substantial record evidence indicates that Funai Hong Kong operationally controls the PRC subcontractors and operates them as divisions of Funai Hong Kong. The petitioners assert that the Department erred in its preliminary determination when it considered only the legal ("formal") control between Funai Hong Kong and the PRC plant's parent company but not the control of the PRC manufacturing entities. See the petitioners' brief for a business proprietary description of the PRC parent company and the PRC manufacturing entities. The petitioners cite the SAA at 838 in contending that the requirements of doing business in an NME country are mandated by the PRC government, which places restrictions on ownership that require the Department to abandon its "traditional focus" on control through stock ownership or equity participation.

The petitioners contend that the following pre-verification record evidence further demonstrates that Funai Hong Kong controls the PRC manufacturing plants. The petitioners maintain that Funai Electric's 2002 annual report, prepared prior to this investigation, includes the PRC plants among its manufacturing subsidiaries. The petitioners also claim that statements in Funai Electric's 2002 annual report regarding new production plants and current operations in the PRC confirm that Funai Hong Kong directed the construction and operation of the PRC manufacturing plants. Finally, the petitioners claim that statements in Funai Electric's 2002 annual report regarding the company's history shows that Funai Hong Kong is a management company overseeing the operating divisions in the PRC. The

petitioners contend that the organization table submitted by Funai Malaysia references the affiliation between Funai Hong Kong and the PRC plants. The petitioners argue that Funai Hong Kong exercises control over the PRC manufacturing plants because Funai Hong Kong constructed these facilities and was responsible for the purchase and specification of all plant equipment, and the production of the plants are dedicated exclusively to Funai Hong Kong. Finally, the petitioners argue that certain business proprietary expenditures listed at section I.B.6 of the petitioners' brief shows that Funai Hong Kong is affiliated with the PRC manufacturing plants.

The petitioners contend that the following evidence gathered at verification demonstrates that Funai Hong Kong is affiliated with the PRC manufacturing plants. The petitioners maintain that for financial accounting purposes, the revenues and expenses of Funai Hong Kong and the PRC manufacturing facilities are totaled, transactions between these facilities are eliminated, and the results are presented as consolidated financial statements for Funai Hong Kong. Thus, the PRC CTV component plants are part of Funai Hong Kong in its accounting records, operating as divisions within Funai Hong Kong. The petitioners argue that under international and Hong Kong GAAP, a company only presents consolidated financial statements inclusive of manufacturing divisions and/or for affiliated companies or divisions. The petitioners also maintain that Funai Hong Kong is responsible for all of the costs and expenses associated with the PRC plants, making Funai Hong Kong the party that is ultimately liable for all operating costs of these facilities, and demonstrating its operational control of these facilities. The petitioners contend that Funai Hong Kong simply pays the PRC parent company for the right to do business in the PRC and that the parent company exercises little or no control over the manufacturing divisions. The petitioners maintain that Funai Hong Kong appears to own all assets, with the possible exception of fee simple title to the buildings and/or land. Thus, the petitioners maintain that Funai Hong Kong operationally controls the PRC manufacturing plants and therefore the Department should find it affiliated with the PRC subcontractor.

Funai Malaysia argues that the primary factor driving the petitioners' argument is that the PRC subcontractors assemble the inputs. Funai Malaysia contends that although the cost of their tolling services accounts for, at most, a small percentage of total CTV manufacturing costs, the petitioners insist that the limited role played by the plants distorts Funai Hong Kong's PCB subassembly costs and have repeatedly attacked Funai Hong Kong's transfer price as the wrong basis to value PCB subassembly costs. Funai Malaysia notes that the petitioners have not contested the Department's finding that Funai Hong Kong is the producer of the PCB subassemblies.

Funai Malaysia argues that the petitioners' claim that Funai Hong Kong's alleged operational control over the PRC plants renders its relationship with the plants' parent company irrelevant. Funai Malaysia contends that the petitioners' argument is untenable because it requires the Department to treat the PRC plants as if they are separate companies, rather than recognizing that they are sub-units of their parent company. Funai Malaysia contends that the PRC plants are not "persons" under 19 CFR 351.102, in that the PRC plants are neither interested parties, nor individuals, nor even distinct companies that would fall under the definitions of "enterprise" or "entity." Rather, Funai Malaysia

argues, the PRC plants are two of several plants owned and controlled by the PRC parent company. Funai Malaysia maintains that by definition, Funai Hong Kong cannot be affiliated with the plants because the statutory definition of "affiliated persons" does not encompass a relationship between one company and the plant of another company. According to Funai Malaysia, for Funai Hong Kong to be affiliated with the plants, the Department would have to find an affiliation between Funai Hong Kong and the PRC parent company, a relationship which Funai Malaysia argues the Department has correctly determined does not exist.

In any event, Funai Malaysia contends that the SAA requires the Department to examine control relationships at the company level. Moreover, Funai Malaysia argues that the Department's practice does not support the petitioners' broad construction of section 771(33) of the Act. Funai Malaysia contends that the Department has never isolated the plants or divisions of one company to find them separately affiliated with a second company. Funai Malaysia cites Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18040, 18417 (Apr. 15, 1997) (Cold Rolled from Korea) and several other cases in maintaining that even in close supplier situations, the Department has examined the relationship at the company level.

Funai Malaysia contends that the petitioners incorrectly assert that Funai Hong Kong "consolidates" the plants' financial results with its own. According to Funai Malaysia, GAAP requires the parent to record all assets of its affiliates on its own consolidated financial statements and that substantial record evidence, verified by the Department, demonstrates that none of the plants' assets are included in Funai Hong Kong's financial statements. Thus, Funai Malaysia argues that what the petitioners characterize as "consolidation" is simply Funai Hong Kong's method of itemizing the processing fees paid to the PRC parent company in its financial statements.

Funai Malaysia contends that the plants' use of the net monthly processing fees to cover most, but not all, of their operating expenses does not prove that Funai Hong Kong exerts operational control over them. Instead, Funai Malaysia argues that, although the fee arrangement obligates Funai Hong Kong to reimburse certain operating expenses, the company has no authority to regulate the plants' expenditures. According to Funai Malaysia, no provision in the tolling agreements requires the plants to operate under a budget imposed by Funai Hong Kong or submit vouchers for approval by Funai Hong Kong. Moreover, Funai Malaysia asserts that at the petitioners' insistence, the Department's verifiers: 1) requested and scrutinized the PRC parent company's corporate documents; and 2) examined its business license, list of shareholders, and company letterhead. Funai Malaysia argues that none of these documents provided any factual basis to question the PRC parent company's ownership and control of its plants.

Funai Malaysia contends that the petitioners' reliance on statements in Funai Electric's annual report as other evidence of operational control by Funai Hong Kong is not persuasive, because 1) Funai Malaysia asserts that the statements in the annual report confirm the PRC plants' role in Funai

Malaysia's global production network as subcontractors; 2) Funai Electric's corporate documents identify the plants as "consignment manufacturing plants"; and 3) its Corporate Guidance brochure notes that the plants operate "on commission." Funai Malaysia argues that it has demonstrated throughout this investigation that the agreement between Funai Hong Kong and the PRC plant is a legitimate tolling arrangement. Funai Malaysia cites Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less Than Fair Value, 63 FR 8909, 8918 (Feb. 23, 1998), in arguing that contacts with, and involvement in the operations of, the PRC plants are similar to tolling arrangements examined by the Department in other cases. Funai Malaysia contends that given that the PRC parent company has tolling arrangements with several other companies (all unrelated to Funai Malaysia), it is highly likely that its other customers have similar arrangements. Moreover, Funai Malaysia argues that none of the corporate documents relied upon by the petitioners demonstrate a degree of operational control beyond normal commercial practices in tolling arrangements. Therefore, Funai Malaysia asserts that the Department should not find that it is affiliated with the its PCB subcontractors located in the PRC.

Department's Position:

We agree with Funai Malaysia that Funai Hong Kong is not affiliated with the PRC subcontractor. Specifically, we find that there is no cross-ownership in these entities, and that neither Funai Malaysia nor Funai Hong Kong is in a position to exercise operational direction or restraint over the subcontractor within the meaning of section 771(33) of the Act.

Control is appropriately examined at the company level and not at the factory level as the petitioners have argued. We recognize that Funai Hong Kong has a close relationship with some of the subcontractor's factories that are involved in the assembly of PCBs. We also recognize that these factories are solely dedicated to the assembly of Funai Hong Kong's PCBs, while Funai Hong Kong provided product designs, technical personnel, the raw materials, and the required machinery. However, close relationships with individual factories of a company does not necessarily translate into control over the corporate entity within the meaning of the statute. Moreover, it is not uncommon for producers to have close relationships with their toll processors. This is especially true, as in the case with Funai Hong Kong, when the product being tolled is of a technical nature and the producer operates on a just-in-time inventory basis.

With respect to the issue of affiliation through a close supplier relationship in which one party becomes reliant on the other, the Department's normal practice is to find that such a situation exists where the buyer has become reliant on the seller, or vice versa. See, e.g., Cold-Rolled from Korea, 62 FR at 18417. During the cost verification, the Department met with a company official from the PRC subcontractor and discussed its corporate structure and operations. See the January 14, 2004, memorandum from Mark Todd to Neal Halper entitled, "Verification Report on the Cost of Production and Constructed Value Data Submitted by Funai Electric (Malaysia) Sdn. Bhd." (COP/CV verification report) at page 17. We noted that the PRC subcontractor has numerous manufacturing facilities

throughout the PRC that assembles and produces a variety of other products for a variety of other customers. Based on the size and diversity of operations of the PRC subcontractor, we have determined that the company is not reliant on Funai Hong Kong, or any other Funai Electric affiliate. Specifically we find that, if Funai Hong Kong were to break off its business relationship, the subcontractor has ample additional customers and business operations such that it could continue to operate until other customers were found to replace Funai Hong Kong. In regards to Funai Hong Kong's reliance on the PRC subcontractor, even though the subcontractor is the exclusive toller for Funai Hong Kong's PCBs, there is no record evidence demonstrating that Funai Hong Kong is mandated to purchase such services from it or that these services could not easily be replaced. Moreover, if the tolling relationship were to be severed with the subcontractor, Funai Hong Kong would retain the knowledge and technology involved with the assembly of its PCBs, enabling it to train replacement assembly toll processors.

Although the subcontractor reports detailed cost information to Funai Hong Kong and this cost data is integrated into Funai Hong Kong's normal books and records at a detailed level, this arrangement does not indicate that Funai Hong Kong is operationally or legally in a position to restrain or direct the subcontractor. Moreover, the fact that Funai Hong Kong may be liable for additional costs does not demonstrate control. The tolling fee structure is a "cost plus fee" contracting arrangements, in which the buyer is obligated to pay the contractor all costs incurred plus a fee. The buyer often requires detailed cost information to be included on the invoice for verification purposes. The fact that Funai Hong Kong normally records the cost information at a detailed level as opposed to a single line item is not indicative of its control over the subcontractor. Given these facts, we disagree with the petitioners that Funai Hong Kong consolidated the results of the subcontractor into its audited financial statements within the meaning of GAAP. Funai Hong Kong uses the term "consolidated" as a way to itemize the expenses incurred by the subcontractor for which Funai Hong Kong is paying a toll processing fee; however, it does not consolidate the complete operations (i.e., assets, liabilities, and retain earnings) of the subcontractor. Therefore, for the final determination, we do not find that Funai Hong Kong is affiliated with its PRC subcontractor within the meaning of section 771(33) of the Act.

Comment 20: *Major Input Transfer Price*

The petitioners contend that because: 1) Funai Hong Kong is affiliated with its PRC PCB subassembly subcontractor; and 2) PCB subassemblies are major inputs, the Department should apply the higher of the cost, transfer price or market price to value the inputs in the cost buildup in accordance with section 773(f)(3) of the Act. The petitioners argue that, even if the Department incorrectly concludes that PCB subassemblies are not major inputs, it should find that Funai Hong Kong's reported transfer price to Funai Malaysia does not "fairly reflect the amount usually reflected" for sales of PCB subassemblies in Malaysia, pursuant to section 773(f)(2) of the Act, because the PCBs were manufactured in the PRC, an NME country. The petitioners maintain that PRC production, by definition, does not reflect the value realized in market economy countries because some production costs, such as energy and land costs are not accounted for or are controlled by the PRC government. The petitioners cite Notice of

Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils From the People's Republic of China, 67 FR 48612 (July 25, 2002) and accompanying decision memo at Comment 12 in asserting that where market economy companies rely on affiliated production based in NME countries, the Department must determine that they do not reflect fair value and reject transfer prices and rely on actual costs or market prices as between unaffiliated companies.

The petitioners contend that Funai Malaysia itself has conceded that the PCB subassemblies are major inputs to the subject merchandise as defined in section 773(f)(3) of the Act. The petitioners disagree with the Department's statement in the Preliminary Determination that, even if Funai and its PRC subsidiaries were affiliated, the subassembly of PCBs constitutes a minor portion of the total cost of the CTV (and thus the major input rule does not apply to the assembly operations).

The petitioners assert that even if the Department believes PCB subassemblies are not major inputs, section 773(f)(2) of the Act requires the Department to develop a fair value of the subassemblies that reflects an amount between persons who are not affiliated in Malaysia. The petitioners argue that because an element of value (i.e., the PCB subassemblies) is produced by an affiliate in an NME country, the Department must obtain a surrogate amount reflecting the price as between unaffiliated persons. The petitioners state that they provided this information in letters dated November 10 and 13, 2003. The petitioners contend that these letters demonstrated that Funai Hong Kong's transfer prices to Funai Malaysia are below either a fair-value market price, or a price constructed using the factors of production, which confirms that Funai Hong Kong's transfer price incorporates unfair elements of cost as a result of affiliated production of inputs in a NME country. The petitioners contend that the Department must eliminate any reliance on affiliated, NME prices or costs for PCB subassemblies.

Funai Malaysia contends that neither the transactions disregarded rule in section 773(f)(2) of the Act, nor the major input rule in section 773(f)(3) of the Act, justifies rejecting Funai Hong Kong's transfer price. Funai Malaysia maintains that the PRC plants assemble the PCBs from parts and components made by other manufacturers that Funai Hong Kong purchases from both market economy and NME sources. Funai Malaysia contends that it has demonstrated, and the Department has verified, that Funai Hong Kong pays comparable prices for the same parts and components regardless of whether they are sourced from NME or market economy suppliers. Funai Malaysia contends that Funai Hong Kong's direct material costs comprise a large percentage of each PCB subassembly's total cost and the remaining minor portion of Funai Hong Kong's costs consists of the cost of the assembly operations performed by the PRC plants. Funai Malaysia maintains that these tolling services are the only inputs that Funai Hong Kong purchased from the PRC plants and that these services account for a very small share of total PCB subassembly manufacturing costs. Funai Malaysia contends that the Department needs no "surrogate" value to determine a "fair value" for the PCB subassemblies because Funai Hong Kong is not affiliated with the PRC parent company or its plants. Funai Malaysia maintains that even if they were affiliated, neither the transaction disregarded rule nor the major input rule applies to the transactions. Moreover, Funai Malaysia asserts that the Department did apply the major input rule to

test Funai Hong Kong's transfer price to Funai Malaysia and verified that Funai Hong Kong's transfer price is higher than its costs of producing the PCBs subassemblies.

Department's Position:

We disagree with the petitioners that the PCB subassembly was not treated as a major input in the preliminary determination. Rather, in our preliminary determination, we noted costs related to the assembly of the PCB "constitute a minor portion of the total cost of the CTV (and thus the major input rule does not apply to the assembly operations)." See Preliminary Determination 69 FR at 66814.

As in the preliminary determination, we continue to treat the PCB itself as a major input of the subject merchandise as defined in section 773(f)(3) of the Act. As such, we tested the PCB transfer price between Funai Hong Kong and Funai Malaysia to ensure it occurred above Funai Hong Kong's cost of production.

In determining Funai Hong Kong's cost of production for the PCB subassembly, we relied on the costs recorded in Funai Hong Kong's normal books and records kept in accordance with the GAAP of Hong Kong. We relied on Funai Hong Kong's production records because, in accordance with the Department's normal practice and 19 CFR 351.401(h), we find that Funai Hong Kong is the producer of the PCBs. We base this conclusion on the fact that Funai Hong Kong provides the design, controls the purchases of all raw materials, arranges for the conversion of the raw materials into the finished PCB, and controls the sale of the PCB to Funai Malaysia. See, e.g., Remand Redetermination: Static Random Access Memory Semiconductors from Taiwan (June 30, 2000); Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14064, 14070 (March 29, 1996). Thus, for the final determination, we have relied on the costs reflected in Funai Hong Kong's accounting system to determine the cost of the PCB.

In this situation, given that Funai Hong Kong is the producer of the PCB and Hong Kong is a market economy, the Act directs us to use the company's recorded costs unless they are not consistent with GAAP or do not reasonably reflect the costs associated with the production and sale of the merchandise. The Department may find that a respondent's costs recorded in its normal books and records do not reasonably reflect the costs of the merchandise where the costs are allocated to the merchandise under consideration in a manner which distorts the dumping analysis. See, e.g., Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina, 60 FR 33539, 33547 (June 28, 1995). While Funai Hong Kong made purchases from unaffiliated PRC suppliers, these purchases were made in a market economy by a market economy entity which keeps its normal books and records in accordance with Hong Kong GAAP. Moreover, in order to demonstrate that Funai Hong Kong's purchases from its PRC suppliers reasonably reflect the costs associated with the production and sale of merchandise, Funai Malaysia provided evidence showing that it purchased the same parts from both market economy and NME suppliers at the same prices.

Finally, because we have determined that Funai Hong Kong is not affiliated within the meaning of section 771(33) of the Act with the PRC subcontractor that assembles the PCB, we find no reason not to rely on the prices paid by Funai Hong Kong for the assembly services provided. In addition, we note that the tolling services provided by the PRC subcontractor are only a small part of the total PCB costs and even a smaller portion of the total CTV manufacturing costs.

Because Funai Hong Kong only supplies Funai Malaysia with PCBs and Funai Malaysia only buys PCBs from Funai Hong Kong, we were unable to compare Funai Hong Kong's transfer prices to other unaffiliated PCB purchase prices by Funai Malaysia or to other unaffiliated sales prices by Funai Hong Kong (i.e., a fair market value). Moreover, due to the technical nature and specific use of a PCB, we were unable to compare Funai Hong Kong's PCB transfer price to other PCBs sold in the general market. We were also unable to use the petitioners' suggested "price" for the PCB subassembly referenced in their November 10, 2003 comments because it is not a market price in the market under consideration, but rather a cost of production build-up which relies on surrogate values and the petitioners' experience. Given that this "price" is merely an estimated cost, we find that it is not appropriate to compare Funai Hong Kong's PCB transfer price to it in place of an actual market price. In situations such as these, the Department normally relies on the affiliated supplier's cost of production as a surrogate for market value. Because the transfer price is higher than the cost of production, we have continued to accept the transfer price for purposes of the final determination.

Consequently, for the final determination, we are continuing to treat the PCB as a major input of the subject merchandise (as defined in section 773(f)(3) of the Act) and we are continuing to rely on Funai Hong Kong's normal books and records to determine the cost of production for the PCBs sold to Funai Malaysia.

Comment 21: *Raw Materials Cost*

The petitioners contend that the Department found at verification that Funai Malaysia's monthly material cost reports (used as the basis for the costs it reported in its questionnaire response) understate the costs for cathode ray tubes (CRTs) and PCBs. According to the petitioners, Funai Malaysia failed to explain why this understatement of costs occurred and there is nothing in the record to demonstrate that the understatement of CRT and PCB costs is limited to the specific models examined at verification. Therefore, for the final determination, the petitioners argue that the Department should increase the CRT and PCB costs for all models based on the Department's findings for the models examined during verification. The petitioners maintain that Funai Malaysia's explanation regarding the cost differences being absorbed as a variance does not explain the inconsistencies. The petitioners contend that the period when production began and ended should not have affected the comparison because the findings are based on a schedule that covered the POI.

Funai Malaysia contends that the Department's cost verification report demonstrates the accuracy of its materials cost reporting methodology and, thus, no adjustment is warranted. Funai Malaysia argues

that, while the Department's materials cost analysis provides a practical basis for testing the reasonableness of Funai Malaysia's reported costs for CRTs and PCBs, the differences are attributed to: 1) for several orders of each selected CTV model, production began in one month and was completed in the next; and 2) for CRTs, Funai Malaysia's weighted-average CRT purchase price was based on the monthly average purchases by screen size, not by specific CTV model. Additionally, Funai Malaysia maintains that it allocated all production costs incurred during the POI, including all materials costs, to CTVs produced during the period. Funai Malaysia argues that, if the Department adjusts the reported costs, then the adjustment should be made only to those CTV models tested by the Department and should not exceed the total actual direct materials costs verified.

Department's Position:

We agree with the petitioners that the CRT and PCB reported material costs should be adjusted for the discrepancies noted during the Department's cost verification. While the total CRT and PCB costs incurred during the POI were captured, the amounts allocated to specific products tested at verification reflected discrepancies. Funai Malaysia explained during the Department's cost verification that the reported material costs, for each CTV model, was based on the actual cost of the CRTs and PCBs consumed each month per the material cost reports. See section II.B.2.a of the COP/CV verification report. Funai Malaysia has also stated on several occasions that the reported CRT and PCB material costs are based on a monthly weighted-average method. See Funai Malaysia's August 6, 2003, section D response and October 9, 2003, supplemental section D response at sections II.B.3.a and II.C.8.b and questions 8 and 9, respectively.

As the monthly material cost reports were the basis for Funai Malaysia's reported model-specific CRT and PCB material costs, we requested supporting documentation at verification for the amounts recorded in these material cost reports. Funai Malaysia provided its inventory movement purchase reports as support. We compared the CRT and PCB material costs in the material cost reports, which are prepared monthly and are the basis for the reported costs, to the average purchase prices from the CRT and PCB inventory movement purchase reports. We performed this comparison on a monthly basis and for the entire POI and noted discrepancies for all models tested. Because we did this comparison for the entire POI, and not just for selected months, our testing captured the effect of Funai Malaysia's production for an order in more than one month. In addition, at verification we gave Funai Malaysia the opportunity to identify the source of the discrepancies noted; however, the company was unable to do so. Funai Malaysia's claim now that the discrepancies were due to timing differences is purely speculation and unsupported by the case record.

We also disagree with Funai Malaysia that the CRT cost discrepancies noted at verification were due to the Department's using the weighted-average CRT purchase prices by screen size, and not specific models. During the cost verification, the Department requested documentation to substantiate the reported model-specific CRT material costs. Funai Malaysia provided its monthly CRT Inventory Movement Purchase Reports as support for the accuracy of the material costs. As noted above, we

identified discrepancies between the reported model-specific CRT costs and that recorded in the Inventory Movement Purchase Reports. We gave Funai Malaysia the opportunity to identify the source of the discrepancies at verification; again, however, the company was unable to do so. Its claim now that the discrepancies were due to differences between model-specific and screen size-specific weight averaging is purely speculation and unsupported by the case record.

Accordingly, for the final determination, we adjusted for the discrepancies found in the reported CRT and PCB direct materials cost, on a control-number-specific basis, for the specific models tested. We also revised the reported direct materials cost variance amount by the total direct materials adjustment in order to not double count these costs (i.e., to capture the actual total direct materials costs as reconciled to the audited financial statements). See the April 12, 2004, memorandum to Neal Halper from Mark Todd entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination," for a detailed discussion regarding the business proprietary information related to the Department's calculation of the direct materials adjustment.

Comment 22: *Parent Company General and Administrative Expense Allocation*

The petitioners contend that the respondent classified certain SG&A expenses reported by Funai Electric, Funai Malaysia's parent company, as indirect selling expenses rather than G&A expenses even though the Funai Electric department descriptions show that these costs should have been reported as G&A expenses. The petitioners also contend that the respondent classified some of these costs as indirect selling expenses solely for non-subject merchandise even though the department descriptions indicate that these functions should apply to all products. The petitioners argue that all of the departments listed in the Department's alternative proposal in the cost verification report should be reclassified as Funai Electric G&A expenses because the expenses are all either administrative or general rather than sales related. Moreover, the petitioners maintain that Funai Malaysia provided no information or documents to show that the expenses incurred in the departments it claimed were solely for non-subject merchandise were actually limited to non-subject activities.

The petitioners cite Notice of Final Results of Antidumping Duty Administrative Reviews and Determination Not To Revoke in Part: Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate from Canada, 66 FR 3543 (Jan. 16, 2001) and accompanying decision memorandum at Comment 2, which states that the Department's practice is not to rely on divisional categories for G&A expenses. The petitioners maintain that G&A expenses benefit the company as a whole and these expenses should be calculated on a company-wide basis. The petitioners argue that, for the final determination, the Department should reclassify all of Funai Electric's divisional departments listed in the Department's cost verification report as G&A expenses and allocate these expenses to Funai Malaysia on the basis of cost of sales. The petitioners maintain that Funai Hong Kong should also be allocated a proportional share of the Funai Electric's G&A expenses.

Funai Malaysia maintains that the Department normally calculates G&A using data from the producing company plus a proportional share of G&A expenses of the parent company, if that company provided services to its subsidiary. Funai Malaysia cites Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24350 (May 6, 1999) (Hot-Rolled Steel from Japan) in arguing that expenses incurred by a parent company are only included in the G&A expense calculation to the extent of the support provided by the parent company. Funai Malaysia contends that the Department's objective is to identify only those expenses that Funai Electric incurs on behalf of its CTV production facilities in Malaysia. Funai Malaysia cites the Department's section D questionnaire in maintaining that the Department instructs respondents to report only those G&A expenses that affiliated parties incur on behalf of the producing company. Moreover, Funai Malaysia asserts that there is no record evidence, and the petitioners have cited none, demonstrating that the activities performed in the management departments for products completely unrelated to CTVs benefit Funai Malaysia production of subject merchandise. Funai Malaysia argues that, if the Department determines that an adjustment is appropriate, it should only directly allocate expenses related to CTV departments to CTV production worldwide, but continue to disregard any expenses incurred in departments performing activities related solely to non-subject merchandise.

Department's Position:

We agree with the petitioners that Funai Electric's G&A expenses should be allocated on a company-wide basis to Funai Malaysia and Funai Hong Kong. We also agree that certain departments should be reclassified as Funai Electric's G&A expenses because the expenses are either administrative or general in nature, rather than sales-related. We agree that it is the Department's normal practice to allocate a proportional share of G&A expenses of the parent company for services provided to its subsidiary. However, the instant case is unique in that Funai Electric is more than just providing services to its subsidiaries, but rather Funai Electric is intimately involved in the overall management and day-to-day activities of Funai Malaysia and Funai Hong Kong.

As we noted at Funai Malaysia's cost verification, which was performed at Funai Electric's headquarters in Japan, Funai Electric manages Funai Malaysia's production schedule and the procurement of all material inputs used by Funai Malaysia. In addition, Funai Electric controls the production process through issuance of all purchase orders to Funai Malaysia and Funai Hong Kong. Funai Electric sends production managers to Funai Malaysia for two to three year periods to oversee the day-to-day operations in Malaysia. Key accounting and production reports (e.g., the purchase orders and material cost reports) are generated and maintained at Funai Electric's headquarters in Osaka. Additionally, Funai Electric coordinates and controls virtually all aspects of Funai Malaysia's CTV sales and performs product engineering and research and development (R&D) activities associated with the production of the merchandise under consideration. See COP/CV verification report at page 4. Moreover, as further evidence that the preponderance of management activities are performed at Funai Electric, we noted that Funai Malaysia incurs virtually no administrative costs at its corporate level. See Cost Verification Exhibit ("CVE") 11.

In effect, the record evidence shows that Funai Electric manages its Malaysian CTV subsidiary as if it were a division of the company as opposed to it being an independently operated subsidiary. We therefore consider it appropriate to allocate Funai Electric's company-wide G&A costs in accordance with the Department's normal methodology, over Funai Electric's company-wide cost of sales, which includes all CTVs produced by Funai Malaysia and sold by Funai Electric. As G&A costs are general in nature, and do not relate to specific products or divisions, we normally allocate such costs over the cost of sales for the company as a whole. This methodology also avoids any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally between divisions. See Hot-Rolled Steel from Japan, 64 FR at 24354. Lastly, Funai Malaysia's assertion that there is no record evidence demonstrating that the activities performed in the management departments for non-subject products benefit Funai Malaysia's production of subject merchandise is off point. We are not advocating allocating production costs associated with non-subject merchandise to CTVs. Rather, we are allocating G&A costs, which are general in nature and relate to the company as a whole, to all products company-wide. Therefore, for the final determination, we have allocated a proportionate share of Funai Electric's company-wide G&A expenses to Funai Malaysia's production activity.

Comment 23: *Negative G&A Departmental Expenses*

According to the petitioners, Funai Electric failed to provide a reasonable explanation for its claimed negative expenses reported for two of Funai Electric's G&A departments. The petitioners contend that the only way these departments should record negative amounts is if there was an over accrual from a prior period. The petitioners maintain that the Department should eliminate the negative amounts from the calculation of Funai Electric's SG&A expenses, and should not include these negative amounts in the allocation of Funai Electric's costs to Funai Malaysia or Funai Hong Kong.

Funai Malaysia contends that the Department verified that expenses in certain Funai Electric departments are allocated to other SG&A departments. Funai Malaysia maintains that companies routinely designate certain departments to provide support to other departments within the company and that, for management reasons, the company may use internal prices rather than actual costs. Funai Malaysia claims that a negative amount for the originating department simply means that the allocation has been overstated. Funai Malaysia argues that ignoring the negative amounts, as the petitioners suggest, would unfairly increase Funai Electric's G&A above the amount actually incurred. Funia Malaysia asserts that if the Department determines it necessary, the correct treatment of the negative amounts shown for these departments would be to reallocate them to the same departments that received the initial allocation.

Department's Position:

We agree with Funai Malaysia that the negative amounts shown for the two G&A departments should be reallocated to the same departments that received the initial allocation. During the cost verification,

we reviewed both G&A departments with negative amounts. Specifically, we obtained worksheets from Funai Electric demonstrating the initial allocation of expenses to other SG&A departments. See COP/CV verification report at CVE 11. We noted that the negative amounts remaining in the two departments are associated with an over-allocation of expenses to other departments. As we deem it inappropriate to allocate to other departments more costs than were actually incurred, we disagree with Funai Malaysia that we should leave the over-allocated amounts as is. However, we do agree that eliminating the negative amounts would result in charging Funai Electric with more costs than were actually incurred. Thus, we consider it appropriate to reallocate the credit amounts on the same basis as the initial allocated amounts. Therefore, for the final determination, we have reallocated the negative amounts shown for the two G&A departments to the other SG&A departments in the same proportion as the initial amounts were allocated.

Comment 24: *Research and Development Costs*

The petitioners contend that Funai Electric should allocate R&D costs to Funai Malaysia and Funai Hong Kong on the same basis as Funai Electric's G&A expenses. The petitioners assert that Funai Electric developed a multi-step approach that involved the separation of R&D expenses into G&A and divisional groupings. The petitioners maintain that Funai Electric should have included R&D costs in its reported parent company G&A expenses and should have allocated these expenses to Funai Malaysia based on cost of sales.

The petitioners cite Dynamic Random Access Memory Semiconductors for One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 64 FR 69964 (Dec. 14, 1999) (Korean DRAMs) in arguing that R&D expenses should be allocated on an overall basis because there is a "cross-fertilization" of R&D projects that benefit the respondent's products as a whole. The petitioners state that, in that case, the Department declined to follow a respondent's accounting records that categorize R&D costs by product line or department when it determines that R&D costs generally benefit all of a company's products. The petitioners contend that in this case cross-fertilization of Funai Electric's R&D expense is apparent from the product categories used by Funai (e.g., DVD/Read-Write/CD/Video, CTV, LCD). The petitioners also assert that cross-fertilization is evident based on the Department's cost verification report because certain business proprietary R&D expenses are not being allocated to the CTV division. The petitioners contend that Funai Malaysia did not provide information to show that its R&D expenses do not provide benefits across product lines. Finally, the petitioners assert that R&D expenses should not be included in the cost of sales for the CTV division when calculating the percentage of R&D to allocate to Funai Malaysia.

Funai Malaysia maintains that it reported R&D expenses based on the accounting records maintained in the ordinary course of business. Funai Malaysia contends that they perform R&D activities with multiple product lines in several departments. Funai Malaysia asserts that the expenses of some of these departments are recorded as G&A expenses because the activities are general in nature and are

considered to benefit all the products of the company. Further, Funai Malaysia asserts that other R&D activities are dedicated to identifiable products and product lines and that the R&D departments directly attributable to CTVs were included in Funai Electric's allocated G&A expenses.

Funai Malaysia cites Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review, 65 FR 37520 (June 15, 2000) and accompanying decision memorandum at Comment 2 (Brass Sheet and Strip from Canada), in arguing that R&D costs related to non-subject merchandise should be excluded. Funai Malaysia cites Hynix Semiconductor, Inc.v. United States, 248 F. Supp. 2d 1297, 1317 (CIT 2003), in asserting that the only exception to the exclusion to the non-subject R&D rule is when the record clearly demonstrates that the R&D expenses incurred for non-subject merchandise provide a benefit to the subject merchandise. Funai Malaysia contends that the petitioners' reliance on Korean DRAMs is misplaced because that case related to the appropriate allocation of R&D costs pertaining to a family of products and this was supported by testimony from an expert witness. Funai Malaysia argues that the R&D expenses at issue in this case are for completely unrelated products and that there is no evidence of cross-fertilization. Funai Malaysia maintains that the subject merchandise does not benefit from R&D for the non-subject products. Finally, Funai Malaysia claims that the Department should reject the petitioners' proposed calculation because it improperly double counts R&D expenses already included in the reported costs.

Funai Malaysia maintains that the business proprietary R&D discussed in the petitioners' case brief is outside the scope of this investigation and the technology for developing the product is entirely different, and therefore, should not be allocated to Funai Malaysia. Funai Malaysia states that it inadvertently did not reduce the cost of sales by the product-specific R&D costs.

Department's Position:

We agree with Funai Malaysia in that its R&D expenses should not be allocated to all products. We also agree with Funai Malaysia that its allocation methodology of the R&D expenses to subject merchandise is appropriate. During the Department's verification of Funai Electric's R&D expenses, we found no evidence of cross-fertilization of R&D activities for non-subject products that benefit subject products. The petitioners' reliance upon Korean DRAMs is misplaced because, in that case, the Department determined the appropriate allocation of R&D costs pertaining to a family of products, whereas Funai Malaysia's R&D expenses relate to a variety of different products. Additionally, in Korean DRAMs, the Department relied on expert testimony to support the cross-fertilization of R&D activities between subject and non-subject merchandise. Funai Malaysia has included in its reported cost the R&D expenses that are either general in nature or relate to future products that may benefit the company as a whole and proportionally allocated these expenses based on cost of sales.

With respect to Funai Electric's R&D allocation methodology, Funai Electric reported R&D expenses based on its normal books and records kept in the ordinary course of business. Moreover, the Department's normal practice is to not include R&D expenses that only benefit non-subject

merchandise. See Brass Sheet and Strip from Canada. In this case, we verified that Funai Electric's allocation of general R&D expenses to Funai Malaysia and Funai Hong Kong based on the cost of sales ratio was reasonable. Additionally, the Department verified that the R&D expenses specifically related to CTV products was appropriately reported because R&D expenses related to CTVs were allocated to Funai Malaysia based on a ratio of Funai Malaysia's cost of sales to the total cost of sales for CTVs. See COP/CV verification report at CVE 11. Also, R&D expenses related to DVD and Video were allocated to Funai Hong Kong based on a ratio of Funai Hong Kong's cost of sales to the total cost of sales for DVD and Video. See COP/CV verification report at CVE 13.E. Therefore, for the final determination, we have continued to rely on Funai Electric's R&D expense allocation methodology.

Moreover, with respect to the errors that the petitioners maintain are reported in Funai Electric's R&D expenses, we note that the business proprietary R&D expenses from another division are related to non-subject merchandise. Thus, based on the discussion above, we have not allocated these R&D expenses to either Funai Malaysia or Funai Hong Kong for the final determination. As for the product specific R&D costs included in the CTVs division's cost of sales, we agree with the petitioners that it should not be included in the cost of sales denominator. Thus, we have adjusted the cost of sales for the final determination.

Comment 25: *Short-Term Income Offset to Financial Expenses*

The petitioners contend that it is the Department's practice to calculate the financial expense ratio using consolidated financial data and to allow an offset only for short-term interest income identified at the consolidated level. The petitioners claim that by using the short-term interest income at the unconsolidated level, Funai Malaysia did not meet this criterion.

Funai Malaysia claims that it was only able to identify the short-term portion for interest income at Funai Electric's unconsolidated level. Funai Malaysia argues that it used the short-term interest income at the unconsolidated level as a conservative estimate, thereby understating the amount of short-term interest income used to offset interest expense. Funai Malaysia asserts that the Department has long recognized the difficulty of identifying short-term income at the consolidated level, particularly where many companies are included in the consolidated results. Funai Malaysia points out that Funai Electric's unconsolidated sales represent 85 percent of the sales value of the consolidated entity. Funai Malaysia cites Stainless Steel Sheet and Strip from Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 64950 (December 17, 2001) and accompanying decision memorandum at Comment 10 in maintaining that the Department has found a respondent's reliance on the short-term interest income at the unconsolidated level to be reasonable.

Department's Position:

We agree with Funai Malaysia that its reliance on the short-term interest income at the unconsolidated level is reasonable. We recognize the difficulty of segregating short-term interest income for each company at the consolidated level and find it conservative and reasonable in Funai Malaysia's case to use the unconsolidated financial statements of Funai Electric to calculate the short-term interest income. We note that using just Funai Electric's unconsolidated short-term interest income understates the total short-term income at the consolidated level. We also note that Funai Electric is the largest of the consolidated companies, accounting for approximately 85 percent of the sales value of the consolidated entity. We find it reasonable to presume that the majority of the short-term interest income reported in the consolidated entity would be associated with Funai Electric. Therefore, for the final determination, we have continued to include Funai Malaysia's offset for short-term interest income.

Comment 26: *CV Profit*

The petitioners contend that the Department should calculate CV profit from one of the seven financial statements they provided. The petitioners assert that, similar to Funai Electric, the seven multinational companies for which they submitted financial statements all: 1) produce CTVs in Malaysia; 2) sell in the retail market; and 3) sell at volumes similar to that of Funai Electric. The petitioners argue that Philips is the most appropriate of the seven companies to use in establishing a surrogate because it is the only company that publicly separated its selling expenses from its G&A expenses. The petitioners also argue that using the average profit ratio for the five profitable companies as the basis for the CV profit ratio would be appropriate.

The petitioners contend that neither FPI's Group or Company financial information is usable. The petitioners assert that the financial results of the FPI Group includes five subsidiary companies and the associated companies whereas the Company financial results only includes the five subsidiary companies. The petitioners contend that three of the five subsidiary companies do not manufacture goods in Malaysia, and thus, neither FPI's Group nor the Company results are usable as a surrogate. The petitioners further contend that FPI's manufacturing operations are not similar to Funai Electric's, stating that Funai Electric is a multinational company and that FPI is a small holding company. In addition, the petitioners assert that FPI produces electronic components whereas Funai Electric produces and sells electronics. Also, the petitioners contend that Funai Electric sells at the retail level while FPI sells to large multinational companies. Finally, the petitioners contend that Funai Electric's volume and value of sales are not comparable to FPI's.

Funai Malaysia does not contest the selection of FPI as the source of surrogate Malaysian financial data. However, to approximate a Malaysian CTV producer's home market profit experience as closely as possible, Funai Malaysia contends that the Department should use FPI's financial results at the company level because the data correlates more closely to Funai Malaysia's home market profit experience than the FPI Group's consolidated results. Funai Malaysia cites Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel, 66 FR 49349 (Sept. 27, 2001) (Pure Magnesium from Israel) and accompanying decision memorandum at Comment 8 in

asserting that the Department's objective under section 773(e)(B) of the Act is to seek a home market profit experience, to the extent possible. Funai Malaysia maintains that, in this case, FPI Group's consolidated financial results are not the best available record evidence to achieve this goal because these results reflect the financial performance of FPI subsidiaries with business operations outside the same general category of goods as the subject merchandise. Funia Malaysia claims that three of the five subsidiaries within the FPI Group do not manufacture any goods in Malaysia, and therefore, as in Pure Magnesium from Israel, none of the three subsidiary companies qualifies as a Malaysian producer with business operations reasonably correlated to Funai Malaysia's operations. Funai Malaysia maintains that this is a factor weighed by the Department when calculating CV profit under section 773(e)(B)(iii) of the Act. Thus, Funai Malaysia concludes that FPI's consolidated results are inferior to the company-specific results for approximating Funai Malaysia's home market profit experience.

Finally, Funai Malaysia contends that the Department should rely upon FPI's company-level financial data to calculate a CV profit because FPI, as a producer of PCBs and speaker systems, has business practices in the consumer electronics segment that are sufficiently similar to Funai Malaysia's operations. Funai Malaysia also claims that whether FPI sells only to OEMs is not important for the limited purpose of selecting a surrogate for the CV profit. Finally, Funai Malaysia contends that it is irrelevant whether FPI's and Funai Electric's sales values are similar for the limited purpose of calculating a profit ratio because the Department's goal is to use financial results of a surrogate producer that produces and sells similar merchandise in the home market. Funai Malaysia contends that none of the petitioners' options generates a reasonable surrogate calculation of a Malaysian CTV producer's home market profit experience because they either reflect the consolidated results of worldwide operations or they do not reflect production and sales activity for products in the same general category of goods as the subject merchandise.

Department's Position:

We agree with Funai Malaysia that FPI's company-level financial data is the most appropriate source for calculating the CV profit ratio. In this case, Funai Malaysia does not have a viable comparison market. Therefore, the Department cannot determine the CV profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent to be made in the ordinary course of trade as the basis of the profit calculation. In situations where we cannot calculate CV profit under section 773(e)(2)(A), section 773(e)(2)(B) of the Act sets forth three alternatives. The SAA states that "section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods." See the SAA at 840.

Section 773(e)(2)(B)(i) specifies that profit may be calculated based on "actual amounts incurred by the specific exporter or producer of merchandise in the same general category" as subject merchandise. Funai Malaysia also produces CTVs in sizes outside the scope of this investigation, which could be considered as the same general category of merchandise as subject CTVs. However, Funai Malaysia had no sales in the domestic market of either subject or non-subject merchandise.

Alternative (ii) of this section provides that profit may be calculated based on "the weighted average of the actual amounts incurred and realized by {other} exporters or producers that are subject to the investigation." However, because Funai Malaysia is the only respondent in this case, the Department cannot calculate profit based on alternative (ii) of this section.

Thus, we must calculate CV profit for Funai Malaysia under section 773(e)(2)(B)(iii) ("alternative (iii)"). Pursuant to alternative (iii), the Department has the option of using any reasonable method, as long as the result is not greater than the amount realized by exporters or producers "in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise," the "profit cap." The profit cap cannot be calculated in this case because, as we noted above, we do not have information allowing us to calculate the amount normally realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category. Therefore, as facts available we are applying option (iii), without quantifying a profit cap. This decision is consistent with the Department's decision in previous cases involving similar circumstances. See, e.g., Pure Magnesium from Israel and Frozen Concentrated Orange Juice from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 51008 (Oct. 5, 2001) and accompanying decision memorandum at Comment 3.

To determine the most appropriate profit rate under alternative (iii), the Department has weighed several factors. Among them are: (1) the similarity of the potential surrogate company's business operations and products to the respondent; (2) the extent to which the financial data of the surrogate company reflects sales in the United States as well as the home market; (3) the contemporaneity of the surrogate data to the POI; and (4) the similarity of the customer base (i.e., retail versus OEM). The greater the similarity in business operations, products, and customer base, the more likely that there is a greater correlation in the profit experience of the two companies. Because we typically compare U.S. sales to a normal value from the home market or third country, we do not want to construct a normal value based on financial data that contains exclusively or predominantly U.S. sales. Further, in accordance with section 773(e)(2)(B) of the Act, generally, we seek to the extent possible a home market profit experience. Finally, contemporaneity is a concern because markets change over time and the more current the data the more reflective it would be of the market in which the respondent is operating.

In this case, we have on the record financial data for eleven companies from which to select a CV profit rate. Seven of the companies are multinational companies that produce a variety of products world-wide, including CTVs in Malaysia (Sony, Hitachi, Matsushita, Samsung, Philips, Sanyo, and Sharp). The financial data on the record for these seven companies reflect the results of each company's world-wide operations. Although each of these company's business operations and products may be considered comparable to Funai Malaysia's consolidated parent, Funai Electric, they bear little similarity to the respondent company. Moreover, there is no evidence that the profit experience from the consolidated results of these multi-international companies reflects the Malaysian profit experience

for the sale of merchandise that is in the same general category in accordance with section 773(e)(2)(B) of the Act.

For the other three surrogate company financial statements on the record (i.e., Nikko Electronics, Acoustech, and Industronics), it does not appear that they produce merchandise that is in the same general category of products. Based on the above criteria, we have determined that FPI's company-level financial statements offer the best option for calculating a surrogate profit ratio. The FPI Company is principally engaged in the assembly of high quality speaker systems and the manufacture of printed circuit boards. Over 90 percent of FPI's sales are in the Malaysian market with the remaining export sales in the United Kingdom. The Department has on record FPI's fiscal year ending March 31, 2003 financial statements which are contemporaneous with the POI. While FPI primarily sells to a different customer base than Funai (i.e., OEMs versus retail customers), we have still determined that it is the best surrogate for a profit ratio based on all of the factors considered by the Department.

FPI's company-level financial statements include the financial statements of the Company and its five subsidiaries, three of which do business in Malaysia and two in the United Kingdom and the British Virgin Islands. The Group financial statements are a consolidation of the FPI Company financial statements and an associated company incorporated in China. Since the FPI company-level financial data more closely represents activity in Malaysia, we have determined that FPI's company-level financial data is more appropriate than the group level data.

Based on this analysis, and consistent with Pure Magnesium from Israel and the Final Determination in the Antidumping Duty Investigation of Low Enriched Uranium from France, 66 FR 65877 (Dec. 21, 2001) and accompanying decision memorandum at Comment 16, for the final determination, we have applied a CV profit ratio which was calculated based on FPI's fiscal year 2003 Company income statement.

Recommendation

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

Agree____ Disagree ____

Jeffrey May
Acting Assistant Secretary

for Import Administration

_____

(Date)