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November 8, 2004

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

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

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

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the antidumping duty investigation of wooden bedroom furniture from the People's Republic of China. The period of investigation covers April 1, 2003, through September 30, 2003. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments and rebuttal comments by parties:

I. General Issues

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Comment 44: CEP Offset
Comment 45: Negative Allowances
Comment 46: Market-Economy Purchases for Paint Inputs
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C. Lung Dong

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D. Markor

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Comment 64: Unreported Sale
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Comment 69: Wooden veneer
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ABBREVIATIONS

We have used the following abbreviations in this Decision Memorandum:

Act - Tariff Act of 1930, as amended
CCCLA - Furniture Sub-chamber of the China Chamber of Commerce for Import & Export of Light Industrial Products and Arts-Crafts
CBP - U.S. Customs and Border Protection
CEP - Constructed Export Price
CIT - Court of International Trade
CNFA - the China National Furniture Association
CPB- Customs and Border Protection
Department - Department of Commerce
Federal Circuit - U.S. Court of Appeals for the Federal Circuit
GNP - Gross National Product
HTS - Harmonized Tariff Schedule
Joint Respondents - Markor, Lacquer Craft, Shing Mark, Dorbest, and Starcorp
POI - Period of Investigation
PRC - People's Republic of China
SG&A - Selling, general and administrative expenses
ITC - International Trade Commission
LTFV - Less Than Fair Value
MLE - Materials, Labor and Energy
MOI - Market-Oriented Industry
MSFTI - Monthly Statistics of Foreign Trade of India
NME - Non-Market Economy
SAA- Statement of Administrative Action

URAA - The Uruguay Round Agreements Act of 1994
WTO - World Trade Organization

Mandatory Respondents

Dorbest - Rui Feng Woodwork Co., Ltd., Rui Feng Lumber Development Co., Ltd. and Dorbest Limited

Lacquer Craft - Lacquer Craft Mfg. Co., Ltd.

Lung Dong - Dongguan Lung Dong Furniture Co., Ltd., and Dongguan Dong He Furniture Co., Ltd.,

Markor - Markor International Furniture (Tianjin) Manufacturing Company, Ltd.

Shing Mark - Shing Mark Enterprise Co., Ltd., Carven Industries Limited (BVI), Carven I Industries Limited (HK), Dongguan Zhenxin Furniture Co., Ltd., and Dongguan Yongpeng Furniture Co., Ltd.

Starcorp - Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., and Shanghai Starcorp Furniture Co., Ltd.

Tech Lane - Tech Lane Wood Mfg. and Kee Jia Wood Mfg.

Non-Mandatory Companies

Best King - Ga Xing Furniture Co., Ltd. and Best King International Ltd.

CF Kent - Shanghai Kent Furniture Co., Ltd., Shanghai Hospitality Product MFG Co., Ltd., CF Kent Hospitality Inc., CF Kent Co. Inc.

Changshu - Changshu HTC Import & Export Co., Ltd.

COE - COE, Ltd.

Daye - Zhangjiagang Daye Hotel Furniture Co., Ltd.

Decca - Decca Hospitality Furnishings, LLC

Dongfang - Nantong Dongfang Orient Furniture

Dongxing - Shenyang Shining Dongxing Furniture Co., Ltd.

Dongying - Dongying Huanghekou Furniutre Co., Ltd.

Dream Rooms - Dream Rooms Furniture (Shanghai) Co., Ltd.

Fine Furniture - Fine Furniture (Shanghai) Limited

Fujian Lianfu - Fujian Lianfu Forestry Co., Ltd./Fujian Wonder Pacific Inc

Fullwin - Zhong Shan Fullwin Furniture Co., Ltd.

Guohui - Hangzhou Guohui Industrial & Trade Co., Ltd.

Golden King - Zhong Shan Golden King Furniture Industrial Co., Ltd.

Hamilton - Hamilton and Spill Ltd.

HKFDTA - The Hong Kong Furniture Decoration Trade Association Ltd.

Hong Yu - Hong Yu Furniture (Shenzhen) Limited

Jiafa - Shenzhen Jiafa High Grade Furniture Co., Ltd.

JFK - Jiangmen Kinwai Furniture Decoration Co., Ltd.

JKI - Jiangmen Kinwai International Furniture Co., Ltd.

Joyce Art - Dongguan Qingxi Xinyi Craft Furniture Factory

Lehouse - Jiangsu Lehouse Furniture Co., Ltd.

Kuan Lin - Kuan Lin Furniture Co., Ltd.

Kunshan Lee Wood - Kunshan Lee Wood Product Co., Ltd.

Maria Yee - Guangzhou Maria Yee Furnishings Ltd., Pylons HK Ltd., and Maria Yee, Inc.

Nanhai Baiyi - Nanhai Baiyi Woodwork Co., Ltd.

Nanhai Jiantai - Nanhai Jiantai Woodwork Co., Ltd.

Nathan - Nathan International Ltd./Nathan Rattan Factory

OIH - Orient International Holding Shanghai Foreign Trade Co., Ltd.

PuTian - PuTian JingGong Furniture Co., Ltd.

Qingdao- Qingdao Liangmu Co., Ltd.

Shanghai Ideal- Shanghai Ideal Furniture Manufacturing Co., Ltd.

Shanghai Jian Pu - Shanghai Jian Pu Export and Import C., Ltd.

Shanghai SMEC - Shanghai SMEC Corporation

Starwood - Starwood Furniture Manufacturing Co., Ltd.

Superwood - Superwood Company

Sunrise - Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Ind. C., Ltd., Shanghai Sunrise Furniture Ind. C., Ltd., and Fairmont Designs

Techniwood - Techniwood Industries Limited

Yeh Brothers - Yeh Brothers World Trade, Inc.

Yida - Yida Manufacture Limited and Yetbuild Company Limited

Yihua - Yihua Timber Industry Co., Ltd.

Yuexing - Jiangsu Yuexing Furniture Group Co., Ltd.

Wumahe - Guangming Group Wumahe Furniture Co., Ltd.

Interested Parties

FBI - Furniture Brands International Inc.

Pulaski - Pulaski Furniture Corporation

FRA - Furniture Retailers of America[1]

BACKGROUND

The Department published its preliminary determination of sales at LTFV on June 24, 2004. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 35312 (June 24, 2004) ("Preliminary Determination").

On August 5, 2004, the Department published an amended preliminary determination. See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 47417 (August 5, 2004) ("Amendment 1"). On September 9, 2004, the Department published another amended preliminary determination. See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value and Amendment to the Scope: Wooden Bedroom Furniture From the People's

[1]Hunton & Williams represents the Furniture Retailers of America and certain Section A respondents (Jiangsu Xiangsheng Bedtime Furniture Co, Ltd., Kuan Lin Furniture Co., Ltd., Zhongsan Fullwin Furniture Co., Ltd., Qingdao Liangmu Co., Ltd., Hualing Furniture (China) Co., Ltd./Tony House Manufacture (China) Co., Ltd./Buysell Investments Ltd., Langfang Tiangcheng Furniture Co., Ltd., Dongguan Great Reputation Furniture Co., Ltd., Long Range Furniture Co., Ltd., Dongguan Grand Style Furniture Co., Ltd./Hong Kong Da Zhi Furniture Co., Ltd., Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd./Dongguan Wanhengtong Industry Co., Ltd., Dongguan King Feng Furniture Co., Ltd., Season Furniture Manufacturing Co., Ltd./Season Industrial Development Co., Ltd., Billy Wood Industry (Dongguan) Co. Ltd./Yuelai Furniture Co. Ltd./Dahuan Furniture Co. Ltd./Time Faith Limited/United Asia Co. Ltd./Billy Taiwan Co. Ltd., King's Way Furniture Industries Co., Ltd./Kingsyear Limited, Songgang Jasonwood Furniture Factory/Jasonwood Industrial Co. Ltd. SA, Nathan International Ltd/Nathan Rattan Factory, Chuan Fa Furniture Factory/K.Wee & Co. Ltd.). Covington & Burling, deKieffer & Horgan, Garvey Schubert Barer, Hogan & Hartson, LaFave & Sailer, Mowry International Group, O'Melveny & Myers, Sandler Travis & Rosenberg, and Wilmer Cutler Pickering Hale & Dorr, counsel to 59 importers and additional Section A respondents, have authorized Hunton & Williams to state that their clients join in this brief and the arguments made herein.

Republic of China, 69 FR 54643 (September 9, 2004) ("Amendment 2").

The Department has prepared a detailed analysis memorandum for each mandatory respondent for which it calculated a margin using the respondents' information. All such memoranda are dated November 8, 2004, and can be found on the record of this investigation located in the Central Records Unit.

DISCUSSION OF THE ISSUES

I. General Issues

Comment 1: Market-Oriented Industry

The CCCLA, the CNFA, the Government of the PRC, and Starcorp argue that the Department's decision on August 30, 2004, to reject their request for an MOI inquiry is contrary to the Department's statutory obligations, the general requirements for fairness and procedural due process, and U.S. WTO obligations. CCCLA, CNFA, and the PRC government conclude that the Department should conduct an MOI inquiry in the time remaining in this antidumping investigation or self-initiate an MOI inquiry in a changed-circumstances review in the event that the ITC issues an affirmative injury determination and the Department publishes an antidumping duty order.

CCCLA, CNFA, and the PRC government state that industry representatives and PRC officials first raised the MOI issue during a meeting on January 14, 2004, with the Department's officials after the initiation of the investigation. They refer to the January 15, 2004, letter from Markor and Lacquer Craft stating their intent to seek MOI treatment and requesting the Department to obtain the necessary information through the Section A questionnaires. CCCLA, CNFA, and the PRC

government state that the questionnaire the Department issued on February 2, 2004, did not include any questions requesting this information. According to CCCLA, CNFA, and the PRC government, officials from the PRC's Ministry of Commerce informed the Department's officials in a meeting held on March 18, 2004, that the Chinese respondents would seek MOI treatment.

CCCLA, CNFA, and the PRC government contend that CCCLA and CNFA filed an MOI request on April 20, 2004, and that the PRC government also expressed its support for this request in a letter on April 28, 2004. CCCLA, CNFA, and the PRC government contend that, although on May 14, 2004, the Department stated that it had not received the necessary information to substantiate the MOI request, the Department did not indicate a deadline for the submission of such information.

CCCLA, CNFA, and the PRC government state that on May 28, 2004, CCCLA and CNFA submitted a 300-page submission that provided data covering "all or virtually all" of the Chinese industry. CCCLA, CNFA, and the PRC government argue that the factual information in this submission, along with information submitted by respondents during the course of this investigation, satisfies the three prongs of the Department's MOI test. Furthermore, they assert that the submission contained data showing a Chinese wooden bedroom furniture industry overwhelmingly characterized by private and collective ownership.

CCCLA, CNFA, and the PRC government assert that on June 17, 2004, CCCLA and CNFA requested the Department to issue questionnaires immediately to gather the data needed to calculate dumping margins based on market-economy status. Also, CCCLA, CNFA, and the PRC government claim that the Department's Preliminary Determination acknowledged the May 28, 2004, submission

and said the Department would "continue to evaluate the request and address it as soon as possible."

Additionally, CCCLA, CNFA, and the PRC government state that the Department identified specific procedural steps for an MOI request for the first time in its decision memorandum of August 30, 2004, citing Memorandum from Jeffrey May to James Jochum, Wooden Bedroom Furniture from the People's Republic of China: Request for Market-Oriented Treatment ("MOI Memorandum"). CCCLA, CNFA, and the PRC government claim that the MOI Memorandum did not deny the MOI request on the basis of not meeting the "industry coverage" requirements nor for failure to meet any prong of the MOI test but, rather, because of time constraints. Additionally, they assert that the MOI Memorandum neither adopted any of the other objections of the Petitioners nor did it rule out that an MOI inquiry might be warranted based on the merits of the request.

CCCLA, CNFA, the PRC government, and Starcorp also argue that the Department has a statutory obligation to consider an MOI request. CCCLA, CNFA, and the PRC government contend that the MOI issue has an important effect on an investigation's outcome and that the Department is statutorily obliged to address the request for an investigation. They assert the Department has this statutory obligation because it developed the three-pronged MOI test interpreting section 773(c)(1)(B) of the Act. Further, CCCLA, CNFA, and the PRC government assert that the courts have acknowledged this as the Department's practice, citing Magnesium Corp. of America v. United States, 166 F.3d 1364, 1368 (Fed. Cir. 1999).

Furthermore, CCCLA, CNFA, and the PRC government argue that the Department did not base its August 30, 2004, decision not to initiate an MOI inquiry based upon any deficiencies in the evidence presented as the Department has done in past cases. They contend that not considering the

MOI issue is akin to not considering affiliated-party questions and adjustments to normal value or export price. CCCLA, CNFA, and the PRC government argue further that "impracticability" is not a legally recognized excuse and the statute allows the Department certain procedural flexibilities to complete all the necessary steps of an investigation within statutory deadlines, such as sampling and averaging to determine export price or normal value or the selection of respondents.

CCCLA, CNFA, and the PRC government contend that the Department did not notify respondents of a deadline, waited more than three months (more than one-fourth of the time for an entire investigation), and then rejected their request and supporting evidence based on ad hoc, purely procedural grounds. They allege that the Department had numerous opportunities to specify deadlines for the submission of an MOI request.

Moreover, CCCLA, CNFA, the PRC government, and Starcorp argue that the decision in the MOI Memorandum is inconsistent with the requirements for transparency and fundamental fairness in antidumping proceedings and the principles of procedural due process. They contend that the Department's decision was based on time constraints and is in effect a determination that their MOI request was "untimely" and would therefore not be considered on its merits. CCCLA, CNFA, the PRC government, and Starcorp state that there is no procedural deadline in the statute or the Department's regulations for an MOI request and that the Department never cited a deadline in its August 30, 2004, decision. Further, they assert that not informing parties of the procedural requirements and then declaring after the fact there was insufficient time to consider MOI, a key and potentially dispositive issue, violates principles of fairness and procedural due process.

According to CCCLA, CNFA, the PRC government, and Starcorp, the Department must

interpret the antidumping statute and conform its procedures in accordance with U.S. international legal obligations, where possible. They argue that Article 6.1 of the WTO Antidumping Code obligates the Department to give notice to all interested parties of the required information and to give ample opportunity to present in writing all evidence. Thus, they maintain, the Department's after-the-fact determination on the timing of MOI-related submissions did not provide adequate notice.

Further, CCCLA, CNFA, and the PRC government assert that the United States agreed to consider the MOI issue in an antidumping investigation as part of the Protocol on the Accession of the People's Republic of China to the World Trade Organization. Consequently, CCCLA, CNFA, and the PRC government argue that the Department cannot ignore or defer the MOI issue.

Finally, CCCLA, CNFA, and the PRC government argue for the Department to reconsider its rejection of the request for an MOI inquiry and conduct an MOI inquiry during the time remaining in this investigation. Alternatively, they argue that the Department should determine now to self-initiate an MOI inquiry in a changed-circumstances review if the ITC issues an affirmative injury determination and if the Department issues an antidumping duty order. Citing Antidumping Duty Order and Initiation of Changed Circumstance Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Poland, 58 FR 44166 (August 19, 1993) ("CTL Poland"), CCCLA, CNFA, and the PRC government contend that the Department has initiated a changed-circumstances review together with an antidumping duty order.

Shing Mark explained that it supports the request for MOI status in this investigation. Shing Mark contends that the Department should conduct an MOI inquiry and treat the Chinese wooden bedroom furniture industry as an MOI. Shing Mark argues further that the Department should

determine during the pending investigation that, if an antidumping order is issued, it will initiate a changed-circumstances review to conduct an MOI inquiry.

The Petitioners argue that the Department's denial of the MOI request was proper and that no basis exists to conduct a changed-circumstances review. First, they contend, the MOI request was untimely. Second, the Petitioners assert that section 773 of the Act permits the application of market-economy methodology to an NME in very limited circumstances and that the Department developed the MOI test to identify these very limited circumstances. According to the Petitioners, the Department stated in the past that the MOI test "must begin with the strong presumption that such situations do not occur because non-market economies are riddled with distortions," citing Notice of Final Determination of Sales at Less Than Fair Value:Steel Concrete Reinforcing Bars from Moldova, 66 FR 33525 (June 22, 2001), and accompanying Issues and Decision Memorandum ("Bars from Moldova").

The Petitioners contend that an MOI inquiry would be difficult and time-consuming in this investigation because there are 30,000 to 300,000 Chinese producers of subject merchandise. Further, the Petitioners insist that respondents knew a complete submission substantiating the request was required as early as possible and that the Chinese industry had plenty of time since the prospective filing of this petition was announced in The Wall Street Journal on July 15, 2003. Additionally, the Petitioners explain that two mandatory respondents, Markor and Lacquer Craft, filed a deficient MOI request on January 15, 2004, two-and-one-half months after the petition was filed and almost a month after initiation. The Petitioners contend that Markor and Lacquer Craft effectively abandoned their request. The Petitioners claim that it was not until seven months after the petition's filing that CCCLA and CNFA filed their request on April 20, 2004, and their substantive submission on May 28, 2004.

The Petitioners argue that the absence of a statutory or regulatory deadline for an MOI request simply underscores the Department's discretion. According to the Petitioners, the logic of the argument that there was no deadline would permit the filing of an MOI request on the eve of the final determination. The Petitioners assert that CCCLA and CNFA should have inquired into the time requirements of an MOI request from the Department but instead they attended several meetings without inquiring.

Further, the Petitioners allege that CCCLA and CNFA did not demonstrate that the MOI request was made on behalf of all or virtually all Chinese wooden bedroom furniture producers. The Petitioners state that there is no evidence on the record regarding the identity of CCCLA and CFA's membership and whether those members produce the subject merchandise. In addition, the Petitioners assert that none of the evidence presented is specific to any producer of subject merchandise and CCCLA and CFA admitted in their May 28, 2004, submission that they were not able to present evidence covering virtually all of the industry on an individual basis.

Moreover, the Petitioners contend that CCCLA and CFA did not satisfy the Department's three-pronged MOI test. First, the Petitioners assert that CCCLA and CFA's May 28, 2004, submission did not explain how the data presented in the "Statement of Huang Weiping," prepared at the request of CFA, was derived from the Chinese Second National Basic Unit Census and that CCCLA and CFA provided no method by which to verify the data. In addition, the Petitioners assert that the Chinese Second National Basic Unit Census did not supply data specific to the wooden furniture industry. The Petitioners also question Mr. Huang's "ownership form" classification of firms with various ownership percentages.

Second, the Petitioners argue that various levels of Chinese government maintain an active role in developing the PRC's furniture industry. Third, the Petitioners argue that the Chinese industry does not pay market prices for all major inputs and for all but an insignificant proportion of minor inputs. The Petitioners state that CCCLA and CFA interpret too narrowly the Department's illustrative examples for the MOI test's third prong in Chrome-Plated Lug Nuts From the People's Republic of China, 57 FR 15052 (April 24, 1992). The Petitioners argue that substantially all production of wooden bedroom furniture relies on significant raw materials from the PRC, an NME country. Finally, the Petitioners assert that CCCLA and CFA did not rebut the Petitioners' data showing non-market distortions in the prices of labor and electricity.

Regarding the argument by CCCLA, CNFA, and the PRC government for a changed-circumstances review, the Petitioners argue that the circumstances in this investigation are different from that of CTL Poland. The Petitioners contend that, in CTL Poland, the Department had decided to graduate Poland to market-economy status several weeks before the final determination but had conducted the investigation using the NME methodology. Hence, the Petitioners assert, the Department initiated the changed-circumstances review to recalculate the margin using a market-economy analysis, not to determine if Poland was a market economy.

Department's Position: We have determined not to initiate an MOI inquiry in this proceeding due to the limited time we would had to complete a full analysis of the MOI request. On August 30, 2004, we issued the MOI Memorandum regarding CCCLA and CFA's request for an MOI inquiry. In this memorandum, we explained that the request was submitted only fourteen working days before the Preliminary Determination. Since we were engaged fully in analyzing data for the Preliminary

Determination, we did not have sufficient time to analyze the MOI submission prior to the issuance of the Preliminary Determination. Additionally, we explained in the memorandum that our ability to analyze the request for an MOI inquiry was also complicated by additional submissions from interested parties. Several of these submissions added new factual information to the record which we also needed to analyze and consider to determine whether an MOI inquiry was warranted. In light of all the new information, we would need to resolve numerous issues about this information on the record before deciding whether to initiate an MOI inquiry. See MOI Memorandum.

Further, due to the late nature of the MOI request, we were not provided sufficient time to conduct the necessary complex market-oriented analysis and provide interested parties a full opportunity to participate in the process of determining whether the industry at issue warrants MOI treatment. In order to conduct such an analysis, we would need sufficient time to issue several additional MOI questionnaires to document the claims made in the substantive MOI submissions. Furthermore, even if a MOI inquiry were initiated, we would not have had sufficient time to request, analyze, verify, and apply home-market or third-country prices and costs that would be necessary for determining normal values in a market-economy dumping analysis.

Therefore, due to the late nature of the MOI request, we determined not to incorporate an MOI inquiry into the current antidumping investigation. Should the Department publish an antidumping duty order as a result of an affirmative determination by the ITC, the Chinese wooden bedroom furniture industry will have an opportunity to request an MOI inquiry in a future segment of this proceeding.

Comment 2: Surrogate-Country Selection

Due to the complicated nature of the subject merchandise and size of this investigation, the Department has addressed many separate specific issues used as argument for support for or against the selection of a particular surrogate country in other sections of this decision memorandum. The overriding analysis and substantial record evidence in both law and fact of these issues supports the Department's initial decision that India is the most appropriate surrogate country for use in this investigation.

Markor, Lacquer Craft, Shing Mark, Dorbest, and Starcorp (collectively referred to as "Respondents") argue that the Department's selection of Indian as the surrogate country was improper. The Respondents explain that the statute instructs the Department to value the factors of production reported by an NME producer by reference "to the prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the non-market economy country, and (B) significant producers of comparable merchandise," citing section 773(c)(4) of the Act. Citing to the Conference Report to the 1988 Omnibus Trade and Competitiveness Act, H.R. Conf. Rep. No. 100-576 at 590 (1988) (the "Conference Report"), the Respondents argue that a "significant producer" of comparable merchandise includes any country that is a "significant net exporter" of such merchandise. The Respondents also assert that the Conference Report instructs the Department, at 591, to use, if possible, surrogate-country data that reflect levels of technology and production volumes that are similar to those of the producers under investigation.

According to the Respondents, the Department's Non-Market Economy Surrogate Country Selection Process, Import Administration Policy Bulletin 04.1 (March 1, 2004) states, "if identical

merchandise is produced, the country qualifies as a producer of comparable merchandise" and that the Department "may only consider countries that produce a broader category of reasonably comparable merchandise" if the focus on producers of identical merchandise "leads to data difficulties." The Respondents argue that the Policy Bulletin explains the extent to which a country is a "significant" producer of such merchandise involves a judgment consistent with the characteristics of world production of, and trade in, comparable merchandise. They assert that the Policy Bulletin illustrates the meaning of this last point by stating, "{i}f there are ten large producers and a variety of small producers, 'significant producer' could be interpreted to mean one of the top ten" producers.

The Respondents contend that, if read together, the Conference Report and the Policy Bulletin stand for several propositions of law. First, the Respondents assert, if two potential surrogate countries produce a product that is identical to the product under investigation, the Department is to assess the significance of their production in relation to that product unless the focus on the identical product leads to data problems. Second, they maintain, the significance of a potential surrogate's role in world trade in the product under investigation, including whether it is a "significant" net exporter, is relevant for purposes of the Department's selection process. Third, they continue, the similarity of a potential surrogate's industry to the industry under investigation in terms of scale, production technology, and production process as well as the type of furniture produced is also relevant for purposes of the Department's selection process. Fourth, they conclude, where one possible surrogate country is a large producer of comparable merchandise and another country is a small producer, the Department may not select the smaller producer without a compelling reason to do so.

The Respondents argue more generally that both the Conference Report and the Policy Bulletin

indicate that the choice among potential surrogate countries should be based on their relative merits under the selection criteria. Therefore, the Respondents contend, the central question for the Department's final surrogate-country choice in this investigation is whether evidence on the record supports the conclusions of fact on which the Department's preliminary preference for India rests.

Regarding economic development, the Respondents recognize that the Department concluded that both India and Indonesia qualified for the selection as surrogate country under the Department's standards of selecting whether a country is at the level of development comparable to the PRC, citing Memorandum from Robert Bolling to Ron Lorentzen, "Request for a List of Surrogate Countries" (January 16, 2004) ("Request Memorandum"). The Respondents argue, however, that, according to the key measurement criteria used by the Department and provided in the Request Memorandum, the per-capita GNP and the national distribution of labor for Indonesia is at a level of economic development that is much closer to the PRC than is India. The Respondents extract from the Request Memorandum that Indonesia's GNP is $680 compared to the PRC's $890 while India's GNP is $460. Moreover, the Respondents state, the PRC's labor distribution in agriculture is 50 percent while Indonesia's is 45 percent and India's is 60 percent. Referring to the Final Determination of Sales at Less Than Fair Value: Siliconmanganese from Kazakhstan, 67 FR15535 (April 2, 2002), and accompanying Issues and Decision Memorandum ("Silicomanganese from Kazakhstan"), the Respondents state that the Department settled on the surrogate country with the GNP that was closest to that of Russia. When selecting a surrogate country, the Respondents contend, Silicomanganese from Kazakhstan stands for the proposition that the Department has placed an emphasis on the comparability of levels of economic development on the basis of per-capita GNP.

The Respondents argue further that the choice of surrogate country and factor values also favors Indonesia. First, they state, Indonesia is a far more significant producer of wooden bedroom furniture than India. Citing International Trade Commission, Wooden Bedroom Furniture from China, ITC Pub. 3667, January 2004 ("ITC WBF Report") at IV-8, the Respondents state that the ITC data shows that, in calendar year 2003, the value of U.S. imports of wooden bedroom furniture from Indonesia was almost sixty times higher than the value from India. The Respondents claim the Department found that India Furniture Products ("IFP") is a significant producer of comparable merchandise although the total value of IFP's domestic and export sales for fiscal-year 2002/03 includes furniture other than wooden bedroom furniture and is less than one-tenth of the value of Indonesia's 2003 exports of wooden bedroom furniture to the United States.

The Respondents argue that the Policy Bulletin directs the Department to assess the "significance" of Indonesia and India's production of bedroom furniture because both India and Indonesia produce wooden bedroom furniture. The Respondents also state that the ITC WBF Report indicates that U.S. importers cite Indonesia as the country that makes wooden bedroom furniture that is most interchangeable with Chinese wooden bedroom furniture. The Respondents state that the PRC is Indonesia's primary competitor in export markets for wooden furniture. Moreover, Respondents claim, according to this report, the Indonesian furniture industry concentrates on the production of wooden furniture for export markets, that the industrial segment of India's furniture industry concentrates on the production of metal and plastic furniture for commercial use, and that most wood furniture produced in India is produced by craftsmen, citing the December 2003 CSIL Report, The Furniture Industry in India ("CSIL India Report").

The Respondents also state that the Indonesian industry as a whole and individual Indonesian producers operate much like the Chinese industry and Chinese producers whereas the Indian industry and producers do not. The Respondents explain that Indonesia has many more producers of wooden bedroom furniture that operate on a scale comparable to the scale of Chinese respondents in this investigation, use technology that is comparable to the technology used by the respondents, and produce bedroom suites in volume for sale to customers in the United States that are comparable to the bedroom suites sold by Chinese producers to the same set or similar sets of customers.

The Respondents also assert that the Department has acknowledged that, when selecting the appropriate surrogate data, it considers whether products have similar physical characteristics, end-uses, and production processes, citing Certain Cased Pencils from the People's Republic of China: Final Results and Partial Recession of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum ("Pencils"). Specifically with regard to financial statements and ratios, the Respondents state that Indonesian companies for which data are on the record are similar to the Chinese respondents in that they produce the same sort of bedroom suites, operate at the same level of trade, produce in substantial volume for export to the United States, and have comparable levels of technology production processes. The Respondents refer to calendar-year 2003 financial data on the record for Goldfino and Cipta and calendar-year 2002 financial data for Maitland Smith and SIMA, all of which are Indonesian companies.

The Respondents also state that the calendar-year 2003 financial data available for Indonesian companies reflect sales of over U.S. $17 million and the calendar-year financial 2002 data reflect sales of over U.S. $40 million. Respondents observe that POI ratio data are available for only one Indian

company, IFP, which had sales of U.S. $12.1 million in fiscal-year 2003/04 and, while technologically sophisticated, it produces ready-to-assemble furniture and sells primarily to India's domestic market. The Respondents contend that, although the Department has fiscal-year 2002/03 data for eight other Indian producers, most of these other companies are small and sell at a level of trade that is different from that of the Respondents. The Respondents maintain that none of them produces furniture that is anything like the Chinese exports subject to this investigation.

The Respondents indicate that, when comparing Lacquer Craft's POI exports of subject merchandise to the United States to the total sales of three Indian surrogate companies the Department used in the Preliminary Determination (Swaran, Nizamuddin, and Fusion Design) for the year ending March 31, 2003, Lacquer Craft's sales were about 300 times the aggregate annual sales of all products by these three companies. Respondents also state that the sales values reported by these three Indian companies and the value of the calendar-year 2002 sales by the Indonesian companies for which data are available (Maitland-Smith, Goldfindo, and SIMA) show that the Indian companies' aggregate value of sales is less than 0.05 percent of the aggregate sales values of the proposed Indonesian companies.

The Respondents contend that in the past the Department has examined the appropriateness of surrogate-ratio data in other cases by reference to the similarity of the products produced by the potential surrogates to the subject merchandise and the similarity of the production processes of potential surrogates, including the complexity of the production process, the quality, the facility structure, industry capabilities, and the type of equipment used to process which the respondents use. The Respondents in this investigation assert that with respect to these measures of comparison Indonesian producers are the better surrogate choice. Additionally, the Respondents state that data

from the Indonesian companies are appropriate because the companies operate at the same level of trade as the respondents whereas certain Indian producers sell directly to end-users.

The Respondents state that the surrogate values for materials from Indonesia are more accurate than the Indian import data on which the Department relied in the Preliminary Determination. They contend this supports their argument that Indonesia is the more appropriate surrogate. The Respondents explain that the record contains actual POI transaction prices paid for key material inputs from a variety of sources. Moreover, the Respondents suggest, Indian import data for certain inputs have nothing to do with furniture production because India does not have an organized wood furniture industry of any significance. The Respondents state that, in contrast, Indonesia's wood furniture industry is organized and significant. Therefore, they believe, the values for certain inputs derived from Indonesian import statistics are much more in line with the actual transaction-price data on the record of this investigation than the values derived from the Indian import statistics. The Respondents argue that, notwithstanding such information, the Department chose to rely exclusively on Indian import data rather than on transaction-specific data available from Indian sources and Indonesian import data.

The Respondents contend that the surrogate values that the Department used for the Preliminary Determination are not more probative of market costs than similar values available in Indonesian import statistics. Relying on Infodrive India data, the Respondents argue that the Indian import data is discredited because it includes imports of products that have nothing to do with furniture production such as imports of paints for automobiles, computers, and ships and imports of rearview mirrors for automobiles. Because India does not have an organized wood-furniture industry of any significance, the Respondents contend, it does not import much material used in wood furniture

production. By contrast, they assert, Indonesia's wood furniture industry is both organized and significant such that the import values for paints, cardboard for packing, mirrors, and other items are much more in line with the actual transaction price data on the record of this investigation than are the values derived from Indian import statistics. In other words, they contend, the record of this investigation shows that for materials, as for financial-statement ratios, the surrogate-value data from Indonesia are more accurate than the Indian data on which the Department relied in the Preliminary Determination.

Additionally, Shing Mark argues that all evidence before the Department indicates that Indonesia is a far more appropriate surrogate country for this investigation. Shing Mark asserts that the Department has the discretion to change its selection of surrogate country for the final determination and it should exercise that discretion here, citing Tehnoimportexport and Peer Bearing Co. v. United States, 766 F.Supp. 1169, 1174-76 (CIT 1991) ("Tehnoimportexport").

Shing Mark argues that, in its Memorandum to the File from Jon Freed to the File: Selection of Surrogate Country, (March 8, 2004) ("Surrogate Country Selection Memo"), the Department offered no more than an assertion that India should be selected, stating simply that India was a "significant producer of comparable merchandise." Shing Mark contends that evidence on the record undermines this conclusion. According to Shing Mark, the Department cannot consider India as a significant producer because case law, the Conference Report, and the Policy Bulletin state that a significant producer is a net exporter of the subject merchandise. Shing Mark cities Yantai Oriental Juice Co. v. United States, 2003 WL 1475038, * (CIT 2003) ("Yantai I 2003") (affirming Department's remand determination to use Turkey as the surrogate country because India was not a net exporter of subject

merchandise to the United States), the Conference Report at 590 (the term "significant producer" includes any country that is a "significant net exporter"), the Policy Bulletin ("a judgment should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics)") to support its assertion. Comparatively, Shing Mark contends, Indonesia is a major exporter of wooden bedroom furniture to the United States, referring to the ITC WBF Report. Moreover, Shing Mark claims that the Indonesian industry is much more comparable to the Chinese industry in terms of its organization, economies of scale, technology, production process, export orientation, and product mix than India. Shing Mark alleges that all available evidence indicates that wooden furniture producers in India consist predominantly of craftsman that produce merchandise by hand in small volumes for retail customers.

FBI claims that the Department erred in selecting India as the surrogate country for Preliminary Determination because record evidence demonstrates that India is not a significant producer of wooden bedroom furniture comparable to that produced by Chinese producers. FBI also contends that the Department now has a wealth of Indonesian data to use for calculating a normal value.

Similar to the other respondents, FBI argues the Department is required by law to select a surrogate country that is a significant producer of merchandise comparable to the merchandise under investigation. FBI adds that the Department is also required by law to use surrogate-country data that "reflect levels of technology and production volumes that are similar to the {technology used by and the volumes produced by} producers under investigation" whenever possible, citing the Policy Bulletin at 1 and the Conference Report at 590. Moreover, FBI argues that the Department prefers to use data that are "as specific as possible to the subject merchandise," citing Antidumping Duties; Countervailing

Duties, 61 FR 7308, 7346 (February 27, 1996) (proposed rule), and Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27295 (May 19, 1997). FBI alleges that the data on the record demonstrates that Indonesia is the only potential surrogate country that meets the requirements of the law and conforms to the Department's policy.

FBI remarks that, in its March 5, 2004, Surrogate Country Selection Memo on surrogate-country selection, the Department declined to accept Indonesia as the surrogate country because of what it characterized as the absence of "any type of industry or company data that would lead the Department to conclude that Indonesia is a significant producer of comparable merchandise." FBI contends that, since then, it and various respondents have submitted data that supports the contention that Indonesia is a significant producer of comparable merchandise and that India is not. FBI argues that Indonesia is a larger net exporter of comparable merchandise than is India.

FBI also asserts that the wooden bedroom furniture produced by Indonesia is comparable to the wooden bedroom furniture produced in the PRC. Specifically, FBI claims, Indonesia's exports of wooden bedroom furniture to the United States would not be 60 times greater than those from India if the two were producing comparable merchandise. FBI asserts that the quantity of sales of Indian-produced wooden bedroom furniture to the U.S. market is evidence that consumers simply do not regard India in the same league as the PRC. FBI claims that the U.S. industry contends that Indonesian producers are comparable to Chinese producers because they have the same kinds of factories, use the same kinds of materials, and have similar design and style capabilities and quality-control standards as the Chinese. Additionally, FBI argues, in general, the U.S. industry considers Indonesia, not India, to be the PRC's main competitor for furniture sales. FBI explains that, when combined with the data, the

U.S. industry's subjective judgments, leave no doubt that India is not remotely a competitor with the PRC in the market for wooden bedroom furniture.

FBI reasserts that in the Surrogate Country Selection Memo the Department concluded that it did not have sufficient data on the record regarding the cost of producing wooden bedroom furniture in Indonesia to permit it to calculate normal value using Indonesia as the surrogate. FBI contends that the data submitted to the Department since its selection of India as surrogate country supports the use of Indonesia as a viable surrogate country. In this case, FBI argues that record evidence shows that India is not only not a significant producer of comparable merchandise but that it is also not a better source of surrogate-value data. FBI contends that the Indian companies on which the Department based its calculations for the Preliminary Determination to calculate financial ratios are nothing like the Chinese respondents with the exception of one company, IFP.

Finally, citing to Lasko Metal Products, Inc. v. United States, 43 F.3d 1442 (Fed. Cir. 1994), FBI claims that a country that does not produce comparable merchandise to that from the PRC simply cannot be used as a surrogate if the Department is to fulfill its mandate of calculating dumping margins as accurately as possible or comply with its policy of using only the most appropriate data in valuing the factors of production.

The Petitioners explain the procedural background, stating that the Department sent a letter dated January 22, 2004, requesting the parties to submit comments with respect to the selection of a surrogate country in this investigation by February 5, 2004. The Petitioners comment that on February 5, 2004, the Department received comments from the Petitioners, FBI, and Markor/Lacquer Craft. Citing the Surrogate Country Selection Memo, the Petitioners contend that the Department recognized

that Markor/Lacquer Craft did not provide any argument or data for any of the factors of production to support their contention that surrogate-value data is available for use in this investigation. In contrast to the comments from FBI and Markor/Lacquer Craft, the Petitioners argue that their February 17, 2004, comments included substantial, uncontested evidence that India meets the statutory criteria for a surrogate country and provides the best data to value all factors-of-production. Thus, the Petitioners argue, the Department determined correctly to find values for all factors in India. Additionally, the Petitioners comment that on March 8, 2004, Markor/Lacquer Craft submitted additional comments expressing concern regarding the Department's surrogate-country determination but again submitted virtually no data to demonstrate that Indonesia or any other country would be an appropriate surrogate. The Petitioners contend that none of the other five mandatory respondents or the over 100 Section A respondents expressed any concern over the Department's selection of India.

Due to the nature and size of this investigation, the Petitioners argue that it was entirely appropriate for the Department to select the surrogate country on March 5, 2004. The Petitioners assert that the Department's March 2004 selection of a surrogate country was necessary to allow all parties ample time to collect the numerous surrogate values required in this investigation. Furthermore, the Petitioners argue that the statute and regulations do not prescribe a specific time for the Department's surrogate-country selection decision.

The Petitioners explain that, given the complexity of the collection of surrogate values in this investigation, it would be prejudicial and unduly burdensome for the Department to require the Petitioners to provide surrogate values from more than one country. The Petitioners also point out that most mandatory respondents proceeded to submit surrogate-value information from India. Given this

procedural background, the Petitioners contend that it would be extremely prejudicial for the Department to change course and to select Indonesia as the surrogate country for use in its final determination.

Furthermore, the Petitioners contend that most respondents waived any challenge to the Department's selection of India as the surrogate country. The Petitioners argue that Markor/Lacquer Craft, Shing Mark, Dorbest, and Starcorp challenge the Department's selection of India as the surrogate country but Lung Dong, Tech Lane, and the Section A respondents have not challenged that determination.

Regarding economic development, the Petitioners argue that India is at a level of economic development that is comparable to the PRC. The Petitioners contend that in their submissions of February 5, 2004, FBI and Markor/Lacquer Craft conceded implicitly that India is at a level of economic development that is comparable to the PRC and that no party has argued to the contrary prior to the submission of the Case Briefs. The Petitioners rebut the Respondents' argument that Indonesia and the PRC are closer in economic development than India and the PRC. Citing the Policy Bulletin, at 2, the Petitioners argue that the statute does not require that the surrogate country is at a level of economic development most comparable to the NME country. They also cite Tehnoimportexport at 1175, in which the court found the law does not require the Department to choose the most comparable economy but rather a comparable economy. The Petitioners also explain that the Department considers all surrogate countries on the Office Policy's list to be equivalent in terms of economic comparability.

Regarding whether India is a significant producer of comparable merchandise, the Petitioners

rebut the Respondents' argument that Indonesia is a significant producer of wooden bedroom furniture but that India is not. The Petitioners argue that the Respondents ignore the statutory test of a significant producer of comparable merchandise. They contend that the statute does not require the Department to select the country that is the most significant exporter of identical merchandise to the United States but rather, as stated in the Policy Bulletin, at 1, the statute provides that the Department "shall utilize *to the extent possible* . . . prices . . . in one or more market economy countries that are . . . a significant producer of comparable merchandise." Additionally, the Petitioners argue that, as the Department recognizes in the Policy Bulletin, the statute does not define the term "significant producer." Moreover, the Petitioners contend, the Policy Bulletin states that "the specific criteria and supporting factual information used to determine whether a potential surrogate country is a significant producer is left to the discretion of the operations team." The Petitioners contend that they provided voluminous evidence in their February 5 and 17, 2004, submissions that India is a significant producer of both identical merchandise (wooden bedroom furniture) and comparable merchandise (other types of furniture). The Petitioners argue that, according to CSIL Report India, the production value of the Indian furniture industry's output was approximately $1.7 billion in 2002. The Petitioners also argue that The Furniture Sector In India, SEA-EIAS (June 2002), estimates the value of furniture production at approximately 2.2 billion Euros (approx. $2.75 billion). The Petitioners contend that there are 11,000 furniture manufacturers in India employing approximately 300,000 people. In addition, the Petitioners argue that the same recent study estimates that approximately 65 percent of the furniture produced in India is wooden furniture. The Petitioners explain that a market-research survey commissioned by the European Furniture Manufacturers Federation estimates that bedroom furniture represented

approximately 20 percent of total furniture production in India during 2001-2002.

The Petitioners also argue that a search of the world-wide web provides listings of numerous manufacturers and exporters of wooden bedroom furniture in India which have large-scale production facilities and use fully mechanized and systematic manufacturing machinery. They refer to Highland House as an export-oriented manufacturer located in Mandawa, India, that is known for its excellent craftsmanship of solid wood furniture. Additionally, the Petitioners refer to evidence in their February 17, 2004, submission to contend that Highland House produces high-quality wooden bedroom and dining room furniture for export to the United States and other markets in three factories that employed over 800 people in 1998. They also explain that Highland House reportedly underwent an expansion with a goal of reaching 4,000 employees and a turnover of Rs 100 crore (approximately $22.1 million).

In addition to identical merchandise, the Petitioners contend, India also produces merchandise that is comparable to wooden bedroom furniture, i.e., other types of furniture. Although the statute does not define the term "comparable," the Petitioners argue, the Department in its Memorandum From the Office of Policy to Robert Bolling dated January 16, 2004, stated that the term "encompasses a larger set of products than 'like product.'" Therefore, the Petitioners contend that the available evidence establishes that India is a producer of merchandise that is both identical and comparable to wooden bedroom furniture.

The Petitioners rebut the Respondents' argument that Indonesia is a larger producer of furniture than India because Indonesia's production was $1.9 billion and that India's production was $1.68 billion by contending the size of the production of comparable merchandise in India and Indonesia is legally irrelevant to the Department's selection of the surrogate country. The Petitioners argue that the

statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry. The Petitioners explain that, in an NME investigation, the statute requires the Department to select a surrogate country that is a "significant producer of comparable merchandise." Accordingly, the Petitioners argue, the Department's focus must be on the comparability of the merchandise, not the comparability of the industry producing the merchandise. Additionally, the Petitioners argue, the Department has stated that "to impose a requirement that merchandise must be produced by the same process and share the same end use to be considered comparable would be contrary to the intent of the statute," citing Final Result of Antidumping Administrative Review: Sebacic Acid From the People's Republic of China, 62 FR 65674, 65676 (December 5, 1997) ("Sebacic Acid from the PRC"). The Petitioners explain further that the Department stated in Sebacic Acid from the PRC that it need not evaluate whether the industry in the surrogate country has a production process that is similar to the NME industry.

The Petitioners also argue that the quantity of exports is legally irrelevant to the Department's selection of a surrogate country. According to the Petitioners, the Department has determined that it does not need "to consider export volumes in selecting the surrogate country" where there are manufacturers of subject merchandise in the surrogate countries under consideration, citing Bars from Moldova.

The Petitioners argue that the Conference Report does not require the surrogate country to be a net significant exporter of comparable merchandise. Specifically, the Petitioners argue that at 590 of the Conference Report, it states that the "term 'significant producer' includes any country that is a significant net exporter." The Petitioners argue that the term "includes" is not a term of exclusion.

Additionally, the Petitioners explain that the final clause in the Conference Report states that the Department "may use a significant net exporting country in valuing factors." According to the Petitioners, the language is clearly discretionary and, thus, there is no requirement that a surrogate country must be a significant net exporter to the United States or any other country. Similarly, the Petitioners add, the Policy Bulletin refers to significant producers and production, not exports or exporters. The Petitioners contend that nowhere does the Policy Bulletin state a requirement that, to qualify as a significant producer, the surrogate country must be a significant net exporter. In any event, the Petitioners argue, even if the Policy Bulletin did have such a requirement, India is a net exporter of furniture, citing the CSIL India Report.

Regarding the reliability and contemporaneity of the data, the Petitioners argue that India provides the most reliable and contemporaneous data to value the factors of production. Regarding Indonesian data, the Petitioners argue, Markor/Lacquer Craft themselves acknowledged that "the availability of Indonesian data has in past investigations not always been satisfactory," citing Markor/Lacquer Craft submission of February 5, 2004, at 7. The Petitioners also argue that the Department has extensive experience in selecting the surrogate country for investigations involving the PRC and has selected India routinely as the surrogate country over Indonesia "based on the quality and contemporaneity of the currently available data," citing among others Preliminary Determination of Sales at Less than Fair Value: Certain Folding Gift Boxes From the People's Republic of China, 68 FR 58653 (October 10, 2003) ("Gift Boxes from the PRC 2003"). The Petitioners explain that the Department's determination in this investigation was based on its considerable experience in addition to its consideration of comments from interested parties regarding surrogate-country selection and its own

research. Additionally, the Petitioners explain, the April 16, 2004, surrogate-value submissions by all parties corroborated the Department's conclusion that India provides the most complete, reliable, and contemporaneous publicly available information to value factors.

The Petitioners comment that all mandatory respondents other than Lung Dong submitted surrogate-value data from India for virtually all of their factors of production. According to the Petitioners, only Markor/Lacquer Craft and Shing Mark submitted surrogate values for Indonesia. With respect to the Indonesian data, the Petitioners argue, Markor/Lacquer Craft acknowledge, in their April 16, 2004, submission at 37, that "there is clearly a problem with Indonesia's import statistics" for woods and processed woods, which are the most important and significant material inputs used in the production of wooden bedroom furniture. To fill the factor-value gaps for wood inputs, the Petitioners state, the Respondents suggest that the Department use reports of the International Tropical Timber Organization to fill the wood factor values from Indonesia. The Petitioners claim that Tech Lane, Dorbest, Lung Dong, and Starcorp did not provide any HTS classifications under the Indonesian tariff schedule. Thus, the Petitioners argue, the Department cannot value their raw-material inputs using data from Indonesia. The Petitioners also assert that there are significant other gaps in the factor values for Indonesia whereas there are no gaps in the factor values due to use of India as the surrogate country.

Regarding the Respondents' arguments that Indonesian financial statements are better sources of factory overhead, SG&A, and profit ratios, the Petitioners argue that Indian financial statements are available for six Indian producers in this investigation. Specifically, the Petitioners argue, the Department does not reject financial statements merely because a company is too small since the financial statements are used to calculate ratios. In addition, the Petitioners argue, the 30,000 to

300,000 producers in the PRC comprise a broad range of company sizes, including numerous very small companies.

Finally, the Petitioners argue that there is absolutely no legal support for the arguments made by the Respondents and FBI that the Department should use Indonesian financial statements because Indian producers do not export to the United States. The Petitioners contend that the self-serving subjective affidavits from retailers and importers to the effect that they do not import from India are irrelevant to the Department's surrogate-country selection. In addition, the Petitioners argue, such affidavits are rebutted by Petitioners' evidence that Crate & Barrel and other U.S. importers have imported wooden furniture from India.

Department's Position: The Department has determined that the overriding analysis and substantial record evidence in both law and in fact support its initial decision that India is the most appropriate surrogate country to use in this investigation. Specifically, the statute provides the Department with broad discretion in the selection of a surrogate market-economy country to value NME factors of production. See Policy Bulletin at 1. In particular, section 773(c)(1)(B) of the Act reads:

> ...the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

Additionally, section 773(c)(4) of the Act states that, "{t}he administering authority shall utilize *to the extent possible* ... prices ... in one or more market economy countries that are (1) at a level of economic development comparable to that of the nonmarket economy country, and (2) a significant producer of comparable merchandise" (emphasis added).

With regard to economic development the Department determined that India is at the same

level of economic development as the PRC. See Request Memorandum. In deciding whether a country is at the same level of economic development, the Department considers the surrogate countries on the Request Memorandum list as equivalent in terms of economic comparability. Additionally, the Policy Bulletin states, "{t}he surrogate countries on the {Request Memorandum} list are not ranked and should be considered equivalent in terms of economic comparability." The Respondents acknowledge that the Department concluded that both India and Indonesia qualified for selection as a surrogate country under the Department's standard of determining whether a country is at a level of economic development comparable to the PRC. The Department does not find, however, that it should or must select the country that is at a level of economic development that is *most* comparable to the NME country. See Tehnoimportexport at 1175.

The Department has also determined that India is a significant producer of comparable merchandise as prescribed by the Act. First, record evidence presented by the Respondents and the Petitioners demonstrates that India is a producer of comparable merchandise. Second, record evidence provided by both the Respondents and the Petitioners demonstrates that India is a significant producer. Therefore, under the Department's regulations and antidumping statute, India satisfies all the statutory requirements for a surrogate country in this investigation.

What the Respondents and FBI contest, however, is whether Indonesia is a more significant producer of wooden bedroom furniture than India. This contention rests on Indonesia's net exports and on whether Indonesia has an industry comparable to that of the NME economy.

The Department finds that a comparative analysis of whether Indonesia or India is the more significant producer of wooden bedroom furniture is unnecessary. First, the Policy Bulletin is clear,

stating that "{t}he extent to which a country is a significant producer should not be judged against the NME country's production level or the comparative production of the five or six countries on {Office of Policy's} surrogate country list" (emphasis added). As explained by the Policy Bulletin, if both countries are significant producers, "judgement should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics)." Therefore, the comparative determination is not whether the countries are significant producers but rather whether the production is consistent with the trade in the comparable merchandise and whether the availability of data characteristic of the subject merchandise exists. From the information put forth by both the Respondents and the Petitioners, we determine that record evidence recognizes that both Indonesia and India have significant production and trade in comparable merchandise.

Contrary to arguments by the Respondents and FBI we find that a primary consideration of determining whether a country is a significant producer is not whether the country is a net exporter. While the Department has used net exports as a means to determine whether a country is a significant producer in the past, it is only one of many criteria the Department may use to determine whether a country is a significant producer. Additionally, we find that the Conference Report does not require that the surrogate country be a net exporter. Furthermore, similar to the issues in Bars from Moldova, we find that record evidence indicates that there are a substantial number of producers in India, with upwards of 11,000 and a furniture-industry output of $1.7 billion in 2002 contrasted with Indonesia's output of $1.9 billion. As in Bars from Moldova, it would be illogical to conclude, as argued by the Respondents and FBI, that Indonesia is a significant producer of furniture while India is not. The fact

that India is a larger consumer of furniture than Indonesia and, therefore, does not have large export volumes does not negate the fact that India is a significant producer.

Furthermore, as in Bars from Moldova, the Department finds that the Respondents' and FBI's premise that the furniture produced in India must be somehow a different product or necessarily non-comparable merchandise is not supportable merely because Indonesia ships more furniture to the United States than India. First, the record evidence does not support the Respondents' and FBI's conclusion that the lack of shipments to the United States bears any relationship to the quality or type of the merchandise produced in India. Second, although Respondents and FBI contend that there are stylistic differences between the furniture produced in Indonesia and India, there is no record evidence that the fundamental characteristics and inputs used to produce the furniture differ substantially. Finally, the Respondents do not argue that India does not produce wooden bedroom furniture.

Although we have considered whether products have similar physical characteristics, end-uses, and production processes (e.g., comparable industry) when considering surrogate values for overhead, SG&A, and profit, we do not find that it is a necessary criterion for selection of a surrogate country. Furthermore, we disagree with the Respondents that the financial statements of the Indonesian companies on the record are at all indicative of whether there are Indian companies that operate at the same level of trade, produce in substantial volume for export, and have comparable levels of technological production. Additionally, the Department disagrees with the arguments by the Respondents and FBI that, because there is a only one publicly available financial statement for a large producer, it somehow indicates that there are no other large producers in India and, therefore, India is

not a significant producer.[2] As discussed above, there is record evidence that 11,000 Indian furniture producers exist. Relying only on the availability of public financial statements for selecting a surrogate would overlook the Department's established standard and practice for selecting a surrogate country. Furthermore, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry. See Sebacic Acid from the PRC, 62 FR at 65676 (stating "to impose a requirement that merchandise must be produced by the same process and share the same end use to be considered comparable would be contrary to the intent of the statute"). The Department also disagrees with the Respondents' argument that there is conclusive record evidence that the Indian furniture industry does not produce wooden bedroom furniture that is as high-quality in raw materials and craftsmanship or as complex in design as any subject merchandise produced in the PRC.

Finally, the Department does not dispute that the record evidence supports the conclusion that Indonesia is also at a comparable level of economic development and a significant producer of comparable merchandise. We find, however, that India offers more accurate, reliable, and contemporaneous data for use in this investigation. As discussed in the Policy Bulletin, when one or more countries have "survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country." As already discussed, this case is particularly unique with regard to the varying pieces of subject merchandise and the overall scale of the investigation. Taking these items into consideration and the fact that substantial case history exists that the purpose of the antidumping statute is to determine margins as accurately as possible, the Department continues to

[2] For further information regarding the discussion of financial ratios for overhead, SG&A, and profit, refer to Comment 3.

determine to use India as the surrogate country for the final determination.

Specifically, this case involves seven mandatory respondents which reported anywhere from 60 to upwards of 100 factors of production which required the Department to evaluate and obtain values for over 500 company-specific factors of production. In order for the Department to calculate an accurate dumping margin as prescribed by the statute, the Department needed to select a surrogate country for which publicly available and contemporaneous surrogate values were consistently reliable and accurate. As we described in the surrogate-country selection memorandum, in response to our letter requesting interested parties to submit information regarding the selection of surrogate country, Markor, Lacquer Craft, and FBI put forth no specific industry or company data that would lead us to conclude that Indonesia is a significant producer of comparable merchandise. Even if the Department assumed without any supporting data that Indonesia was a significant producer of comparable merchandise prior to its selection of a surrogate country, none of these companies provided the Department with any data that showed Indonesia offered accurate, reliable, and contemporaneous data for this investigation. In fact, as we stated in the surrogate-country selection memorandum, we "acknowledge that the availability of data from Indonesia has been unsatisfactory in other investigations." In contrast, however, the Petitioners provided the Department with substantiated specific industry or company record evidence that led the Department to conclude that India is a significant producer of comparable merchandise and for which reliable and accurate surrogate-value data were available with which the Department could calculate a normal value.

Only after the Department's decision regarding India as a suitable surrogate country did Markor, Lacquer Craft, Shing Mark, and FBI submit voluminous amounts of information with regard to

surrogate-value information from Indonesia. We continue to find that use of Indonesian data is troubling. First, Markor and Lacquer Craft acknowledge and agree with the Department that the availability of data from Indonesia has been unsatisfactory in other investigations. Even more troublesome, Markor and Lacquer Craft acknowledge that "there is clearly a problem with Indonesia's import statistics" for woods and processed woods. See Markor/Lacquer Craft April 16, 2004, submission at 37; see also Tehnoimportexport at 1176 (finding that the Department's decision to select a different surrogate country was supported by counsel's acquiescence regarding reliable data). Second, the Department reviewed the Indonesian import statistics which Markor, Shing Mark, and Lacquer Craft submitted and found that in many instances the information was either unreliable or the Indonesian import statistics were reported in units for which the Department was unable to obtain a comparable value (e.g., mirrors reported in numbers rather specific measurement of size and weight). Third, because of the inadequacies of the Indonesian import statistics, Marker, Lacquer Craft, and Shing Mark submitted gap-filler data from various sources that the Department prefers not to use unless there are clear distortions in the surrogate import statistics (e.g., price lists and respondent- selected company-purchase information).

In contrast, we have determined that data from India does not suffer from the same problems as the Indonesian data. Additionally, the Department has extensive experience in selecting the surrogate country for investigations involving the PRC and has selected India routinely as the surrogate country over Indonesia based on the quality and contemporaneity of the currently available data. Furthermore, many mandatory respondents have reported their factors of production consistent with the Indian import statistics. Although the Respondents also put forth numerous arguments regarding the reliability

of the Indian data used for valuing the surrogate values, the Department has determined that these arguments, which are addressed in other comments of this memorandum, do not rise to level that would require the Department to deviate from its initial decision that Indian data are accurate and contemporaneous with the POI.

Therefore, for the aforementioned reasons and in accordance with 19 CFR 351.408(c)(2), we continue to determine that India provides the most accurate values. Consequently, the Department has determined that India is at a comparable level of economic development to the PRC, India is a significant producer of comparable merchandise, and India provides the best opportunity to use reliable, publicly available data to value the factors of production. Therefore, the Department determines that India is the appropriate surrogate country for the purposes of this investigation.

Comment 3: Surrogate Financial Ratios

The Petitioners claim that the Department should base its financial-ratio analysis on Indian financial statements and not Indonesian financial statements. The Petitioners argue that the Department's long-standing practice is to develop factor-value information from only one surrogate country unless there is no reliable information for a particular factor in the primary surrogate country and cite the Department's Antidumping Manual, Chapter 8 Normal Value, Section XVI -Non-Market Economy Countries to support their assertion. Accordingly, the Petitioners argue that there are several reliable Indian financial statements on the record of the investigation and there is no reason for the Department to use financial data from a second surrogate country. Additionally, the Petitioners claim that the Department prefers to base surrogate financial ratios on the performance of multiple producers

of comparable merchandise.

The Petitioners contend, however, that several of the financial statements on the record should not be used either because they are not from the primary surrogate country (i.e., Indonesian financial statements), would distort the ratios, are not primarily engaged in the furniture industry, or are missing vital schedules. Moreover, the Petitioners suggest it is the Department's well-settled practice to base surrogate financial ratios using simple averages of multiple surrogate producers in the surrogate country. Accordingly, the Petitioners state that the Department should continue to use the financial data of IFP, Fusion Design Pvt. Ltd. ("Fusion Design"), Nizamuddin Furnitures Pvt. Ltd. ("Nizamuddin"), and Swaran Furnitures (P) Limited ("Swaran") in its financial-ratio analysis, as the Department did in its Preliminary Determination. The Petitioners argue that the Department's practice is to use financial statements of companies that show losses but to exclude profit information from those producers while continuing to use such producers' factory overhead and SG&A information. Thus, the Petitioners argue that the Department's exclusion of Imperial Furniture Company's ("Imperial") financial results due solely to zero profits was incorrect. The Petitioners also argue that the Department should use the submitted fiscal-year 2002/03 financial statements of D'n'D's Fine Furniture Pvt. Ltd. ("DnD") for use in its financial-ratio analysis but exclude DnD's negative profit in its calculation of profit ratios. The Petitioners also state that, if the Department decides to exclude the data of companies with zero profits for the final determination, the Department must also exclude the 2003/04 data of IFP, which also showed a zero profit for that period.

The Petitioners disagree with the allegations by Markor/Lacquer Craft that Nizamuddin, Swaran, and other Indian producers have small operations. The Petitioners cite Final Results of

Antidumping Duty Administrative Review: Persulfates from the People's Republic of China, 68 FR 6712 (February 10, 2003) ("Persulfates from the PRC"), to support their contention that the Department has rejected the argument that the small size of a company distorts the financial ratios. The Petitioners assert that economies of scale apply to both the numerator and denominator of the financial-ratio calculations. Thus, the Petitioners conclude that, barring proof that a surrogate company's production is anomalously low for the year in question, the Department's practice is to use the financial statements of small producers so long as they produce comparable merchandise to that produced in the NME country, irrespective of whether the surrogate producer is much smaller than the NME producers.

The Petitioners state that there is no basis for excluding companies with related retail establishments because it is common for furniture manufacturers in both the United States and the PRC to have related retail establishments and because Marker operates its own retail distribution outlets in the PRC.

The Petitioners contend that Markor/Lacquer Crafts' argument regarding Nizamuddin's production of "handicraft" furniture is factually incorrect as Nizamuddin produces a variety of furniture including carved beds, simple beds, and upholstered furniture. Moreover, the Petitioners argue that, contrary to Markor/Lacquer Crafts' assertions throughout this investigation, Swaran is a manufacturer because record evidence (i.e., the financial statement of Swaran and affidavit of Swaran official) makes clear that the company is a manufacturer of wooden bedroom furniture in India. Additionally, the Petitioners argue that Fusion Design is a producer of wooden furniture and point to the "job work expenses", the purchases of "raw materials and consumables," and to the "generation and disposal of

scrap and wastage" in Fusion Design's financial statement to support this assertion. The Petitioners also argue that the fact that a furniture producer purchases some of its requirements neither implies that it does not produce furniture nor suggests that the use of its financials would distort the SG&A, factory overhead, and profit ratios applied to Chinese producers because several respondents contract out production of furniture and furniture parts. Additionally, the Petitioners argue that a small amount of depreciation for plant and equipment does not show that a company is not a producer. Furthermore, the Petitioners argue that, if the total depreciation amount for plant and equipment were larger, the depreciation would be larger (increasing the overhead ratio) and the fact that Fusion Design operates with a small amount of depreciable plant and equipment understates the factory overhead ratio. Moreover, the Petitioners state that, although Fusion Design has no internal audit/control system in place, the company's auditors stated that the profit and loss statement and balance sheets produced by the company fairly reflect the books and records of account.

Additionally, the Petitioners disagree with Markor/Lacquer Craft's contention that the use of Fusion Design's financial data would be anomalous because Fusion Design produces furniture to retail customers' orders and, as a result, renders its SG&A costs at a different level of trade than those of the Chinese respondents. First, the Petitioners state that Markor/Lacquer Craft's argument was made in an untimely submission and should be disregarded by the Department. Second, the Petitioners assert that Fusion Design's brochure indicates that the company's main business is creating and selling different lines of furniture and that the company also offers to design furniture for specific customers, although the vast majority if its business is offering off-the-shelf designs.

The Petitioners argue that the Department should reject certain Indian financial statements. The

Petitioners state that the 2003/2004 financial statements of IFP should be rejected because IFP had negative profits in 2003/2004. The Petitioners indicate that the Department's practice is not to use financial statements from a producer where a significant portion of its business is not related to the subject merchandise and, to support their contention, cite the Final Determination in the Antidumping Duty Investigation of Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000), and accompanying Issues and Decision Memorandum ("Apple Juice"). The Petitioners state that the production and sale of leather garments is the most important part of Evergreen International, Ltd.'s ("Evergreen") business since, based on Evergreen's 2002/03 financial statement, sales of leather garments were the majority of Evergreen's business and less than a quarter of raw materials were used by the furniture division while three-quarters were consumed by the leather garment division. Moreover, the Petitioners state that only some of the data from Evergreen's financial statement can be disaggregated along divisional lines and all other expenses are commingled. As a result, the Petitioners indicate, the production costs and respective overhead, SG&A, and profit ratios could not be determined by segment if the Department uses Evergreen's financial statement was to be used as a surrogate for financial ratios. The Petitioners state that financial ratios obtained from Jayaraja Furniture Group's ("Jayaraja") 2002/03 financial statements are missing vital sections and, thus, cannot be used to determine financial ratios because they would be highly distortive. The Petitioners cite to Silicomanganese from Kazakhstan, and state that the Department rejected the use of financial statements because the financial statements were incomplete, lacking both the auditor's statement and accounting notes. The Petitioners state that Jayaraja's financial statements on the record consist solely of the balance sheet and the profit and loss statement and there are no notes to the statements, no

schedules, and no auditor's opinion or directors' statement. The Petitioners argue further that Jayaraja reports zero depreciation in its profit and loss statement and has no depreciation schedule or listing of fixed assets. Consequently, the Petitioners argue, there is no way to determine if Jayaraja is even a manufacturing company. Moreover, the Petitioners state that, even if Jayaraja is a manufacturing company, using it as a surrogate for the Chinese respondents is distortive on its face because the respondents were selected due to the size of their shipments to the United States, have significant fixed assets, and would have significant depreciation in any market economy. In addition, the Petitioners argue that the 2002/03 financial statements of Akriti Perfections India, Ltd. ("Akriti"), are missing vital sections and are otherwise unreliable. The Petitioners state that Akriti's profit and loss statement is not the company's actual profit and loss statement because the statement has no marks of authenticity whereas the balance sheet, notes to the financial statements, and accompanying schedules are all stamped by the relevant authority and are either initialed or signed as well as stamped by company officials. Moreover, the Petitioners state that the font and style of the profit and loss statement differ dramatically from all other documents comprising the financial statements thereby providing further indication that the profit and loss statement is not authentic. Moreover, the Petitioners state the financial statement is missing Schedule IV, "Fixed Assets and Depreciation," and, as a result, does not indicate if the fixed assets refer to a manufacturing facility. The Petitioners argue that the 2002/03 financial statements of M.M. Agencies Pvt., Ltd. ("MM Agencies"), and Wood Kraft Pvt., Ltd. ("Wood Kraft"), should be rejected by the Department because the Department rejected the use of Usha Shriram Furniture Industries Pvt. Ltd.'s ("Usha Shiram") financial statements because they were stale, as they were from the fiscal year 2001/02. The Petitioners state that the Department has other usable

2002/03 financial statements from other companies and one potentially usable 2003/04 financial statement on the record and state that there is no need to include non-contemporaneous data.

The Petitioners also argue that Markor/Lacquer Craft's calculations of financial ratios for IFP's fiscal-year 2003/04 financial statements are flawed and that once corrected show that IFP incurred a loss for the 2003/2004 financial year. The Petitioners state that the ratio calculations are flawed because Markor/Lacquer Craft eliminated interest income and expense from affiliates improperly, did not limit the offset to interest expense to only short-term interest revenue, erred in treatment of stores and consumables by treating them both as MLE and Overhead, included certain expenses in MLE improperly, and included the cost of finished goods purchased in its factory overhead ratio denominator improperly. First, the Petitioners claim that there is no evidence on the record that justifies the respondents' exclusion of interest income and interest paid to affiliates. The Petitioners state that respondents did not place IFP's parent company financial statements for 2003/04 on the record to serve as a basis for financial expense, although they were able to obtain financial statements for the subsidiary company, and respondents claim that the interest paid and received from affiliates must be factored out of IFP's financial statements, even though the only data available for IFP's interest cost are those in IFP's financial statements. The Petitioners argue that money is fungible and the interest expense shown in IFP's financial statements is a conservative measure of its cost of borrowing because, if IFP could have borrowed funds at rates better than those given to it by its parent company, it would have done so. As a result, the Petitioners claim that this conservative measure of IFP's cost of borrowing understates the overall SG&A ratio. Additionally, the Petitioners argue that respondents attempted to create a profit for IFP to have the Department include IFP in its surrogate-ratio

calculations when IFP lost money during its fiscal year. The Petitioners argue further that, if the Department uses IFP's 2003/04 financial data in its ratio analysis, it must also include all other companies on the record which were excluded due to having zero profits. Second, the Petitioners state that the Department limits offsets to interest expense solely to short-term interest revenues. Accordingly, the Petitioners calculated the percentage of revenues associated with short-term versus long-term instruments from IFP's financial statement, applied the percentage to the total interest revenue to determine how much of the total interest revenue can be offset properly against total interest expense, and included the resulting amount as a deduction from SG&A expenses in the recalculation of financial ratios. Third, the Petitioners claim that Markor/Lacquer Craft treated IFP's stores and consumables incorrectly by treating them as both MLE and Overhead but they are by nature classified as overhead items. Fourth, the Petitioners state that Markor/Lacquer Craft included 100 percent of salaries, wages, bonus, allowances, contributions to provident funds, gratuities, and staff welfare expenses improperly in MLE without considering the fact that portions of these items were incurred for SG&A functions. The Petitioners also state that the respondent recognized this problem by treating one line item, "labour charges," as both labor and SG&A. Further, the Petitioners state that IFP's financial statement only permitted the Petitioners to correct for renumeration received by the Managing Director, which is a minor part of the total SG&A, and the remaining IFP expenses will overstate MLE labor costs, thereby understating all the financial ratios. The Petitioners suggest that the Department adjust the claimed labor costs by eliminating them from both MLE and SG&A or by determining another method to spread some labor-associated costs to SG&A. Finally, the Petitioners argue that finished-goods purchases must be removed from the factory overhead denominator, although the item should

remain in the denominator for SG&A and profit calculations as they are both affected by the purchase and sale of finished goods.

In addition, the Petitioners assert that Lung Dong's calculations of financial ratios for Raghbir Interiors, Pvt. Ltd.'s ("Raghbir") fiscal-year 2002/03 financial statements are flawed in several respects and must be corrected. First, the Petitioners claim that material costs were overstated, leading to an inflated denominator in the financial-ratio calculations lowering the resulting ratios because Lung Dong included the opening stock of raw materials and work in progress but did not take account of the closing stock of raw materials and work in progress. Second, the Petitioners claim that Lung Dong should not have included transportation charges as part of MLE costs. Third, the Petitioners claim that Lung Dong included "Bonus & Ex Gratia Paid" as labor charges but these expenses should have been included in SG&A because these payments normally relate to salaried workers and/or officers/directors of a company, not wage earners.

Shing Mark contends that the Department should revise its calculation of the financial ratios used to calculate normal value. Shing Mark argues that the Department should only use contemporaneous financial data from the 2003/2004 financial statements of IFP which include the POI.

Additionally, Shing Mark argues that, in the Preliminary Determination, the Department should not have used financial statements from Fusion Design, Nizamuddin, and Swaran for surrogate-ratio purposes. According to Shing Mark, none of these financial ratios are contemporaneous with the POI and should be rejected because the inclusion of the financial ratios distort the results. Shing Mark alleges that the Department provided no justification concerning how these surrogate producers are comparable to the respondents and that the Department has an obligation to do so, citing Shanghai

Foreign Trade Enterprises Co., Ltd. v. United States, 318 F.Supp.2d 1339 (CIT 2004) ("Shanghai Foreign Trade Enterprises"). Shing Mark argues that Fusion Design should be rejected because it is a very small company, its merchandise and production processes are not comparable to those of the respondents, and the auditor's notes suggest that Fusion is not a reliable surrogate. Finally, Shing Mark argues that Fusion's "job work expense" should be treated as a part of MLE rather than overhead. Shing Mark argues that Nizamuddin should be rejected because it is very small in terms of production, sales, and the amount of fixed assets.

Shing Mark alleges that there is little evidence to support the Department's conclusion that Swaran is a producer of wooden bedroom furniture and that, even if Swaran could be considered a producer, it probably subcontracts all of its production. Therefore, Shing Mark contends, Swaran cannot be considered a viable surrogate comparable to Shing Mark.

Starcorp argues that India has no viable furniture industry at the level of furniture production in the PRC or Indonesia. Starcorp contends that, even if the Department determines that an Indian furniture manufacturer could serve as a surrogate for Chinese manufacturers, only one, IFP could reasonably be used and that it must be by reference to its POI-overlapping financial statements for 2003/2004.

Starcorp argues that the Department could also use Indonesian financial statements in the calculation of surrogate financial ratios even if it determines that India is the appropriate surrogate country. Starcorp states that, while normally the Department uses publicly available information from a single surrogate country to value factors of production in an NME proceeding, the Department departs from this norm when suitable information from the surrogate country is not available and uses

information from another country identified by the Office of Policy as being at a comparable level of economic development to the NME country

Starcorp argues that Indian furniture producers do not produce merchandise comparable to that of the Chinese producers and they use very different production techniques and operate at an entirely different level of trade. Starcorp cites Pencils and states that in that case the Department determined that, while the statute does not define "comparable merchandise" in selecting surrogate values for overhead, SG&A and profit, the Department has considered whether products have similar physical characteristics, end uses, and production processes. Starcorp argues that Pencils held that when evaluating production processes the Department has taken into account the complexity and duration of the processes and the types of equipment used in production. Starcorp contends that nothing in the Pencils case will support the use of the financial statements upon which the Department relied in the Preliminary Determination. Starcorp argues that the financial statements the Department used in the Preliminary Determination do not meet the criterion the Department has set forth in previous cases like Pencils.

Starcorp argues that the Department can use an Indonesian financial statement even if the Department determines that the surrogate country is India. Starcorp states that in Pencils the Department used a financial statements from a producer in a surrogate country other than the primary surrogate country. Starcorp argues that the Department should do the same here.
Starcorp argues that using the Indian producers' financial statements for surrogate financial ratios is inappropriate in this case. Starcorp states further that the Indonesian financial statements are contemporaneous with the POI and represent the experience of producers far more similarly situated as

compared to the Chinese respondents.

Dorbest contends that the Department erred in the Preliminary Determination by treating "job work" expenses in the financial statements of Fusion Design and Swaran as overhead expenses rather than labor to be included in the MLE denominator. Dorbest states that it reported labor hours of five different outside subcontractors. Dorbest asserts that it combined all labor hours of its own employees with the outside labor hours of the subcontractors to derive the per-unit labor hours it reported. Dorbest asserts this was inconsistent with the Department's past treatment of job-work expenses as labor citing the Memorandum to the File from Brian C. Smith re: Factors Valuation for the Preliminary Results: Fourth Administrative Review and Sixth New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China (March 1, 2004) ("Mushrooms Memo"). In addition, Dorbest alleges that the Department engaged in double-counting by treating "job work" labor as an overhead item in the financial ratios and also applying it to the respondents' reported labor, including all subcontractors' hours.

In contrast to the Petitioners' argument, Dorbest contends that the Department should continue to use Jayaraja's financial statements. Dorbest states that, as the Department has recognized, Jayaraja's financial statements are not distortive but rather are representative of the Chinese wooden furniture industry. Dorbest cites 19 CFR 351.408(c)(4) which provides that, "for manufacturing overhead, general expenses, and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." Dorbest points out that Jayaraja is a wooden furniture producer of identical or comparable merchandise in the

surrogate country, which is why the Department used and should continue to use Jayaraja's financial statements. Dorbest disagrees with the Petitioners' argument that the Department has a policy of not using incomplete financial statements and cites Silicomanganese From Kazakhstan, to support this assertion. Dorbest asserts that Jayaraja's financial statements contain all the information necessary for the Department to calculate the financial ratios. Dorbest points out that the financial statements are fully audited, provide a certification by the auditor, and contain a complete balance sheet as well as a detailed profit and loss statement which allows the Department to calculate overhead, SG&A, and profit ratios, as is demonstrated by the fact that the Department had no problems in calculating these financial ratios for the Preliminary Determination.

Furthermore, Dorbest contends that the Petitioners' argument that there is no way to determine if Jayaraja is a manufacturer is directly contradicted by record evidence because Jayaraja's financial statements show significant charges for "Electrical Hardware" and "Saw Mill Expenses," which are the type of expenses that only a manufacturer would incur. Dorbest asserts that it also provided pictures directly from Jayaraja's web-site which corroborate further that Jayaraja manufactures and sells wooden bedroom furniture. Dorbest concludes that, contrary to the Petitioners' implication, Jayaraja is an appropriate surrogate company because it is a manufacturer of comparable merchandise.

The Joint Respondents argue that the Department's financial-ratio calculation in the Preliminary Determination was based on non-contemporaneous data for Indian companies that are poor surrogates under the law governing surrogate selection. The Joint Respondents argue that the Department should have used the financial data for Goldfindo, an Indonesian company, in the Preliminary Determination.

The Joint Respondents argue that the preliminary financial-ratio calculation grossly distorts the margin calculation because it is based on non-contemporaneous data for companies that are not reasonably comparable to respondents in terms of the furniture they produce, their scale of operations, their production process, or the level of trade at which they operate.

The Joint Respondents argue that, of the companies submitted by the Petitioners, IFP, Swaran, Nizamuddin, and Fusion Design, only IFP is a reasonable surrogate for the seven mandatory Chinese respondents. The Joint Respondents argue that, if Swaran produces wooden bedroom furniture, its production is very small because its total sales of all products is only $75,165. In addition, the Joint Respondents argue that, because Swaran lists no production equipment among its assets, it must either subcontract its production or produce furniture by hand. Similarly, the Joint Respondents contest the inclusion of Nizamuddin as a surrogate because, the Joint Respondents allege, it characterizes itself as a "handicraft" producer specializing in "carving pearl and wood inlay." In addition, the Joint Respondents argue that Nizamuddin is too small to consider as a surrogate because it only sold 73 double beds, ten single beds, and eleven dressing tables for total bedroom sales of $14,387 during the twelve-month period from April 1, 2002, to March 31, 2003. Moreover, the Joint Respondents argue that an affidavit by an Indian lawyer who visited Nizamuddin shows that its workspace is roughly 600 square feet and that no more than four or five people were employed in the activity of manufacturing furniture. Similarly, the Joint Respondents argue that Fusion Design is too small to consider as a surrogate company because its 2002/2003 sales of all products was only $42,233 and the book value of its plant and equipment was $122.58. Also, the Joint Respondents argue that Fusion Design sells directly to

end-users and that it is more of a designer than a manufacturer.

The Joint Respondents argue that the surrogate companies should be reasonably comparable to the Chinese respondents in terms of the furniture they produce, their technology, and their production volumes. The Joint Respondents argue that Goldindo is the best surrogate available. First, the Joint Respondents state that Goldfindo's 2003 sales of wood furniture were more than $10 million. Second, the Joint Respondents argue that Goldfindo produces bedroom suites for U.S. customers like Rooms To Go that are interchangeable with the wooden bedroom furniture subject to this investigation. They contend that its data reflect production of identical merchandise on a scale and with technology that is very much like the Chinese respondents.

Notwithstanding the availability of Goldfindo's contemporaneous financial data, if the Department calculates ratios exclusively on the basis of Indian surrogate information, the Joint Respondents argue that the only Indian data that the Department can rely on properly are the fiscal-year 2003/2004 data for IFP. The Joint Respondents point out that IFP's 2003/2004 information is the only Indian surrogate financial statement that is contemporaneous with the POI. Further, the Joint Respondents contend that the Department prefers to use financial-ratio information that covers the POI, citing Final Determination of Sales at Less Than Fair Value, Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 34125 (June 18, 2004) ("PRC Bags"), and accompanying Issues and Decision Memorandum. The Joint Respondents contend that the Department should use IFP's 2003/2004 financial statement because the Department prefers contemporaneous factor-value data, the Petitioners have recognized that contemporaneous data should be used, the Department and the

Petitioners have relied on IFP's data for the previous year, IFP's 2003/2004 financial data are the only Indian financial data that cover the POI, IFP is the only Indian company that operates on a scale and with technology that is close to the scale and technological sophistication of respondents' operations, and IFP is the only Indian company that operates at the same level of trade as the respondents.

Finally, the Joint Respondents argue that, if the Department decides to use other Indian producers' financial data, corrections should be made in the calculations of the ratios. The Joint Respondents argue that the Department erred in its classification of the "job work expenses" reported by Fusion Design and Swaran. The Joint Respondents argue that job-work expenses have been treated consistently as direct labor in other cases and cite the Mushrooms Memo and three other Department determinations to support its argument. Furthermore, the Joint Respondents argue, such treatment is required in this case to avoid double-counting because it is included in the MLE reported by the Chinese respondents. In addition, the Joint Respondents assert that the Director of Fusion Designs, described job-work expenses as the total expenses incurred in making the item, which includes purchases, labor, and overhead, but not profit. In addition to job-work expenses, the Joint Respondents argue that the Department categorized salaries, staff welfare charges, and employer contributions to ESI incorrectly as SG&A rather than labor costs.

For Evergreen's financial statement, the Joint Respondents state that its costs must be allocated between the two product groups. In addition, the Joint Respondents contend that Evergreen classifies only wood and wood products as a raw material and that all other materials such as hardware and paints are classified as "consumables."

The Petitioners rebut the Joint Respondents' assertion that the Department should use the financial statements of Goldfindo, an Indonesian producer. The Petitioners cite the Department's Antidumping Manual, the Final Determinations of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 57 FR 21058 (May 18, 1992), and Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China, 57 FR 29705 (July 6, 1992), to argue that the Department only chooses factor data from a secondary surrogate country if there is no reliable information from the primary surrogate country for a particular factor.

The Petitioners argue that the 2003/2004 financial statements of IFP do not appear to be authentic or final and that its 2003/2003 financial data shows a negative profit. Furthermore, the Petitioners argue that the 2002/2003 financial statements of multiple Indian producers are "non-contemporaneous" by only a day. Accordingly, the Petitioners argue that IFP's 2003/2004 financial statements should be rejected. The Petitioners argue that the Department's practice is to base surrogate financial ratios on more than a single producer in the surrogate country and cite Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002) ("Rhodia"), and five Department determinations to support this argument. The Petitioners disagree with the Joint Respondents' interpretation of PRC Bags and state that, in that investigation, in which the POI was October 1, 2002, through March 31, 2003, the Department did not use April 1, 2001-March 31, 2002 financial statements because it had three usable April 1, 2002-March 31, 2003 financial statements.

The Petitioners contend that the Pencils case does not support Starcorp's argument that the

Department should choose Indonesian financial statements rather than Indian financial statements in this case. In Pencils, they assert, there were two financial statements on the record from an Indian producer of paperboard and a Philippine producer of wooden furniture. The Petitioners contend that neither company made pencils, the subject merchandise, and the Department rejected the Indian financials because the Indian producers' financial statements showed a loss. The Petitioners argue that, in Pencils, the Department had to use a financial statement from a secondary surrogate country because it had no usable financial statement from India. The Petitioners argue that in this investigation the Department has reliable financial statements of Indian producers of identical and comparable merchandise.

The Petitioners rebut the arguments of Shing Mark and the Joint Respondents that Fusion Design's financial statements should not be used. The Petitioners argue that the Department has rejected the argument that the small size of a company somehow distorts the financial ratios, citing Persulfates from the PRC. In addition, the Petitioners disagree with the respondents that Fusion Design does not produce furniture because its brochure demonstrates that it manufactures both wooden bedroom furniture and wooden furniture. The Petitioners disagree with Shing Mark that companies with retail establishments should be excluded from the pool of surrogate companies. The Petitioners argue that it is common for furniture manufacturers in the United States, the PRC, and other countries to have related retail establishments and that Markor operates its own retail distribution outlets in the PRC. In addition, the Petitioners disagree with Shing Mark that the auditors' notes render Fusion Design's financial statements unreliable as a basis for surrogate ratios.

The Petitioners disagree with Shing Mark's argument that Nizamuddin's financial statements should not be used because it is a small, "self-described" handicraft producer of pearl and wood inlay furniture, only 27 percent of Nizamuddin's sales came from wooden bedroom furniture, and it has a small amount fixed assets. The Petitioners refer to Nizamuddin's web-site to argue that it manufactures furniture. In addition, the Petitioners acknowledge that, while 27 percent of Nizamuddin's sales were of wooden bedroom furniture, the vast majority of its sales were of wooden furniture, i.e., comparable merchandise. Moreover, the Petitioners argue, the fact that Nizamuddin has a small amount of fixed assets results in a conservative measure of fixed overhead, not an overstatement.

The Petitioners disagree with Shing Mark and the Joint Respondents that the Department should not use Swaran's financial statements. With regard to the size of the operation and the amount of fixed assets, the Petitioners reiterate the arguments they made with regard to Fusion and Nizamuddin. In addition, the Petitioners disagree that evidence of subcontracting should eliminate Swaran from the pool of surrogate companies. The Petitioners argue that Swaran produces and subcontracts and that this mirrors the Chinese respondents which do the same.

The Petitioners argue that the Department should not use Evergreen because its primary business is the production and sale of leather garments and that the expenses for its furniture production cannot be disaggregated from its leather operations. In addition, the Petitioners argue that Evergreen's financial statements only list one line item for furniture raw materials, i.e., wood, and that placing the "consumables" line in MLE understates all of the ratios. The Petitioners argue that some of the manufacturing expenses incurred by the Leather Division cannot be separated, such as the freight-in

expense.

The Petitioners reiterate the arguments made in their affirmative comments that the Department should not use Jayaraja's and Akriti's financial statements.

The Petitioners reiterate their objections to the manner in which the Joint Respondents calculated IFP's 2003/2004 financial ratios. The Petitioners suggest changes to certain allocations if the Department uses these statements. In addition the Petitioners suggeste corrections to the ratio calculations for Raghbir with respect to "job work purchase."

The Petitioners disagree with the Joint Respondents' ratio calculations for Swaran. The Petitioners argue that, because there are no other salary expenses recorded under SG&A expenses in Swaran's financial statements, "Salaries" must refer to SG&A labor expense while "Labour Expenses including Subcontracting Expenses" refers to factory labor and subcontracting expenses. The Petitioners suggest changes to the allocations to distribute some of the employee-related expenses to SG&A. In addition, the Petitioners suggest allocating "job work expense" between Labor, Energy, and Factory Overhead.

The Joint Respondents argue that the Department should use contemporaneous financial data from Indonesian companies and must do so if it declines to use IFP's 2003/2004 financial statement. The Joint Respondents argue that Goldfindo is a significant producer of wooden bedroom furniture that is identical to much of the Chinese furniture subject to this investigation and, like the Chinese respondents, it exports most of its production to the United States. The Joint Respondents argue that section 773(c)(4) of the Act authorizes the Department to value factors of production by references to

prices in one or more market-economy countries. The Joint Respondents argue that the only reliable ratio data on the record from India are those of IFP; if, for whatever reason, the Department decides it cannot use IFP's 2003/2004 data, they contend that the only viable option is to use Goldfindo's data.

The Joint Respondents contend that the Petitioners' arguments for rejecting IFP's 2003/2004 financial statements are baseless and that IFP's 2003/2004 statement is the only reliable Indian financial data on the record. The Joint Respondents argue that IFP was profitable in 2003/2004 because the interest on the loan from its parent company should not be considered an interest expense. The Joint Respondents contend that a holding company has a strong tax incentive to take profit from its wholly owned subsidiary in the form of high-interest loan repayments rather than have IFP report a taxable net profit and that this is evidenced by the fact that the interest rate IFP pays on its loan from its parent company is nearly twice the interest rate it pays to its unaffiliated lenders.

The Joint Respondents argue that the Department should reject the financial statements of Imperial, Nizamuddin, Swaran, Fusion Design, and DnD. The Joint Respondents argue that all five of these statement are stale because four of the statements cover the fiscal year ending March 31, 2003, and Imperial's statement covers the fiscal year ending March 31, 2002. Additionally, the Joint Respondents argue that these five companies operate on a scale that is tiny compared to the respondents and that Fusion Design, Imperial, and DnD are all design shops. The Joint Respondents disagree with the Petitioners that small companies do not distort the financial-ratio calculations. The Joint Respondents contend that section 773(a)(7)(A) of the Act provides for a level-of-trade adjustment to normal value precisely because the sales effort relative to sales value required at the retail

level is much greater than the effort required to supply large-volume importers or customers. The Joint Respondents argue that the selection of surrogate companies should not depend on whether the Chinese respondents have a retail operation but it should turn on whether it is reasonable to assign the SG&A ratio of a surrogate company that sells at retail to the exports of a Chinese company that sells to U.S. importers and original-equipment manufacturer ("OEM") customers.

The Joint Respondents disagree with the Petitioners' objections to the use of the data for Evergreen, Jayaraja, and Akriti. The Joint Respondents contend that, other than IFP, Evergreen is the only Indian furniture manufacturer of any real size and scope for which financial data are on the record as evidenced by its fiscal-year 2002/2003 furniture sales of over four million dollars. The Joint Respondents argue that, although Evergreen produces leather products, its furniture production and sales account for a major part of its operations and over 47 percent of Evergreen's sales are sales of furniture. In addition, the Joint Respondents assert that Evergreen's financial statement states that it subcontracts "almost the entire" production of the leather garments it sells. The Joint Respondents argue that, because the garment and furniture parts of the business operate so differently, Evergreen's financials allow a reasonably precise allocation of costs between furniture and leather garments. The Joint Respondents suggest using 47 percent of Evergreen's SG&A total in order to calculate a SG&A ratio for Evergreen's sales of furniture. Moreover, the Joint Respondents argue that the Petitioners' reliance on Apple Juice is misplaced because in that case the Department declined to use the financial statements of a potential surrogate because financial statements had several flaws and the processed fruit sales only amounted to 19 percent of total sales. The Joint Respondents argue that is not the

situation with Evergreen, a company that derives half of its revenues from furniture and subcontracts the production related to the other half.

The Joint Respondents disagree with the Petitioners' contention that Jayaraja's financial statements are incomplete due to a lack of notes, schedules, an auditor's opinion and a director's statement. The Joint Respondents argue that Jayaraja's financial statement is markedly different from the facts in the cases cited by the Petitioners as examples of cases where the Department rejected statements for incompleteness. The Joint Respondents argue that Jayaraja's statement contains all the information necessary for the Department to calculate the financial ratios as demonstrated by the fact that the Department had no problems in calculating the financial ratios for the Preliminary Determination. In addition, the Joint Respondents argue that the Petitioners cannot cite a single case where the Department has decided not to use a company because of failure to report depreciation. The Joint Respondents suggest that Jayaraja may have fully amortized its depreciation assets in previous years. Finally, the Joint Respondents argue that Jayaraja is a manufacturer of furniture as demonstrated by "Electrical Hardware" and "Saw Mill Expenses" contained in its financial statement.

The Joint Respondents respond to the Petitioners' allegation that the Akriti income statement does not appear to be authentic by stating that they submitted the Akriti statements in the form in which they were received from India. In addition, the Joint Respondents contend that the income statement corresponds with the balance sheet, notes, and schedules to financial statements, which they assert the Petitioners have accepted as authentic.

The Joint Respondents disagrees with the Petitioners' proposed changes to the calculation of

IFP's 2003/2004 financial statements. The Joint Respondents argue that "salaries, wages, bonus, allowances, contribution to provident funds, gratuities and staff welfare expenses" should be included in the cost of labor calculation because there is no way of distinguishing between the labor costs IFP incurs in connection with production and those associated with selling and administrative functions. The Joint Respondents agree with the Petitioners that the cost of finished goods purchased from others for resale should be excluded from the denominator in calculating the factory overhead and that only short-term interest income should offset interest expense.

Lung Dong disagrees with the Petitioners' proposed calculation of Raghbir's financial ratios. Lung Dong argues that the Department should either add to MLE the "Closing Stock Work in Progress" and subtract the "Opening Stock Work in Progress" or not adjust for these items at all because no such adjustment is made when calculating Chinese respondent producers' factors of production. The Petitioners contend that "Coolie & Cartage Expenses", "Labor License Fee", "Leave Encashment", "Workman Comp. Insurance", "ESIC", "Bonus & Ex-Gratis Paid", and "Staff Welfare Expenses" should be classified as labor expenses. Lung Dong argues that "Conveyance Expenses" and "Tender Fees" should be excluded because this cost relates to freight-out expenses. In addition, Lung Dong argues that "Discount Allowed" should be excluded from the calculations because adjustments to prices are already made in calculating net U.S. prices. Finally, Lung Dong argues that "Sales Tax", "Works Contract Sales Tax", and "Provision for Taxation" should be excluded from the calculations because Indian government taxation policies are irrelevant to Chinese producers' operating costs.

Department's Position: The Department has determined to use the financial 2002/2003 statements

of IFP, Raghbir, Jayaraja, Akriti, Nizamuddin, Fusion, Swaran, Evergreen, and DnD to calculate the surrogate financial ratios for this investigation. The Department calculated the surrogate ratios using the simple average of each company's ratios with the exception that it excluded DnD's zero-profit amount from the profit ratio. We have not used the 2003/2004 financial statement of IFP or the 2001/2002 financial statements of MM Agencies Private Limited, Wood Kraft Private Limited, Imperial Furniture Company, and Usha Shriram Furniture Industries. We declined to use the financial statement of Huzaifa Furniture Industries Ltd. in the Preliminary Determination and we did not receive any comments suggesting that it should be used. In addition, we did not use the 2003 financial statements of Goldfindo, CIPTA, and SIMA which are Indonesian producers.

We find that we have no reason to look to Indonesia for surrogate financial statements unless reliable financial statements from India are not available. The Department selected India as the surrogate country for the Preliminary Determination and has continued to use India for the final determination. See Surrogate Country Selection Memo. As demonstrated by the fact that we have used nine Indian surrogate companies to calculate the financial ratios, we had no reason to look outside the surrogate country because the record contained a wealth of Indian financial statements that we received from the respondents and the Petitioners. Therefore, we have not used the financial statements of Goldfindo, CIPTA, and SIMA.

We did not use the 2001/2002 financial statements of MM Agencies Private Limited, Wood Kraft Private Limited, Imperial Furniture Company, and Usha Shriram Furniture Industries because the record contained numerous financial statements that were more contemporaneous.

Although the 2003/2004 financial statement of IFP covers the POI, we excluded it because it showed no profit for its 2003/2004 fiscal year and we had a wealth of financial statements from the previous fiscal year on which to rely. The Department disagrees with the Joint Respondents that IFP showed a profit in the 2003/2004 fiscal year. The Joint Respondents argue that IFP is profitable once the interest that it paid its parent company is removed from its income statement. The Joint Respondents contention, that the interest owed to IFP's parent company was just a method for the parent company to extract profits without incurring tax liability, is speculation and does not change the fact that the inter-company interest expense is an expense nonetheless. Thus, the only Indian statement that covers the POI completely shows zero profit. The financial statements that we have used were sufficiently contemporaneous for use at the Preliminary Determination and remain so for the final determination. The fiscal year of the financial statements that we have used end only one day before the beginning of the POI. Considering the Department's preference for using multiple financial statements and the absence of any profitable financial statements completely covering the POI, the Department determined that the pool of 2002/2003 Indian financial statements would provide the best basis for calculating the surrogate financial ratios. No party has suggested that the Department should average IFP's 2003/2004 data with the financial statements from 2002/2003 and the Department does not believe that it is appropriate to do so. IFP's 2003/2004 factory overhead and SG&A were not included in the calculations because its 2002/2003 statements were already included in the calculation.

Several of the respondents argue that Nizamuddin, Fusion, Swaran, and DnD are too small to be considered comparable to the Chinese respondents. As the Department explained in Persulfates,

however, differences in production and sales volumes between the Indian company and the Chinese respondent do not render the Indian company unfit as a surrogate producer. Simply because the production process of the surrogate producer results in smaller production volumes does not render it unfit as a surrogate. The fact that the Indian surrogate has a smaller production capacity than the Chinese respondents "does not lead to the automatic conclusion that its overhead rate is different, but simply that it may incur less overhead (in the numerator) and consume fewer raw materials (in the denominator)." See Persulfates.

Although the Joint Respondents argue that the size of an operation is relevant to the economies of scale realized in the SG&A expenses, we find that Jayaraja and Akriti both experienced production and sales volumes in the range of those experienced by Nizamuddin, Fusion, Swaran, and DnD. Further, the SG&A expenses of Jayaraja and Akriti demonstrate that small production and sales volumes do not automatically precipitate high SG&A expenses.

The Petitioners and various respondents have argued that certain surrogate companies should be excluded because they are not predominately furniture manufacturers. The record contains marketing products (e.g., brochures, web-sites, etc.) or industry directories for each of these companies indicating that these companies are manufacturers of comparable merchandise. The Department analyzed each financial statement to determine whether any of these companies were, in fact, producers and not just retailers or traders. For each company, the financial statements show evidence of production. As both the Petitioners and respondents have acknowledged, a company's balance of plant and machinery assets and its amount for depreciation do not necessarily indicate the extent to which a company is a

producer because these assets could be fully amortized. Each company shows raw materials and labor consumed. For these reasons, we included all of these financial statements in the calculation of the surrogate ratios. Our changes to the calculations are discussed below and each company's calculation is detailed in the Memorandum to the File from Jon Freed: Final Financial Ratios, dated November 8, 2004 ("Surrogate Ratio Memorandum").

We have reclassified certain labor-related expenses such as bonuses, pension expenses, and workers' compensation insurance as labor and included these amounts in the MLE denominator for purposes of calculating the surrogate financial ratios. For Nizamuddin, Jayaraja, and Swaran, we have treated the "salaries" as SG&A expenses rather than labor because the labor wages are specifically listed on a different line-item and compensation for non-labor employees does not appear to be captured on a line-item other than "salaries".

In its company brochure, Fusion reports that it is a manufacturer of furniture products. While the company's income statement identifies certain direct material purchases, it does not separately identify any direct labor expenses. We have determined that, because Fusion is a furniture manufacturer and therefore can be expected to incur direct labor expenses, such direct labor expenses would be captured in the "jobwork expense" account. Similarly, Raghbir recognizes "jobwork purchases" in its income statement. Raghbir also presents an extensive schedule of labor contractors. Based on the relative size of the "jobwork purchase" expense account and Raghbir's outstanding liabilities to labor contractors in the balance sheet, we presume that the "jobwork purchase" expense account captures the company's labor contracting expense. Accordingly, we have reclassified

"jobwork" expenses for Fusion and Raghbir from factory overhead to the MLE denominator for purposes of calculating the surrogate financial ratios.

For those surrogate companies which have separately reported work-in-process ("WIP") inventory, we have included the change in WIP inventory in the MLE denominator for purposes of calculating the surrogate financial ratios. The change in WIP inventory is included in order to capture all direct expenses comprising the surrogate company's cost of manufacturing during its fiscal year in the MLE denominator. Similarly, because the MLE denominator models the cost of manufacturing rather than the cost of goods sold, we have excluded the change in finished-goods inventory from our surrogate-ratio calculations where applicable.

Where applicable, we have also offset the surrogate companies' SG&A expenses with short-term interest income and foreign exchange gains or losses, according to our standard methodology of including these items as offsets to the cost of production. See Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order in Part; Certain Preserved Mushrooms from Indonesia, 68 FR 11051, 11054 (March 7, 2003). For IFP, however, the Department could not disaggregate short-term and long-term interest income accurately. The Petitioners' proposed methodology for allocating interest income based on the balance of IFP's short-term and long-term accounts at the end of its fiscal year may not reflect the accurate relative balances of these accounts throughout the year.

Evergreen's financial statements indicate at note 23 that it "outsources almost the entire production" of its leather goods and as such "there is no installed capacity." Accordingly, in our

calculation of Evergreen's factory overhead ratio, we have excluded identifiable manufacturing expenses related to the production of leather goods from the MLE denominator. Because Evergreen only produces furniture products, the reported overhead expenses should relate only to furniture production. Because the company's general and selling activities as well as its profit relate to both leather and furniture goods, however, we have included the identifiable manufacturing expenses related to the production of leather goods in the denominator of the SG&A ratio and the Profit ratio. See the Surrogate Ratio Memorandum for our calculations of the ratios we used for the final determination.

Comment 4: Tech Lane

The Petitioners argue that the Department should use partial facts available to calculate Tech Lane's dumping margin for the final determination. The Petitioners contend that the Department acted correctly in determining not to verify Tech Lane based on the fact that Tech Lane did not provide financial statements nor a sales reconciliation to the Department. The Petitioners state that, in a normal case, the decision not to verify a respondent would lead to the assignment of a dumping margin for that respondent based on adverse facts available, citing Final Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Wire Rods from India, 69 FR 29923 (May 26, 2004), and accompanying Issues and Decision Memorandum ("Stainless Steel Wire Rods from India"). The Petitioners argue, however, that this is not a normal case and the Department should apply partial adverse facts available to Tech Lane rather than total adverse facts available.

The Importer's Coalition argues that the Department should assign Tech Lane a dumping margin based on total adverse facts available. It states that the statute directs that the Department

"shall" use "facts otherwise available" when necessary information provided by the respondent cannot be verified, as is the case with Tech Lane.

The Importer's Coalition contends that the Department assisted Tech Lane substantially in assuring that its questionnaire responses could be verified. The Importer's Coalition states that tying submitted data to the respondents' internal accounting records is a fundamental element of verification and the Department reminded Tech Lane that it had committed to have financial statements prepared for verification. The Importer's Coalition argues that it is the respondent's responsibility to provide verifiable information to the Department and Tech Lane's failure to provide verifiable information merits the application of total adverse facts available.

Finally, the Importer's Coalition argues that the Department has determined previously that, where provided responses were substantially unverifiable and unreliable and the respondent failed to cooperate by not acting to the best of its ability to comply with requests under the review, an adverse inference is warranted in selecting facts otherwise available, citing Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 66 FR 31203 (June 11, 2001), and Final Result or Antidumping Duty Administrative Review: Natural Bristle Paintbrushes and Brush Heads from the PRC, 64 FR 27506 (May 20, 1999).

FBI argues that the Department must use facts available to calculate Tech Lane's dumping margin for the final determination. FBI states that the Department declined to verify Tech Lane's questionnaire responses because Tech Lane did not have financial statements to which to reconcile its sales figures and Tech Lane did not provide the Department with other acceptable means to verify its

responses despite numerous opportunities to do so.

FBI asserts that in past cases the Department has applied total adverse facts available where the Department was unable to verify the respondent's information because the respondent did not provide financial statements or other independent sources for reconciliation, citing Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan, 62 FR 51427 (October 1, 1997) ("Roofing Nails"). FBI asserts further that the Department has applied total adverse facts available to a respondent that failed to provide audited financial statements or other independent financial records because the respondent "had sufficient notice of the Department's requirements for verifiable submissions and ample opportunity to provide information that is amenable to verification" and, nevertheless "continued to provide unverifiable data," citing Final Results of Antidumping Duty Administrative Review: Chrome-Plated Lug Nuts From Taiwan, 64 FR 17314, 17316 (April 9, 1999) ("Chrome-Plated Lug Nuts from Taiwan 1999"). FBI argues that the CIT upheld the Department's determination in that case and that, in the current investigation, the Department has no basis for departing from its past practice as illustrated by these cases, citing Gourmet Equipment (Taiwan) Corp. v. United States, 2000 WL 977369 (CIT 2000) ("Gourmet Equipment").

Finally, FBI asserts that section 776(a)(1) of the Act provides that the Department "shall" use "facts otherwise available" when necessary information is not on the record, the information provided by the respondent "cannot be verified," and the Department has given the respondent "an opportunity to remedy or explain the deficiency" and finds that the result is "not satisfactory." FBI argues that, because the Department has no verified information with which to calculate a dumping margin for Tech

Lane and because Tech Lane had ample opportunity to remedy the deficiency of its responses, pursuant to the Act, the Department must apply total facts available to Tech Lane. FBI contends that, even if the Department has discretion not to apply total facts available, it should do so because Tech Lane's information is unverified and potentially incorrect. Further, FBI asserts, using Tech Lane's information as a basis for the calculation of the all-others rate would contravene the Department's obligation to calculate dumping rates as accurately as possible. Finally, FBI asserts that section 735(c)(5)(A) of the Act provides that the Department must exclude from the calculation of the all-others rate any margins determined entirely on the basis of facts available.

Tech Lane argues that the Department's decision not to verify Tech Lane violates the antidumping statute and Department precedent. Tech Lane argues that it does not maintain the type of financial statements the Department claimed is necessary in order for the Department to verify a respondent and that Tech Lane notified the Department of this fact in its March 1, 2004, Section A submission and several times thereafter. Tech Lane asserts that it made available alternate means for the Department to reconcile Tech Lane's sales data and verify Tech Lane's questionnaire responses.

Tech Lane argues that, despite its efforts, the Department determined not to verify Tech Lane because "Tech Lane did not provide financial statements covering reported subject merchandise and because Tech Lane did not provide the Department with a reconciliation of its sales made during the {POI} to its financial statements," citing Amendment 1. Tech Lane contends that this is the first time that the Department has held that reconciliation and verification under the statute can only be done with a financial statement.

Tech Lane states that section 782(i)(1) of the Act requires that the Department verify all information used in its final determination in an investigation and that the Department's regulations at 19 CFR 351.307(b)(1)(i) also provide that the Department "will verify factual information upon which the Secretary relies in . . . a final determination in an . . . antidumping investigation." Tech Lane states that the Department's cover letter accompanying the July 21, 2004, verification outline emphasizes that the Act requires the Department to verify all U.S. sales and factors-of-production data used in the final determination. Tech Lane argues that, despite these requirements to verify and its cooperation, the Department refused to verify Tech Lane.

Tech Lane states that the Federal Circuit has held that it is unreasonable for the Department to require respondents to keep their financial records in a particular form for purposes of an antidumping investigation, citing Atlantic Sugar, Ltd. v. United States, 744 F.2d 1556, 1561 (Fed. Cir. 1984) ("Atlantic Sugar"). Additionally, Tech Lane states that, in Borden, Inc. v. United States, 4 F. Supp.2d. 1221, 1246-47 (CIT 1998) ("Borden"), the CIT stated that the Department cannot require a party to use a different accounting system nor to supply information that it does not have.

Tech Lane argues that the Department's practice does not require that respondents have financial statements and that, where respondents have not had financial statements, the Department has recognized that it must use other reasonable means to verify that respondent. It refers to Final Results of Antidumping Duty Administrative Review: Manganese Metal from the People's Republic of China, 64 FR 49447, 49451 (September 13, 1999) ("Manganese Metal from the PRC 1999"), as such an example. Tech Lane contends that in Manganese Metal from the PRC 1999 the Department

conducted a sales verification using the respondent's commercial invoices, in Final Results of Antidumping Duty Administrative Review and New Shipper Review: Certain Steel Concrete Reinforcing Bars From Turkey, 64 FR 49159 (September 10, 1999) ("Reinforcing Bars from Turkey") the Department verified a respondent based on bank statements, and the Department verified companies that lacked financial statements and tax returns for Final Results of New Shipper Countervailing Duty Reviews: Certain In-Shell Pistachios and Certain Roasted In-Shell Pistachios from the Islamic Republic of Iran, 68 FR 4997, 4999 (January 31, 2004), and accompanying Issues and Decision. Finally, Tech Lane argues that the fact that the Department's Antidumping Manual at http://www.ia.ita.doc.gov/admanual/index.html states that completeness tests are "typically" done by worksheets and ledgers to financial statements indicates that there are other acceptable ways to verify that do not include financial statements. Tech Lane asserts the Antidumping Manual indicates that this is particularly relevant at NME verifications where flexibility in verification is especially important. Tech Lane argues that the fact that the Antidumping Manual gives direction on carrying out a verification where the respondent keeps two sets of books is further indication that financial statements are not essential to the verification.

Tech Lane argues that the Department was obligated by law to base its verification on Tech Lane's records such as bank accounts, bank payment records, purchase and cash records, payment certificate journal entries, customs records, bills of materials, withdrawals from inventory, warehouse entries, or internal consistency checks of Tech Lane's records. Additionally, Tech Lane states that the Department granted it a July 16, 2004, extension request in which Tech Lane stated that it does not

have financial statements. Finally, Tech Lane states that, knowing that Tech Lane had no financial statements, the Petitioners nevertheless urged the Department to continue investigating Tech Lane, encouraged the participation of Tech Lane, and stated their position that Tech Lane was cooperative and that the Department should have verified Tech Lane.

Further, Tech Lane argues that the imposition of adverse facts available would violate the antidumping statute. Tech Lane states that it acted to the best of its ability in complying with the Department in this investigation, that it supplied all information the Department requested, that it suggested alternatives to normal reconciliation techniques, and that it was fully prepared for verification.

Tech Lane states that section 776(e) of the Act permits the Department to use adverse facts available against a party only if that party did not act to the best of its ability to comply with the Department's requests for information. Tech Lane contends that the Federal Circuit has held that the "best of its ability" standard is assessed based on whether the respondent has "put forth its maximum effort to provide full and complete answers to all inquiries" and full cooperation, citing Nippon Steel Corp. v. United States, 337 F.3d 1373 at 1381, 1383 (Fed. Cir. 2003) ("Nippon Steel"), and AK Steel Corp. v. United States, 2004 CIT LEXIS 107, 17- 21, Slip Op. 04-108 (August 25, 2004). Tech Lane argues that adverse facts available is not applicable where the information requested of a respondent is not available and not maintained in the ordinary course of business. It cites American Silicon Technologies v. United States, 110 F. Supp.2d at 1003-04 (CIT 2000), Olympic Adhesives Inc. vs. United States, 899 F. 2d 1565, 1573 (Fed. Cir. 1990), and United States - Antidumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, para. 101 (July 24,

2001).

Tech Lane argues that even in situations where a respondent's financial statements were missing pertinent transactions and the respondent did not offer to reconcile to independent records the Department has determined to assign neutral facts available to the respondent, citing Preliminary Results of Antidumping Administrative Review and Termination in Part: Chrome Plated Lug Nuts from Taiwan, 61 FR at 35725 (July 8, 1996) ("Chrome Plated Lug Nuts from Taiwan 1996").

Tech Lane argues that, in applying neutral facts available to calculate its margin, the Department should use its latest submitted databases and the latest surrogate values it selects for all respondents. Tech Lane contends that this is the only way that the Department can meet the statutory mandates of calculating the margin accurately and treating all respondents equally. Tech Lane states that the updated databases it submitted should be used because they reflect changes to correct issues for which the Department made adverse inferences in the Preliminary Determination, they include information for a major by-product adjustment, and they correct errors that the company discovered when preparing for verification.

Furthermore, Tech Lane argues that statutory requirements dictate that the Department must use verified information in the calculation of all respondents' final dumping margins and, if the Department does not calculate a rate for Tech Lane based on its own data, then the Department must assign Tech Lane the separate rate assigned to non-mandatory respondents in this investigation. Also, Tech Lane argues that it qualifies for the Section A rate because it is a wholly foreign-owned entity and the Department has already found that Tech Lane is separate from the PRC-wide entity. In addition,

Tech Lane argues that the Department assigned the all-others rate to a cooperative respondent under the same circumstances in Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 61 FR 35188, 35189 (July 5, 1996) ("Carbon Steel Pipe from Turkey 1996").

Finally, Tech Lane argues that, in other cases where a respondent was cooperative but a margin could not be calculated, the Department delayed a determination of the amount of dumping by that respondent until the annual administrative review, citing Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan, 54 FR 42543, 42550 (October 17, 1989) ("Telephone Systems from Taiwan"). Tech Lane claims that the courts have approved this practice, citing Auto Telecom Co., Ltd., et. al. v. United States, 765 F. Supp. 1094 (CIT 1991), as an example. Tech Lane argues that there is merit for doing this in the present investigation because Tech Lane cooperated fully and could have been verified.

The Petitioners argue that Tech Lane did not act to the best of its ability to cooperate in this investigation and that the Department was correct to cancel the verification of Tech Lane. The Petitioners assert that the Department is not required to base Tech Lane's final margin on total adverse facts available but has the discretion to base the final margin on partial adverse facts available.

The Petitioners argue that from the beginning of this investigation Tech Lane was obtuse, non-responsive and affirmatively misleading regarding its sales process and the entities involved in the sales process. The Petitioners contend that Tech Lane misled the Department deliberately as to its accounting of sales, how sales revenue flows through the company, and how the revenue was reflected

on its financial statements, tax returns, or other records. The Petitioners argue that, despite the Department's deficiency questions which attempted to clarify Tech Lane's contradictory responses, it was not until Tech Lane's July 16, 2004, questionnaire response, thirteen days before the scheduled start of verification, that Tech Lane disclosed that it did not have financial statements that covered all sales of subject merchandise.

The Petitioners state that Tech Lane's claim that it informed the Department that it did not have comprehensive financial statements "at the earliest possible date" is untrue. The Petitioners contend that Tech Lane's initial March 1, 2004, Section A response stated only that the Tech Lane China companies had no financial statements and that in its subsequent responses Tech Lane gave the impression intentionally that the financial statements of its affiliates accounted for all of the sales of subject merchandise. The Petitioners argue that, through its experienced counsel, Tech Lane knew that it was required to reconcile its submitted data.

The Petitioners argue that, if Tech Lane had informed the Department from the beginning of its inability to reconcile its U.S. sales data, an alternative reconciliation methodology might have been possible. The Petitioners contend that, by waiting until July 16, 2004, to notify the Department that it had no financial statements to reconcile to and by presenting the Department with a 111-page document purported to be a reconciliation to bank statements on July 22, 2004, one week before the start of verification, Tech Lane put the Department in an untenable situation. The Petitioners refers to Chrome-Plated Lug Nuts from Taiwan 1999, where, in a similar though less egregious situation, the Department stated that,

> {d}espite the admitted discrepancies between its financial statements and its questionnaire response, {the respondent} argues that its questionnaire response could be verified using other information, such as bank records. In attempting to demonstrate this, however, it became clear that the records that it was attempting to rely on could not adequately substantiate its response without requiring the Department essentially to perform a complete audit of {respondent's} financial records. This is not the purpose of verification, which is fundamentally a spot check of selected data - not a detailed examination of a respondent's entire accounting system. We believe that {respondent} has had sufficient notice of the Department's requirements for verifiable submissions and ample opportunity to provide information that is amenable to verification. Yet {respondent} has continued to provide unverifiable data. Therefore, we determine that {respondent} has failed to cooperate by not acting to the best of its ability, and thus we are using an adverse inference in our application of facts available.

The Petitioners assert that the court affirmed this approach in Gourmet Equipment and the Department has taken the same approach in several decisions. The Petitioners argue that the Department's established practice is that a demonstrated inability to reconcile U.S. sales prior to verification will result in the cancellation of verification. The Petitioners assert that, based on the facts of this investigation, section 776(a) of the Act authorizes the Department to calculate Tech Lane's dumping margin for the final determination based on adverse facts available.

The Petitioners argue that, although the statute authorizes the Department to calculate Tech Lane's final dumping margin based on total adverse facts available, it does not require it. Citing Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada, 64 FR 56739, 56742-44 (October 21, 1999) ("Live Cattle"), the Petitioners argue that the Department has discretion to apply partial adverse facts available to calculate a final margin for an uncooperative respondent where the removal of the respondent's dumping margin from the calculation of the all-other rate would penalize the domestic industry and reward the separate-rate companies that constitute a majority of the

imports during the POI, the respondent's failure to cooperate was isolated to the reporting of U.S. sales, and the Petitioners have waived verification of the respondent's factors-of-production data. Therefore, the Petitioners argue, the Department should calculate Tech Lane's dumping margin for the final using partial adverse facts available.

Tech Lane argues that the Petitioners' and other respondents' claims for adverse facts available in calculating its final dumping margin are contrary to the law and to the facts. Tech Lane contends that the Department did not verify Tech Lane even though Tech Lane stated in its initial questionnaire response that it did not have pertinent financial statements and the Department required Tech Lane to participate in the investigation. Tech Lane contends that there were alternative means to reconcile Tech Lane's data and the Department's decision not to verify Tech Lane contradicted Department practice. Tech Lane argues further that it acted to the best of its ability and, therefore, the statute does not permit the use of adverse facts available.

Tech Lane argues that the cases that the Petitioners and other parties cite as support for the contention that the Department should apply adverse facts available do not support the Petitioners' or interested parties' position.

Tech Lane argues that Gourmet Equipment proves that adverse inferences are not permissible. Tech Lane asserts that in Gourmet Equipment the Department first applied neutral facts available against the respondent whose submissions were unreconcilable to its financial statements. Tech Lane contends that it was only after the respondent did not improve its accounting system over the next several annual administrative reviews that the Department applied adverse facts available against the respondent. Tech Lane argues that, because this is Tech Lane's first investigation, adverse facts

available is not permissible.

Tech Lane argues that the other parties also rely improperly on Roofing Nails and contends that in Roofing Nails the Department used adverse inferences in the selection of facts available because the respondent never told the Department that it was unable to provide a reliable independent source to substantiate the data contained in its unaudited financial statements. Tech Lane contends that this differs from its situation because it informed the Department that it had neither financial statements nor tax returns and because Tech Lane offered to reconcile its information to independent records.

Tech Lane contends that Stainless Steel Wire Rods from India is inapposite because the respondents in that case did not provide reconciliations to known financial statements, while Tech Lane has no known financial statements. Likewise, Tech Lane argues, Live Cattle is also inapposite because the respondents in Live Cattle refused to be verified, while Tech Lane wanted to be verified.

Finally, Tech Lane argues that certain importers misstate the record in claiming that the Department had reminded Tech Lane that it had committed to have financial statements prepared for verification. Tech Lane contends that it never made that statement.

Department's Position: Based on the record evidence and pursuant to the statutory requirements of the Act, the Department has determined that Tech Lane impeded this investigation, provided unverifiable information, and did not cooperate to the best of its ability to comply with the Department's requests for information. Therefore, the application of adverse facts available to Tech Lane is proper in this investigation.

Tech Lane failed to provide the Department with an adequate reconciliation of its U.S. sales data prior to verification. The reconciliation is required of respondents to determine whether they have

reported all appropriate sales of the subject merchandise. Such a reconciliation serves as a "starting point" for the Department at verification. See Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico, 64 FR 77, 78 (January 4, 1999). The goal of verification is to confirm the accuracy and completeness of the data provided in a company's questionnaire responses and this data serves as a basis for the Department to ascertain if sales were reported accurately. See 19 CFR 351.307(d).

Section 776(a)(2)(C) of the Act provides that, subject to section 782(d) of the Act, the Department shall use facts otherwise available when a respondent significantly impedes a proceeding under this title. Tech Lane's failure to provide an adequate sales reconciliation is an incomplete questionnaire response that significantly impeded this proceeding. See Final Results and Partial Rescission of Antidumping Duty Administrative Review: Heavy Forged Hand Tools from the People's Republic of China, 65 FR 43290 (July 13, 2000) ("Hand Tools from the PRC 2000"), and accompanying Issues and Decision Memorandum (the Department used total facts available because the respondent failed to provide the essential reconciliation chart requested by the Department necessary to test the completeness of questionnaire response and thus failed verification).

Section 776(a)(2)(D) of the Act provides that, if an interested party provides information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination. Without the requested sales-reconciliation information, the Department is unable to verify the information Tech Lane submitted. The Department has canceled verification in several other cases because of incomplete questionnaire responses and specifically because the respondents failed to

provide requested reconciliations. See Gourmet Equipment, sustaining Chrome-Plated Lug Nuts from Taiwan 1999 (the Court affirmed the Department's refusal to conduct verification because the respondent did not demonstrate that the information which it placed on the record accurately reflected all relevant sales made during the POR where independently prepared audited financial statements were available to the respondent but it did not provide them); Final Determination of Sales at Less Than Fair Value: Certain Hot-rolled Carbon Steel Flat Products from Taiwan, 66 FR 49618, 49620-21 (September 28, 2001) ("HR from Taiwan") (the Department canceled both sales and cost verification because the respondent failed to provide explanation and documentation for all its expenses and sales, and it provided incomplete, deficient, and inconsistent affiliated-party sales information); Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164, 73165-66 (December 29, 1999) ("CTL Plate from Indonesia") (the Department canceled verification and applied adverse facts available because the respondent did not address the sales-related and cost-related questions adequately).

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

Tech Lane did not inform the Department until July 16, 2004, only thirteen days before the

scheduled verification, that it did not have financial statements that covered sales of subject merchandise. See Tech Lane Fourth Supplemental Response at 1. On the same date, Tech Lane stated for the first time, without having explained why or suggesting alternatives, that it was reconciling to bank statements and receipts. Further, Tech Lane submitted this "reconciliation" to the Department on July 22, 2004, just seven days before the start of verification, without any explanation of the methodology it used to compile it. Conducting verification based on this reconciliation would have required the Department to perform a complete audit of Tech Lane's financial records, which is not the purpose of verification. See Chrome-Plated Lug Nuts from Taiwan, 64 FR at 17316. Tech Lane had every opportunity to notify the Department promptly that it did not have the requested financial statements. Although aware all along of these deficiencies, Tech Lane did not notify the Department promptly that it did not have the requested information and such a failure rendered the Department unable to modify the requirement for a reconciliation.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency and give the respondent an opportunity to remedy or explain the deficiency. The Department requested that Tech Lane provide financial statements on three occasions: the original Section A questionnaire, the first supplemental questionnaire, and the fourth supplemental questionnaire. In responses to the first two requests, Tech Lane maintained consistently that financial statements covering the POI were forthcoming but never mentioned that they did not cover subject merchandise. See Tech Lane March 1, 2004, Section A response at 16 and Tech Lane April 15, 2004, first supplemental response at 20. Furthermore, the Department requested a sales reconciliation twice, first in the original March 1, 2004, Section A questionnaire and again in the

fourth supplemental questionnaire. It was not until July 16, 2004, that Tech Lane attempted for the first time to explain that it had no financial statements with which to reconcile its information.

Section 782(e) of the Act provides that, notwithstanding the Department's determination that the submitted information is deficient under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

The Department has determined that Tech Lane has not provided information that can be verified due to the fact that Tech Lane has provided no adequate sales reconciliation, that the information it provided cannot serve as a reliable basis for reaching a determination because Tech Lane has provided no comprehensive documents that cover all of its subject merchandise, that Tech Lane did not demonstrate that it acted to the best of its ability because it withheld relevant information from the Department, and that the information provided cannot be used without undue difficulty because Tech Lane's purported sales reconciliation was provided late with no explanation of the methodology it used to create it. Therefore, the Department has not considered Tech Lane's submitted information.

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

Department. We have determined that Tech Lane has not acted to the best of its ability to comply with our requests for information in this investigation.

The Federal Circuit has held that the "best of its ability" standard "requires the respondent to do the maximum it is able to do." See Nippon Steel at 1382. Also, the court stated, that to find that a respondent has not acted to the best of its ability, the Department needs to make two showings: (1) an objective showing that "a reasonable and responsible importer would have known that the requested information was required to be kept and maintained," and (2) "a subjective showing that the respondent not only has failed to promptly produce the requested information" but that the failure is due to either a failure to maintain required records or a failure to put forth the maximum effort to obtain the information requested. See Nippon Steel at 1382-83. The court clarified further that "{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made." See Nippon Steel at 1383.

The Department has determined that Tech Lane did not act to the best of its ability because it did not notify the Department in a timely manner that it had no financial statements to which to reconcile its sales of subject merchandise. Not only did Tech Lane not do the maximum it was able to do, it did not do even the minimum, i.e., state clearly and early enough in this investigation for the Department take it into consideration that it had no financial statements that covered subject merchandise. The record shows that Tech Lane provided incomplete answers in its submissions, stating that its Taiwanese affiliates had "relevant financial statements" and that the Taiwanese affiliates "deal with all relevant financial transactions." See March 1, 2004, Section A response at 15-17. The Department maintains

that Tech Lane should have known that it had no usable financial statements, it did know that it had no usable financial statements but made absolutely no effort to notify the Department, and it was fully reasonable for the Department to expect that Tech Lane would be much more forthcoming with this information. See Neuweg Fertigung GmbH v. United States, 797 F.Supp. 1020, 1024 (CIT 1992) ("{u}ltimately it is the respondent's responsibility to make sure that {Commerce} understands, and correctly uses, any information provided by the respondent.").

Tech Lane claims that it notified the Department that it did not have financial statements that accounted for subject merchandise at the earliest possible date and repeatedly afterwards, and it supplies a list of citations to its submissions as evidence. See Tech Lane Brief, dated October 6, 2004,, at 4, fn 3. As an initial matter, the Department observes that Tech Lane refers specifically to the "Tech Lane China companies" and claims that "information for the questionnaire response is appropriately from Tech Lane China." Tech Lane consists of six companies: two plants in the PRC, two companies in Hong Kong ("Tech Lane Hong Kong") and two companies in Taiwan ("Tech Lane Taiwan"), all of which are primarily owned and controlled by the same people and all of which interact to produce subject merchandise. Because all six entities work in affiliation to produce and sell subject merchandise, information for the questionnaire response is appropriately from all of the entities.

The citations to submissions where Tech Lane stated that the plants in the PRC or the Tech Lane HK offices had no financial statements are irrelevant because from the very beginning of this investigation Tech Lane represented the Tech Lane Taiwan companies as having the "relevant financial statements." The citations purporting to show that Tech Lane was forthcoming at the earliest possible

date regarding the Tech Lane Taiwan companies do not, in fact, demonstrate this point.[3] In the original March 1, 2004, Section A response, when first asked about Tech Lane's accounting and financial practices, Tech Lane commenced by addressing the Tech Lane Taiwan companies. Tech Lane's response to this question painted a picture of the Taiwan companies controlling and accounting for all financial transactions. Tech Lane stated that "{t}he Tech Lane Taiwan companies pay money for the

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[3] "{S}ales and production of merchandise made by the Tech Lane China plants are not included in the financial statements of the Taiwan companies. See, e.g., Tech Lane's July 27, 2004 Letter at p. 2." See Tech Lane Brief, at 4, fn 3 (emphasis added). Tech Lane submitted this letter to the Department only two days before scheduled verification and, therefore, it could not serve as notification to the Department that the Tech Lane Taiwan financial statements do not cover subject merchandise.

"As Tech Lane noted from the outset, the Tech Lane Taiwan companies may own the Tech Lane China plants, but they are not involved in sales. See, e.g., Tech Lane's March 1, 2004, Section A submission at 4-5 and 13." See Tech Lane Brief, at 4, fn 3. In actuality, however, these citations do not state that Tech Lane Taiwan companies are not involved in sales nor do they indicate that Tech Lane Taiwan companies' financial statements do not cover subject merchandise.

"In any event, as also noted from the outset, even the Tech Lane Taiwan financial statements are not audited and only consist of a balance sheet and income statement (single pages) without any notes. See, e.g., Exhibit 15 of Tech Lane's March 1, 2004, Section A response; Tech Lane April 15, 2004 submission at 20." See Tech Lane Brief, at 4, fn 3. Tech Lane's March 1, 2004, Section A response at Exhibit 15 merely submitted financial statements with absolutely no explanation. Tech Lane's April 15, 2004, first Section A supplemental response at 20 states that the financial statements are not audited but does not state that they do not cover subject merchandise.

"At the time Tech Lane submitted its initial Section C and D response, Tech Lane yet again emphasized that:

> Due to lack of {accounting} information, we find it impossible to actually reconcile the input of all factors of production during the…POI and the actual output during the same period {and so we offered some reasonable assumptions to do so based on the production cycle} in the way possible from Tech Lane China Companies' records as to when product is withdrawn from warehouse, records that Tech Lane does have.

Tech Lane March 29, 2004 original Section C& D, answer to question D.1.B and at D-12 & D-29." See Tech Lane Brief, at 4, fn 3.

In this one-sentence, six-line "quotation" Tech Lane has cobbled together eight sentences from three paragraphs covering two pages of a response dealing with the reporting period for factors of production, leaving out parts without mentioning it, and adding extra language as Tech Lane sees fit to come up with an incomprehnsible statement that still does not indicate in any way that the Tech Lane Taiwan companies do not have financial statements that cover subject merchandise.

"Tech Lane June 14, 2004 submission at 2." In answer to a question regarding how Tech Lane accounts for returns, Tech Lane answers that it does not keep accounting records of this and that it does not have a general accounting ledger or sales ledger. Tech Lane had been asserting all along, however, that the Tech Lane China companies and the Tech Lane HK companies had no accounting documents. It did not specify in this answer that none of the Tech Lane entities had accounting records that covered subject merchandise.

purchase of raw materials, and transfer the money to Tech Lane HK companies for payment of processing fees" to the Tech Lane China companies and others. It also stated that "{o}ur two Taiwan companies follow the GAAP in our company's accounting and financial reporting practices .... We prepare our annual financial report based on our accounting books at the end of the accounting period. Included in Exhibit 15 are the financial statements of the two Taiwan companies for the fiscal year 2002. The financial statements for 2003 will not be completed until about May 2004, at which point they will be provided." Also it stated that "Kee Jia TW and Ding Jia TW {the Tech Lane Taiwan companies} directly deals {sic}with all relevant financial transactions ..." In answer to request 5(b) of the original March 1, 2004, Section A questionnaire to provide financial documents, Tech Lane answered: "{a}chart of accounts for the Tech Lane Taiwan companies is attached as Exhibit 14. The relevant financial statements available at the Tech Lane companies are attached collectively as Exhibit 15." The "relevant financial statements" attached to Exhibit 15 were those of the Tech Lane Taiwan companies. See March 1, 2004, Section A response at 15-17.

Tech Lane's characterization of the Department's position that "verification under the statute can only be done via a financial statement" is incorrect. The decision not to verify Tech Lane because Tech Lane had no financial statements with which to reconcile its sales was made necessary because Tech Lane did not notify the Department of these facts until it was far too late in the proceeding (thirteen days before verification) for the Department to assess, analyze, and question Tech Lane regarding its purported reconciliation and its methodology. Furthermore, by its own admission and contrary to the cases Tech Lane cites, Tech Lane had no verifiable accounting or tax documents at all that completely covered subject merchandise. See July 27, 2004, Letter to the Department from Tech

Lane. By presenting the Department on July 22, 2004, with a "reconciliation" consisting of a 111-page document with absolutely no explanation of the methodology it used in compiling it, just one week before the scheduled start of verification and four days before the verification team was to depart, Tech Lane left the Department with no alternative but to cancel the verification. See Chrome-Plated Lug Nuts from Taiwan 1999, at 17316.

The cases which Tech Lane cites as precedent for not requiring a financial statement for purposes of verification do not address the facts and circumstances of this case. Tech Lane cites Atlantic Sugar as precedent that the Federal Circuit "has held that requiring respondents to keep their financial records in a particular form 'inflate{s} out of all proportion the importance' of the antidumping statute; it is unreasonable to 'expect that business people and corporate accounts would keep their books with an eye to an obscure and wholly arbitrary statutory {provision}, which a relatively small Government agency might declare for the purposes of an antidumping investigation.'" Tech Lane Brief at 6 (quoting Atlantic Sugar at 1561). The issue that Atlantic Sugar was addressing was the reasonableness of requiring a large company to keep its accounting data on a "plant-by-plant basis," specifically, on a "wholly arbitrary statutory geographic region (emphasis added)." See Atlantic Sugar at 1561. Tech Lane's substitution of "provision" for "geographic region" is a material misrepresentation of the court's position. Nowhere does the court imply that it is unreasonable for the Department to expect a company to keep records of sales of its subject merchandise.

Tech Lane cites Borden as precedent for the position that the CIT has "opined that the Department may not require a party to change its accounting system or provide information that it simply does not have." See Borden, at 1246-47. In that case the respondent did not initially have a

cost accounting system from which to make a reconciliation of costs to financial statements for purposes of a cost-of-production investigation, and the respondent did not submit the reconciliation that it came up with until six days before the scheduled start of verification. Indeed, the CIT determined that the Department acted correctly in cancelling the scheduled verification of the respondent based on "genuine concerns about the lack of complete data, particularly the reconciliation statement, and genuine fears that it could not prepare for a thorough verification because of the continual changes to {the respondent's} data." See Borden, at 1243 and 1246. The issue before the court was not whether the Department should have attempted to verify the respondent but whether the respondent had acted the best of its ability to supply the information required by the Department. Having observed that the respondent notified the Department two days after the initiation of the cost-of-production investigation for which the reconciliation was required by stating clearly that it had "no formal cost accounting system that tracks costs as required by the Department," the court determined that the respondent was unable, rather than unwilling, to submit the required information. See Borden, at 1243, 1246-47. That case is distinguishable from the present investigation because, unlike Tech Lane, the respondent in Borden notified the Department clearly and promptly of the deficiency.

Tech Lane cites Industrial Quimica del Nalon, S.A. v. United States,15 CIT 240, 244 (CIT 1991), as precedent that the Department must give a respondent " the opportunity at verification to support its claim by any means possible." This case dealt merely with evidence of a "technical services adjustment" where the Department insisted on written evidence in a situation where the court found it was reasonable that such evidence did not exist. Industrial Quimica at 244. This is distinguishable from the requirement for a sales reconciliation, which is a fundamental requirement for any verification. See

Final Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Wire Rods From India, 68 FR 26288 (May 15, 2003) ("Stainless Steel Wire Rods from India 2003").

Tech Lane's reliance on Manganese Metal from the PRC 1999[4] and Reinforcing Bars From Turkey as precedent that the Department will use other means besides financial statements for verification is misplaced because in both of these cases the Department used other means only to corroborate the respondent's accounting system or financial statements, not in lieu of the financial statements. See Manganese Metal from the PRC 1999, at 49451; see Tech Lane's Brief, Exhibit 2, Memorandum to Louis Apple From Irine Itkin and Sergio Gonzalez: Verification of the Sales Questionnaire Response of Icdas Celik Enerji Tersane Ulasim Sanavi A.S. in the Antidumping Duty New Shipper Review on Steel Concrete Reinforcing Bars from Turkey Report (March 31, 1999) at page 2. Similarly, in Roofing Nails the Department attempted to use other sources, in that case tax returns, to substantiate unaudited financial statements. When it was unable to do this, the Department determined ultimately that, because the respondent had not notified the Department promptly that it had no reliable source to substantiate its financial statements, the application of an adverse inference was warranted. See Roofing Nails, 62 FR at 51427-28. This is precisely the situation which Tech Lane has created in this investigation.

The Department will use other means such as tax returns to reconcile sales when it is proven to be reliable, usable, and prepared for purposes independent of the antidumping proceeding. See

[4]Once again, Tech Lane materially misrepresents and misquotes the authority upon which it relies. Not only did the Department not stress that it "must" use other reasonable methods of verifying the respondent's data" when it lacks financial statements, it did not even say it. The correct quote is that the Department said it "attempts" to use other reasonable methods of verifying. See Manganese Metal from the PRC, at 49451.

Gourmet Equipment, at 2-3. None of the proposals of Tech Lane meet this dual requirement because they were either prepared for this investigation or were proposed to the Department at such a late date that the Department could not analyze them properly before verification.[5]

The Department finds Tech Lane's argument that it acted to the best of its ability to comply with the Department's requests for information unconvincing. As stated above, the Department has determined that Tech Lane provided half-truths, incomplete and misleading answers to the Department's questionnaires, and only provided relevant information when it was far too late in the investigation and far too close to verification for the Department to consider properly. Furthermore, the untimely provided information was information of which Tech Lane should have been aware, of which the record shows that Tech Lane was in fact aware, and regarding which it was reasonable for the Department to expect that Tech Lane would have been forthcoming in its responses. See, e.g., Nippon Steel at 1382-83.

In the Preliminary Determination, the Department granted Tech Lane a separate rate based on the claim in its March 1, 2004, Section A questionnaire response that it is a wholly market-economy-owned entity. Tech Lane's continued misrepresentations and contradictory statements to the Department throughout the course of this investigation have called into question the veracity of its responses as a whole. See Final Results and Partial Rescission of the New Shipper Review and Final

[5]Tech Lane's Brief at 11 provides citations to Tech Lane's submissions purporting to show where Tech Lane proposed alternate means to verify its responses. None of these citations supports this claim: "Tech Lane's July 16, 2004 4th Supplemental Response to Sections A, C, and D Questionnaire at Question 2; Tech Lane's July 22, 2004 and July 27, 2004 Letters." Both of these submissions were too late to be of use to the Department. "Tech Lane June 4, 2004 Submission, Supp 2 E1" deals with packing materials. Tech Lane May 21, 2004 submission, Exhibits SC 13 & 14" are lists of source documents and movement expenses, respectively. "Tech Lane March 29, 2004 submission at question I.B Section D at 2-3" is a description of how Tech Lane would like to report the use of wood withdrawn from its warehouse.

Results and Partial Rescission of the Third Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the PRC, 68 FR 41304, 41306, 41307 (July 11, 2003) ("Mushrooms from the PRC"). Because the Department was unable to verify Tech Lane's questionnaire responses, the Department has determined that Tech Lane does not qualify for a separate rate.

Furthermore, the cases cited by Tech Lane wherein the Department assigned a separate rate to mandatory respondents that were unable to supply the Department with information sufficient to calculate a margin are distinguishable on the basis that the respondents in those cases were found to be cooperative. See Carbon Steel Pipe From Turkey 1996, and Telephone Systems From Taiwan, at 42550.

Finally, because we have determined to apply adverse facts available to establish Tech Lane's dumping margin for the final determination, we have not used Tech Lane's latest submitted data or the latest surrogate values selected for mandatory respondents for the determination of Tech Lane's margin.

Comment 5: Tech Lane Rate/Section A Rate

In NME investigations, the Department may determine as many as three different types of rates. The mandatory respondents receive a rate based on the Department's analysis of their responses to all sections of the antidumping questionnaire. Companies which the Department does not select as mandatory respondents may file timely responses to Section A of the antidumping questionnaire and the Department examines whether the company is eligible for a rate separate from the rate the Department determines for the state-controlled NME-wide entity. See Bicycles from the PRC: Notice of Final Determination of Sales at Less Than Fair Value, 61 FR 19026, 19036 (April 30, 1996) ("Bicyles").

Finally, the Department establishes a rate for the companies which did not respond to any section of the questionnaire and which are presumed to be within the state-controlled NME-wide entity. The issues parties raised and which we address in this section of the memorandum concern our determination of the so-called Section A rate for non-mandatory respondents which demonstrated that their export activities are independent of government control. The Department's practice is to establish this Section A rate under section 735(c)(5) of the Act, which addresses the Department's calculation of the estimated all-others rate.

The Petitioners argue that the Department should use partial facts available to calculate Tech Lane's dumping margin for the final determination. The Petitioners contend that the Department acted correctly in determining not to verify Tech Lane based on the fact that Tech Lane did not provide financial statements nor a sales reconciliation to the Department. The Petitioners state that in a normal case the decision not to verify a respondent would lead to assigning a dumping margin for that respondent based on adverse facts available, citing, among others, Final Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Wire Rods from India, 69 FR 29923 (May 26, 2004), and accompanying Issues and Decision Memorandum ("Stainless Steel Wire Rods from India 2004"). The Petitioners contend, however, that in this particular case the use of total adverse facts available to determine the dumping margin for Tech Lane would be manifestly inequitable because it would remove Tech Lane's relatively high margin rate from the calculation of the Section A rate, thereby lowering the rate that will be applied to companies qualifying for the Section A rate and minimizing the relief provided to the domestic industry.

The Petitioners contend that a representative Section A rate is critical in this investigation

because the majority of subject imports will be subject to the Section A rate due to the highly fragmented nature of the Chinese wooden bedroom furniture industry and the fact that the Department was able to select only seven mandatory respondents accounting for only 40 percent of subject imports. The Petitioners argue that, because of Tech lane's relatively high preliminarily calculated dumping margin, the exclusion of Tech Lane's rate from the calculation of the Section A rate will result in a distorted Section A rate for the non-mandatory companies which have received a separate rate. The Petitioners argue that although the statute prohibits the Department from including a margin based on total adverse facts available of the "all-others" rate, the Department cannot permit the majority of subject importers to benefit from Tech Lane's failure to cooperate by excluding Tech Lane's rate from the calculation of the Section A rate.

The Petitioners argue that in Live Cattle the Department encountered a situation similar to this and concluded that it was not compelled to apply total adverse facts available to a respondent that did not participate in verification. The Petitioners argue that, in Live Cattle at 56743, the Department concluded that, where there is a highly fragmented industry where the mandatory respondents accounted for less that the majority of subject imports and where replacing a non-cooperative mandatory respondent's data with total adverse facts available could distort the all-others rate, "the agency has the discretion to deny a respondent's request to withdraw information where it is necessary to preserve the fundamental integrity of the process and the remedial purpose of the law."

The Petitioners acknowledge that the Department must rely on verified information in making the final determination but contend that the Department has held "the statute does not define what constitutes sufficient verification, "citing Live Cattle at 56744, referring to American Alloys, Inc. v.

United States, 30 F.3d 1469, 1475 (Fed. Cir. 1994) ("the statute gives the Department wide latitude in its verification procedures"). The Petitioners agree with the Department's position in Live Cattle at 56744, in which it stated that "...in limited circumstances, data not specifically verified may be used in an investigation to calculate a company's dumping margin." The Petitioners argue that these cases support the fact that the Department is not required to apply total adverse facts available when it does not conduct an on-site verification of a respondent.

The Petitioners argue that to determine Tech Lane's margin the Department should apply partial adverse facts available based on a total rejection of Tech Lane's unreconciled U.S. sales data and should instead assign to each reported sale the lowest price Tech Lane reported on piece-type basis. The Petitioners state that the Department could use Tech Lane's submitted factors-of-production data and that the Petitioners waive verification of that data, citing section 733(b)(2) of the Act, providing authority to calculate dumping margins based on unverified data if verification is waived by the petitioner and the respondent. Finally, the Petitioners argue that the Department should use the corrected surrogate values attached to the Petitioners' brief at attachment 1 in the calculation of Tech Lane's margin.

Tech Lane did not address this issue directly, but its affirmative arguments have some bearing on the issue. Tech Lane argues that the Department's refusal to verify Tech Lane's questionnaire responses violates the antidumping statute and judicial and Department precedent. Tech Lane contends that neither the statute nor the precedent limits verification to reconciliation based on financial statements, and it asserts that it provided multiple alternative means for the Department to reconcile the company's reported data and thus verify its questionnaire responses.

Tech Lane argues that, because the Department decided not to verify it, the Department must now rely on neutral facts otherwise available to determine Tech Lane's dumping margin because Tech Lane cooperated to the best of its ability and the Department may not reasonably apply an adverse inference against Tech Lane.

Tech Lane argues that, in selecting facts otherwise available to use in determining Tech Lane's dumping margin, the Department should rely on the most recent databases Tech Lane submitted and the latest surrogate values the Department applied to all respondents for the final determination. Alternatively, Tech Lane argues, the Department must give Tech Lane the separate rate assigned to other Section A only respondents.

The Importers' Coalition argues that the Department is bound by its obligation under the WTO, the statute, and its own regulations to exclude the rate assigned to Tech Lane from the calculation of the separate rate applicable to non-mandatory Section A respondents. Importers' Coalition argues that the separate rate for non-mandatory respondents must be based on the average of the estimated weighted-average dumping margins of exporters individually investigated, excluding any zero and de minimis margins and any margins determined using facts available.

The Importers' Coalition argues that the purpose of the antidumping law is to be remedial, not punitive, and that it would be inequitable to non-mandatory respondents if the Department includes an adverse facts-available rate in the calculation of the Section A rate, citing Nat'l. Knitwear & Sportswear Assoc. v. United States, 779 F.Supp. 1364, 1372-73 (CIT 1991) ("Knitwear").

Importers' Coalition contends that the Department has held consistently that the all-others rate cannot be tainted by non-cooperative respondents. It cites, among others, Preliminary Determination

of Sales at Less Than Fair Value: Honey from the People's Republic of China, 60 FR 14725, 14729-30 (March 20, 1995). Importers' Coalition states further that the Department is required to calculate the separate rate based on verified data from cooperative respondents and to exclude facts available, citing Yantai Oriental Juice Co. et al v. the United States, 2003 WL 22757936, (CIT 2003) ("Yantai II 2003"). Importers' Coalition argues that the Department may not include Tech Lane's margin in the calculation of the separate-rate margin regardless of whether the Department bases Tech Lane's margin on total adverse facts available or neutral facts available.

FBI argues that, because the Department has no verified information with which to calculate a dumping margin for Tech Lane and because Tech Lane had ample opportunity to remedy the deficiency of its responses, pursuant to the Act, the Department must apply total facts available to Tech Lane. FBI contends that, even if the Department has the discretion not to apply total facts available, it should do so because Tech Lane's information is unverified and potentially incorrect and using it as a basis for the calculation of the Section A rate would contravene the Department's obligation to calculate dumping rates as accurately as possible. Finally, FBI asserts that section 735(c)(5)(A) of the Act provides that the Department must exclude from the calculation of the Section A rate any margins determined entirely on the basis of facts available.

Tech Lane argues that the cases cited by the Petitioners and other interested parties are inapposite to the present investigation. Tech Lane argues that Gourmet Equipment supports its position because initially the Department applied neutral facts available and only applied adverse inferences after the respondent failed to develop a verifiable accounting system after several administrative reviews.

Tech Lane argues that Roofing Nails, 62 FR at 51427-28 is distinguishable because the

respondents in that case did not have independent records with which to reconcile its financial statements and the respondent did not notify the Department of this fact. Tech Lane claims that it offered to reconcile to independent records and that it notified the Department that it had neither financial statements nor tax returns. Tech Lane argues that Stainless Steel Rods from India is distinguishable because in that case the respondents had known financial statements but did not reconcile to them, while Tech Lane has no known financial statements. Last, Tech Lane argues that Live Cattle is distinguishable because in that case the respondent refused to participate in the investigation and the verification, demanded the withdrawal of its information from the record, and demanded to be assigned the adverse facts available while in the instant case Tech Lane wants to participate and be verified.

The Petitioners argue that Tech Lane did not act to the best of its ability to cooperate in this investigation and that the Department was correct to cancel the verification of Tech Lane. The Petitioners argue that the Department is not required, however, to base Tech Lane's final margin on total adverse facts available but has the discretion to base the final margin on partial adverse facts available. They cite Live Cattle, 64 FR at 56742-44. The Petitioners argue that the Department has discretion to apply partial adverse facts available to calculate a final margin for an uncooperative respondent where the removal of the respondent's dumping margin from the calculation of the all-others rate would penalize the domestic industry and reward the separate-rate companies that constitute a majority of the imports during the POI, the respondent's failure to cooperate was isolated to the reporting of U.S. sales, and the Petitioners have waived verification of the respondent's factors-of-production data. The Petitioners argue that the Department should calculate Tech Lane's dumping

margin for the final determination using partial adverse facts available and the methodology outlined in their case brief.

FBI argues that the use of partial adverse facts available to Tech Lane would destroy the integrity of the Section A rate. FBI asserts that the Department has an obligation to calculate an accurate dumping margin using accurate information. FBI argues that because Tech Lane did not provide verifiable information the Department must apply total adverse facts available to avoid calculating an inaccurate margin for Tech Lane and a consequentially inaccurate Section A rate for the non-mandatory respondents.

FBI contends that the Petitioners' argument that the Department should use partial facts available in calculating a margin for Tech Lane is a baseless results-oriented maneuver. FBI contends that Live Cattle, is not applicable to the facts of this investigation. FBI asserts that Live Cattle stands for the principle that parties to an antidumping proceeding may not manipulate procedures to produce the results they desire and the facts of Live Cattle are distinguishable from the instant investigation. FBI states that in Live Cattle the Department refused to allow the respondent to exclude verifiable information from the rate calculation because doing so would distort the all-others rate. FBI argues that the Petitioners's insistence in this case to use Tech Lane's unverified data to produce a higher Section A rate is not consistent with Live Cattle.

FBI argues further that the Petitioners' reliance on section 733(b)(2) of the Act as statutory authority to waive verification of Tech Lane's factors-of-production data is unfounded. FBI contends that section 733(b)(2) permits waiver of verification only prior to the preliminary decision and where all parties agree to the waiver.

FRA argues that the statute requires that the Department calculate dumping margins for mandatory respondents using verified data or, where that is not possible, the facts otherwise available. FRA argues that the statute also requires that the Department may not calculate the all-others rate using any margins that were determined by facts otherwise available. FRA contends that the CIT has approved the Department's application of the statute to exclude facts-available rates from the calculation of the all-others rate because the inclusion of such rates would unduly punish non-mandatory respondents, citing Knitwear. FRA states that it is the Department's practice to calculate the Section A rate in the same manner that it calculates the market-economy all-others rate. FRA argues that, pursuant to the statute, the Department should establish Tech Lane's dumping margin using total adverse facts available because it has not verified Tech Lane's data.

FRA argues that the Petitioners' proposed partial facts-available methodology for the calculation of the dumping margin for Tech Lane is contrary to law and is an attempt to manipulate the Section A rate. FRA refers to the Department's statements in Live Cattle that it must guard against manipulation of the all-others rate, particularly in cases where the all-others rate will affect a large percentage of subject imports. FRA also contends that section 773(b)(2) of the Act does not allow for the Petitioners' partial waiver of verification, requires that any waiver be prior to the preliminary determination, and requires waiver by the respondent as well as the petitioner.

FRA contends that the Petitioners' reliance on Live Cattle is misplaced because, in the present investigation, as opposed to the situation in Live Cattle, Tech Lane has requested to be verified and the proposed methodology would base calculation of the dumping margin on distortive partial facts available, not the respondent's submitted data.

FRA contends that, while the Department has discretion as to whether to apply neutral or adverse facts available, it must calculate the dumping margin for Tech Lane based on total facts available. FRA argues that even under the methodology proposed by the Petitioners the Department cannot use Tech Lane's margin in the calculation of the Section A rate because the Department has no reliable basis for determining how to weigh Tech Lane's margin as a proportion of the total due to the fact that the Department has found Tech Lane's sales data to be unreliable. FRA argues that it makes no sense for the Department to conclude that Tech Lane's own sales data is too unreliable to be used in the calculation of Tech Lane's own margin but it is reliable enough to be used to calculate the rate applicable to over one hundred Section A respondents.

Finally, FRA argues that it would be egregious for the Department to penalize the Section A respondents by inflating the rate applicable to their exports when the Department was on notice that Tech Lane could not provide a sales reconciliation and there were voluntary respondents willing to take Tech Lane's place and participate in this investigation.

Fine Furniture expresses its support of the positions which FRA argues. Fine Furniture states that the antidumping duty margin the Department assigns to Tech Lane should be based on total adverse facts available and should not be included in the calculation of the Section A rate.

Department's Position: Section 735(c)(5)(A) of the Act provides that the Department shall calculate the all-others rate using a weighted-average of the estimated weighted-average dumping margins of exporters individually investigated and excluding any zero and de minimis margins and any margins determined entirely using facts available. In this investigation the Department has determined to determine the final dumping margin for Tech Lane using total adverse facts available. See our response

to Comment 4. Because the Department relies on the instructions of section 735(c)(5) of the Act in the calculation of the Section A rate in NME proceedings, the final margin we have determined for Tech Lane cannot be included in the calculation of the Section A rate.

The Department does not find the precedent of Live Cattle persuasive in this investigation. In Live Cattle, the respondent refused to participate in verification and attempted to withdraw its information from the record. In the unusual circumstances of Live Cattle, the Department determined to keep the respondent's information on the record and use the information to calculate a margin that it included in the weighted-average margin calculation of the all-others rate, even though there was no on-site verification of the information, in order to protect the integrity of the investigation and prevent manipulation and distortion of the all-others rate. See Live Cattle at 56742-44. In the present investigation there is no evidence on the record that Tech Lane's actions are designed to manipulate rates. Indeed, Tech Lane claims to want to be verified. Additionally, the Department has determined that section 733(b)(2) of the Act permits waiver of verification only prior to the preliminary decision and where all parties agree to the waiver. Neither occurred in this investigation.

Comment 6: Treatment of Abrasives

Lung Dong argues that the Department cannot consider sandpaper items such as sandpaper, sandcloth, steel wool, abrasive sponge, and abrasive polyester fabric consumed in the production of subject merchandise as a direct material. Lung Dong cites the Bicycles, to argue that the Department only considers a material to be a direct material if the input is "significant" or "essential" to the production process and it is "incorporated into the product." Lung Dong cites Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's

Republic of China, 62 FR 9160 (February 28, 1997) ("Brake Rotors 1997"), as another example of the Department's emphasis of "incorporation of the input" into the finished good as the standard for determining whether a material constitutes a direct material. In Brake Rotors 1997, Lung Dong argues, the Department relied on the Indian Compendium of Statements and Standards in its decision to treat certain inputs as overhead items because the function of these materials is to "assist" in the manufacturing process and do not enter physically into the composition of the finished product. Lung Dong cites four other cases as support for the same standard articulated in Brake Rotors 1997.

Lung Dong argues that sandpaper items are no more essential to the production of subject merchandise than production machinery, equipment repair expenses, and other manufacturing costs that the Department typically treats as overhead expenses. Lung Dong argues that, as a result, the Department should not value Lung Dong's consumption of sandpaper items as separate components of normal value.

Markor argues that the Department's treatment of sandpaper in the Preliminary Determination is inconsistent with Markor's treatment in its own cost-accounting system and contrary to Department practice and decisions by the CIT. It contends that sandpaper is not physically incorporated into Markor's subject merchandise and that it accounts for sandpaper expenses as overhead. Markor argues that the Department's practice is to treat items that are not physically incorporated into the subject merchandise as overhead expenses rather than direct expenses.

Citing Fujian Machinery and Equipment Import & Export Corp., v. United States, 178 F.Supp.2d 1305, 1328 (CIT 2001) ("Fujian Machinery"), Markor argues that the CIT held that a material that is not incorporated into the final product should not be considered a separate factor of

production. In addition, Markor argues, where a material was not incorporated into the final product, the CIT has put the burden on the Department to demonstrate that the material was not included in the surrogate company's factory overhead item, citing Fuyao Glass Industry Group Co. Ltd. v. United States, Slip Op. 03-169 (CIT 2003) ("Fuyao Glass"). Markor argues that the Department has provided no evidence that the cost of sandpaper is not included in the overhead figures of the Indian surrogate companies and there is no such evidence on the record.

Shing Mark argues that the Department erred by requiring it to report sandpaper, abrasive cloth, and abrasive sponge consumption rates and used facts available to value these inputs for the Preliminary Determination. In particular, Shing Mark argues, the Department should consider sandpaper inputs as an overhead because sandpaper is not incorporated into the finished subject merchandise, the "consumables" line-item in the surrogate financial statements is treated as an overhead expense and sandpaper accounts for an insignificant proportion of the total cost of manufacture.

Shing Mark argues that the Department's practice indicates that a material must be physically incorporated into the finished product in order to be considered a direct input. Citing Final Determination of Sales at Less Than Fair Value and Critical Circumstances, Certain Malleable Iron Pipe Fittings from the People's Republic of China, 68 FR 61395 (October 29, 2003) ("Iron Pipe Fittings"), Shing Mark argues that the Department determined the moulding clay, silica sand, coal powder, and bentonite used to produce pipe fittings were not physically incorporated into the final product and not considered direct inputs. Similarly, Shing Mark asserts, in Brake Rotors 1997, the Department found that dextrin, steel shot, antirust, cutting oil, cleaning agent, and dehydrating oils, materials used to produce brake drums and rotors, were indirect materials. Shing Mark argues that in

Brake Rotors 1997 the Department cited the Compendium of Statements and Standards published by the Institute of Chartered Accountants of India which states that, in order for a material to be considered a part of factory overhead, it must "assist the manufacturing process, but not enter physically into the composition of the finished product." Although Shing Mark does not dispute that these abrasives remove debris after sawing and smooth the wood in the production process, Shing Mark argues that the sandpaper is simply consumed and thrown away after being used and it does not enter into the finished subject merchandise.

Further, Shing Mark alleges that record evidence demonstrates that indirect materials are valued separately from the direct raw materials in the surrogate financial statements from Indian furniture companies. Specifically, Shing Mark states that the Akriti financial statement, which the Department used in the Preliminary Determination, includes a line valuing "consumables" that is separate from the valuation of raw materials. Shing Mark claims that this separate valuation means necessarily that materials in the "consumables" line have different uses than those in the "raw material consumed" line of Akriti's financial statements.

Citing the Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China, 63 FR 72255, (December 31, 1998), and accompanying Issues and Decision Memorandum ("Mushrooms from the PRC 1998"). Shing Mark argues that the Department found the raw materials used in the production of canned mushrooms such as salt, water, chlorine, and ascorbic acid were not included under "raw materials" but rather as "consumables" in the surrogate financial ratios. According to Shing Mark, the Department found these materials were already included as part of factory overhead and did not value these inputs separately to

avoiding double-counting. Shing Mark argues that the Department should follow a similar approach for the final determination and consider sandpaper to be captured in "consumables" as a part of factory overhead.

Shing Mark contends that, even if the Department considers sandpaper a raw material, the fact that it is consumed in extremely small quantities should lead the Department to consider all sandpaper items as part of overhead. Shing Mark argues that the Department treats inputs consumed in low or very low quantities as overhead rather than direct inputs and cites the Final Determination of Sales at Less Than Fair Value of Synthetic Indigo from the PRC, 66 FR 25706 (May 3, 2000), and accompanying Issues and Decision Memorandum, and the Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 59 FR 58818 (November 15, 1994), and accompanying Issues and Decision Memorandum ("Saccharin from the PRC 1994"), to support its assertion.

Starcorp argues that the Department's inclusion of sandpaper and abrasives in the factors of production as a raw material is contrary to the universal treatment of incidental consumables in any industry. Starcorp argues that the essential nature of an incidental consumable to a production process is irrelevant to a determination of its categorization as an element of the cost of goods sold in either the overhead or the direct materials category since both overhead and direct materials are so included. Starcorp contends further that almost every element of the production process is "essential" to the production or it would not be used. Starcorp ponders whether this means that the saws for cutting wood for furniture production render them direct materials. Starcorp states that it would be incorrect to consider that either the machines or the expendable parts of those machines are direct materials and

the Department's treatment of sandpaper and abrasives as direct materials is also incorrect.

Starcorp argues that historically the Department has treated only those materials that are physically incorporated into the finished product as direct materials and certainly sandpaper and abrasives are not physically incorporated into finished furniture; it cites Iron Pipe Fittings. Starcorp states that sandpaper and abrasives are simply tools used in conjunction with more durable finishing tools like planes and files in various stages of the production of furniture.

Starcorp cites to Cost Accounting - 8th Edition, Horngren, Foster, and Datar, Prentice Hall, pages 41-42 (1994), which defines direct materials costs as "the acquisition costs of all materials that eventually become part of the cost object (say, units finished or in process) and that can be traced to that cost object in an economically feasible way" and the text goes on to state that "{e}xamples of manufacturing overhead include power, supplies, indirect materials."

In addition, Starcorp states that the Department's questionnaire asks for information on direct material costs which requests the respondent to "report the yielded {control-number} specific per-unit direct material costs incurred to produce the merchandise under consideration. Direct material costs should include transportation charges, import duties and other expenses normally associated with obtaining the materials that become an integral part of the finished product."

Starcorp also argues that it is unremarkable that consumables like sandpaper and abrasives are not mentioned specifically in a company's financial statements. Starcorp asserts that this is not evidence that the producer categorizes the cost element as a direct material and it contends that the Department drew this conclusion without any basis and in direct contravention of cost accounting conventions.

Starcorp cites Anshan Iron & Steel Co., Ltd. v. United States, 2003 WL 22018898 (CIT

2003), where Starcorp states that the CIT held that the Department could not base its reasoning for a conclusion in an antidumping proceeding on speculative and unfounded assumptions. Starcorp contends that there, as in this case, the Department made an assumption concerning the absence of certain information in a surrogate company's financial statements and based its determination on an unfounded negative inference. Starcorp states that the court held that this cannot constitute substantial evidence. Starcorp argues that more is needed to support the kind of conclusion the Department has drawn here, particularly in the face of evidence as to the appropriate treatment of an indirect material cost like that for sandpaper and abrasives.

Starcorp also asserts that sandpaper and abrasives are neither capitalized nor do they become an integral part of the finished product. Starcorp states that the Department erred when it included a cost for these items in Starcorp's materials costs and that it should include these costs in overhead.

The Petitioners disagree with the respondents' contention that because abrasives are not "incorporated" into the subject merchandise they cannot be classified as direct inputs. The Petitioners argue that Department rejected a similar argument previously where it valued certain inputs even though the items were not incorporated in the finished product, citing Final Results of Antidumping Duty Administrative Review: Potassium Permanganate From the People's Republic of China, 66 FR 46775 (September 7, 2001), and accompanying Issues and Decision Memorandum ("Potassium Permanganate from the PRC"). The Petitioners argue that sanded wood is a critical input in the production of wooden bedroom furniture and the abrasives expended during the several sanding stages throughout the production process are appropriately considered direct inputs. The Petitioners acknowledge that incorporation into a product may at times be an indication of a direct expense but

argue that the dispositive factor for determining whether to classify an input as a direct expense or overhead is the significance of the input in the production process. The Petitioners argue that wooden bedroom furniture cannot be made without the use of abrasive materials and, as such, abrasives cannot be classified an indirect inputs.

The Petitioners disagree with Lung Dong's interpretation of the Department's determination in Bicycles. The Petitioners argue that incorporation was not the determinative factor for the Department's conclusion that the abrasive chemicals had to be reported as direct material inputs in Bicycles. Citing Bicycles, the Petitioners argue that the Department treated the abrasive chemicals as direct inputs because they were "essential for producing the finished product" and were "significant inputs into the manufacturing process rather than miscellaneous or occasionally used materials." Thus, the Petitioners argue, the Department determines not necessarily by cost ratios in comparing the value of the input to the cost of manufacture but by the role the input plays in the production process.

Additionally, the Petitioners argue, the Department has distinguished Brake Rotors 1997, the principal case upon which the respondents rely, citing Notice of Final Determination of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Romania, 66 FR 49625 (September 28, 2001), and accompanying Issues and Decision Memorandum, and the Petitioners assert that the Department stated that "{i}n the brake drum case . . . the molding materials used in the production of steel brake drums were treated as overhead because they were used to 'assist in the manufacturing process', {and} were not related to the actual transformation of the raw materials into {a} product." The Petitioners argue that abrasive materials are not depreciable, re-usable tools that were ancillary in the production process but, instead, abrasive materials are inputs expended directly in

the transformation of lumber and rough-cut boards into wooden bedroom furniture. The Petitioners contend that abrasive material usage ties directly to the volume of wooden furniture that each of the respondents produced.

The Petitioners argue that the respondents' speculation that there might be double-counting of an input cannot justify a decision to account for an input that is related directly to the production of subject merchandise. The Petitioners assert that none of the respondents has shown that surrogate-company financial statements actually include abrasives as an overhead expense. Thus, the Petitioners argue, the Department should continue to value sandpaper as a direct material expense in its final margin calculations.

Department's Position: The Department has determined to value abrasives as a separate component of normal value for the final determination. The Department has rejected the argument that incorporation is the determinative factor when deciding whether to treat an input as a direct material or an overhead expense. See Final Results of Administrative Review: Automotive Replacement Glass Windshields From the People's Republic of China, 69 FR 61790 (October 21, 2004), and accompanying Issues and Decision Memorandum ("ARG Windshields"). As in this case, in ARG Windshields, the respondent argued that the Department's determinations in Bicycles and Brake Rotors 1997 required that it consider certain inputs as overhead because they were not incorporated into the subject merchandise. The Department found that this is not the case.

The Department disagrees with the respondents that the decisions in Bicycles and Brake Rotors 1997 limit the Department's ability to value abrasives separately in this case. In Bicycles and Brake Rotors 1997, the Department cited "incorporation into the product" as one justification for considering

an input to be considered a direct material, but incorporation was not characterized as an essential requirement for an input to be considered a direct material. See Bicycles at 19040, and Brake Rotors 1997 at 9169. In Bicycles, the Department valued the input as a separate component of normal value because the input was so significant that it would not normally be considered a part of factory overhead and, therefore, determined that no double-counting would occur by valuing it separately. See Bicycles, 61 FR at 19040. Also, in Brake Rotors 1997, the Department did not value certain inputs separately because the inputs were considered "stores and spares consumed" by the Indian surrogate companies and, therefore, it determined that double-counting would occur if it valued the inputs separately. See Brake Rotors 1997 at 9169. Also, the respondents' interpretation of the Department's precedent is too narrow. The fact that physical incorporation was one factor it considered in previous decisions does not indicate that physical incorporation of a major component of production into the finished product is a necessary condition for separate valuation by the Department.

Other instances demonstrate that incorporation is not a prerequisite for separate valuation. For example, in determining that water was a significant input and should be valued separately in Crawfish, the Department found at verification that "the process of cleaning and boiling live crawfish to produce subject merchandise requires large quantities of water, and this is clearly different from water used by a company for incidental purposes." See Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review: Freshwater Crawfish Tailmeat from the PRC, 66 FR 20634 (April 24, 2001), and accompanying Issues and Decision Memorandum ("Crawfish"). The CIT upheld the Department's decision to value water as a separate factor of production as reasonable. See Pacific Giant Inc. v. United States, 223

F.Supp.2d 1336, 1346 (CIT 2002).

The respondents' references to definitions in the Compendium of Statements and Standards do not require that Indian companies value abrasives as an overhead expense. The Compendium of Statements and Standards only states that an item cannot be allocated to factory overhead if it is incorporated in the finished product, not that it must be allocated to factory overhead if it is not incorporated in the finished product.

Further, the Department disagrees with Markor that the CIT has placed the burden on the Department to demonstrate that an input is not included in the surrogate company's factory overhead. In Fuyao Glass, the CIT remanded this issue to the Department because the schedule for raw materials in the surrogate financial statement indicated that these inputs were likely valued outside the raw materials line-item. Thus, a unique factual situation compelled the CIT to ask the Department to show that it was not double-counting. The surrogate financial statements in this investigation present entirely different facts in that, in this case, the surrogate financial statements either provide no schedule detailing the raw materials consumed or the schedule lists an "Others" line-item. See IFP's 2002/2003 Financial at Note 8. Furthermore, when valuing factory overhead in an NME case, the Department has broad discretion and is not required to dissect the surrogate company's financial information. The discretion of the Department when making decisions based on surrogate financial statements has been affirmed by the CIT and the Federal Circuit. See Magnesium Corp. of Am. v. United States, 166 F.3d. 1364, 1372 (Fed. Cir. 1999) ("Magnesium Corp."). In that case, the CIT recognized that, when using financial statements of surrogate companies, the Department is not required to do an item-by-item analysis in calculating factory overhead. See Magnesium Corp. Of Am. V. United States, 938 F.

Supp. 885, 897 (CIT 1996) ("Magnesium Corp 1996"). In affirming the CIT's decision, the Federal Circuit stated that factory overhead is composed of many elements and, in valuing the factors of production, section 773 of the Act provides the Department broad discretion to decide how to calculate factory overhead. See Magnesium Corp. at 1372. Both decisions affirm that the Department has broad discretion when valuing factory overhead and that the Department is not required to delve behind each element of factory overhead in the surrogate company's financial information.

Furthermore, the record also shows that the Department is not double-counting in this investigation by valuing abrasives separately. Only two of the nine surrogate companies' factory-overhead calculations possess even the potential for double-counting.[6] It is most likely that the abrasives are valued in the raw materials consumed of the surrogate companies. Given the amount of consumption and its importance to the production of wooden bedroom furniture, we find that abrasives would not be valued in the "stores and spares consumed" of the surrogate company. No party to this proceeding has disputed that abrasives are essential to the production of subject merchandise. In addition, abrasives are not incidently or occasionally consumed in the production of subject merchandise. To the contrary, abrasives are consumed in large quantities and their consumption is tied directly to the amount of subject merchandise each respondent produced. Therefore, we find that abrasives are direct inputs and should not be valued as overhead items. Instead, we have valued abrasives as a separate component of normal value. Since the publication of the Preliminary Determination, Lung Dong, Markor, Dorbest, and Shing Mark have reported their actual abrasive

[6]The financial statements of IFP and Akriti are the only statements that contain a line-item in the factory-overhead calculation that might capture abrasives (i.e., "stores and consumables" or "stores and spare parts"). None of the other factory-overhead calculations includes a "stores" line-item in the factory overhead sub-total.

consumption during the POI on a control-number basis. The Department's final analysis memorandum for each company details the inclusion of the abrasive consumption in the calculation of normal value.

Comment 7: Brokerage and handling

Dorbest, Starcorp, and Lung Dong argue that the Department should recalculate the Meltroll surrogate value using Dorbest's full container weight in accordance with past precedent. Dorbest, Starcorp, and Lung Dong argue that, in the Preliminary Determination, the Department calculated a brokerage and handling rate in kilograms by dividing the expenses of an Indian company (Meltroll) by 1080 kilograms, which is a partial container-load instead of a full (20-foot) container-load. All three respondents contend that, in the past, the Department has calculated the Meltroll per-unit brokerage expenses on the basis of the weight of a 20-foot container. Citing Apple Juice, the three respondents assert that the Department's calculation was improper in this investigation because it assumes that the respondents shipped only 1080 kilograms when, in fact, most respondents ship full container-loads. Dorbest, Starcorp, and Lung Dong state that in Apple Juice a respondent argued that it was improper to divide the Meltroll brokerage cost by the weight of a partial container because the Chinese respondents shipped the subject merchandise by full containers only and that, in that case, the Department agreed and recalculated the Meltroll per-unit brokerage expenses on the basis of the weight of a full 20-foot container.

Dorbest asserts that the record shows that Dorbest ships in full containers and that the average weight of its containers is 15,560 kg. Lung Dong and Starcorp also argue that, because they shipped full containers only, the Department should use brokerage expenses calculated on a full-container basis and cite Dorbest's June 29, 2004, submission. Therefore, all three respondents contend, the

Department should correct the Meltroll surrogate value to reflect the costs associated with shipping full containers rather than partially full containers.

The Petitioners allege that the Department should continue to use its surrogate-value calculation for brokerage and handling from the Preliminary Determination despite the respondents' argument that this surrogate value must be recalculated as it was done in Apple Juice. The Petitioners contend that, in Apple Juice, the Department recognized that the Meltroll value was based on a per-container basis, not on a weight basis, and it adjusted the surrogate value to account for the apple-juice respondents' full, 20-foot container shipments. The Petitioners stress that in this case none of the three respondents points to any record evidence demonstrating it ships only full containers. Thus, the Petitioners contend, there is no basis for the respondents to argue that the Department must re-calculate the surrogate value it used in the Preliminary Determination.

Additionally, the Petitioners focus the Department's attention on the fact that Dorbest's responses clarified that the suggested average container weight of 15,560 kg. is not an average of actual shipments at all but the maximum capacity allowed under U.S. law for 40-foot containers. Therefore, the Petitioners contend, the Department should ignore Dorbest's attempts to portray the maximum gross weight per container allowed under U.S. law as the average net weight of the containers it actually shipped. The Petitioners allege that Lung Dong and Starcorp did not provide a reliable per-container weight for shipments of subject merchandise that the Department can use for surrogate-value purposes.

Finally, the Petitioners assert that, if the Department determines to change the surrogate value it used in the Preliminary Determination, it should calculate a surrogate value based on record evidence.

The Petitioners contend that the Department should use the average per-container brokerage and handling value of 7,994.33 Rupees per 20-foot container in the numerator as determined in Apple Juice. The Petitioners state that, in the event it changes its calculation, the Department should use the weight of an actual container of subject merchandise. The Petitioners state that, in determining the denominator, the Department should base the full container load on the lowest of the per-container weights in verification exhibits the Department received or, at the very minimum, the Department should base the per-container weight on the average weight indicated by verification exhibits.

Department's Position: The Department has determined to not recalculate the Meltroll-based surrogate value using a full container weight. Record evidence does not support Dorbest's claim that the Department should use the figure for the denominator which Dorbest provided from Apple Juice because Dorbest did not provide supporting documentation for this figure. Further, none of the three respondents provided pre-verification record evidence that it exported its merchandise in 20-foot containers. Thus, for the final determination, the Department has determined to recalculate the denominator for brokerage and handling using the information in the bills of lading or freight forwarder's cargo receipts of the sales-trace exhibits for each of the three respondents it collected during verification. The Department has recalculated a new per-container weight for each of the three respondents for the POI. See the Dorbest, Starcorp, and Lung Dong Final Analysis Memoranda.

Comment 8: Treatment of Non-Dumped Sales

Dorbest argues that the Department's methodology of "zeroing" positive differences between U.S. price and normal value is inconsistent with the Uruguay Round Agreement. Dorbest asserts that U.S. law after the Uruguay Round created a specific procedure for analyzing allegations of targeted

dumping and that the Department even promulgated a special regulation, 19 CFR 351.414(f), to address targeted dumping. Dorbest contends that Congress has elected to address targeted dumping through a special provision of the statute rather than by endorsing the Department's practice of zeroing. Dorbest argues that, if additional steps are necessary to address targeted dumping, then there was no need for a special statute and regulation to address targeted dumping after the Uruguay Round Agreement. Dorbest asserts that the Department did not interpret the statute correctly and that it should not substitute targeted dumping with its treatment of non-dumped sales. Dorbest also contends that the Petitioners have missed the deadline for filing an allegation of targeted dumping as set forth in 19 CFR 351.301(d)(5). Dorbest asserts that, because the Petitioners missed the deadline for alleging targeted dumping, the Department cannot rely on concerns about targeted dumping as a basis for treatment of non-dumped sales.

The Joint Respondents argue that the antidumping statute is silent on the issue of non-dumped sales and that the CIT held recently that setting non-dumped sales to zero in antidumping investigations was a permissible interpretation of the antidumping statute. The Joint Respondents assert that the WTO Appellate Body in Softwood Lumber from Canada has ruled that the Department's practice of non-dumped sales in antidumping investigations violates U.S. international obligations under the WTO Antidumping Agreement, citing Appellate Body Report, United States -- Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R, adopted 31 August 2004 ("Softwood Lumber from Canada App. Body Report").

The Joint Respondents contend further that the Federal Circuit stayed adjudication of the issue in the Corus case pending adoption of the WTO Appellate Body decision in Softwood Lumber from

Canada App. Body Report. See Corus Engineering; Bowe Passat Reiningungs-und Waschereitechnik GmbH v. United States, 926 F.Supp. 1138, 1150 (CIT 1996) ("Corus"). The Joint Respondents argue that the Department may soon be required to interpret the antidumping statute consistent with U.S. international obligations under the WTO Antidumping Agreement.

The Petitioners argue that the Department's Preliminary Determination is in accordance with law and the Department should apply its methodology concerning the treatment of non-dumped sales in the final determination. The Petitioners cite to Timken Co. v. United States, 354 F.3d 1334, 1345 (Fed. Cir. 2004) ("Timken 2004"), and assert that the Federal Circuit held that the Department's so-called zeroing practice is a reasonable and permissible interpretation of the statute – notwithstanding rulings that the practice violates U.S. WTO obligations – and is therefore in accordance with U.S. law. The Petitioners assert that the Federal Circuit has held consistently that WTO Appellate Body reports do not bind U.S. courts in construing the laws of the United States, citing Allegheny Ludlum Corp. v. United States, 367 F.3d 1339, 1348 (Fed. Cir. 2004), as an example. The Petitioners contend that there is no support for the Joint Respondents' suggestion that the Department is bound by the recent WTO Appellate Body report in Softwood Lumber from Canada App. Body Report, under the Charming Betsy doctrine or any other legal theory.

Additionally, the Petitioners argue that there is no validity to Dorbest's suggestion that the Department's treatment of non-dumped sales is permissible only in cases where the Petitioners have alleged targeted dumping. The Petitioners argue that, while concerns about targeted dumping are one of the grounds cited by the Department as justifying its treatment of non-dumped sales, that is not the only ground.

The Petitioners state that the Joint Respondents have provided no justification for abandoning the Department's treatment of non-dumped sales practice in this investigation and the Department should continue its longstanding treatment of non-dumped sales in the final determination.

Department's Position: The Department has determined not to change its calculation of the weighted-average dumping margins as suggested by Dorbest and the Joint Respondents for the final determination. The CIT upheld the Department's treatment of non-dumped sales in Corus and in Timken Co. v. United States, 240 F.Supp.2d 1228 (CIT 2002) ("Timken 2002"), and the methodology is consistent with the Department's statutory obligations under the Act.

Furthermore, recently the Federal Circuit affirmed the Department's methodology in Timken 2004. As discussed below, we include U.S. sales that were not priced below normal value in the calculation of the weighted-average margin as sales with no dumping margin. The value of such sales is included in the denominator of the weighted-average margin along with the value of dumped sales. We do not allow U.S. sales that were not priced below normal value to offset dumping margins we found on other sales.

Section 771(35)(A) of the Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) of the Act defines "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or CEP, and to divide this amount by the value of all sales.

The use of the term "aggregate dumping margins" in section 771(35)(B) is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) as applying on a comparison-specific level and not on an aggregate basis. At no stage in this process is the amount by which the export price or CEP exceeds the normal value on sales that did not fall below normal value permitted to cancel the dumping margins found on other sales.

This does not mean, however, that we ignore non-dumped sales in calculating the weighted-average dumping margin. It is important to recognize that the weighted-average margin reflects any non-dumped merchandise we have examined; the value of such sales is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

Furthermore, this is a reasonable means of establishing estimated duty-deposit rates in investigations and assessing duties in reviews. The deposit rate we calculate for future entries must reflect the fact that CBP is not in a position to know which entries of subject merchandise are dumped and which are not. By spreading the liability for dumped sales across all examined sales, the weighted-average dumping margin allows CBP to apply this rate to all merchandise subject to the investigation. Finally, as implemented through the URAA, U.S. law is fully consistent with our WTO obligations.

Comment 9: Russian Timber Prices

The Petitioners argue that the Department should not use the prices of Russian lumber in the final determination because these prices are subsidized through Russia's stumpage-fee system which results in a price that is significantly undervalued.

Citing the SAA at 590-91, the Petitioners assert that the legislative history regarding NME methodology states that the Department "shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices." The Petitioners state that Congress did not intend for the Department to conduct a formal investigation to ensure that such prices are not dumped or subsidized but rather intended that the Department base its decision on information generally available to it at the time. The Petitioners assert that the Department should disregard purchases of wood products from Russia because the prices of timber are subsidized by the system of stumpage fees and are distorted by widespread illegal activities such as commercial logging of healthy trees under the guise of salvage logging, misclassification of species in order to avoid profit taxes, etc. which results in significantly undervalued prices. Further, the Petitioners argue, because timber values are distorted, prices of inputs processed from timber, such as lumber, are also affected by these distortions. Furthermore, the Petitioners allege that compared with neighboring countries the low stumpage prices in Russia amounts to a subsidy that would justify exclusion of purchases of wood products from Russia. The Petitioners contend that, as a result, the Department should disregard prices that may be distorted or aberrational in order to ensure accuracy in its calculation of the dumping margin.

The Petitioners refer to their July 6, 2004, submission that demonstrated the distortion in the average value of Russian stumpage fees which showed that the distorted low stumpage fee acts as a subsidy to the Russian timber industry. Furthermore, the Petitioners argue that, based on a similar fact pattern, the Department determined in Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002) ("Softwood Lumber from Canada, CVD"), that the stumpage-fee system

constituted a countervailable subsidy to the Canadian lumber industry. Moreover, the Petitioners assert, a NAFTA binational panel also found that the Department found the necessary elements to support the conclusion that the Canadian Provincial governments provided a countervailable subsidy to timber harvesters (citing Decision of the Panel In the Matter of Certain Softwood Lumber Products From Canada, Binational Panel Review (NAFTA June 7, 2004)). Therefore, the Petitioners argue, the Department should disregard purchases of wood products from Russia.

Markor agrees with the Department's rejection in the Preliminary Determination of the Petitioners' argument that purchases of wood products from Russia should be disregarded. Markor contends that the Petitioners have placed no new evidence on the record to cause the Department to change its finding in the final determination.

Markor cites 19 CFR 351.408(c)(1) in which the Department states that, "where a factor {of production} is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will value the factor using the price paid to the market economy supplier." Markor argues that the Department has developed a limited exception to this rule for purchases from market-economy countries that it has determined maintain broadly available, non-industry-specific export subsidies but otherwise the Department has followed the general rule of the regulation.

Markor argues that a lawful basis on which to disqualify Markor's purchases of wood products from Russia does not exist. Markor asserts that the Petitioners' two bases for rejecting wood purchases from Russia, press reports of "illegal activities" by Russians in the logging and lumber business and allegedly low-priced stumpage, have never been investigated by the Department. Markor asserts that the Petitioners have made no allegation of a broadly available export subsidy and there is no

evidence on the record demonstrating that the prices Chinese furniture producers pay for Russian lumber are distorted or aberrational.

The Joint Respondents contend that the Department should continue to reject the Petitioners' argument for the final determination. These respondents remark that the Petitioners have not added anything to the record on this issue since their last submission in June 2004. Additionally, they state, there is no lawful basis on which to disqualify the prices of their purchases of wood products from Russia because the Department has determined that Russia is a market-economy country, the Department has not investigated alleged illegal activities by Russians in the logging and lumber business or allegedly low-priced stumpage, and there is no evidence on the record demonstrating that the prices Chinese furniture producers pay for Russian lumber are either distorted or aberrational.

Department's Position: The Department designated Russia as a market economy on August 6, 2002, with an effective date of April 1, 2002. Thus, for this investigation, 19 CFR 351.408(c)(1) applies because respondents purchased the timber in question from a market-economy supplier and paid for it in a market-economy currency.

The Department disagrees that comparisons between prices in neighboring countries or allegations of illegal activities should form the basis for disregarding such purchases. There are many factors other than subsidization that could account for price differentials of goods among countries, and a simple demonstration of such price differentials does not constitute *prima facie* evidence that the imports in question are subsidized. Generally, in past cases, the Department has relied on formal countervailing duty or antidumping determinations in determining which imports may be subsidized or dumped. See ARG Windshields. In the present case, however, the Petitioners have relied principally

on demonstrations of distortions in the subject market on a price comparison that reveals the stumpage price in Russia to be comparatively low. The Department does not find this to be sufficient evidence to cause it to believe or suspect that the Russian timber industry has benefitted from subsidies.

Further, the Department disagrees that Softwood Lumber from Canada, CVD, is applicable in the present case. In that case, the Department found that the Canadian stumpage system constituted a subsidy after it had conducted a formal investigation. In the present case, however, the Russian timber industry is not under investigation and neither the Department nor other authorities have conducted an investigation and found subsidies.

The Department recognizes that input markets in market-economy countries may be distorted by a large number of factors, including the factors cited by the Petitioners. The Russian economy also has various imperfections. Nonetheless, because the Department's threshold for disregarding market-economy purchases is higher than mere evidence of distortions and because no subsidy program has been demonstrated, the Department has used the market prices of Russian wood for the final determination.

Comment 10: Use of Infodrive and IBIS Data

Shing Mark argues that it submitted transaction-specific data from two research companies, Infodrive India, http://www.infodriveindia.com, and IBIS, http://www.tradeintelligence.com, from which the Department should obtain surrogate values and product-specific information relating to Indian imports. According to Shing Mark, both Infodrive India and IBIS are valid valuable sources of accurate and entry-specific surrogate-value information. Shing Mark contends that Infodrive India and IBIS afford the Department another tool to develop accurate, specific, and contemporaneous surrogate

values. Shing Mark alleges that the Department erred in its decision not to use the Infodrive India and IBIS information because data from Infodrive India and IBIS cover a large percentage of total Indian imports and the nature of the entry-specific data from Infodrive India and IBIS provides surrogate values based on units of measurement that match those as reported by the MSFTI.

Specifically, Shing Mark argues that Infodrive India and IBIS report the date of entry, the Indian HTS, the importer of record, the import description, the quantity, the value, unit measure, foreign port, foreign country, Indian port, and method of shipment. Therefore, Shing Mark contends, Infodrive India and IBIS data meet the Department's criteria as stated in other determinations: (1) it is publicly available information; (2) it contains actual completed import transactions; (3) transactions are in substantial commercial quantities; (4) the information is contemporaneous with the POI; (5) it reflects tax-exclusive prices for felt, fiberglass, iron ingot, particle board, plywood, polyethylene sheet, titanium dioxide-rutile, powder coating, and lock.

Specifically, Shing Mark argues that Infodrive India and IBIS data avoid the distortions created by basket categories and overly broad Indian HTS classification categories because the Infodrive India and IBIS data report specific entries with product descriptions into India during the POI as distinct from the MSFTI data reported by the World Trade Atlas. According to Shing Mark, Infodrive India and IBIS data would enable the Department to exclude import data that is not comparable with Shing Mark's factors of production.

Shing Mark also argues that, even if the Department is unable to obtain a surrogate value from Infodrive India or IBIS, the Department could use the data to determine whether Indian imports were misclassified in the wrong HTS classification. Shing Mark contends that Infodrive India and IBIS data

demonstrate that a substantial quantity of imports have aberrational and distortive effect on the values derived from a specific Indian HTS classification.

Shing Mark states that in the recent Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers from the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum ("Color TV Receivers from the PRC "), the Department found that Infodrive India was a valid source of surrogate-value information. Shing Mark argues that the decision to use Infodrive India in Color TV Receivers from the PRC bolsters its argument that Infodrive India may be used for surrogate-value purposes in this investigation. Shing Mark contends that this case is unlike the Final Determination of Sales at Less Than Fair Value: Floor Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China, 69 FR 35296 (June 24, 2004), and accompanying Issues and Decision Memorandum ("Ironing Tables from the PRC"), where Infodrive India data were not used because MSFTI data were not proven to be inaccurate.

Shing Mark explains that, although IBIS has not been used for surrogate-value purposes in a previous antidumping proceeding involving an NME country, that fact alone should not prevent the Department from applying IBIS data in this case. Shing Mark acknowledges that, in the Final Results of the Antidumping Duty Administrative Review on Brake Rotors from the People's Republic of China, 66 FR 27063 (May 16, 2001), and accompanying Issues and Decision Memorandum ("Brake Rotors 2001"), the Department found that IBIS data did not indicate the size or weight of wood pallets so the data could not be used in a manner that would have allowed accurate valuation. Shing Mark contends that its submission of IBIS data does not suffer from these same defects and thus is distinguishable from

Brake Rotors 2001.

Shing Mark contends that Infodrive India and IBIS data cover a large percentage of Indian imports. Contrary to the Department's preliminary decision, Shing Mark argues that both Infodrive India and IBIS should be used because they cover a substantial proportion of total imports into India. Shing Mark argues that it submitted data reported by the Indian Ports Association for the period April 2001-March 2002, the most current information available, that covers India's twelve major ports handling over 90 percent of foreign trade. Based on this information, Shing Mark contends, it provided information that described the number of major ports that Infodrive India (nine) and IBIS (eight) covered, respectively. Shing Mark alleges that this demonstrates that Infodrive India covers as much as 73 percent of the import traffic at the major ports and IBIS covers up to 67 percent of the import traffic at the major ports.

Shing Mark also argues that it included information that provided the total import value (in rupees) for a specific Indian HTS classification as derived from Infodrive India and IBIS during the POI which compared the total value of imports for the same HTS classifications as reported by the MSFTI. Thus, Shing Mark contends, the data provides evidence that Infodrive India and IBIS report information that constitutes the great majority of Indian imports and the Department's assertion that these sources do not cover enough imports is wholly unjustified, particularly in light of the Department's decision in Color Television Receivers from the PRC, where the Department determined that the quantities reported by Infodrive India were commercially significant, stating "there is no information on the record of this investigation to show that the quantities shown in the Infodrive data do not represent commercial quantities."

Shing Mark argues that the fact that Infodrive India and IBIS data report information in non-uniform unit measures cannot disqualify them as valid sources of surrogate-value information. Based on information it provided to the Department, Shing Mark argues that the Department should not dismiss the wealth of Infodrive India and IBIS data simply because these sources report import entries in different units of measure. Shing Mark contends that the unit measures are obtained directly from Indian customs as declared by Indian importers bills of lading and the differing unit measures are not the product of manipulation or an inherent flaw in the import information reported by Infodrive India and IBIS.

According to Shing Mark, the lack of uniformity among units of measure may require the Department to disregard some Infodrive India and IBIS data but, Shing Mark contends, it should not lead the Department to reject all Infodrive India and IBIS data for surrogate-value purposes. For example, Shing Mark argues, although Infodrive India and IBIS may report import data for paints in cans, bottles, pieces, sets, or numbers, they also report a substantial amount of paint imports as measured in kilograms or liters. Additionally, Shing Mark states that, since the MSFTI values all paints in kilograms, the Infodrive India and IBIS data for paints in kilograms and liters could be used for surrogate-value purposes. Shing Mark submits that, if the Department analyzes all the Infodrive India and IBIS data before it, the Department will find useable data that matches the correct unit of measure for every factor of production at issue and which is reported in substantial commercial quantities.

The Petitioners contend that the Department's decision not to use Infodrive India or IBIS data to value the respondents' factors of production in the Preliminary Determination was correct. The Petitioners explain that Infodrive India should not be used because it reports only sea and air shipments

from eight Indian ports covering only 60 percent of total Indian import shipments. The Petitioners also explain that IBIS should not be used because IBIS collects data from only seven Indian ports – one less than Infodrive India – and it cannot be determined what percentage of all Indian imports are covered by its database.

According to the Petitioners, Shing Mark's claims that additional evidence submitted with its August 17, 2004, surrogate-value comments demonstrates that Infodrive India and IBIS essentially replicate the coverage of the MSFTI are unsupported by the record evidence. Rather, the Petitioners state, a close examination of the cited exhibits demonstrates that India has twelve major sea ports, 185 minor/intermediate sea ports, and an unspecified number of inland ports. The Petitioners observe that, even if Shing Mark is correct that the sea ports account for 90 percent of all imports into India, the IBIS data cover only eight of the twelve major ports, none of the minor/intermediate seaports, and none of the inland ports; they state that Infodrive India data cover nine of the twelve major ports, none of the minor/intermediate seaports, and none of the inland ports.

Thus, the Petitioners allege, contrary to Shing Mark's claim that Infodrive India data cover 90 percent of India's imports, it is all of India's sea ports (consisting of both the twelve major and the numerous minor/intermediate ports) that cover 90 percent of India's trade. As a result, the Petitioners argue, Infodrive India and IBIS do not cover the ten percent of imports that come overland, the imports that come through all minor/intermediate sea ports, and the imports that come through three or four major seaports. The Petitioners contend that Shing Mark's own information reports that, of the trade through the twelve major ports (putting aside the minor/intermediate sea ports and the inland ports), they only cover 73 percent for Infodrive and 67 percent for IBIS. Additionally, the Petitioners observe

that, when comparing the MSFTI data to the same HTS classifications from Infodrive India and IBIS, the total imports for numerous classifications are well below the standard 73 percent and 67 percent of import entries that Shing Mark argues. By contrast, the Petitioners argue, MSFTI data cover 100 percent of all imports into Indian through all ports.

Furthermore, the Petitioners contend that Shing Mark's argument that Color TV Receivers from the PRC provides a precedent for using Infodrive India is not applicable in this investigation. The Petitioners argue that, in Color TV Receivers from the PRC, the Department used Infodrive India only to value two discrete factors, color picture tubes and speakers. Instead, the Petitioners state, in Color TV Receivers from the PRC, the Department valued all other raw material inputs not purchased by the respondents from market economies using India import statistics published in the World Trade Atlas. Additionally, the Petitioners argue, in Color TV Receivers from the PRC, the Department acknowledged that its preferred source of surrogate-value data in that case was the MSFTI data because it found that it represented the best available information. Accordingly, the Petitioners argue, Color TV Receivers from the PRC provides no precedent for using Infodrive India data as a comprehensive source for surrogate values in this investigation when appropriate data from MSFTI are available.

Finally, the Petitioners contend that the Department has never used IBIS in any investigation and cite Brake Rotors 2001, the only case where a party submitted data from IBIS as a potential source, where the Department declined to use it. In that determination, the Petitioners argue, the Department recognized that the IBIS data did not allow it to value the factor reported by the respondent properly. According to the Petitioners, the Department stated that the MSFTI data provide

a more "representative Indian import value for limestone because it covers all imports of limestone into India," citing Brake Rotors 2001 at 1307-8. Accordingly, the Petitioners argue that the Department should decline to use IBIS data as a source for surrogate values in this investigation because they are incomplete and unreliable.

Department's Position: As in our Preliminary Determination, we have determined not to use Infodrive India or IBIS data to value Shing Mark's or other respondents' factor inputs. As we discuss in response to Comment 24, below, we consider MSFTI data the best available information and it ensures that the margins we calculate are as accurate as possible. Additionally, for this case we determined that Infodrive India data is unreliable and does not represent the best available information. Regarding IBIS, we have determined that there is no Department precedent that would support its use nor is there any record evidence that IBIS is the best available information. Further, there is no record evidence that the Department's long-standing preferred source of surrogate values, the MSFTI, is somehow distorted or unreliable in this case.

We disagree with Shing Mark's argument that because we used Infodrive India in Color TV Receivers from the PRC we should find it reliable in this case. The Department makes it determination of the best available information on a case-by-case basis, depending on the reliability and accuracy of the information. In the case of Color TV Receivers from the PRC, the Department used Infodrive India to value only color picture tubes and speakers that had clearly discernable characteristics (e.g., picture tube size and speaker size). In fact, in Color TV Receivers from the PRC, the size of the picture tube was a distinguishing characteristic for which the respondents reported different inputs. Further, in Color TV Receivers from the PRC, the Department valued all other less distinguishable factor inputs using the

MSFTI information. In this case, the respondents did not report factor inputs in a manner similar to Color TV Receivers from the PRC that would allow the Department to obtain a reliable values from Infodrive India. Instead, the respondents' aggregated inputs do not provide sufficient descriptions or distinguishable characteristics that would allow the Department to search the voluminous Infodrive India data and IBIS data to obtain accurate surrogate-value information. Although Shing Mark argues that the Department could use the Infodrive India and IBIS information as a means to exclude certain items for valuation, the Department finds that there is no correlating record evidence that would provide the Department with a means to determine the more appropriate consideration of what imported items should be included in valuing the factor inputs. Additionally, any selection of the specific import items would be completely subjective because there is no reliable way to correlate the respondents' inputs with the Infodrive India data. Moreover, as discussed in response to Comment 24 of this memorandum and in accordance with Ironing Tables from the PRC, we find that it is not necessary to use Infodrive India and IBIS to obtain surrogate values because there is no record evidence that demonstrates that the MSFTI data is inaccurate.

Additionally, the Department determines that Infodrive India and IBIS data are unreliable and lack a comparative standard of measurement from which the Department can calculate an accurate surrogate value. See PRC Bags (declining to use Infodrive India data because of concerns about the quality and reliability of the data). As already discussed in response to Comment 24, in 2003, India reclassified and modified its Tariff Schedule. The only information on the record that India's HTS reclassification resulted in any misclassifcations under the Indian Tariff Schedule is from the Infordrive India data. In fact, we found that the MSFTI information from the World Trade Atlas does not contain

the same misclassification as those contained in Infodrive India. Therefore, we find that, if India's reclassification of the Tariff Schedule resulted in any misclassifications of import items, it is Infodrive India's data that is unreliable because these data are the only data that report such misclassification. The Department observes further that the World Trade Atlas reports the official MSFTI data which may account for Infodrive India's misclassifications.

As discussed in our Preliminary Determination, we continue to determine not to use Infodrive India and IBIS also because a majority of the HTS categories do not report the specific import items in a uniformly comparative manner (i.e., cans, bottles, pieces, sets, or numbers) from which we can calculate a reliable or accurate surrogate value. For example, a single HTS category could include numerous specific entries with various product descriptions but all are reported in rupees per piece. With no way to know the size or the weight of the piece, the information is unusable for surrogate-value purposes. Because there is no standard measurable quality for a piece, it is impossible for the Department to calculate an accurate value for the respondents' inputs. With the MSFTI data, however, every HTS category is reported using a single uniform measurement (e.g., rupees per kilogram).

Even if we found the data to be reliable, we would have to reject large amounts of the data because Infodrive India does not report the Indian import statistics in a uniform measurable quantity. Thus, if the Department were to accept Shing Mark's argument that Infodrive India reports commercially significant quantities of roughly 73 percent of imports, the actual usable Infodrive Indian data is far less than the contrasted 100 percent usable data reported by the MSFTI. In fact, in most cases, the only usable Infodrive India data (i.e., imports reported in quantifiable measurements) are

reported by a limited number of customers. Therefore, not only are large amounts of data unusable for surrogate-value purposes but the data that are usable are limited to a few customers of any given HTS classification. As we determined for the Preliminary Determination we continue to find that record evidence indicates that Infodrive India, at best, only accounts for 60 percent of the imports. Additionally, in reviewing the Infodrive information, several factors do not have any reportable data for many months of the POI.

The Department has also found that much of IBIS suffers from similar defects as Infodrive India. As in Brake Rotors 2001 and similar to the Infodrive India data, we find that the IBIS data does not provide measurable quantities in a manner that would allow us to calculate accurate surrogate values in this case. Additionally, we find that, because IBIS collects data from one less port than Infodrive India, it is also lacks significant commercial quantities, as compared to the 100 percent of imports reported by the World Trade Atlas data from which the we can calculate an accurate surrogate value in this case.

Therefore, after a thorough examination of the record evidence, we continue to determine that Infodrive India and IBIS do not provide the best available information to calculate surrogates values for the respondents' factor inputs in this case and have relied on MSFTI data for surrogate-vale purposes.

Comment 11: Sets Reported by Markor and Lacquer Craft

The Petitioners argue that Markor's and Lacquer Craft's method for reporting complete "sets" is distortive and should be rejected. The Petitioners state that Markor and Lacquer Craft reported their U.S. sales on the basis of product control numbers by aggregating component SKUs (Stock-keeping Units) that make up complete "sets" despite the fact that they cobbled these set designations together

from pieces they sold separately under different invoices. The Petitioners remind the Department that, in the Preliminary Determination, it stated that it would examine Markor's and Lacquer Craft's practice of combining multiple invoices for a single observation in the U.S. sales listings thoroughly.

The Petitioners assert that combining multiple invoices into a single sales transaction masks the true characteristics of the constituent sales and prevents a proper calculation of expenses such as credit and inventory carrying costs. The Petitioners argue that this method disregards the relationship between sales dates hand the separately invoiced pieces.

The Petitioners argue that this is not a case where the companies' accounting systems prevented them from reporting each invoice separately but, instead, Markor and Lacquer Craft went out of their way to devise methodologies that would allow them to mask their true dumping margins. The Petitioners assert that the Department's Lacquer Craft Verification Report indicates that Lacquer Craft could have constructed the computer program it used to compile its U.S. sales response so that it would match quantities on a single invoice first and then match other product codes from other non-matching quantity invoices. Citing the Department's Lung Dong Verification Report and its Shing Mark Verification Report, the Petitioners argue that the Department must reject Markor's and Lacquer Craft's method of collapsing piece sales into sets because the Department found problems with the reporting of sets by Lung Dong and Shing Mark.

The Petitioners argue that Markor aggregated separately invoiced pieces for purposes of defining its control numbers in defiance of the Department's explicit instructions in the May 3, 2004, Supplemental Section C and D Questionnaire to report the quantity sold and gross unit price for each U.S. sale of a complete furniture item sold during the POI. If sale data is reported for component

pieces of the furniture item (i.e., each SKU), identify the SKU entries with a {control number} unique from the {control number} assigned to the complete furniture item.

The Petitioners argue that Markor's failure to cooperate with the Department's instructions demands the application of partial adverse facts available. The Petitioners argue that Markor and Lacquer Craft both refused to cooperate with the Department when they rejected the Department's established practice and specific instructions to create control numbers that reflected the same degree of product specificity found in their own invoices and sales documents. The Petitioners argue that Markor and Lacquer Craft made it impossible for the Department to unwind and categorize the unique pieces properly that the companies aggregated arbitrarily into sets. Thus, for the final determination, as partial adverse facts available the Petitioners request that the Department apply the highest non-aberrational margins for each respondent's arbitrarily defined control numbers.

Markor contends that the Department has already rejected the Petitioners' proposed requirement that the pieces the companies reported as sets must appear on the same invoice. In addition, Markor argues, the Department verified that it only combined sales of pieces from the same set to the same customer at the same price. Markor argues that the Department also verified that Markor's customers order in complete sets, not by SKU numbers. Markor also asserts that its methodology is not distortive.

Markor states the Petitioners proposed that the Department limit the reporting of complete sets to cases where the component SKUs appear on one invoice in order to combine the sale in their February 17, 2004, letter wherein it requested that the Department require respondents to "report an item as a 'bed (complete)' only if the constituent pieces of the bed were not invoiced separately (i.e.,

the complete bed was invoiced on a single line item)." Markor argues that the Department rejected the Petitioners' suggestion and that the Department's questionnaires permitted the collapsing of sales of pieces into sets even when the pieces were invoiced separately. Markor disagrees with the Petitioners' suggestion that the Department discovered the relationship between SKUs and complete sets at verification and cites its February 24, 2004, March 29, 2004, May 24, 2004, and July 7, 2004, submissions as instances in which it explained its methodology for reporting complete sets. Furthermore, Markor disagrees with the Petitioners' contention that Markor defied the Department's instructions in its supplemental questionnaire.

Markor asserts that the Department verified that Markor only combined POI sales of the same pieces to the same customer at the same price and that it found no discrepancies. In addition, Markor argues that the Department verified that Markor's customers order and purchase complete sets, not individual SKU numbers. Citing the Department's Markor Verification Report, Markor recounted the description of its sales process and Verification Exhibit 12 to support its contention that it and its customers deal in sets, not pieces.

Markor argues that the Petitioners have not provided any evidence that demonstrates that Markor's reporting methodology gives distorted results. Markor argues that sale date is irrelevant to any adjustments made to gross price and that the Department verified that the weight per set was reported appropriately and thus there is no distortion to the freight and brokerage adjustments. Therefore, it contends, the Department must reject the Petitioners' arguments and reaffirm in its final determination the approach the Department used in the Preliminary Determination.

Lacquer Craft argues that it has reported its sales in a manner that is consistent with way the

merchandise is sold and that conforms to the control numbers the Department created and that its method does not result in distortion. In addition, Lacquer Craft asserts that the question of whether pieces could be combined across invoices was vetted completely in the parties' comments on the draft questionnaire and the Department rejected the Petitioners' arguments at that time. Lacquer Craft asserts that 94 percent of the sales it reported were made using one invoice. Lacquer Craft argues that the Department's Lacquer Craft Verification Report and the accompanying exhibits confirm that Lacquer Craft's entire business is structured to sell complete units and not individual pieces, that the pieces are packed in a given container solely to maximize the cubic feet in shipped pieces sold together as sets may be shipped and therefore invoiced separately, and that it only combined into a single transaction sales of the matching pieces which it sold to the same customer. In doing so, the company contends, it ensured that there would be no distortions in the margin analysis. Lacquer Craft argues that the Department examined numerous sales traces and reviewed multiple purchase orders and found "no discrepancies" or distortions in Lacquer Craft's methodology.

Lacqer Craft argues that, although the pieces are invoiced and carry distinct SKUs for purposes of production and shipping, it designs furniture as a unit and determines the price of the furniture as a unit. Furthermore, Lacquer Craft argues, at verification the Department saw multiple customer purchase orders demonstrating that customers order matched sets of pieces.
Lacquer Craft argues that the Petitioners cannot and have not identified any actual distortions in Lacquer Craft's sales data arising from its matching criteria. Lacquer Craft argues that the only variable factor in the calculation is the weight and that the Department was able to verify the weight calculation for each and every sale it checked. Furthermore, Lacquer Craft argues that the sale date is only

relevant for determining which sales to report and for calculating imputed credit expenses. Lacquer Craft asserts that its methodology does not distort imputed credit for export control sales because, for those sales, credit expenses are based on surrogate values and thus not determined by date. Also, Lacquer Craft argues that the imputed credit for CEP sales is calculated on a customer-specific basis based on average accounts receivable balances and, thus, the imputed credit expense is not dependent on sale date.

Department's Position: The Department has accepted Markor's and Lacquer Craft's method of reporting complete sets for the final determination. Markor and Lacquer Craft are correct that the Department never limited the reporting of complete sets to items that appear on the same invoice. See Amended Section C Questionnaire (February 13, 2004) at Footnote 1, wherein the Department states, "Specify bed (complete) when a bed is sold with a headboard, wooden rails and footboard." Markor and Lacquer Craft explained their methods of reporting in each of their Section C questionnaire responses and in a meeting with the Department. See Memorandum to the File re: Meeting with Markor and Lacquer Craft discussing Section C & D databases (April 21, 2004). We were aware of these companies' reporting methodology as we explained in the Preliminary Determination.

The Department limited the reporting of sets to items "sold" as sets and these respondents have argued throughout this investigation that their headboards, footboards, and rails are "sold" as sets and that the manner in which these components are invoiced reflect packing and shipping realities rather than the manner in which their customers order and in which they price the sets. The Department's decision in this instance does not detract from its normal practice of comparing sales as invoiced to normal values. Rather, the unique characteristics of these furniture items and the manner in which they

were sold by Markor and Lacquer Craft make it reasonable for Markor and Lacquer Craft to have reported its sales in this manner for this investigation. The acceptance of this method for the investigation does not mean that it would be acceptable for purposes of an administrative review.

Comment 12: Electricity for Factory Overhead and SG&A

The Petitioners argue that the Department captured all expenses related to energy and utility consumption in the energy component of its MLE denominator in the surrogate financial ratios. Therefore, the Petitioners assert, the energy component of the MLE denominator includes expenses for energy that are related not only to manufacturing activities but also to factory overhead activities and SG&A activities. The Petitioners argue that the respondents have only reported the energy consumed for manufacturing and thus the MLE denominator in the surrogate ratios does not correspond with the cost-of-manufacture component in the Department's normal-value calculation for the respondents. The Petitioners suggest adding a variable to the normal value that would represent each company's energy consumed for factory overhead and SG&A. Using verification exhibits from four respondents, the Petitioners present ratios they calculated showing the percentage of energy consumed for production and energy consumed for other purposes for those four respondents. The Petitioners argue that the Department can use this data to add a factory overhead and SG&A energy consumption variable to the normal-value calculation for all mandatory respondents. The Petitioners assert that this adjustment will ensure an "apples-to-apples" comparison between the surrogate ratios and the respondents' data.

The Joint Respondents disagree with the Petitioners' assertion that the average financial ratio the Department applied captures all of the surrogate producers' expenditure on energy and utilities in the MLE denominator. The Joint Respondents argue that the Department rejected a similar request in

Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (September 27, 2001) ("Magnesium from Russia"), and accompanying Issues and Decision Memorandum. Furthermore, the Joint Respondents argue, the CIT affirmed that Department is not required to make these adjustments and cites Rhodia, to support their argument.

Dorbest disagrees with the Petitioners' argument that the Department should make a specific adjustment to Dorbest's reported energy and utility costs in order to make a more perfect match between Dorbest's factors of production and the Indian surrogate companies' cost. Dorbest alleges that the Department does not normally conduct a line-by-line analysis of the Indian surrogate companies' costs nor is it obligated to achieve a perfect match between the respondents and the Indian surrogate producers, citing the Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China, 66 FR 50608 (October 4, 2001), and accompanying Issues and Decision Memorandum. Dorbest asserts that the Department has been reluctant to engage in this type of exercise in the past and should reject the Petitioners' request in this case.

Department's Position: The Department has determined that it should not add a factory overhead and SG&A energy amount to normal value for any of its calculations of the respondents' margins. Although the surrogate-company ratios may contain energy consumed for factory overhead and SG&A in the MLE denominator, we do not find that making such an adjustment yields a more accurate result. Indeed, such an adjustment could introduce unintended distortions into the data. See Magnesium From Russian. Moreover, both the CIT and the Federal Circuit have affirmed the following principle:

> Commerce does not generally adjust the surrogate values used in the calculation of factory overhead. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 61 FR 14057, 14060 (Mar.

> 29, 1996); Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706, 25706-07 (May 3, 2000); Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 64 FR 31143, 31143 (May 16, 2000); Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China, 62 FR 51410, 51413, 51417 (Oct. 1, 1997). Rather, once Commerce establishes that the surrogate produces identical or comparable merchandise, closely approximating the nonmarket producer's experience, Commerce merely uses the surrogate producer's data. Section 771(c)(4) (2000); 19 C.F.R §351.408(c)(4) (2001). Furthermore, Commerce is neither required to 'duplicate the exact production experience of the Chinese manufacturers,' Nation Ford Chem. Co. v. United States, 166 F.3d. 1373, 1377 (Fed. Cir. 1999), nor undergo 'an item-by-item analysis in calculating factory overhead.' Magnesium Corp. of Am. v. United States, 166 F. 3d. 1364, 1372 (Fed. Cir. 1999). Moreover, Commerce need not use 'perfectly conforming information,' only comparable information. Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7344 (Feb. 27, 1996).

See Rhodia. Accordingly, we have not made the adjustments as urged by the Petitioners.

Comment 13: Sigma Freight Rule and Market-Economy Purchases

The Petitioners argue that in the Preliminary Determination, citing Sigma Corp. v. United States, 117 F.3d 1401 (Fed. Cir. 1997) ("Sigma"), the Department added a surrogate freight cost to Indian import surrogate factor values using the shorter of the reported distance from the domestic supplier to the factory or the distance to the seaport. The Petitioners contend that the Department also applied the Sigma cap to certain market-economy input purchases. The Petitioners argue that applying the Sigma cap to market-economy purchases in the Preliminary Determination is contrary to the Department's established practice of applying the Sigma cap only to those inputs for which it used surrogate values based on import statistics, citing Preliminary Results of First Antidumping Duty Administrative Review: Honey from the People's Republic of China, 68 FR 69988, 69992-93 (December 16, 2003) (applying

the Sigma rule to surrogate values based on import data, but basing freight for non-import surrogate values for factors sourced domestically by PRC suppliers on the actual distance from the input supplier to the site at which the input was used). The Petitioners state that the purpose of applying a Sigma cap is to prevent double-counting but that the double-counting concern is irrelevant to market-economy factors. Thus, the Petitioners assert that, for the final determination, the Department should use the actual mileage reported by the respondent multiplied by the applicable freight rate (i.e., the surrogate value freight rate or market-economy freight rate) for inputs purchased from market-economy sources.

Lung Dong argues that the Department should not average the distances from Lung Dong to various ports when calculating the amount of inland freight expenses to add to raw material input costs. Lung Dong argues that the Department's practice is to use the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, citing Sigma. In the final determination, Lung Dong argues that the Department should recalculate freight rates using the shorter rather than an average of the reported distance from Lung Dong's suppliers to the factory or the distance from Lung Dong to the nearest seaport.

Dorbest argues that the Petitioners' argument does not apply to Dorbest because the Department used the furthest distance from the port to the factory for all of Dorbest's market- economy inputs. Therefore, Dorbest contends that the Department has not applied the Sigma freight cap that is limiting the distance used to transport Dorbest's market inputs from the port to the factory.

Department's Position: In the Preliminary Determination, we applied the Sigma cap inadvertently to certain market-economy purchases. As stated in Sigma the purpose of the Sigma cap is to add to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from

either the closest PRC port of exportation to the factory or from the domestic supplier to the factory on an import-specific basis. Therefore, for the final determination, we only applied the Sigma cap to NME purchases. For market- economy purchases of certain inputs, we have based the freight charge on the actual terms of the freight expense. Thus, if the freight term for a market-economy purchase is only CIF to the Chinese port, we calculated a freight charge from the Chinese port to the plant.

Additionally, we agree with Lung Dong that we used an average freight distance rather than the shorter distance from the supplier to the factory or the port to the plant for surrogate values. Therefore, for the final determination, we have calculated Lung Dong's freight rates using the shorter distance, rather than an average distance. See Lung Dong Final Analysis Memo. Furthermore, we agree with Dorbest that, at the Preliminary Determination, we used the furthest distance from the port to the factory for all of Dorbest's market-economy inputs. Therefore, no adjustment is necessary to the determination of the Sigma cap for Dorbest.

Comment 14: Furniture Parts

Lung Dong argues that the Department should exclude sales of furniture parts detailed in VE-15 of the Department's Lung Dong Verification Report from the antidumping calculation. Although the Department's report indicates that Lung Dong did not report certain spare parts, Lung Dong contends that it reported in its July 9, 2004, supplemental questionnaire response that occasionally it provided customers some furniture parts or hardware for self-repair for free or for a small charge as an aftermarket service to its customers. Lung Dong reiterates its explanation of its treatment of parts shipped separately from regular sales and why the Department should exclude them from the antidumping calculation. Thus, Lung Dong argues, this was not a situation where the Department

discovered information that the company had failed to provide and, thus, the Department should not make any adverse inferences with regard to these shipments.

Lung Dong argues that it excluded the furniture parts and hardware items from its U.S. sales listing correctly. Lung Dong asserts that the additional hardware it shipped was not "made substantially of wood products" as the scope language requires. In addition, Lung Dong argues, the scope language does not specify that the investigation covers wooden bedroom furniture "and parts thereof" as in many Department investigations and that, except for bed headboards, footboards, and rails, the scope language appears to contemplate the subject merchandise as entire furniture pieces. Lung Dong argues that language limiting the scope to products "whether or not assembled, completed, or finished" lends further support to the interpretation that the subject merchandise includes entire pieces of furniture, not merely individual parts thereof. Therefore, Lung Dong argues, the Department should not include sales of these parts in the calculation of Lung Dong's margin.

The Petitioners argue that the Department should include in Lung Dong's sales database certain parts which, it argues, are clearly subject merchandise.

Lung Dong disagrees with the Petitioners that its steel hardware items and other parts are clearly subject merchandise. Specifically, Lung Dong contends, steel hardware items are not made of wood and the other shipments are pieces that are not intended to be assembled into a complete piece of furniture and, as such, are not within the scope of the investigation. Therefore, Lung Dong argues, the Department should not include its shipments of these parts in the calculation of its margin.

Similarly, Markor argues that the Department's inclusion of its sales of spare parts in its margin calculation was incorrect. Markor asserts that the inclusion of spare parts in the final margin calculation

for Markor will prevent a fair comparison between the export price and the normal value as required by section 773(a) of the Act.

Markor argues that these sales are unusual and not representative of the company's normal pricing behavior. Markor states that generally it does not charge its customers for spare parts and that, in the rare instances when it does charge a nominal fee for spare parts, it accounts for the fee as an offset to expenses. Markor cites the Department's Markor Verification Report and states that the Department verified that spare-part sales amount to very small revenues and that Markor treats those nominal revenues as an offset to selling expenses in its accounting system.

In addition, Markor argues that using its sales of spare parts creates a distortion in the calculation due to the manner in which it has reported the factors of production for its spare parts. Markor states that it combined all the factors for spare parts into one control number because the administrative burden to provide specific information prohibited the linking of each spare-part sale to the primary sale for which the spare part was needed. Markor argues that, as currently classified, the data distorts its margin calculation.

Markor states that the Department's practice is to ignore unusual U.S. sales, such as U.S. sales of spare parts, when determining dumping margins and cites Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part: Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea, 65 FR 35886 (June 6, 2000) ("DRAMS"), and Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166 (July 23, 1996) ("Printing Presses"), to support its argument. Markor states that, in

DRAMS , the scope excluded DRAMs that were reimported for repair or replacement. Similarly, in Printing Presses, Markor argues, the Department found that including the price of the spare parts in the U.S. price would result, in effect, in double-counting the costs of the spare parts. Markor contends that inclusion of the spare parts in its margin calculation will result in a distortion of the margin.

The Petitioners disagree with Markor's argument that the Department should exclude U.S. sales of spare parts in its dumping calculation. Contrary to Markor's claim, the Petitioners argue, the data in its U.S. sales database suggest that its sales of spare parts are not unusual. The Petitioners state that the quantity of spare-part sales relative to Markor's total transactions demonstrates that these transactions are a routine part of Markor's U.S. business activities. Additionally, the Petitioners argue, the relative share of Markor customers that received spare parts to all of its customers demonstrates that these transactions are a routine part of Markor's U.S. business activities

Further, the Petitioners argue that the Department's practice is to exclude sales only when they are clearly atypical and would undermine the fairness of the comparison of foreign and U.S. sales, citing Windmill Int'l PTE., Ltd v. United States, 193 F.Supp.2d 1303, 1312 (CIT 2002). The Petitioners assert that the Department must determine sales are not *bona fide* before excluding them from the margin calculation.

Furthermore, the Petitioners argue, the volume of Markor's sales of spare parts prevents such sales from being deemed "clearly atypical." Moreover, the Petitioners argue that, because the current proceeding involves a non-market economy, the concern of an unfair price comparison is simply not an issue. Also, the Petitioners contend that excluding sales because they are allegedly unusual would allow respondents to structure their U.S. sales in such a manner as to discount apparently high U.S. prices

indirectly by providing heavily discounted or free parts and accessories.

Finally, the Petitioners disagree with Markor's argument that the Department should exclude spare parts from its calculation because the control number Markor assigned to these sales is incorrect. Although Markor stated that the administrative burden prevented it from linking each spare-part sale to its primary sale, the Petitioners contend that Markor could have suggested a reasonable alternative to the allegedly overly burdensome methodology of linking each spare-part sale to the primary sale. Instead, the Petitioners argue, Markor simply classified all spare-part sales into a single control number. Thus, they contend, the Department should not permit a respondent to select which transactions it will and will not include in the data the Department will use to calculate the dumping margin.

Department's Position: The Department has determined to include sales of spare parts fitting the description in the scope of this investigation in the margin calculation. The Department has clarified the extent to which parts of wooden bedroom furniture are included in the scope through a separate memorandum. See Final Scope Decision Memorandum to Laurie Parkhill from Erol Yesin (November 8, 2004). The spare parts at issue for Markor and Lung Dong include parts that are both within the scope of this investigation and parts that are outside the scope of this investigation.

Nevertheless, for Lung Dong, we have not included its spare-part sales in the margin calculation due to the small quantity and value of Lung Dong's spare-part sales and the manner in which it reported these items. Additionally, the Department has no information with which to calculate normal values for Lung Dong's spare-part sales. Further, the Petitioners have not alleged, and the record does not support a finding, that Lung Dong did not cooperate to the best of its ability in providing the factors of production for the spare parts it sold during the POI. Moreover, the quantity and value of Lung Dong's spare-part

sales is inconsequential relative to Lung Dong's total sales. Therefore, for the final determination, we have not made any adjustments to assign a normal value to Lung Dong's spare-part sales in order to calculate a margin on these sales.

The Department has continued to include Markor's spare-part sales in its margin calculation. Unlike Lung Dong's spare-part sales, Markor's spare-part sales represent a broad range of spare parts and are not inconsequential in terms of the total quantity of its spare-part sales relative to Markor's total sales of subject merchandise during the POI. Moreover, in contrast to Lung Dong's spare-part sales, the Department has the necessary information to calculate the normal value for Markor's spare-part sales. Although the factors of production Markor reported for its spare parts are grouped into one control number, the Department has no other basis on which to calculate normal values for Markor's spare-part sales. Markor chose the manner in which to report its factors of production for spare parts. Furthermore, Markor's spare-part sales are too significant to set aside from the margin calculation. Therefore, the Department has continued to include Markor's spare-part sales and associated factors of production in the margin calculation.

Comment 15: Valuation of NME Self-Made, Semi-Finished, or Subcontracted Parts

The Petitioners point out that the Department stated in the Preliminary Determination that "{t}he Department's normal practice is to use a surrogate value for the production of subcontracted items, since the overhead, SG&A and profit are reflected in the surrogate value and not the subcontracted factor inputs," citing the Memorandum to File from Michael Holton through Robert Bolling: Analysis Memorandum for the Preliminary Determination Concerning Shing Mark, at 5-6 (June 17, 2004). The Petitioners assert that the Department also stated at the Preliminary Determination that

it would evaluate for the final determination whether it was distortive to use subcontracted factor inputs to value subcontracted materials.

The Petitioners assert that the subcontractor's fee and the market value of raw materials used are meaningless because the subcontractor is operating in an NME. They argue that, therefore, the Department must assign a surrogate value to inputs received from subcontractors. The Petitioners assert that this is the typical practice of the Department, citing Certain Helical Spring Lock Washers From China, 69 FR 12119 (March 15, 2004), and accompanying Decision ("Helical Spring Lock Washers").

The Petitioners argue that the Department should use surrogate values for the NME subcontracted inputs reported by Shing Mark, Dorbest, Lacquer Craft, and Tech Lane. The Petitioners argue that otherwise the value of the inputs will be distorted and the respondents are able to understate reported costs by omitting key inputs of the subcontracted manufacturing process.

Dorbest disagrees with the Petitioner's claim that the Department should not rely on the factors of production provided by subcontractors because such data would understate normal value by not capturing the subcontractors' factory overhead and SG&A expenses. Dorbest claims that the Petitioners have not demonstrated any distortion in relation to the Indian surrogate companies. Dorbest states that the Petitioners cite the decision by the Department in Helical Spring Lock Washers as the only support for their argument. Dorbest points out that, in that case, the Department rejected the respondent's subcontractor's factors of production for a plating operation in favor of a specific value for the electroplating operation itself placed on the record by the Petitioners because the unaffiliated subcontractors consumed the inputs rather then the respondent company. Dorbest argues that its

situation is distinguishable from Helical Spring Lock Washers because Dorbest consumed the inputs for its subcontracted operation since the raw material that was converted by the subcontractors belonged to Dorbest. In addition, Dorbest asserts that, once it received the semi-finished component from the subcontractors, Dorbest had to engage in significant additional manufacturing to incorporate those semi-finished subcontracted parts into the finished furniture pieces it sold. Thus, Dorbest claims that the subcontractors' facilities operate as a highly integrated extension of Dorbest's own factories. Dorbest asserts that the Department has in the past stated that, in situations involving highly variegated products, use of the subcontractors' factors-of-production can yield more accurate dumping margins. Dorbest states that furniture is obviously a highly variegated product, involving many hundreds of different designs which incorporate hundreds of raw materials. Dorbest contends that the Department examined the subcontractors' factors-of-production data at the verification, including both examination of subcontractors' books, reconciliation of reported factors-of-production data into the subcontractors' ledgers, and interviews of subcontractor accounting personnel, citing Dorbest Verification Report at 18. Therefore, Dorbest asserts that its reporting methodology places no additional burden on the Department to use the subcontractors' factors-of-production data and concludes that the Department should not alter its preliminary decision to use such data in this case.

Lacquer Craft contends that the Petitioner's argument is unfounded. Citing USEC Inc. v. United States, 281 F.Supp.2d 1334 (CIT 2003) (quoting the Department's Remand Determination in DRAMS from Taiwan), Lacquer Craft argues that, because a significant portion of the value of its subcontracted parts is its intellectual property, Lacquer Craft should be considered the producer. Lacquer Craft claims that the Department saw at verification that the subcontracted parts Lacquer Craft

used were produced by drawings and prints which Lacquer Craft developed.

Lacquer Craft contends that the Department reviewed the material, labor, and energy it reported for its subcontracted parts at verification and the Department found no discrepancies or distortions. Lacquer Craft contends that its reporting methodology is the most reasonable and non-distortive methodology for reporting subcontracted inputs and the Department should not double-count the overhead, SG&A, and profit that has already been added to the parts factors in the Preliminary Determination by adding such financial ratios to the parts factors which the respondents reported.

Shing Mark argues that its self-made parts are valued properly by using the same methodology as its other merchandise and that the Petitioners' argument that it should be valued as if purchased from an outside supplier is groundless. Shing Mark asserts that it reported the materials and all inputs used to make these self-made parts properly and that the Department verified its methodology. Citing Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 62 FR 61294 (November 20, 1990) ("CLT Plate from the PRC"), Shing Mark asserts that the Department has found that self-made parts are valued based on the actual inputs used to make them rather than a surrogate value.

Department's Position: The Department has determined to value the self-made, semi-finished, or subcontracted inputs reported by Dorbest, Lacquer Craft, and Shing Mark using the reported actual inputs used to make these products. All three of these respondents reported these inputs in a timely manner and the Department was able to review the production of the parts. In all three cases the production of the products in question was highly integrated with the production of the subject merchandise. Where the actual input used in the production of an in-house input is reported and its

factors-of-production can be verified, it is the Department's preference to use that data rather than assign a surrogate value to the finished product. See CLT Plate from the PRC. This issue is moot with respect to Tech Lane because we have determined to establish the dumping margin for Tech Lane using total adverse facts available.

II. Surrogate Value

Comment 16: Surrogate Values - General

The Petitioners assert that the Department gave the respondents multiple opportunities to provide clear and reliable information concerning the materials they used to produce the subject merchandise and values each respondent thought the Department should use for those factors. Nevertheless, the Petitioners contend, in many instances the respondents did not meet the Department's requests for information on the following bases: (1) often the respondents' suggested HTS categories were overly broad and the descriptions from the respondents were vague; (2) the respondents did not provide a detailed narrative description justifying the suggested HTS categories as the Department requested; (3) many of the HTS classifications do not appear in the Indian HTS; (4) some factors have no suggested HTS category; (5) the Department received insufficient information concerning purchases of market-economy inputs. As a result, the Petitioners argue, the Department should apply adverse facts available to value many factors for each respondent.

The Petitioners argue that the lack of detailed descriptions of the inputs by the respondents results in the use of overly broad categories encompassing many inputs. Acceptance of this type of reporting is unacceptable, the Petitioners contend, because it allows the respondents to choose the tariff classification with the lowest average unit value that may apply to the vaguely described factor. At a

minimum, the Petitioners state, such an approach invites inaccuracy if not manipulation since more detailed information about the input may result in the use of a more specific and possibly higher-valued HTS category.

The Petitioners assert that, unless the Department relies on adverse facts available to value factors for which the respondents have provided insufficient descriptions for purposes of determining the most applicable HTS categories, the Department will reward the respondents for their vague responses to the Department's requests for information. As an example, the Petitioners contend, some respondents provided more than one HTS classification for a broad category of materials and for the Preliminary Determination the Department chose to average the import values in the multiple categories because there was insufficient information to ascertain the single most-suitable category for that material. Such a choice, the Petitioners argue, contradicts the Department's normal practice of applying some type of adverse facts available where companies do not provide information which it has requested.

Finally, the Petitioners argue, the fact that the respondents have provided vague or overly broad descriptions of their inputs affects the reliability of their information concerning market-economy inputs. Although the Department's usual practice under 19 CFR 351.408(a)(1) is to value all inputs for which a respondent purchased a portion from a market-economy supplier at the market-economy price, the Petitioners assert that, as a result of the vague descriptions by the respondents, in this investigation the Department cannot determine whether it is appropriate to value the NME portions of the inputs at the market-economy price.

For these reasons, the Petitioners conclude, the Department should apply adverse facts

available wherever the descriptive information is inadequate to permit classifications at the eight-digit level of the Indian HTS. They assert that the appropriate adverse facts available is the highest average unit value of the HTS category that may be applicable to the input. For NME-sourced purchases for which the respondents also made purchases from market-economy countries, the Petitioners argue, the Department should use the higher of the market-economy price or the average unit value for the item under the Indian HTS.

The respondents rebut the Petitioners' comments on a company-specific basis (see below).

Department's Position: This investigation has presented a host of complex issues with respect to HTS categories and factor valuations, given the hundreds of inputs that are necessary to produce the subject merchandise. It is important to recognize that the breadth of the information we have requested in this investigation is substantial. We have balanced that recognition with the importance of ensuring that the information we receive is adequate for the purposes of calculating an accurate antidumping margin. We have examined each of the Petitioners' criticisms of the respondents' HTS and valuation recommendations carefully to ensure that the values we apply to the respondents' factors are supported by the weight of the evidence on the record. Our analysis appears in company-specific sections below.

Comment 17: Purchase-Price Information

The Respondents assert that they have provided the average POI purchase-price information for paints, mirrors, cardboard, and other factor inputs of two Indian and one Indonesian wooden bedroom furniture producers to the Department. The Respondents contend these data provide actual average POI transaction prices, not selected transaction price data or offers to sell. The Respondents submit that, to the best of their knowledge, the Department has never had comparable surrogate-

country transaction price data in any prior investigation. According to the Respondents, the average actual transaction prices at which the inputs were bought and sold by Indonesian or Indian wooden furniture manufacturers and their suppliers represent a better measure of the value of the factor inputs used to produce wooden bedroom furniture than values taken from Indian import statistics. The Respondents argue that the prices paid by Highland House, an Indian producer of international-quality wood furniture, and verified by a review of Highland House's books and records by Ernst & Young are more representative than the MSFTI information the Department used to calculate the surrogate values for the Preliminary Determination.

The Respondents explain that they sought and obtained actual average transaction prices for the full POI from wooden furniture manufacturers and a major supplier and asked that the accuracy of the data be verified by independent counsel or outside accountants in the case of the furniture manufacturers or, in the case of the paints supplier, be attested to by a senior company executive. The Respondents contend that, because the data covers POI purchases from, and sales to, a range of suppliers and customers, they cannot be dismissed as selective. Additionally, the Respondents argue that, because the pricing data have been publicly released, they meet the Department's requirement of public availability.

The Petitioners argue that Tarun Vadehra's purchase prices were compiled by its own outside general counsel and were neither compiled nor reviewed by an accountant. The Petitioners contend that, while Mr. Ghuman claims to have verified the accuracy of the data in the report, there is no showing that he has any expertise or experience that would qualify him to do so. The Petitioners allege that, when a certain raw material identified by Lacquer Craft had not been produced by Tarun

Vadehra, Mr. Ghuman simply took a substitute product into consideration, citing Ghuman Report at 4. Finally, the Petitioners argue that, because Highland House and Tarun Vadehra did not release their audited financial statements to Ernst &Young and Mr. Ghuman, their purchase records could not have been reconciled with such statements.

Further, the Petitioners argue that, of the sample invoices that were attached to the reports, many of the invoices were either illegible or not translated into English. According to the Petitioners, Ernst & Young also acknowledged that it did not know the relationship, if any, of any of the suppliers of raw materials to Highland House. Furthermore, the Petitioners argue that Mr. Ghuman does not indicate whether any of the suppliers of raw materials were related to Tarun Vadehra. Thus, the Petitioners contend that the reported prices could include those from affiliated suppliers.
Finally, the Petitioners argue that the unit values calculated by Ernst &Young and Mr. Ghuman are not publicly available. The Petitioners contend they cannot be derived from public records and thus cannot be duplicated by the Department, the Petitioners, or anyone else that lacks access to the confidential records from which they were derived. Accordingly, the Petitioners submit that the Department should reject these respondents' proposal to use Highland House and Tarun Vedhera data.

Department's Position: The Department has determined not to use the alternative sources of information submitted by certain respondents to value paints, mirrors, cardboard, and other factor inputs. First, it is the Department's practice to use publicly available sources of information to value factors. See 19 CFR 351.408(c)(1). The Department finds that the proffered information from Highland House and Tarun Vedhera and that regarding paint are not publicly available in the sense that the information can be duplicated by parties that do not have access to the records from which it was

derived. Because of this the Department finds that the information is not reliable and accepting this information would effectively prohibit interested parties from participating in this investigation.

Furthermore, the Department's practice is to not use price quotes to value factors when other usable, reliable information is available. See Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003), and accompanying Issues and Decision Memorandum ("Saccharin from the PRC 1993"). Additionally, the Department has not considered the factor values derived form Goldfindo because Goldfindo is an Indonesian company and the Department has determined to use India as the surrogate country in this investigation.

Finally, the Department has determined that using MSFTI data is not distortive. As we stated in the Preliminary Determination, in selecting the best available information for valuing factors of production in accordance with section 773(c)(1) of the Act, our practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. For the reasons detailed above, we continue to find that the MSFTI data satisfy these criteria better than the data proposed by the respondents.

Comment 18: Exclusion of Aberrational Data

Shing Mark argues that the Department should ensure that it applies its normal methodology for excluding distorted values from the calculation of surrogate values based on MSFTI data. Shing Mark contends that the Department's practice is to exclude those unit import values from countries that are significantly different than the average unit value for that Indian HTS calssifcation as a whole, citing Final Determinations of Sales at Less Than Fair Value: Steel Wire Rope from India and People's Republic of China, 66 FR 12759 (February 28, 2001), and accompanying Issues and Decision Memorandum.

Furthermore, Shing Mark argues that the Department departed from its prior practice by including countries representing low-volume import quantities with aberrational values when calculating the average unit value of MFSTI data. Thus Shing Mark argues that, consistent with its prior practice, the Department should examine its data from the MSFTI and exclude low-volume imports from certain countries with per-unit values that "break significantly" from the per-unit values of the higher-quantity imports of that same product from other countries based on its proposed benchmarks. According to Shing Mark, low-quantity imports are distortive, are not commercially significant, do not represent appropriate or accurate values for that specific commodity, and should not be included in the average unit value calculation for the given HTS classifications. Citing, among others, Hebei Metals & Minerals Import & Export Corp. v. United States, Slip Op. 04-88, 03-00442, at 10-12 (CIT 2004) ("Hebei Metals"), the respondents argue the Department's inclusion of such aberrational values could amount to legal error in calculating appropriate surrogate values.

The Petitioners argue that the Department should reject Shing Mark's proposed benchmarks for aberrational data as they are unsupported by the Department's practice. The Petitioners contend that the Department generally does not exclude imports solely on the basis that they exceed the average unit value of all merchandise entered under the same HTS classification, citing among others Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China, 60 FR 49521, 49523 (September 22, 1995) ("Hand Tools from the PRC 1995"). The Petitioners argue that, if import statistics are based on a small quantity of imports for the POI or if imports from a particular country are in a small quantity, the Department's practice is to determine if the price for those imports is aberrational. According to the Petitioners, the Department has observed that

it will not exclude imports of small quantities of merchandise automatically from the calculation of surrogate values. Instead, the Petitioners argue, the Department's practice is to exclude only data that is deemed to be distortive, citing among others Color TV Receivers from the PRC. Additionally, the Petitioners contend that the Department has not provided a numerical standard for what qualifies as a small quantity of imports and has rejected a respondent's assertion that imports made in quantities of less than100 kg were legally *de minimis*, citing Heavy Forged Hand Tools From the People's Republic of China, 66 FR 48026 (September 17, 2001), and accompanying Issues and Decision Memorandum ("Hand Tools from the PRC 2001")

Department's Position: In this case, the Department is unable to determine whether any of the values from the MSFTI surrogate-value calculations are aberrational. First, we find that respondents have not advanced a reasonable standard by which we could measure whether such values are aberrational. Based upon our examination of the information presented in this case, we find that each company's products are uncharacteristically unique due to the significant differences in design and the resulting broad range of inputs going into each product. These circumstances make it virtually impossible for the Department to measure in a reasonable manner whether such values are aberrationally high or low. Without a reasonable and objective standard, the Department would be opening a Pandora's box of subjective interpretations from all interested parties on whether the Department identified aberrational values correctly and used the best available information to calculate accurate margins in this investigation. Second, any attempt to measure whether the values are aberrational is complicated further in this case by the fact that the record evidence shows Shing Mark and the other respondents often aggregated hundreds of inputs into a single factor input, thereby complicating the possibility of

comparing values. Finally, the Department does not generally exclude imports as aberrational solely on the basis that they exceed the average unit value of the merchandise entered under the same HTS classification. See Hand Tools from PRC at 49523. This is particularly the case where, as here, the respondents reported aggregated factor inputs which contain items with wide-ranging values and usage rates. Accordingly, based on the information on the record in this case, the Department is unable to determine whether the values from the MSFTI surrogate-value calculations are aberrational.

Comment 19: Dorbest

The Petitioners contend that the Department should use corrected surrogate-value data in its margin calculations for Dorbest. The Petitioners argue that the Department should revise the following factors of production that the Department used in the Preliminary Determination: cardboard, glue, screws, resin applique, styrofoam, hooks, connectors, hinges, iron components, tape, staples, veneer toon, miscellaneous hardware, stains, and pboard. The Petitioners argue that Dorbest provided classification of the factors of production that is overly broad or appears in an earlier version of the Indian HTS that is not contemporaneous with the POI. The Petitioners contend that the Department should reject these classifications and value the factors of production using, as adverse facts available, the average unit value of merchandise imported into India during the POI under the Indian HTS category that is both potentially applicable and has the highest average unit value.

Dorbest asserts that the Department should reject the Petitioners' arguments regarding application of adverse facts available to Dorbest for alleged ambiguities in the Indian HTS. Dorbest claims that it can, not be held responsible for the overly broad categories established by the Indian government to classify imports. Dorbest argues that, contrary to the Petitioners' claims, Dorbest

provided detailed breakdowns of all of its raw materials in its May 26, 2004, submission and included corroborative evidence such as U.S. Customs rulings to support its claimed classifications. Dorbest contends that it acted to the best of its ability and believes that the Department should continue using the same HTS categories for the disputed factors of production.

With respect to cardboard, Dorbest argues that HTS category 4808.90.00 covering "Other paper and paperboard corrugated" remains the most appropriate HTS category for this input. Dorbest contends that it described this raw material as "paper cardboard for protecting furniture at the time of shipping." Dorbest alleges that the Department later confirmed that cardboard is made up of corrugated paper, citing the Department's Dorbest Verification Report. Dorbest states that the HTS category 4808.10.00 suggested by Petitioners covers "corrugated paper/paperboard whether or not perforated," which necessarily includes cardboard that has been perforated. Dorbest claims that the Department's verifiers observed at the verification that the cardboard purchased by Dorbest is not perforated.

With respect to glue and stains, Dorbest claims that it purchased a significant portion of its glue and stains from a market-economy source. Dorbest states that it submitted a detailed listing of all specific raw materials underlying each reported factors-of-production field in the "Raw Material Rollup Table" lists submitted on May 24, 2004, and several times thereafter. Dorbest alleges that the Petitioners have not explained any distortions or problems with the manner in which Dorbest's raw materials were grouped. Dorbest contends that at verification the Department examined that glue and stains were purchased from a market economy and found no discrepancies, citing the Department's Dorbest Verification Report at 6-7.

With respect to screws, Dorbest argues that HTS category 7318.12.00 covering "other wood screws threaded" remains the most appropriate HTS category for this input. Dorbest alleges that, since it uses its screws in wooden furniture, this category matches Dorbest's screws most closely. Dorbest contends that the Petitioners' proposed HTS category 7318.11.90, which covers "other threaded coach screws," is not specific to Dorbest's screws as it covers coach screws.

With respect to resin applique, Dorbest argues that HTS category 3926.40.09 remains the most appropriate HTS category for this input. Dorbest described this input as "PVC and polymer used for decorating" in its May 26, 2004 response. Dorbest contends that the Petitioners' proposed HTS category 3924.90.90 covers "household and toilet articles of plastic" and it does not apply to Dorbest because it does not use toilet or household articles in the manufacture of wooden bedroom furniture.

With respect to styrofoam, Dorbest concedes that the HTS category 3901.10.10 refers to polyethylene rather than polystyrene. Dorbest states that it misclassified this input inadvertently and, therefore, Dorbest agrees that the Department should use the HTS category 3903.11.00 that it used to value styrofoam for Markor in the Preliminary Determination.

With respect to hooks, connectors and hinges, Dorbest argues that HTS category 8302.10.09 remains the most appropriate HTS category to value these inputs since it described these input as made out of iron in its May 26, 2004 response. Dorbest disagrees with the Petitioners' suggested HTS category 8302.10.20 covering "hinges of brass" because this category does not apply since Dorbest's hooks are made of iron and not brass.

With respect to iron components, Dorbest argues that HTS category 7216.99 covering "shapes & sections of iron" remains the most appropriate HTS category to value iron components since it

described this input as "iron panel" in its May 26, 2004, response. Dorbest contends that the Petitioners' suggested HTS category 83024200 covers "other fittings suitable for furniture" and does not apply as it is a basket category covering all sorts of furniture products.

With respect to tape, Dorbest argues that HTS category 3919.10.00 covering "self-adhesive plates, sheets, film, etc." remains the most appropriate HTS category for this input which it described as "adhesive tape" in its May 26, 2004, response. Dorbest states that, although the Petitioners argue that Dorbest's description is overly broad, the Petitioners suggest the Department use an even broader category, 3919.90.90 covering "other self-adhesive plates, etc.", and do not explain why this category is more appropriate than the category the Department used in the Preliminary Determination. With respect to staples, Dorbest argues that HTS category 7317.00.91 remains the most appropriate HTS category to value staples, referring to its description of this input as "galvanized gun staples" in its May 26, 2004, response. Dorbest points out that Petitioners suggest HTS category 7415.10.00 which includes only staples made of copper. With respect to veneer toon, Dorbest agrees with the Petitioners that HTS category 4408.90.90 is the appropriate surrogate value for toon veneer. With respect to miscellaneous hardware, Dorbest argues that HTS category 8302.42.00 remains the most appropriate HTS category to value miscellaneous hardware which it described as including "galvanized plates and iron discs" in its May 26, 2004, response. Dorbest states that the HTS description reads "hardware, fixtures, castors, etc. of base metal" and contends that the Petitioners' proposed HTS category 4409.10.20 covering "tounged, grooved coniferous wood" is not even close to the metal hardware the Department seeks to value. With respect to pboard, Dorbest stated that it reported it as a market-economy input in its July 13, 2004, submission. Dorbest argues that the Department should value

pboard using Dorbest's market-economy cost.

Department's Position: With respect to cardboard, the Department has determined to use HTS category 4808.10.00 for Dorbest because it covers "corrugated paper/paperboard whether or not perforated" which is in accordance with the Department's observation at verification that Dorbest's cardboard is made of corrugated paper. See Dorbest Verification Report. The Department did not indicate in its verification report, however, whether Dorbest used perforated or non-perforated cardboard. Further, in Dorbest's May 26, 2004, submission, it described this input as "paper cardboard for protecting furniture at the time of shipment" and did not provide further information about the cardboard. Therefore we have used HTS category 4808.10.00. With respect to glue and stains, the Department has determined to continue evaluating these inputs using market-economy prices in accordance with the Department's finding at the verification that Dorbest purchased significant portion of its glue and stains from a market-economy source. See Dorbest Verification Report. With respect to screws, the Department has determined to continue using HTS category 7318.12.00 covering "other wood screws threaded" because it remains the most appropriate HTS category for this input that is used in furniture. With respect to resin applique, the Department has determined to use HTS category 3926.30.90 as the most comparable category listed in the HTS headings covering "other articles of plastics and articles of other materials" because the category that the Department used in the Preliminary Determination no longer exists.

With respect to styrofoam, the Department has determined to use HTS category 3921.11.00 covering articles made of "polymers of styrene" as the most appropriate category for this input. Dorbest has acknowledged that it misclassified this input because its styroforam is made of polystyrene

and not polyethylene. The old category is no longer appropriate.

With respect to hooks, connectors and hinges, the Department has determined not to use the HTS category 8302.10.09 because that category is no longer a valid HTS category. Thus, for hinges, the Department has used HTS category 8302.10.00 which covers hinges made out of different types of metal because Dorbest did not specify, in its description of this input in May 26, 2004, submission, the type of metal it uses in its hinges. Also, for hooks and connectors, the Department has used HTS category 8302.42.00 covering "mountings, fittings and similar articles" that are "suitable for furniture." The Department has determined to use HTS category 8302.42.00 for iron components and has used this category with respect to miscellaneous hardware as a more suitable category for those inputs, given the HTS description which covers "mountings, fittings and similar articles" that are "suitable for furniture." With respect to tape, the Department has used HTS category 3919.10.00 covering "self-adhesive plates, sheets, film, etc." as the most appropriate HTS category for this input which is in accordance with Dorbest's May 26, 2004, submission. With respect to staples, the Department has determined to use HTS category 7317.0091 as the most appropriate HTS category for this input because there is no evidence that Dorbest used staples of copper. With respect to veneer toon, the Department has determined to use HTS category 4408.90.90 as the most appropriate category for this input because Dorbest misclassified this category and agreed with the Petitioners' description of this category. With respect to particle board, the Department has determined to value it using a market-economy price for the final determination in accordance with Dorbest's June 7, 2004, and July 13, 2004, responses. See Dorbest Final Analysis Memo.

Comment 20: Lung Dong

The Petitioners argue that the Department should use adverse facts available to value certain of Lung Dong's factors of production because Lung Dong used the HTS of the PRC when it responded to the Department's request for HTS categories rather than using the Indian HTS and because Lung Dong did not provide a detailed narrative response explaining why the proposed HTS category is appropriate. The Petitioners argue that the PRC and Indian tariff schedules are harmonized only to the six-digit level and thus are not interchangeable. Because some of Lung Dong's classifications do not correspond to classifications under the Indian HTS, the Petitioners argue that the Department should value certain of Lung Dong's factors of production using adverse facts available. The Petitioners suggest that the adverse facts available should be the average unit value of merchandise imported into India during the POI under the Indian HTS category that is both potentially applicable and has the highest average unit value.

Lung Dong argues that the application of adverse facts is not warranted. Lung Dong argues that it reported its HTS information using the PRC HTS because that was the schedule to which it had access and with which it was familiar. Contrary to the Petitioners' argument, Lung Dong asserts that adverse facts available is not appropriate because it has been cooperative and submitted information to the Department based on its best understanding of how the materials should be classified. In addition, Lung Dong argues the Petitioners' suggested HTS categories are drastically different than the factors of production used by Lung Dong.

Department's Position: The Department disagrees with the Petitioners that application of adverse facts available is warranted to value any of Lung Dong's factors of production. The Department has not rejected market-economy prices based on the Petitioners' argument that the respondent provided

overly broad factor descriptions. Lung Dong's grouping of factors was subject to verification and, in fact, examined at verification. See the Department's Lung Dong Verification Report, at page 19. For the factors identified by the Petitioners, the Department has evaluated whether the value it used in the Preliminary Determination is appropriate considering the description of the factor and the HTS category description. Based on this analysis, the Department has determined to change the HTS category for Lung Dong's reported polyethylene plastic sheet and polystyrene foam. Lung Dong's consumption of polyethylene plastic sheet and polystyrene foam was valued with HTS category 3921.19.00 in the Preliminary Determination. The Indian HTS category 3921.19.00 captures plates, sheets, film, foil, and strip of "other" plastics. See Chapter 39 of the Indian HTS available at http://www.cbec.gov.in/cae/customs/cs-tariff-main.htm. Polymers of styrene are categorized under HTS 3921.11.00. Thus, we have used the POI average import value for HTS 3921.11.00 to value Lung Dong's consumption of polystyrene foam. Similarly, polyethylene plastic sheet is categorized under HTS 3920.10.12. Thus, we have used the POI average import value for HTS 3920.10.12 to value Lung Dong's consumption of polyethylene plastic sheet. See Lung Dong Analysis Memo.

Comment 21: Markor

Although the Petitioners did not make written arguments concerning surrogate values for Markor's factors of production, they submitted a worksheet suggesting surrogate values for specific factors to which it requested that the Department apply adverse facts available for Markor. For Markor's cartons consumed for packing, the Petitioners argue that the surrogate value the Department used in the Preliminary Determination, HTS 4808.9000, is for corrugated paper and that the HTS classification for cartons falls under 4819.1010. For Markor's cardboard, coating, thinner, tinter,

medium-density fiberboard ("MDF"), metal handles, metal fittings, particle board, screw, and sandpaper, the Petitioners argue that the Department should apply adverse facts available because the product groupings are overly broad.

Markor argues that the Department should not accept the Petitioners' suggested HTS categories. In particular, Markor argues that the Department's use of HTS 4808.9000 to value Markor's cartons was proper. Markor asserts that the Department saw at verification that its "cartons" were large pieces of flat corrugated paper that Markor shapes into packaging containers. Markor argues that the Petitioners' suggested category, HTS 4819.1010, consists largely of fancy boxes not used in the packing of furniture and that its use is inappropriate.

Department's Position: The Department disagrees with the Petitioners that adverse facts available is warranted for any of Markor's factors of production. The Department has not rejected market-economy prices based on the Petitioners' argument that the respondent provided overly broad factor descriptions. Markor's grouping of factors was subject to verification and, in fact, examined at verification. See the Department's Markor Verification Report, at pages 24-25.

For the factors identified by the Petitioners, the Department evaluated whether the value it used in the Preliminary Determination was appropriate considering the description of the factor and the HTS category description. Based on this analysis, the Department has determined to change the HTS category for Markor's reported cartons. Markor's consumption of cartons was valued with HTS category 4808.90.00 in the Preliminary Determination. The Indian HTS category 4808.90.00 captures corrugated paper and paperboard, whether or not perforated. Corrugated boxes are categorized elsewhere, however, under HTS 4819.1010. Although Markor asserts that this category consists of

"fancy" boxes, the plain description of the HTS category fits the description of the factor of production consumed by Markor. Furthermore, the Department's verification report for Markor does not contain a finding that the "cartons" reported by Markor were in fact sheets of cardboard. Thus, we have used the POI average import value for HTS 4819.1010 to value Markor's consumption of carton. See Markor Final Analysis Memo.

Comment 22: Starcorp

The Petitioners argue that the Department should correct the surrogate-value data in its margin calculations for Starcorp and use the information they provided in a table setting forth the factors which they assert should be corrected from the data the Department used in the Preliminary Determination. The Petitioners contend that the following factors should be corrected for the final determination: paint, glue, thinner, radiata pine, beech, woodcore board, plywood, nails, screws, hinges, abrasive paper, and abrasive fabric.

Additionally, the Petitioners argue that the Department should reject Starcorp's asserted classifications and use adverse facts available to value certain of Starcorp's factors of production because Starcorp provided HTS classifications from an unknown tariff schedule. The Petitioners argue that few of the classifications asserted by Starcorp match the Indian HTS and Starcorp did not otherwise identify the source of its tariff classifications. The Petitioners assert that the Department should reject these classifications and value these factors of production using adverse facts available. The Petitioners argue that the adverse facts available should be the average unit value of merchandise imported into India during the POI under the Indian HTS category that is both potentially applicable and has the highest average unit value.

Furthermore, the Petitioners argue that Starcorp's May 27, 2004, response regarding HTS classification was not in sufficient detail. The Petitioners also contend that Starcorp did not answer the Department's questions and has not acted to the best of its ability to comply with the request for information regarding HTS classification.

The Petitioners assert that Starcorp's experience in importing these factors is irrelevant given its decision not to identify the tariff schedule on which its classifications are based and the lack of harmonization between the Indian and PRC tariff schedules beyond the six-digit level. The Petitioners contend that Starcorp's classifications should be rejected and its factors of production should be valued using adverse facts available.

Starcorp argues that the Petitioners' suggestion that the Department should use adverse facts available in valuing certain of Starcorp's inputs is incorrect. Starcorp argues that it undertook its best efforts to provide what it believes are the most appropriate classifications for its various inputs in order to enable the Department to obtain reasonable surrogate values in those instances where import values into the surrogate country might be required for a calculation. Starcorp contends that it acted in good faith and to the best of its ability and therefore it is not appropriate for the Department to impose adverse facts available in the determination of Starcorp's margin.

Starcorp argues that, under Borden, the Department is permitted to make an adverse inference only where it is able to make the additional finding that the "party has failed to cooperate by not acting to the best of its ability to comply." Starcorp asserts that it provided detailed information to the best of its ability. Starcorp argues that, with respect to radiata pine, the Department should have applied this value to Starcorp's use of Mongolian scots pine (and douglas fir), each of which share the same six-

digit Indian HTS classification of 4407.10, and the Department should make this modification to its calculation in the final determination in accordance with the Petitioners' preference for the six-digit-level classification.

Department's Position: The Department has determined not to use adverse facts available when applying surrogate values to Starcorp's factors of production. The Department has applied the most appropriate surrogate value to each of Starcorp's factors. For the factors identified by the Petitioners, the Department evaluated whether the value it used in the Preliminary Determination is appropriate considering the description of the factor and the HTS category description. Based on this analysis, the Department has determined to change certain surrogate values. The Department has changed the surrogate values for paint, thinner, and abrasive fabric. See Starcorp Final Analysis Memo.

The Department has not changed the surrogate value for the following inputs because the Department has determined that the value it used in the Preliminary Determination was the most appropriate based on the description of the HTS category: glue; radiata pine; beech; woodcore board; plywood; nails, screws, etc.; hinges; and abrasive paper. See Starcorp Final Analysis Memo. The Department did not change the surrogate values for glue, radiata pine, and beech as they were based on market-economy prices and the Department examined market-economy inputs at verification and found no discrepancies. See Starcorp Verification Report.

The Department has changed the surrogate value for mirrors (see the response to Comment 67), and did not change the value for plywood (see the response to Comment 70) or any other surrogate value not mentioned above as the Department considers the value it used in the Preliminary Determination to be the most appropriate based on the description of the input and HTS category.

Comment 23: Labor Surrogate Value and Calculation of Expected NME Wages

The Petitioners argue that the Department should calculate a new regression-based expected wage rate for the PRC and apply this value in the final determination. The Petitioners cite 19 CFR 351.408(c)(3) which states that the Department is required to update its calculation annually of the surrogate value it uses to value labor rates in antidumping proceedings involving NME countries. The Petitioners comment that the Department has for the last three annual cycles revised the NME expected wages during the month of September. The Petitioners remark that the most recent revision was dated September 2003 but that the 2004 update has not yet been issued. Therefore, the Petitioners state that the Department should complete the new expected wage-rate calculation promptly and incorporate this rate into the margin calculations for the final determination.

Dorbest responds that the Department updated the estimated wage rate to $0.93/hour on October 6, 2004. It contends that use of that rate would be fundamentally flawed and unlawful. Dorbest comments that, in calculating its new estimated wage rate for the PRC, the Department used as one of its data points the publicly available, country-wide wage rate for India of $0.14/hour. Dorbest contends that the Department's complicated calculation operates to replace the wage rate in a comparable surrogate country by a wage rate that is over 600 percent higher or $0.93. Dorbest remarks that, even if the Department's methodology is lawful, the data the Department used yields a wage rate of $0.72/hour, not $0.93/hour.

Also, Dorbest points out that the Department treated Kazakhstan incorrectly as an NME for 2002, the year for which the Department is calculating the estimated wage rate, because Kazakhstan attained market-economy status effective October 1, 2001. Thus, Dorbest contends, there is no basis

to exclude Kazakhstan's wage and Gross National Income ("GNI") data from the 2002 calculation. Additionally, Dorbest asserts that the Department excluded eighteen other countries arbitrarily for which both per-capita GNI and wage-rate information was available from the ILO's web-site. Dorbest argues that the Department has articulated no basis for excluding countries for which ILO data was available when calculating its October 6, 2004, expected wage rates. Dorbest asserts that, if Kazakhstan plus the other eighteen countries which the Department omitted are included in the regression analysis, the wage rate for the PRC would be $0.45/hour. Furthermore, Dorbest contends that the Department has decided arbitrarily to include only a selection of the market-economy countries' data for which both wage and GNI information are available. Dorbest explains that the reason the Department's expected wage rate is higher is plain from the non-comparable source countries such as Switzerland, the United Kingdom, Norway, and Germany that the Department included in its calculation. Dorbest acknowledges that the regression analysis considers these high-wage countries in deriving the wage rate for the PRC, whose GNI is dramatically lower, but it argues that, because the Department's regulation was based on the premise that more data yields a more accurate result, there is no lawful, or even rational, basis to estimate the PRC expected wage rate on a subset of available countries' data rather than the entire data pool.

Department's Position: As an initial matter, we do not agree with Dorbest that we should use India's average wage rate of $0.14/hour as a surrogate value for Chinese labor because use of such data as a surrogate for Chinese labor would be contrary to law. Section 351.408(c)(3) of the Department's regulations directs the Department to value labor in the calculation of antidumping duties in cases involving NME countries as follows:

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

As obligated, we have recalculated the regression-based expected wage rate for the PRC and have used this recalculated regression-based expected wage rate for the PRC in our calculation of the final margins in this proceeding. Specifically, for the first component of our 2004 revision of expected NME wages, we have used current NME GNI data, obtained from the World Bank per our general practice. For the second component of our 2004 revision of expected NME wages, we have continued to rely on the regression analysis of the relationship between per-capita GNI and wage rates published in our September 2003 revision.

Further, the Department agrees in part with Dorbest that a recalculation of the regression analysis may require the Department to expand the basket of countries it includes in its regression analysis. A review of the data shows, however, that it may be appropriate to include substantially more than the nineteen countries which Dorbest identified. Furthermore, the data reveal that some wage-rate data available to the Department may require further analysis in order to ensure that it does not use aberrational or misreported data.

Moreover, re-estimating the relationship between GNI and wage rates using a regression analysis on a significantly different basket of countries would be a significant change in the dataset. Such a change should be subject to comment from the general public. Thus, it would be inappropriate to restrict this public-comment process to the context of the instant investigation, and, consequently, we will invite comments from the general public on this matter in a proceeding separate from the current

investigation.

Finally, the Department requires more time than is currently available in this investigation to determine an accurate construction of a new dataset and to conduct a new regression analysis. As discussed above, the introduction of new countries to the regression analysis dataset requires the Department to examine the new data closely for consistency and would be impracticable given the time constraints in this case.

Therefore, for the final determination, we have used our 2004-revised expected wage rate of $0.93/hour as a surrogate for Chinese labor costs which we derived using our long-established methodology for the determination of the wage rate for the PRC.

Comment 24: Reliability of Data

Shing Mark contends that the Department's use of MSFTI data in the Preliminary Determination is not supported by the Department's obligation to use the best available information for the selection of surrogate values to value the respondents' factors of production, citing, among other cases, Timken Co. v. United States, 166 F. Supp. 2d 608, 616 (CIT 2001) ("Timken 2001"). To ensure that the Department uses the best available information, Shing Mark contends, the Department should select surrogate values on the following factors basis: (i) those which are contemporaneous to the POI, (ii) those derived from items that are specifically comparable to the respondents' inputs, and (iii) data which are not distorted. Shing Mark cites numerous decisions by the Department to support its position. Citing Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States, 268 F.3d 1376, 1382 (Fed. Cir. 2001) ("Shakeproof"), Shing Mark also argues that it is the Department's obligation to calculate the antidumping margins as accurately as possible. Shing Mark

acknowledges that the Department has discretion in selecting surrogate values but explains that the Department's "discretion is not unbounded," citing Union Camp Corp. v. United States, 8 F. Supp. 2d 842 (CIT 1998).

Shing Mark alleges that, in its decision in the Preliminary Determination to rely on MSFTI data to value Shing Mark's NME inputs, the Department neglected to consider the "best available information" standard. Shing Mark also contends that it submitted substantial evidence from sources other than the MSFTI from which the Department can derive contemporaneous specific and accurate surrogate values. Shing Mark argues that, while the MSFTI data is contemporaneous to Shing Mark's purchases of its factors of production, the MSFTI data the Department used in the Preliminary Determination were based on imports of items that are not comparable to the factors Shing Mark used in its production. Also, Shing Mark alleges, the MSFTI data resulted in distorted values.

Specifically, with regard to the comparability of the merchandise, Shing Mark argues that revisions to the Indian government's import classification that occurred immediately prior to the POI led to numerous documented instances of misclassification of goods by Indian importers. Shing Mark alleges that, even if the Department determined in prior investigations that the MSFTI is an appropriate source of surrogate-value information, India's February 1, 2003, update of its Indian Tariff Classification to the eight-digit subheading level resulted in unique circumstances for this investigation that should compel the Department to reject MSFTI as a viable source for surrogate values.

Shing Mark argues that the reclassification of the Tariff Schedule resulted in the creation, renaming, moving, or deletion of various headings and subheadings which, in turn, resulted in the

misclassification of entries in this new tariff system. Specifically, Shing Mark contends, if the Department analyzes "finishings" in Heading 3208, a factor used by Shing Mark, the Department will discover that all of the last two digits of the eight-digit Indian HTS codes have changed. Using Infodrive India information it submitted, Shing Mark asserts that nitrocellulose lacquers that were classified previously under Tariff Schedule number 3208.10.09 ("Nitrocellulose lacquers") are now classified under the Indian HTSC code 3208.90.11 ("Nitrocellulose lacquers"), resulting in frequent misclassifications of nitrocellulose paints as importers became accustomed to the new HTSC. Specifically, Shing Mark alleges, the entry-specific import data in the Infodrive India demonstrates that merchandise continued to be imported under the outdated Tariff Schedule numbers long after February 1, 2003, and well into the POI. Shing Mark contends that these misclassification have led to distortions in the average unit prices the Department derived from the MSFTI data for certain Indian HTSCs.

Shing Mark also argues that the Department relied on "basket" HTS categories from the MSFTI which resulted in distorted surrogate values. Shing Mark contends that basket HTS categories have led the Department to reject the use of certain surrogate values in other proceedings. According to Shing Mark, the Department should reject the use of basket HTS categories unless there is no other value available, citing Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl from the People's Republic of China, 69 FR 3887, 3892 (January 27, 2004). On the basis of information obtained from Infodrive India, Shing Mark questions the Department's use of certain basket HTS categories as overly broad and distorted since the Infodrive India data reflects the inclusion of wide-ranging products and values. Although not exhaustive, Shing Mark argues that the Department used overly broad basket HTS categories to value mirrors, glass, certain metal furniture fittings, certain

plastic furniture fittings, fiberglass, and Allen wrenches. For example, Shing Mark contends that HTSC 7009.91.00, used to value its mirrors and described by MSFTI as "other unframed glass mirrors," is a basket category. Specifically, Shing Mark argues that Infodrive India data for HTSC 7009.91.00 shows that during the POI several types of mirrors were included in the basket category such as bathroom "chiara" mirrors (5,043 Rs./pc), telescopic mirrors (1,065 Rs./pc), and dentistry mirrors (655 Rs./pc).

The Petitioners argue that MSFTI data are reliable and provide the best match for Shing Mark's and the other respondents' factors. The Petitioners argue that Shing Mark has not acknowledged that its and the other respondents' factor descriptions are so vague, ambiguous, and overly broad in that they preclude the use of entry-specific values from Infodrive India or IBIS. The Petitioners also argue that price quotes from Highland House or Tarun Vedehra or surrogate-value information from any other source are equally vague and ambiguous, especially considering the lack of detail the respondents have put on the record to describe their factors. The Petitioners contend that the Department should use the MSFTI data because the level of specificity in the Indian HTS categories correlates most closely with the level of specificity with which Shing Mark and the other respondents reported their factor information.

The Petitioners allege that the respondents' reporting conventions obscure the true characteristics of their respective inputs. The Petitioners claim that any discussion of whether the Indian HTS categories are too "broad" must begin with a review of the descriptions Shing Mark and the other respondents assigned to their factors. For example, the Petitioners describe, Shing Mark's March 29, 2004, Questionnaire Response purports to provide a "description" for each factor. The Petitioners

argue that all of the respondents' descriptions consist of titles of one to three words under each major factor heading such as "rubberwood" "cherry" veneer, "MDF" boards, "sealer" and "mirror - 3mm." The Petitioners contend that respondents described glues, hardware, packaging materials, and other factors in a similarly terse way.

The Petitioners argue that the respondents' descriptions of their factors are broad summary categories of numerous specific inputs Shing Mark and the other respondents used to manufacture wooden bedroom furniture. For example, the Petitioners argue, Shing Mark does not use generic "plywood" or "plywood (special)" to build a piece of wooden bedroom furniture. Rather, the Petitioners claim, it uses plywood of a particular thickness (e.g., greater than 6 millimeters) and made of particular materials (e.g., outer ply of coniferous wood, inner ply of particle board), citing Shing Mark's May 13, 2004, Surrogate Value Submission, at 6-7. Similarly, the Petitioners argue that Shing Mark does not use generic sealer, lacquer, stain, and glaze but uses sealer, lacquer, stain, and glaze that have specific chemical contents. The Petitioners claim that the same is true for each input in Shing Mark's summary and factor categories. According to the Petitioners, the other respondents' factor categories are also equally broad and contain many specific inputs they reported in a single aggregated factor.

Because each broad factor category encompasses many different inputs, the Petitioners argue that the Department cannot rely on a single price quote from Highland House or Tarun Vedehra, or a few entries from Infodrive India or IBIS, to value the factor category. The Petitioners contend that, if the Department were to adopt this methodology, the Department would allow respondents to choose the input in the factor category with the lowest value, provide a detailed description of the input, provide no descriptive information for the remaining inputs in the category, and then urge the

Department to value all inputs in the category using a single price quote, Infodrive India or IBIS entry, on the ground that it is more "specific." The Petitioners argue that this would invite inaccuracy and manipulation by the respondents.

The Petitioners also contend that there are additional reasons why this methodology is distortive. First, the Petitioners claim, during the investigation Shing Mark provided specific descriptions for some of its inputs in order to challenge the Petitioners' HTS classifications of its factors. Second, the Petitioners argue, Shing Mark indicated that its generically described "lacquer" is "nitrocellulose lacquer" rather than some other lacquer that has a higher average unit value. Thus, the Petitioners argue, Shing Mark's selective, self-serving disclosure of descriptive information for certain inputs implies that disclosure of descriptive information for its remaining inputs would result in a higher unit value than the one that if the Department would apply in using MSFTI data.

The Petitioners also argue that the Department should not allow the respondents to be specific with information only when it provides them with an advantage but stay general with MSFTI data when the disclosure of specific information is disadvantageous. The Petitioners contend that Shing Mark has disclosed additional descriptive information for certain inputs only when it favors Shing Mark to do so, citing plywood, lacquer, and other examples. Therefore, the Petitioners allege, the Department can only conclude that Shing Mark's lack of detailed information and acquiescence in Petitioners' asserted classifications obscures a higher unit value for those inputs.

Further, the Petitioners argue that the level of specificity in the MSFTI data correlates most closely with the level of specificity used by respondents to describe their factors and, therefore, is the best source of surrogate-value information. The Petitioners contend that, if anything, the MSFTI

categories are drawn more narrowly than respondents' factor descriptions. For example, the Petitioners argue, the MSFTI descriptions for fiberboard are classified under separate six-digit HTS subheadings for densities but the respondents described their inputs as simply as fiberboard or MDF. The Petitioners contend that the MSFTI classifications are equally more descriptive with regard to solid wood, veneer, plywood, finishing materials, glass, mirrors, and metals than the level of specificity provided by the respondents for their factor inputs. At the very least, the Petitioners contend, the level of specificity with which Shing Mark and the other respondents describe their factors is no greater than the level of specificity available in the MSFTI.

The Petitioners also argue that the changes to the Indian HTS occurred before the POI and object to Shing Mark's contention that the Department should not use the MSFTI because some tariff classification headings, subheadings, and items in the Indian HTS were revised on February 1, 2003. Specifically, the Petitioners claim, the changes to the Indian HTS occurred two full months before the commencement of the POI and were put into full affect after the first quarter of 2003. The Petitioners rebut Shing Mark's argument concerning imports of nitrocellulose lacquer classified under the old HTS number after February 1, 2003, and through the POI by referring to the lack of quantities or values under the old nitrocellulose lacquer HTS number in the World Trade Atlas for April 2003-September 2003, the POI. In fact, the Petitioners argue, the MSFTI data are not distorted and Shing Mark's argument only highlights the fact that the Infodrive India data are infected with the misclassifications. Therefore, the Petitioners argue, the MSFTI data used by the Department to calculate the factor values had no misclassifications and these statistics make clear that no misclassifications or distortion occurred in the official Indian import statistics as a result of the changes to the Indian HTS.

Finally, the Petitioners argue that, to the extent Shing Mark's objection to the use of the MSFTI has any merit, Shing Mark's objection would also apply to the use of information from Infodrive India and IBIS on which Shing Mark relies to value other factors. The Petitioners observe that these data are arranged similarly to the classifications Indian importers use to enter merchandise into the country. Consequently, the Petitioners contend that any misclassification by Indian imports due to changes in the Indian HTS would also affect the Infodrive India and IBIS data on which Shing Mark relies.

Department's Position: Upon evaluating all the information regarding the available surrogate-value information, we determine that substantial record evidence supports our Preliminary Determination that the surrogate values we obtained using MSFTI data represent the best available information and ensure that the antidumping rates we calculate are as accurate as possible for this investigation.

It is well documented that the Department's preferred choice is to use import statistics to value material inputs because they are publicly available and do not include domestic taxes and subsides. See Shanghai Foreign Trade Enterprises (citing Hand Tools from the PRC 1995). If, however, the Department finds import values to be distortive or aberrational, it will consider other sources that it finds reliable. In this case, despite the numerous sources placed on the record by the respondents and addressed specifically in other comments of this memorandum, we determine that the MSFTI data is the most reliable and least distortive source of information for this case because the MSFTI statistics provide the best available information with which to value the inputs.

The Department also determines that India's reclassification of its HTS headings and subheadings did not result in the misclassification of import entries under its new tariff system. We found, contrary to Shing Mark's argument and reliance on Infodrive India, that record evidence shows

that the MSFTI data we obtained using the World Trade Atlas did not suffer from the same distortions as a result of misclassified import entries as the Infodrive India information. In fact, after a thorough review, the Department found none of the values obtained using the World Trade Atlas contained misclassifications during the POI. Additionally, the Petitioners observed and the Department found that the World Trade Atlas did not contain any MSFTI information with regard to quantity and value for the old reclassified HTS headings in the POI. Therefore, Shing Mark's claim that data in Infodrive India somehow proves that the MSFTI data was misclassified and unreliable is incorrect. Further, there is no record evidence specific to the World Trade Atlas data the Department used to obtain the surrogate values that shows the surrogate values in this case contain repeated misclassification of entries which would otherwise make these data unreliable.

We also disagree with Shing Mark that our reliance on basket HTS categories from the MSFTI resulted in distorted surrogate values. As discussed in the Factors Valuation Memorandum, at 4, for the Preliminary Determination and due to the mandatory respondents' limited input descriptions, the Department requested all the mandatory respondents to provide the HTS heading and article descriptions for which their reported factors of production would be classified under the Indian HTS. For the most part, all the mandatory respondents attempted to comply with the Department's request. In more than one instance, however, the respondents, including Shing Mark, provided the Department with multiple HTS numbers for which the Department should value a single factor input. Thus, even Shing Mark supplied overly broad or basket categories to the Department. Furthermore, the Department found that the respondents' reported factors of production are actually broad summary categories of numerous specific inputs which Shing Mark and the other respondents used to

manufacture wooden bedroom furniture. Moreover, Shing Mark's Section D Questionnaire Response, dated March 29, 2004, at D-10, states as follows:

> In the ordinary course of business, Shing Mark Group maintains a detailed classification system for all inputs used in the manufacturing of its products. Because this classification system is quite detailed, similar inputs are often assigned multiple input codes. For example, Shing Mark Group maintains {countless} different input codes for rubber wood, of which {numerous input codes} are used in the production of subject merchandise. To make factor reporting more manageable, Shing Mark Group has aggregated input codes for similar products. . . . For instance, while Shing Group uses a number of different types of glue and adhesives in its production, Shing Mark Group has aggregated them into a single "glue" input category.

We have examined each mandatory respondent's HTS submission and found that they aggregated multiple inputs into a single factor or describe that they aggregated the inputs in similar manner as Shing Mark.

We do not find that the basket HTS categories we used are overly broad and distorted. Although certain items in Infodrive India could cause the MFSTI data to appear distortive, there is no record evidence to support the claim that these items were in the MSFTI information we used. In fact, even Shing Mark's own Infodrive India data is discredited by its attempt to discount the MSFTI data becuase the very misclassifications upon which it relied to discredit the MSFTI were based upon the misclassified information from Infodrive India. Furthermore, even if these items were classified properly and were reported in the MSFTI data we used, it would be impossible to evaluate their distortive nature since they are not reported in units that are similar or comparable to the MSFTI information. Regardless of the description, to state merely that the price is high without some basis that is grounded in a measurable quality (e.g., price per kilogram, price per square meter, etc.) is not informative. In addition to being unreliable, we also found that Infodrive India also reports equally low-priced goods in

its basket categories.

Finally, there is no record evidence that the aggregated inputs Shing Mark and the other respondents reported are particularly unique or otherwise dissaffirm the use of a so-called basket category. In fact, it would stand to reason that the "basket" categories are the best available information to value Shing Mark's and the other respondents factor inputs because they contain the aggregated value of goods in a manner similar to how Shing Mark and the other respondents reported their factor inputs. See Final Results of the Antidumping Duty Administrative Review for Manganese Metal from the People's Republic of China, 65 FR 30067 (May 10, 2000), and accompanying Issues and Decision Memorandum ("Manganese Metal from the PRC 2000").

Therefore, we determine that the MSFTI data represent the best available information and ensures that the antidumping rates we calculate are as accurate as possible for this investigation.

Comment 25: Mirrors, Glass, Glass Yug

The Respondents argue that, for Preliminary Determination, the Department chose a value for mirrors in India under HTS 7009.91.00, the category for "mirrors, other unframed," which does not capture fairly the value of the types of mirrors sold with bedroom suites.

The Respondents cite to the Infodrive data that almost all of the mirrors imported into India under HTS 7009.91.00 during the POI were imports of mirrors from Taiwan. Specifically, they contend, these show that the great majority of these imports are from an Indian company to which Infodrive refers as "Engintech." In fact, the Respondents argue, these Infodrive shipments appear to be misclassified imports for the sale of rearview mirrors for automobiles. The Respondents argue that, to determine whether the Enginetech imports were, in fact, misclassified, they examined Taiwan's export

data for "mirrors, other unframed." The Respondents claim that the Taiwanese export data show a low volume of exports shipped to India under this HTS category. At the same time, the Respondents argue, the Taiwan export data show a much larger volume of exports under the HTS category for rearview mirrors for automobiles. Therefore, the Respondents believe that the Taiwanese export data confirm that the value derived by the Department for mirrors reflects the value of misclassified rearview mirrors for automobiles imported into India from Taiwan.

The Respondents claim that the pricing information published by Glass Yug and the prices actually paid by Indian and Indonesian manufacturers of wood furniture, i.e., Highland House, Tarun Vedehra and Goldfindo, offer far more accurate bedroom mirror values than values derived by the Department from the Indian import statistics. Relying on the Infodrive data, the Respondents claim that the Indian imports of mirrors are largely of specialty mirrors such as mirrors for motor vehicles, dentistry and scientific instruments. The Respondents contend that the much lower value mirrors used by the furniture industry are, as the data supplied by Tarun Vedehra and Highland House show, purchased domestically.

Shing Mark asserts that these data constitute the best information available for glass and mirrors because they are publicly available, contemporaneous with the POI, representative of a large sample of domestic prices, comparable to the Shing Mark's factors of production that the Department is trying to value, and tax-exclusive. Comparatively, Shing Mark contends that the MSFTI data for glass and mirrors provide only distortive data that do not match Shing Mark's factors of production.

Shing Mark states that it submitted two editions of Glass Yug for the Department's consideration which are concurrent with the POI, the April-June 2003 edition of Glass Yug contains

pricing information for glass and mirrors and the July-September 2003 edition contains pricing information for glass. Shing Mark explains, however, that no data for mirrors was available in the July-September 2003 edition of Glass Yug. Shing Mark observes that these sources provide a reliable surrogate value in rupees that can be calculated on a square-meter basis, with thickness of the glass and mirrors specified in millimeters. Additionally, because the price trend listings specify that they represent "average wholesale prices (local taxes extra)," Shing Mark argues the Department can be certain that the prices are net of taxes. Accordingly, Shing Mark claims that Glass Yug constitutes the perfect type of industry-wide publication that the Department can use to obtain domestic surrogate prices.

For mirrors, Shing Mark argues that the mirrors are 3mm, 5mm, or 6mm thick and that Glass Yug provides the wholesale average price for two types of mirrors in varying thickness-- "Modiguard" and "SSG - Miralite Evolution." Thus, Shing Mark asserts that the "Modiguard" and "Miralite Evolution" mirrors are specifically comparable, in terms of physical characteristics, to Shing Mark Group's factors of production. Additionally, Shing Mark argues, it has submitted product information about each mirror type that was publicly available from the world-wide web-site for each company. Shing Mark observes that the product information for "Miralite Evolution" states that these mirrors can "be used as framed or unframed mirrors … {and} cladding for doors and furniture (tables, cabinets, shelving)." Additionally, Shing Mark adds that the product information for "Modiguard" states that these mirrors can be used as "wardrobe door mirrors" and "furniture applications." Shing Mark argues that, taken in combination with the dimensions provided by Glass Yug, it is evident that these two mirrors are used for furniture and match the type of input factor used by Shing Mark Group. Because these mirrors are sold by two, large multinational glass companies, Shing Mark alleges that the

published Glass Yug prices for these mirrors represent a large sample of domestic prices and should be used by the Department for surrogate-value purposes. Shing Mark contends that the Glass Yug data are far superior to the MSFTI data which are highly distorted. As with other respondents, Shing Mark argues that the Department's selection of a surrogate value from the Indian HTSC 7009.91.00 is unreasonable because the average unit value derived would be based on non-comparable imports with distorted values and, based on this information, a reliable average unit value cannot be calculated from the MSFTI data.

Dorbest and other respondents also assert that the Department should use the surrogate prices available on the record published by Glass Yug, an industry-wide publication. Dorbest contends that, in selecting the most appropriate surrogate prices, the Department considers several factors, including whether the surrogate values are 1) specific to the input, 2) representative of a realistic domestic value, 3) corroborated by other prices on the record, and 4) match the experience of the Chinese producers. Dorbest alleges that the quality of the Glass Yug surrogate data is more adequate than the import data used by the Department.

As with other respondents, Dorbest contends that the Indian HTS 7009.91.00 that covers "unframed mirrors" is a basket category that also includes specialty mirrors, despite the description of the World Trade Atlas database of HTS 7009.91.00 that covers "unframed mirrors." Dorbest cites to Shing Mark's Infodrive India data and other respondents' arguments that entries under HTS 7009.91.00 are specialty mirrors and mirrors used by the automobile industry such as telescope search mirrors, inner mirror panoramic car, mirror plates inside prismatic, side mirror, TWM mirror plate with lettering, and 5800 mirror with lettering. Dorbest argues that these entries were not classified properly

because they do not fall into the HTS description of "unframed mirrors." Dorbest alleges that the above-mentioned items should have been classified as HTS 700910 which covers vehicles rearview mirrors. With respect to Glass Yug, Dorbest contends that its prices provide a domestic, industry-wide value for mirrors in India. Dorbest argues that the Glass Yug publication also provides prices for the mirrors with the same thickness as the mirrors purchased by the Chinese respondents to manufacture bedroom furniture.

Additionally, citing Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085, 3087 (January 21, 1998), Dorbest states that another reason for the Department to use the industry-wide prices published by Glass Yug is that its information represents domestic values which the Department prefers over import values. Dorbest states that the CIT has held that domestic values are more preferable than imported values unless there is evidence of distortion, citing Yantai Oriental Juice Co. v. United States, Slip Op 02-56 CIT (June 18, 2002) ("Yantai 2002"). Specifically, Dorbest claims that in Yantai 2002 the CIT ordered the Department to value steam coal using domestic prices instead of import data. Dorbest argues that the Department should value mirrors using Indian domestic values published by Glass Yug because it is an Indian magazine that specializes in the domestic glass and mirror industry. Dorbest contends that imported prices include imports from surrogate countries like Taiwan, Austria, Germany, and the United States, to name a few, which the Department does not consider to be suitable for valuation of Chinese raw materials.

Furthermore, Dorbest explains that another reason to use domestic prices for valuing mirrors is that, by using an imported value, the Department presumes that Chinese producers buy more expensive

imported mirrors instead of cheaper domestically produced mirrors. Dorbest alleges that in Yantai 2002 the CIT concluded that "it cannot find Commerce's conclusion that imported coal data is the 'best available information' is supported by the record" because there was no indication that the domestic Indian coal market was distorted and there was no indication that the use of imported coal values "best approximate the cost incurred" by the Chinese producers. Therefore, Dorbest argues that, pursuant to the CIT's decision, the Department should value Dorbest's mirrors by applying a domestic price for mirrors instead of import data distorted by high-priced specialty mirrors and air-freight charges.

Moreover, Dorbest alleges that the Indian HTS price for mirrors is aberrationally high compared to other mirror prices on the record. Dorbest asserts that the price based on the Indian HTS category is six times higher than the Glass Yug prices and about five times higher than domestic prices paid by Indian and Indonesian producers for mirrors used in the furniture industry. Dorbest contends that the Department has considered Indian import statistics unreliable when the U.S. import benchmark prices are 50 to 75 percent lower, citing Final Results of Antidumping Duty Administrative Reviews: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, 61 FR 65527 (December 13, 1996) ("TRBs 1996"). Dorbest contends that, according to the Department's own standards, enunciated in TRBs 1996, it should reject the Indian import prices for mirrors because they are several times higher than the other more specific values on the record. Finally, Dorbest asserts that the Department should use Glass Yug prices for mirrors because they are more adequate, reliable, and comparable to mirrors used by Dorbest.

The Petitioners contend that Shing Mark originally only provided the publication of Glass Yug

that covered only the first three months of the POI. The Petitioners argue that Shing Mark could have provided the issue for July through September, which would have covered the remaining half of the POI, but did not submit the publication until September 3, 2004. The Petitioners contend that this filing is untimely because the Department's deadline for interested parties to submit new surrogate-value information was August 17, 2004, and, therefore, rebuttal comments were due on August 27, 2004. Therefore, the Petitioners, contend that, because no reference was made to Glass Yug in the Petitioners' August 17, 2004, surrogate-value submissions, there is no basis for accepting this untimely factual information as a rebuttal submission. Because the July-September 2003 edition of Glass Yug was filed in an untimely manner, the Petitioners request that the submission be stricken from the record in accordance with 19 CFR 351.301(c).

The Petitioners contend that, although Glass Yug provides pricing data on both flat glass and figured glass, Shing Mark did not provide a full description of the glass and mirror types consumed in its production process, yet it selected the lower-priced figured-glass value without any explanation. Moreover, the Petitioners observe that the rates listed, both for flat and figured glass, are the price in rupees, per square meter, per millimeter of thickness. The Petitioners argue that Shing Mark did not multiply its surrogate value by the thickness of glass used.

For mirrors, the Petitioners argue that the information from Glass Yug does not purport to be any sort of average price for mirrors but instead is pricing data only for two specific brands of mirrors. The Petitioners contend that the Department should reject data that does not represent a range of prices in the market but, instead, represents only a self-selected portion of the POI. The Petitioners also argue that the prices quoted for "Modiguard" and "SSG Mirrors" in Glass Yug cannot be used as

they would understate the average prices paid for mirrors in India during the POI. The Petitioners observe that the Glass Yug article quotes certain prices to illustrate the effects of a price war that was occurring during this period by two mirror manufacturers that were attempting to promote "branded" mirrors in the marketplace. The Petitioners contend that the manufacturers were offering "hefty discounts" in an effort to get their brand names into the marketplace. The Petitioners argue that the Department should ignore such prices because they are distortive of the overall market for mirrors in India. For these reason, the Petitioners argue, the Department should continue to decline to use data from Glass Yug in the final determination.

The Petitioners refer to a May 10, 2004, submission by Markor/Lacquer Craft containing a document that purports to be "information on U.S. glass and mirror prices from the Float Glass and Mirrors Price Marketing Association," dated May 5, 2004, and it asked the Department to use this document as a potential benchmark against which to judge whether the MSFTI data are aberrational. The Petitioners also argue that Markor/Lacquer Craft information on U.S. glass and mirror prices from the Float Glass and Mirrors Price Marketing Association is merely an on-line price list from McGills Glass Warehouse, a self-described purveyor of "{s}tained glass supplies at a fair price since 1983" rather than prices reported by the so-called "Float Glass and Mirrors Price Marketing Association." The Petitioners add that the source of Markor/Lacquer Craft's Exhibit 1 is unclear because the web-site link is unclear whether McGills Glass Warehouse still sells float glass and mirrors. Even if it does, the Petitioners argue, the information provided by Markor/Lacquer Craft does not show that the prices are in any way reflective of a broad pool of float glass and mirrors prices or that the prices are contemporaneous with the POI.

The Petitioners argue that Markor/Lacquer Craft and Shing Mark have not explained why the products listed in the quote are representative of the range of glass and mirrors used by respondents in this case. The Petitioners add that the respondents have provided one- or two-word descriptions of their inputs, e.g., "mirrors" or "glass." Therefore, the Petitioners allege that the respondents use a broad range of mirrors and glass in different sizes, shapes, and thicknesses, some with further working such as bevels and some cut to size. Because the submitted price quote is for large sheets of plain glass and mirrors in several thicknesses, the Petitioners contend that the price quote cannot account for variations in the glass and mirror inputs, such as glass or mirrors that are cut to size or particular shapes, or incorporates further working such as bevels, all of which would increase the cost of the input. Accordingly, the Petitioners contend, the Department should continue to reject Markor/Lacquer Craft's and Shing Mark's non-contemporaneous price quotes in the final determination because they are not appropriate benchmarks for official Indian import statistics and are not representative of the range of glass and mirror inputs used by all respondents in this case.

The Respondents respond that the core problem is that the Indian import statistics are shaped by imports of products not used in furniture production. The Respondents contend that the Petitioners' arguments against use of data from Glass Yug to value mirrors and glass is far from convincing. Even if the Department were to agree that the Glass Yug data are less than ideal, the Respondents contend, it would still have to conclude that the Glass Yug prices reflect the value of glass used in the production of mirrors for furniture far more accurately than values derived from Indian import statistics.

The Respondents reassert that Glass Yug reports Indian market values for the sort of basic unframed mirrors used in production of wooden bedroom furniture. The Respondents claim that the

Petitioners' argument that the Glass Yug pricing is the result of a price war does not suggest that the Department should ignore competition "in the marketplace" for its search of Indian surrogate values. The Respondents also rebut the Petitioners' objection to the untimely filing of Glass Yug by contending that, regardless of whether the Department decides to accept the July through September 2003 Glass Yug data, the fact remains that the April through June 2003 data cover three months of the POI. Finally, in terms of accuracy in dumping calculations, the Respondents contend that these data are far preferable to HTS data that include a very wide range of mirrors, most of which are demonstrably not the sort used in furniture production.

Shing Mark argues that the untimely Glass Yug submission should not be rejected because the Petitioners were fully aware that this publication existed and could serve as a domestic source for surrogate values. Shing Mark argues that it is ironic that the Petitioners seek the rejection of Shing Mark's submission of the July-September 2003 edition of Glass Yug from the record of this case, as it was the Petitioners who specifically requested on April 29, 2004, that it be submitted. Shing Mark argues that, now having had the opportunity to review the contents of this document, the Petitioners urge the Department to strike it from the record. First, Shing Mark argues that it is not at all clear that the information in the July-September Glass Yug publication is "new factual information." Rather, Shing Mark contends that the July-September 2003 Glass Yug information corroborated data already on the record by providing prices that were fully contemporaneous with the POI. Even if this document was untimely filed, Shing Mark argues that the Department still has the discretion to accept the July-September Glass Yug document and use its information for surrogate-value purposes, citing Persulfates, finding certain new surrogate-value information to be untimely filed but, because that

information was contemporaneous with the period of review, the Department subsequently placed that data on the record itself and used that information to value wood pallets.

Shing Mark cites among others that in Final Results of the Antidumping Duty Administrative Review: Bulk Aspirin from the People's Republic of China, 68 FR 6710 (February 10, 2003), and accompanying Issues and Decision Memorandum ("Bulk Aspirin from the PRC"), and other NME proceedings, the Department has expressed a preference for domestic prices as a source of surrogate-value information so long as they meet certain standards, namely that they are net of taxes (or when taxes could be easily removed) and where domestic prices have not been distorted by high tariffs.

Shing Mark alleges that the Petitioners apparently agree that Glass Yug is an industry-wide publication published quarterly that contains domestic Indian prices for glass and mirrors. Shing Mark also contends that, as the prices reported in Glass Yug are contemporaneous with the POI, exclusive of taxes, and not distorted, these data are the perfect example of the type of domestic price information upon which the Department frequently relies to derive surrogate values.

Additionally, Shing Mark rebuts the Petitioners' argument that the prices for mirrors are reported in prices per millimeter thick on a square-meter basis for the first half of the POI, are sold throughout India by large, multinational glass companies, Gujarat Guardian and St. Gobain, and can be used in furniture. Shing Mark adds that the fact that the mirror prices are publicly reported in Glass Yug, with the relevant article discussing average pricing trends for mirrors during the POI, necessarily means that Glass Yug provides a range of prices. Shing Mark argues further that the Petitioners' complaint that the mirror prices are applicable for "only a self-selected" portion of the POI is misleading, as there were no prices for mirrors in the July-September 2003 edition of Glass Yug and,

thus, Shing Mark reported all POI mirror surrogate values available from this publication. Shing Mark alleges that the Petitioners did not provide comparative data for how much mirrors actually cost in India during the POI. Furthermore, Shing Mark argues that, while agency practice directs the Department to determine whether domestic prices are distorted by high tariffs, the Department has no practice to reject prices that are affected by vigorous price competition. Even if there were a "price war" as the Petitioners allege, Shing Mark contends that the values resulting from this price competition are nothing more than the ordinary supply-and-demand considerations in a market economy. Thus, it is Shing Mark's argument that the Petitioners have offered no basis for rejection of these prices and, absent any such basis, these mirror values from Glass Yug should be accepted by the Department.

Contrary to the Petitioners' assertion, Shing Mark argues that it did describe its glass factor, stating that it consisted of "non-colored, clear glass 3mm to 5mm thick." On the basis of this information, Shing Mark believes that the Indian domestic pricing data in Glass Yug, which is listed in "rupees per mm per square metre, sales tax extra," can be used to calculate an accurate, tax-exclusive value for Shing Mark Group's factors of production during the POI. Although the Petitioners may be correct that Glass Yug's glass prices are quoted in rupees per millimeter in thickness, Shing Mark contends that this fact bolsters Shing Mark's argument that dimension-specific glass prices are reported in the publication. Finally, Shing Mark contends that the Petitioners have not provided any evidence undermining the quality, specificity, or contemporaneity of these glass data, suggesting that these domestic surrogate prices are a reliable basis to value Shing Mark's factors of production.

The Petitioners agree with the Department's valuation of the respondents' usage of mirrors in the Preliminary Determination. The Petitioners agree that the Department properly rejected price

information from Glass Yug and should do so again in the final determination. The Petitioners state that these imports were classified correctly by the Department because the Indian import statistics has a separate HTS category for rearview mirrors. The Petitioners allege that the Infodrive entries for mirrors imported into India describe the products as "mirror plates," not specifically “rear view mirrors.” Also, the Petitioners claim that Dorbest overstates the importance of Taiwanese exports to Engintech because exports from Taiwan do not account for all mirrors imported into India and Engintech is not the sole Indian importer.

Additionally, the Petitioners contend that prices published by Glass Yug are unreliable because the mirror prices in Glass Yug are for only two brands of mirrors which do not correspond to the full range of prices in the market. Further, the Petitioners argue that the prices quoted for “Modiguard” and “SSG Mirrors” in Glass Yug cannot be used as they would understate the average prices paid for mirrors in India during the POI. The Petitioners allege that the Department should reject Dorbest’s proposed benchmarks for aberrational data, as they are unsupported by Department practice. The Petitioners allege that the Department generally does not exclude imports solely on the basis that they exceed the average unit value of all merchandise entered under the same HTS classification, citing Hand Tools from the PRC 1995.

Furthermore, the Petitioners argue that Dorbest’s cite to Hebei Metals, and Shanghai Foreign Trade Enterprises, for the proposition that the CIT has ordered the Department to exclude certain imports with aberrational prices, does not support Dorbest’s argument. The Petitioners contend that, in Hebei Metals, the CIT excluded a Swedish import value from the surrogate value for steel pallet packing materials on the grounds that it (a) was imported in small quantities and was 1134 percent

higher than the average unit value of merchandise imported under the same Indian HTS classification from other countries, (b) increased the overall average unit value by 24 percent, and (c) was 8.5 times higher (or 850 percent greater) than the average unit value of all merchandise imported under the same Indian HTS classification. The Petitioners allege that, in Shanghai Enterprises, the respondent sought to exclude 1132 tons of pig iron imported into India because it represented only one-tenth of one percent of Indian domestic consumption and yielded a price per kilogram that was 20 percent higher than the prices for pig iron reported in an Indian domestic publication.

Department's Position: As in the Preliminary Determination and after a thorough review of all the record evidence, the Department determines that the MSFTI data from the World Trade Atlas represents the best available information to ensure that the antidumping margins are calculated accurately in this case.

The Respondents' main contention that MSFTI data is distorted relies on their argument that the Infodrive reports high-priced specialty mirrors, including rear view mirrors, telescope mirror, and dental mirrors. This assertion is not supported by the record evidence. As already discussed in our response to Comment 10, the Department finds Infodrive does not represent the best available information in this investigation because the broad nature of the inputs reported by the respondents, the reclassification of the Indian import statistic, the non-quantifiable unit measurement, the lack of usable commercially significant entries, and the lack of contemporaneous data for the entire POI. In this instance, the Infodrive data submitted by Shing Mark for mirrors does not report any imports for the months of April, it reports single imports for September and August, and it has very limited imports of the other months in the POI.

If the Respondents' arguments are correct that the high-priced specialty mirrors distort the MSFTI data, then the MSFTI should reflect these distortions in the values from Taiwan (i.e., the respondents' rearview mirror argument) and Germany, which included the telescopic mirror and the chiara mirror. After close examination of the record evidence, we find the MSFTI data we used for surrogate values reveals no inconsistencies which the Respondents claim the Infodrive India data reports. In fact, the only conclusion that the Department could reasonably determine is that the Infodrive India data is distortive, not the MSFTI data in this investigation. For example, the Respondents argue that Infodrive India reports imports of mirrors from Indonesia that are more representative of the respondents' factor inputs. Thus, using the MSFTI data for the imports from Indonesia as a benchmark, even though we consider Indonesia to be a country with subsidies and excluded the value from Indonesia in the surrogate-value calculation, we find that the POI average price from both Taiwan and Germany are lower than the average price from Indonesia. For example, the comparison of the average values per kilogram of imports from Taiwan and those from Indonesia reveals that the average per kilogram value for mirrors from Taiwan during the POI was 194.5255 rupees with an Indonesia average per-kilogram value for mirrors during the POI of 258.2184 rupees reported by the MSFTI, resulting in a difference of 63.6929 rupees. Similarly, the Department found that MSFTI reported a POI average price of 163.3987 rupees/kilogram from Germany is much lower than the Indonesia price of 258.2184 rupees/kilogram for a difference of 94.8197 rupees. If the Infodrive India information is accurate, the higher price for the Indonesian imports that the respondents use as a benchmark reveals that the so-called rearview mirrors from Taiwan and the imports from Germany are not distortive. More likely, however, as the price comparison reveals, it is Indofrive India

data that is unreliable and incomplete, not the MSFTI data.

Additionally, the Department finds the Respondents' arguments that the MSFTI data contains rearview mirrors from Taiwan is unsupported by the record evidence. First, the Department finds that the official Indian import statistics reported in the MSFTI contains a separate HTS classification of 7009.10.00 described as rearview mirrors for vehicles, whereas the HTS classification the Department used to value the Respondents' mirrors, 7009.91.00, is described as glass mirrors, non-framed, excluding rearview mirrors in the official MSFTI. Second, to the extent that any imports were misclassified from Taiwan there is no record evidence that these were distortive as the value comparison described above clearly indicates. Third, other than the information in Infodrive India, there is no record evidence that any rearview mirrors were reported in the MSFTI.

The Department also finds that the MSFTI classification, 7009.91.00, glass mirrors, non-framed, excluding rearview mirrors, more closely represents Shing Mark's and other respondents' reported inputs descriptions. Additionally, as the Department found in the Preliminary Determination the respondents did not provide any information regarding the factor input for mirrors which would lead the Department to conclude that they are of higher or lower quality that would require the Department to seek more specific pricing information than reported in the general MSFTI classification. See Bulk Aspirin from the PRC (using MSFTI data where there was no record evidence that supported the input was of a particular purity level). Furthermore, because no record evidence of specific distortion has been provided regarding the MSFTI, the Department has determined that the MSFTI data is the best available information. See Ironing Tables from the PRC (finding that it was not necessary to use a second pricing source because the MSFTI data was not shown to be inaccurate).

As in Ironing Tables from the PRC, we determine that it is not necessary to use the Glass Yug pricing information because there is no record evidence specific to MSFTI indicating the data that we used to value mirrors and glass are inaccurate. Furthermore, unless otherwise proven to be unreliable the Department's preferred source of surrogate-value data is the MSFTI. See Color TV Receivers from the PRC. We disagree with Shing Mark's analysis that Bulk Aspirin from the PRC stands for the proposition that the Department has expressed a preference for domestic prices as a source of surrogate value information so long as they meet certain standards, namely, that they are net of taxes (or when taxes could be easily removed) and where domestic prices have not been distorted by high tariffs. As stated earlier, the Department will consider domestic prices where sufficient record evidence demonstrates that the range of grades exist in the reported inputs and a difference of the domestic and import price appear to be caused by the breadth of category. Additionally, the Department determines that Glass Yug is not the best available information due to lack of detail put on record by the respondents for their factor inputs of mirror and glass and the lack of specific information for the prices reported in Glass Yug.

First, the respondents did not provide any descriptions that would lead the Department to determine that the glass or mirrors reported in the factor inputs is of the particular type reported in Glass Yug. In fact, the respondents merely assert that glass and mirror prices reported in Glass Yug are of similar quality without providing any analysis to support their assertions. As the Petitioners observed, Glass Yug reported three different prices for three types of glass (i.e., float glass, sheet glass and figure glass) and the respondents asserted that the lower price reflected the type of glass they use without providing any analysis. Additionally, the Department determines that the glass and mirror prices

do not reflect other added-value qualities, such as bevelling, shaping, edgework, or etching, that is often used in furniture. Instead, the prices described in the Glass Yug reflect the price per square meter of glass or mirror. Furthermore, because there is no record evidence that any of the Respondents purchase their mirrors or glass in square meter sheets before processing them, the Department determines that Glass Yug prices do not reflect mirror and glass inputs of the respondents accurately. Additionally, the Department determines that the Glass Yug mirror prices represent at best two months of the POI. As indicated, among the Indian mirror manufacturers there was intense competition that resulted in the downward prices for mirrors. While this in and of itself is not a reason to reject the mirror prices, the fact that mirror prices do not cover the entire POI, thus not contemporaneous with the entire POI, calls into question the accuracy of the reported mirror prices for the POI.

Furthermore the Department determines that Shing Mark's September 3, 2004, filing of the July-September 2003 edition Glass Yug was untimely. Therefore, in accordance with 19 CFR 351.301(c) the Department did not consider this information in making the final determination.

Comment 26: Paint-General

The Petitioners argue that the existence of numerous potentially applicable HTS classifications for the "finishes" factors of production demonstrates that these factors are overbroad and potentially distortive of the surrogate value the Department assigned to them. For example, the Petitioners state that in its HTS Submission Tech Lane grouped together paints, solvents, oxides, and coloring matter, even though all of which are separately classifiable, in the broad factor-of-production category entitled "glaze." The Petitioners argue that such broad groupings result in distortions of the dumping margin.

The Petitioners argue the Department's decision to aggregate stain, thinner, glaze, lacquer, and sealer into a single "paints" category and assign one HTS classification and surrogate value to the category also resulted in distortions. The Petitioners argue that, by aggregating these factors of production, the Department rewarded Lacquer Craft, Shing Mark, and Tech Lane for not responding fully to its May 10, 2004, information request. Therefore, the Petitioners contend that, for purposes of the final determination, the Department should value each "finishes" input separately that comprises each broad factor category. The Petitioners argue that because Lacquer Craft, Shing Mark, and Tech Lane did not report and describe these inputs separately and because these respondents did not report specific usage rates for these inputs, the composite factors of production should be valued using adverse facts available.

The Petitioners argue that the adverse facts available should be the average unit value of merchandise imported into India during the POI under the Indian HTS category that is both potentially applicable and has the highest average unit value. The Petitioners assert that they presented such average unit values for certain of these factors of production that substantially affect the cost of manufacture in their August 17, 2004, submission.

The Respondents argue that the Department's reliance in the Preliminary Determination on a value for paints derived from Indian imports under HTS heading 3208 was improper. The Respondents contend that the value the Department derived for paints from Indian import statistics introduces a major distortion into the Department's antidumping calculation. The Respondents allege that the value is driven by the value of imported paints that are demonstrably not used to produce furniture. Relying on Infodrive India data showing Indian paint imports by importer, the Respondents

allege that many of the reported values are distortive. Additionally, the Respondents contend that not one of these companies imports paints used to finish wood furniture.

According to the Respondents, two of the companies listed as importers of paints in the Infodrive India database import paints used to finish wood products. The Respondents contend that their entries as reported in the Infodrive India database are the sorts of paint products that Lacquer Craft and Markor used and which the Department has verified. The Respondents allege that the per-unit values of the paints which the two Indian companies imported are systematically lower than the values of paints imported by other companies for use in applications unrelated to wood furniture production. In sum, the Respondents argue that Infodrive India data discredit in two ways the value for paints upon which the Department relied in the Preliminary Determination.

Additionally, the Respondents argue that the Department's reliance on a single value for paint based on Indian imports under HTS 3208 is also grossly distortive because it ignores the fact that thinner, the paint type used by furniture manufacturers in the largest volume, is mostly an acrylic carbon imported under HTS 2901.29.90. The Respondents argue that the Department verified Lacquer Craft's purchases of thinner which it mixes at its plant with various stains, glazes, sealers, and lacquers to produce specific finishing formulae. According to the Respondents, when Lacquer Craft buys "NC topcoat" or "sealer," it adds thinner, which is separately purchased, prior to application. Therefore, the Respondents argue that, because the Department took a surrogate value for stain, glaze, lacquer, and sealer without also taking the value of the thinner added prior to application, it significantly overstated the per-unit value of the paint used to finish wooden bedroom furniture.

The Respondents also argue that the Department should not have ignored actual POI

transaction prices for the different types of paint used to produce wooden bedroom furniture. The Respondents argue that Indian furniture companies' transaction prices reflect a more reliable estimate than the Indian import value shaped by large-volume purchases of automobile and other industrial paint. Specifically, the Respondents argue that the validity of the transaction prices for sealers, glazes, stains, and lacquers that they put on the record can be tested by reference to import values in the Infodrive India database.

Lacquer Craft argues that, despite the Petitioners' claim that the respondents have not provided the detail needed to value the many types of paints used in furniture production, it is impossible to provide a more detailed breakdown of paint usage than Lacquer Craft has already done. Lacquer Craft states that, although it grouped the paints it purchases into five broad categories, the five product groupings taken together cover all the paints that Lacquer Craft purchases. Lacquer Craft argues that it had to develop an allocation methodology because it does not track paint usage on a product-specific basis, its methodology is reasonable, related to each product's relevant physical characteristics and based on verifiable records generated in the ordinary course of business. Lacquer Craft states that the Department was able to confirm at verification that the allocation among the various factors based on their overall usage ratios is a reasonable approximation of product-specific factor usage. Therefore, Lacquer Craft asserts that the Department should accept Lacquer Craft's paint-allocation methodology in its final determination and recognize that its paint inputs are not a "single product" but a large number of inputs that are reasonably divided into five factor categories, including thinner as a distinct factor, as it does not cause a distortion.

Lacquer Craft states that the Department may not apply a broad HTS classification when more

accurate and specific information is on the record and verified. Lacquer Craft states that the Petitioners have provided the Department with no indication that Lacquer Craft's classification of its inputs is inaccurate or distortive, nor any information to indicate that the HTS classifications provided for each of the five paint factors are inaccurate or incomplete. In addition, Lacquer Craft states, the Department has more than enough verified information on the record to allow it to apply accurate and specific surrogate values to Lacquer Craft's paint factors. Lacquer Craft contends that, if the Department decides not to rely on Lacquer Craft's actual purchase price, it should calculate a surrogate value for each of the five paint factors based on the verified weighted-average Lacquer Craft has provided.

The Petitioners argue that Lacquer Craft and other respondents' reporting convention for their paints is overly broad, referring Lacquer Craft's comment that it uses approximately 230 different inputs to create the paint finishes it actually uses on its furniture products. Additionally, the Petitioners observe that Lacquer Craft argues that the paint inputs range from relatively expensive stain pigments, which are used in very small quantities, to inexpensive thinners, which are used in large quantities to decrease the viscosity of all of the glazes, sealers, stains, and lacquers that are applied to furniture.

The Petitioners argue that Lacquer Craft did not classify the 230 paint products it uses to make its finishes as the Department requested. Rather, the Petitioners contend that it responded by listing between four and nine different HTS classifications for each finish. The Petitioners argue that Lacquer Craft's submission stated that these classifications were "for the ingredients that are used to mix paints at its plants" but that at no point did it classify each one of its 230 paint inputs or describe why the selected classification was appropriate. The Petitioners argue that Lacquer Craft's contention that it was not feasible to classify all 230 inputs was demonstrably feasible since Lacquer Craft provided HTS

classifications for its 230 inputs at verification.

Furthermore, the Petitioners argue that the Department should not value Lacquer Craft's glaze, lacquer, sealer, and stain using Lacquer Craft's proposed weighted-average approach. The Petitioners contend that the weighted-average approach would distort the surrogate value of these factors because Lacquer Craft's classification of many of the inputs is incorrect or arbitrary, particularly in light of its frequent use of the same eight-digit HTS headings for different factors.

The Petitioners allege that Lacquer Craft has not justified a separate factor category for thinner. Specifically, the Petitioners contend that by electing not to separately report, describe, and classify the approximately 230 inputs it purchased, Lacquer Craft necessarily has defined the term "factor of production" to mean the finishing products applied directly to furniture. Therefore, the Petitioners argue that unlike glazes, lacquers, sealers, and stains, which are the finishing products applied directly to Lacquer Craft's furniture, thinner is an input that is subsumed in the production of glaze, lacquer, sealer, or stain and is not a factor of production. Accordingly, the Petitioners contend that Lacquer Craft's thinner should not be separately valued as an independent factor of production.

The Petitioners argue that, because the inputs are combined in different ways using different amounts and proportions to produce different types of glazes, lacquers, sealers, and stains, there is no way to ascertain what these final finishes are or how to classify them under the Indian HTS. The Petitioners allege that Lacquer Craft provided no description of the end-product finishes other than to say that they are glaze, lacquer, sealer, or stain and, as a result, there are myriad potentially applicable eight-digit HTS classifications. Thus, the Petitioners contend, if the Department does not apply adverse facts available or otherwise value Lacquer Craft's inputs using the correct HTS classifications, the

Department should use a classification at a higher level of generality for each factor of production in order to capture all the different kinds of lacquers (or glazes, sealers, or stains) that will be mixed and used in the production of wooden bedroom furniture.

Lacquer Craft argues that the paint value the Department used in the Preliminary Determination is distorted because most of the imports entering India under HTS category 3208 are types of paints that have nothing to do with the paints used to finish wood furniture, citing to Infodrive Data. Lacquer Craft argues that, contrary to the Petitioners' assertion, the existence of numerous potentially applicable HTS classifications does not mean that the factors are "overbroad" but, rather, that the HTS classifications do not correspond to the specific types of paint used to produce wooden bedroom furniture.

Lacquer Craft remarks that the Petitioners also question the Department's preliminary decision to value all paints by reference to a single value taken from imports under a single HTS category. Lacquer Craft alleges that, short of the sort of painstaking HTS classification of the two hundred-plus specific paint types that it purchased, the only viable option is to value paints by reference to the non-HTS surrogate data on the record.

Shing Mark argues that the Department's single "catch-all" four-digit HTS category to value all of Shing Mark's finishings is patently inappropriate and results in a significant distortion to Shing Mark Group's margin. Shing Mark argues that it provided sufficient information for the Department to value each of its finishings factors individually. In addition, Shing Mark maintains its previous position that the Indian HTS distorts the surrogate values it generates and is an unsuitable source of surrogate-value

information. Shing Mark argues that Asian Paints or the Indian HTSC which Lacquer Craft and Markor submitted on May 26, 2004, provides more accurate sources of surrogate-value information.

Department's Position: After a thorough review of all the record evidence, we determine that substantial record evidence supports our Preliminary Determination that HTS 3208 from the Indian import statistics provides the best available surrogate value for the respondents' glaze, sealer, lacquer, stain, and paint inputs and ensures that the antidumping rates we calculate are as accurate as possible for this investigation. We find, however, that we valued the thinner input incorrectly in the Preliminary Determination. Thus, for the purposes of the final determination, we have determined that HTS 3814.00.10 from the Indian import statistics provides the best available surrogate value for the respondents' thinner input.

As discussed in the Preliminary Determination, the Department valued stains, glazes, lacquers, and sealers (collectively "paints") by using the single HTS 3208. We observed that the respondents either did not provide an HTS classification for their paint inputs or they provided the Department with multiple HTS classifications that represent the necessary component for making the paints. Additionally, we found each company reported a usage rate for the final product and did not provide usage rates for the specific ingredients that make up the paints.

Furthermore, we concluded that, because there is no record evidence with respect to the usage rates for the components that make up the paints and because other information indicates that these components are mixed to create a single product, the best surrogate value to use for the paints in the Preliminary Determination was a single value for paint. Because there has been no substantively new

record evidence presented with respect to paints since the Preliminary Determination, except for thinner, we determine that the HTS category 3208 is the most appropriate surrogate value.

As the respondents' and Petitioners' comments reveal, this investigation is unique with regard to calculating surrogate values. As discussed in other sections of the memorandum and as described in the parties' comments on this issue, the respondents often aggregated hundreds of inputs or product codes into a single reported factor input. In this investigation the Department was faced with obtaining a single surrogate value for a wide range of inputs that may have varying values but were reported as a single factor. Therefore, this investigation is not typical of most where the Department often finds that the value in the surrogate import statistics represents a broader sample then the reported factor input. As the respondents observe, the Department's preference for value data is to obtain specific information for the product under investigation.

Lacquer Craft's aggregated paint factors do not reflect the described characteristic specifically but report components that describe the finish which is applied to the final merchandise. For example, Lacquer Craft's paint factors report over-lapping components which could be classified generically as a glaze, stain, lacquer, or sealer (i.e., Lacquer Craft's sealer factor includes lacquer components). Shing Mark has explained its reported paint inputs are the exactly what they report to be (e.g., the glaze factor only includes glaze components), not what is applied to the final merchandise. The Department observes, however, that both respondents reported the same multitude of various HTS classifications by which the Department should calculate the surrogate value for their paint inputs. Additionally, it is clear from the numerous supplemental questionnaires, other requests for information, and other record evidence that the respondents' paint factors have gone through numerous incarnations to establish how

the Department should arrive at a value for the various paint factors. Furthermore as the Petitioners describe, it is not at all clear why the respondents chose to segregate the thinner component but not any of the other components when they reported their factors. Additionally, the respondents never provide an explanation as to why they grouped certain paint components that not only reflect different usage rates but reflect widely varying values. Therefore, for the aforementioned reasons, the Department continues to find that a single surrogate value calculated using the HTS heading 3208 of the MSFTI represents the best available information to calculate the respondents' glaze, stain, lacquer, and sealer factors. This ensures that the antidumping rates we calculate are as accurate as possible for this investigation. As the respondents remark, the Department's preference for value data is specific information for the product under investigation. The nature of the merchandise and the reported factors in this investigation, however, require that value data best match the respondents' aggregated factor inputs.

Regarding the surrogate value for thinner, the Department determines to value this factor input using the MSFTI HTS heading/subheading of 3814.00.10 because, as the respondents describe and as the Department found at verification, the usage rate for thinners was independent of the reported paint factors. The Department finds, however, that the respondents' HTS heading/subheading recommendation of 2901.29.90 (described in the Indian Tariff Schedule as hydrocarbons and their halogenated, sulphonated, nitrated or nitrosated derivatives, acyclic hydrocarbons, unsaturated, other) is not the best available surrogate value for thinner. Instead, the Department finds that heading/subheading 3814.00.10 (described in the Indian Tariff Schedule as organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers: organic

composite solvents and thinners, not elsewhere specified or included) better covers the numerous thinners the respondents reported in an aggregated thinner factor and constitutes the best available information because the description is more clearly defined.

Regarding the respondents' comments on the use of Infodrive India data and purchase-price information, the Department has addressed these issues in other responses of this memorandum. See our response to Comments 10 and 17.

Comment 27: The Asian Paints Price List

Shing Mark alleges that the Department ignored highly relevant information concerning paint and finishing values in the Preliminary Determination. Specifically, Shing Mark contends, it submitted public pricing data and product information from an Indian company, Asian Paints (India) Ltd. Shing Mark argues that the Department should use the values provided for thinner, sealer, glaze, and lacquer reported on the Asian Paints price list for the final determination. Shing Mark contends that this price list is more preferable than the MSFTI data the Department used to value finishing factors of production in the Preliminary Determination because it is more reliable.

Shing Mark explains that the Asian Paints price list is an example of domestic prices that have been accepted by the Department in previous antidumping investigations to value factors of production, citing among others Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Romania, 61 FR 24274 (May 14, 1996), accompanying Issues and Decision Memorandum ("Steel Pipe from Romania"). In Steel Pipe from Romania, Shing Mark argues, the Department used a price list from a company called Acerias to value steel inputs because the Department determined that it was more appropriate to use actual prices of the producer's specific

factors of production rather than values from import statistics. In accepting the price list as a source for surrogate values, Shing Mark alleges that the Department ruled that there was no hierarchy in which import statistics were the preferred source for surrogate.

In accord with the conclusions set forth in Steel Pipe from Romania and the Department's general policy of accepting prices from domestic sources, Shing Mark argues, the Asian Paints data constitute the best information available because the price list is publicly available, is contemporaneous with the POI, describes the maximum retail prices to be charged by all Indian dealers, is representative of a large sample of domestic prices because Asian Paints is a major producer of paint products that are sold and distributed throughout India, is not aberrational, is tax-exclusive, and the products listed are comparable to the Shing Mark' factors of production that the Department must value. Shing Mark claims that it compared the physical characteristics of the products used in its production to the characteristics of the products listed by Asian Paints very carefully. Specifically, Shing Mark claims that its sealer and glaze match Asian Paints product information available from the world-wide web-site stating that Melamyne is "formulated as a protective and decorative clear finishing for wood. It has excellent resistance to oil, food and beverage stains and protects wood for years." For Sealer and Glaze, Shing Mark alleges that it matched these products to Asian Paints Melamyne Sealer and Asian Melamyne Glossy, respectively, as based on prices listed for 20-liter containers. Shing Mark states that Asian Paints pricing data for these products resulted in a calculated surrogate value of US$ 3.3122 per liter for sealer and US$ 2.9459 per liter for glaze.

For the surrogate value of lacquer, Shing Mark argues that the publicly available product information available from Asian Paints world-wide web-site states that Touchwood "adds sparkle to

wooden surfaces and provides unmatchable decorative appeal. It has long lasting gloss, protects wood from coffee and tea stains and is better than conventional coatings, like French polish or Nitrocellulose lacquers." Shing Mark claims that the submitted price-list information for this product is the best product to be used as a value for lacquer. Shing Mark states that the pricing data for "Touchwood Clear Glossy" resulted in a calculated surrogate value of US$ 1.9875 per liter. Additionally, Shing Mark alleges that publicly available product information from the Asian Paints web-site recommends Thinner 101 as a suitable and reasonable match and contends that a calculated surrogate value using the Asian Paints price list of US$1.1227 per liter for this product is appropriate.

The Petitioners argue that the Department should not accept the Asian Paints Dealer Price List submitted by Shing Mark as an appropriate source for surrogate values in the final determination. The Petitioners contend that the Department should not use a dealer price list, especially a price list that was self-selected by the respondents. The Petitioners contend that, despite Shing Mark's declaration that the price list represents prices charged by the dealers, i.e., prices at the retail level, the list actually reflects prices from Asian Paints to dealers, not to end-users. They explain that a comparison of the retail prices with the prices per liter reported in the Dealer Price List demonstrates that the prices charged in the Dealer Price List for liter packs are substantially below the maximum retail prices reported on the Asian Paints web-site. They present the comparison for the Department's consideration. According to the Petitioners, if the Dealer Price List represented prices charged by dealers to end-users, the maximum prices shown in the price list for liter packs should be the same as those shown as maximum price in the Asian Paints web-site.

In sum, the Petitioners allege that the prices submitted by Shing Mark are at the wrong level of trade and understate the actual prices charged to end-users. To be suitable for purposes of valuing respondents' finishing factors of production, the Petitioners argue that the actual prices to end-users would have to reflect the profits of the distributors. Thus, the Petitioners explain, the prices contained in the Asian Paints Dealer Price List cannot be used as surrogate values.

Additionally, the Petitioners contend that Shing Mark's claim that it compared the physical characteristics of the products used in its production to the products listed by Asian Paints to select the appropriate values is misleading because Shing Mark did not place a description of the physical characteristics of its inputs on the record. Accordingly, the Petitioners claim that the Department and the Petitioners cannot confirm Shing Mark's determinations as to the most appropriate comparison products. As such, the Petitioners argue that the Department should continue to use the appropriate Indian HTS category to value this factor in the final determination rather than specific products hand-picked by this respondent.

Shing Mark rebuts the Petitioners' argument by explaining that the Department should adhere to its preference for using domestic sources of pricing information from a surrogate country to value factors of production, citing CTL Plate from the PRC 1997. Shing Mark reiterates that the Department has used domestic price lists in the past as a valid source of surrogate values in cases where, identical to the Asian Paints price list, the price list is publicly available, represents a broad range of actual prices, is contemporaneous with the POI, is specific to the factors of production being valued, and is tax-exclusive.

Shing Mark alleges that the Petitioners do not contest the fact that the Asian Paints price list represents valid prices charged for the identified products. Shing Mark claims that the Petitioners cannot cite any evidence in the Asian Paints price list to support their contention regarding the recipient of such prices. According to Shing Mark, a reasonable reading of the title "All India Dealer Price List" leads to the conclusion that the Asian Paints price list indicates the maximum price that all dealers are to charge for finishing products.

Shing Mark rebuts the Petitioners' argument by contending that the prices in the Asian Paints price list are below the maximum retail prices listed on the Asian Paints web-site. Shing Mark argues that, because prices listed on the web-site are not contemporaneous and because prices can and do change over time, the Petitioners' purported comparison does not prove that the Asian Paints price list reflects prices from the manufacturer to the dealer rather than a manufacturer (or dealer) to the end-user.

Additionally, Shing Mark contends that the products in the exhibit proffered by the Petitioners are less specific than price-list submitted by Shing Mark. For example, Shing Mark argues that although the Asian Paints price list submitted by Shing Mark contains prices for each of the four types of "Asian Melamyne" wood finishes -- matt, glossy, sealer, and silk matt -- the web-site print-out only includes a range of maximum retail prices for "Asian Melamyne" in total. According to Shing Mark the generic product-pricing information in the Petitioners' exhibit cannot be used to extrapolate specific pricing data for different Asian Paints products, such as the exact price per liter for "Asian Melamyne Sealer," identified in the Asian Paints price list.

Finally, Shing Mark contends that the Petitioners' assertion that Shing Mark has "cherry-picked" the lowest surrogate values for these paint products is without merit. Specifically, Shing Mark explains that in its May 14, 2004 submission, at 21, Shing Mark used Asian Paints "Wood Finishes" line of products to value sealer, glaze, thinner, and lacquer factors of production because these products in this price list match most closely actual finishing inputs Shing Mark used. Regarding the Petitioners' challenge of the Asian Paints data as illegitimate, arguing that it is "a single price list hand-picked by the Respondents" and that it reflects prices to dealers not end-users, the respondent contends that the Petitioners mischaracterize the nature of the Asian Paints data. The respondent alleges that, if the Petitioners' objections were valid, the Asian Paints data would not be consistent with the other product-specific data on the record from other sources. The respondent contends that the Asian Paint pricing data is corroborated by all the other producer and supplier pricing information for paints on the record.

Department's Position: The Department determines that the Asian Paints Dealers Price List does not represent the best available information to ensure that the antidumping margins it calculates for this investigation are accurate.

The Department finds that the Asian Paints price list does not best represent the respondents' paint inputs. For example, Shing Mark aggregated over 100 different products to create its five finishing categories of glazes, lacquers, sealers, stains, and thinners. Similarly, Lacquer Craft aggregated approximately 230 products into its five finishing categories of glazes, lacquers, sealers, stains, and thinners. In Steel Pipe from Romania, the Department determined that the price list described the commercial quality of the input used by pipe producers adequately. In this investigation,

isolating a single type of thinner, sealer, lacquer, or glaze from a single price list does not describe the commercial quality of the multitude of different products that make up the respondents' finishing factors adequately. Therefore, the Department finds, for example, that the Asian Paints single "Touchwood" lacquer product does not best represent the broad multitude of different lacquers that the respondents have reported in the lacquer factor. Additionally, each respondent aggregated their factor inputs vary differently and to assume that the Asian Paints single products represents the way in which each respondent reported the finishing inputs accurately would be improper.

Additionally, the Department determines for this investigation that a single price list from a domestic Indian producer is not a representative sample of the domestic prices charged for the respondents' finishing factors, especially considering the limited products that Asian Paints offers and the multitude of aggregated products the respondents reported in their finishing inputs. Additionally, given that the MFSTI data the Department used is contemporaneous with the entire POI, the Department finds that there is not adequate record evidence that the price list represents the purchase prices throughout the entire POI.

Additionally, the Department finds that the difference in retail prices reported on the Asian Paints web-site is substantial enough to support the Petitioners' contention that the price list represents prices sold to dealers, not end-users. Thus, the Department finds, as the Petitioners observe, that for purposes of valuing respondents' finishing factors of production the actual prices to end-users would have to reflect the profits of the distributors in order to be a fair representation of the price a manufacturer of wooden furniture would pay. For all of these reasons, we have used the MSFTI data to value these factors.

Comment 28: Packing Cardboard

The Joint Respondents argue that in its Preliminary Determination the Department used a surrogate price from MSFTI for the corrugated cardboard they used to pack bedroom furniture that is almost twice the actual cost to furniture manufacturers in India (Highland House, Tarun Vadehra) and Indonesia (Goldfindo).

The Petitioners disagree with the Joint Respondents' contention that the MSFTI data are distortive of the purportedly true price of cardboard for packing. The Petitioners state that the Joint Respondents make no specific argument supporting their contention but simply point out that the prices Highland House, Tarun Vedhera, and Goldfindo paid are less than the average unit value of merchandise entered under the selected Indian HTS classification for cardboard. The Petitioners reiterate the arguments they made for other surrogate values that price information from Highland House, Tarun Vedhera, and Goldfindo is inherently unreliable. Consequently, the Petitioners argue, there is no reason to use information other than the MSFTI to value packing cardboard.

Department's Position: The Department has determined to continue to use MSFTI data to value cardboard for packing. The Joint Respondents did not show that the MSFTI data are distortive. Additionally, the Department does not know the precise specifications of the products which Highland House, Tarun Vedhera, and Goldfindo purchased. Therefore, we cannot determine whether the prices they paid would result in an accurate surrogate value for packing cardboard. The benefit of using MSFTI data is that the HTS category reflects more accurately the mix of packing cardboard that the respondents used. Therefore, the Department has used MSFTI data to value packing cardboard in the determination of normal value.

Comment 29: Packing Materials (Cardboard)

The Petitioners state that Markor and Lacquer Craft provided the cost of cardboard used to pack furniture from Pulp and Paper Week, a U.S. industry publication. The Petitioners point out that, in the Preliminary Determination, the Department used import values from the World Trade Atlas to obtain surrogate values for packing materials. The Petitioners contend that the data Markor and Lacquer Craft provided is not the cost of cardboard but, instead, the cost of two of the primary materials used to produce cardboard. Further, the Petitioners argues that, because, these prices do not include the costs of converting these materials into cardboard or converting the cardboard into cartons, they are not appropriate points of comparison for the MFSTI data for cardboard cartons. Furthermore, the Petitioners assert the Markor and Lacquer Craft did not provide all the information they could have obtained through Pulp and Paper Week. Accordingly, the Petitioners argue, the Department should reject the submitted Pulp and Paper Week data.

Markor and Lacquer Craft state that they placed Pulp and Paper Week on the record in order to allow the Department to test the reasonableness of the value for cardboard that the Petitioners have offered based on their reading of the Indian import statistics. Markor and Lacquer Craft contend that, in the Preliminary Determination, the Department rejected the value the Petitioners proposed. They highlight that the data from Pulp and Paper Week provides a reliable basis for checking the reasonableness of any factor value for corrugated cardboard that the Department might want to consider. Markor and Lacquer Craft state that the Petitioners are correct that Pulp and Paper Week does not publish "corrugated cardboard" prices but, instead, publishes prices for the two materials that, when glued together, make corrugated cardboard. Markor and Lacquer Craft contend that there is

little else to corrugated cardboard because the production process involves gluing or otherwise combining these two components, cutting them to specific dimensions, and, in some cases, printing.

Department's Position: The Department determines that the Pulp and Paper Week price list does not represent the best available information to ensure that it calculates accurate antidumping margins in this investigation. We find that the Pulp and Paper Week price list does not provide the best representation of the respondents' packing inputs (i.e., cardboard). Additionally, we have determined that the prices published in Pulp and Paper Week are not "corrugated cardboard" but prices for the two materials that make corrugated cardboard or converting the cardboard into cartons. In Steel Pipe from Romania, the Department determined that the price list described the commercial quality of the input used by pipe producers adequately. In this investigation, isolating a single type of packing material from a single price list would not reflect the commercial quality of the multitude of different products that make up the respondents' finishing factors. Additionally, we determine that for this investigation a single price list from a domestic producer is not a representative sample of the domestic prices for packing materials, especially considering that this publication does not contain the actual packing material that we must value in the calculations. Instead, it contains prices for the two materials the respondents used to construct the packing material. Further, the publication provides a disclaimer stating that, "while the information contained in this index has been obtained from sources believed to be reliable, Paperloop does not warrant or guarantee the accuracy and completeness of the information." Given that this publication does not guarantee the accuracy of its data, the Department cannot rely on admittedly questionable data to calculate an antidumping margin. Thus, given that the MFSTI data we used in the

Preliminary Determination is contemporaneous with the POI and a better description of the material, we find the MFSTI data is more representative.

III. Mandatory Respondents - Company-Specific Issues

A. Dorbest

Comment 30: Commissions

Dorbest argues that the Department should use the commission amounts it reported in its latest database submitted to the Department on October 18, 2004. Dorbest contends that in its May 24, 2004, submission, it revised commission amounts to remove certain amounts that it claimed were not commissions. Dorbest states that, in the Preliminary Determination, the Department determined not to use its amended data but instead relied on earlier submission to calculate per-customer commissions. Dorbest contends that, at verification, the company officials demonstrated to the Department that certain amounts that Dorbest removed for its May 24, 2004, submission were not commissions, citing the Department's Dorbest Verification Report. Dorbest argues that, for the final determination, the Department should use the amounts Dorbest reported in its July 13, 2004, database and, Dorbest states, it only has positive commission amounts for a U.S. customer.

The Petitioners allege that the Department should adjust U.S. price for all of Dorbest's commissions reported in the respondent's accounting records. The Petitioners contend that Dorbest reported these expenses initially as commissions because they were identified as such in its accounts. Also, the Petitioners disagree with Dorbest's argument that its presentation of information on commissions during verification means that the Department should now disregard its accounting of these transfers as commissions. The Petitioners contend that the Department should rely on information as

reported in a company's accounting records, citing Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 69 FR 24128 (May 3, 2004), and accompanying Issues and Decision Memorandum (recognizing that "{t}he Department must rely on the accounting records of a respondent"), and Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review, 65 FR 13717 (March 14, 2000), and accompanying Issues and Decision Memorandum, (relying on shipment date reflected in respondent's "books and records" instead of an alternative shipment date that the respondent contended was more accurate). The Petitioners assert that the Department should use the information in Dorbest's accounting records to make an adjustment.

Department's Position: The Department has determined to use the commissions amounts Dorbest reported in its October 18, 2004, submission. At verification, the Department examined Dorbest's statement in its May 24, 2004, supplemental questionnaire response claiming that certain expenses appearing in Dorbest's accounting records were not commissions and were not associated with sales transactions. Dorbest officials presented bank books and remittance forms which supported its claims that these payments were not associated with sales transactions. See the Department's Dorbest Verification Report at 9. Additionally, the Department has confirmed that the October 18, 2004, database contains the commissions Dorbest paid. Thus, for the final determination, we have excluded certain amounts that Dorbest has claimed were not commissions from the value Dorbest had reported as commissions for its U.S. sales. See Dorbest Final Analysis Memo.

Comment 31: Cheval Mirrors

Dorbest states that the Department modified the scope of this investigation to exclude "cheval" mirrors, citing Memorandum from Robert Bolling to Laurie Parkhill, Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China (August 31, 2004) ("August 31 Scope Memo"). Dorbest contends that one of its products falls into the category of "cheval mirror" and requests that the Department delete that transaction from its analysis.

The Petitioners did not comment on this issue.

Department's Position: The Department has determined to exclude the specific item which falls into the category of "cheval mirror" from its calculation of the margin for Dorbest. The Department modified the scope of this investigation to exclude cheval mirrors, which are "any framed, tiltable mirror{s} with a height in excess of 50 inches that {are} mounted on a floor-standing, hinges base." See Amendment 1 and August 31 Scope Memo. Consistent with Amendment 1 and with Dorbest's July 13, 2004, response, the Department has excluded the item described as "mirror, cheval (CM2)" from its analysis of Dorbest. See Dorbest Final Analysis Memo.

Comment 32: Brokerage and Handling

Dorbest argues that the Department double-counted the company's document-handling expenses for shipments from Hong Kong. Dorbest contends that it only paid customs-clearance fees to NME providers for shipments from Hong Kong. It refers to its May 24, 2004, response at 11 in which it stated that the Department needs to "ensure that the surrogate value applied to shipments out of the port of Hong Kong include only expenses for customs clearance fees. (This is different than shipments made out of the ports of Yantian/Shekou, which include both customs clearance fees and document

handling fees.)" Dorbest asserts that, in the Amendment 1, the Department applied a single surrogate value of 0.7352 Rs/kg for all of Dorbest's shipments. Dorbest states that the surrogate value included costs for BPT Charges (Port Trust Charges), Shipping Bill Handling Charge, and B/L Handling Charges. Dorbest contends that, for the final determination, the Department should ensure that, for its shipments from Hong Kong, the surrogate value does not include any amounts for document-handling fees since it reported these separately as a market expense. Dorbest asserts that, in Verification Exhibit 8, the Department examined that the information Dorbest reported for shipments from Hong Kong includes both terminal handling charges plus document fees. Additionally, Dorbest contends that the Department should remove the "shipping bill handling charge" and "b/l handling charge" from the Meltroll surrogate value for Dorbest's shipments from the Hong Kong ports because it had reported them separately in another category for terminal handling charges. Alternatively, Dorbest suggests, if the Department selects a different surrogate value for the final determination, it should also ensure that its shipments from Hong Kong include only NME customs-clearance charges.

The Petitioners did not comment on this issue.

Department's Position: The Department has determined to recalculate Dorbest's surrogate brokerage and handling rate to avoid double-counting. At verification, we verified information in its May 24, 2004, response that Dorbest pays these charges in a market-economy currency to Hong Kong shipping companies. See Verification Exhibit 8. Thus, for the final determination, we have excluded "shipping bill handling charge" and "b/l handling charge" from the Meltroll surrogate value. See Dorbest Final Analysis Memo.

Comment 33: Offset Adjustment for By-products

Dorbest contends that it reported two types of by-products, scrap wood and scrap cardboard. Dorbest asserts that it described these types of scrap in its May 24, 2004, response and included sample receipts relating to sales of by-products. Dorbest asserts that the Department should take into consideration the discussion of scrap in its May 24, 2004, response and, for the final determination, grant Dorbest an offset for scrap wood and scrap cardboard which it did not receive in the Preliminary Determination.

The Petitioners claim that the Department should reject Dorbest's claim for a by-product offset to the cost of manufacturing for wood scrap and cardboard scrap. The Petitioners allege that, in its March 29, 2004, response, Dorbest did not state whether it had based the allocation on scrap production or scrap sales. Additionally, the Petitioners claim, the supporting exhibit in Dorbest's May 24, 2004, submission does not contain total scrap produced or total scrap sold, which are critical to determining whether the allocation is correct. The Petitioners assert that Dorbest provided only the barest amount of information regarding how it calculated the by-product quantity attributable to each control number, it provided no worksheets, and it did not demonstrate the reasonableness of its allocation methodology. The Petitioners contend that, given the dearth of information on the record to support Dorbest's claim, the Department's decision to deny the claim for the Preliminary Determination was correct. The Petitioners cite Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China, 68 FR 53347 (September 10, 2003), and accompanying Issues and Decision Memorandum ("Hand Tools from the PRC 2003"), in which the

Department also denied a respondent's claim for a by-product offset where the respondent did not provide the information necessary for the Department to calculate the applicable offset amount.

Department's Position: The Department has determined not to grant Dorbest an offset for wood scrap and cardboard scrap. In the Amendment 1, the Department did not grant an offset for Dorbest's by-products because the Dorbest Group never reported that scrap cardboard and scrap wood are by-products. See Memorandum to File, at 9-10 (July 29, 2004). Although Dorbest listed scrap wood and scrap cardboard as by-products in its March 29, 2004, response, it did not explain therein or elsewhere whether it based its scrap-allocation methodology on sales or production figures for scrap. Further, the Department has determined that Dorbest's explanation for its calculation of the by-product offset is not sufficient for determining the by-product adjustment because Dorbest did not provide worksheets or any other evidence on the record to demonstrate how it calculated its wood scrap and cardboard scrap offset. Thus, consistent with the Preliminary Determination and with Hand Tools, the Department has not granted Dorbest a by-product offset for scrap wood and scrap cardboard for the final determination.

Comment 34: Direct Selling Expenses

Dorbest asserts that the figures it reported as direct selling expenses reflect expenses related to incoming raw materials (board and lumber), not outgoing finished products. Dorbest asserts that, because these expenses are not sales-related expenses, the Department should not deduct them from the gross unit price for the final determination. Dorbest asserts that at verification the Department examined the amounts reported and saw that they were related to production, citing the Department's Dorbest Verification Report at 12.

The Petitioners argue that there is no support for Dorbest's claim that the Department should consider the amount it reported as direct selling expenses as part of raw material costs instead of as selling expenses. Additionally, the Petitioners argue that there is no factual evidence to support Dorbest's assertion in its July 13, 2004, response that the overhead element of the Indian surrogate producers includes these expenses. Thus, the Petitioners assert that, in the final determination, the Department should include the total amount of these expenses in Dorbest's cost of manufacturing.

Department's Position: The Department has determined to treat the expenses at issue as direct selling expenses and, consistent with section 772 (c)(2)(A) of the Act, to deduct the amount from the U.S. gross sales price. In its June 15, 2004, response, Dorbest categorized this expense as related to sales of the subject merchandise to the United States. At verification, the Department examined Dorbest's documents associated with this expense. These documents showed that Dorbest applied this expense to its sales during the POI. See Dorbest Verification Report at 12 and Verification Exhibits 8, 9, and 10 which show that Dorbest attributed these expenses to its U.S. sales. Additionally, Dorbest presented the direct selling expense as part of each sales-trace exhibit which demonstrates that Dorbest associated this expense with its sales. Therefore, for the final determination, the Department has determined to treat this expense as a sales expense and deduct it from U.S. gross price. See Dorbest Final Analysis Memo.

Comment 35: Conversion Factors

Dorbest alleges that the Department did not use the correct conversion factor when determining freight for hickory and lotus veneers. Dorbest contends that, in the Preliminary Determination, the Department used a conversion factor of 0.033185 to calculate the freight for hickory veneer and lotus

veneer. Dorbest points out that the Department's factors-valuation memorandum listed an average conversion value of 0.00003318 for veneers not specifically listed, like hickory and lotus, to calculate freight. Dorbest asserts that the Department should recalculate the freight value for hickory and lotus veneers using the correct conversion factors from the factors-valuation memorandum. The Petitioners did not comment on this issue.

Department's Position: Consistent with its factor-valuation memorandum, for the final determination, the Department has corrected the conversion factor for freight for hickory and lotus veneers, the factor is 0.00003318. See Dorbest Final Analysis Memo.

Comment 36: Contemporaneity of Surrogate-Value Data

Dorbest contends that the Department used the correct HTS categories to value certain inputs but that it did not use the correct time period. Dorbest alleges that, where the Department could not find values during the actual POI of April 2003 through September 2003, for the Preliminary Determination the Department should have used import data from April 2002 through September 2002 to obtain the most accurate representation of POI prices and trends instead of using import data for the calendar year 2002. Dorbest contends that furniture is a seasonal product and using data from months outside the period will reflect purchasing trends not experienced by the Chinese producers during the POI months. Dorbest asserts that, in order to calculate the most accurate margins, the Department should use the surrogate prices based on HTS categories that represent the seasonal trends affecting the prices of inputs during the actual POI. Dorbest contends that import data from the period April 2002 through September 2002 is the only period other than the actual POI that would capture the seasonal trends affecting the prices of these inputs.

The Petitioners argue that the Department should rely on 2003 Indian import statistics when valuing inputs. The Petitioners contend that, in selecting surrogate values, the Department has a clear preference for (1) products as similar as possible to the input being valued, (2) values that are contemporaneous with, or closest in time to the period, and (3) representative of a range of prices in effect during the period, citing Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from the People's Republic of China, 66 FR 46775 (September 7, 2001), and accompanying Issues and Decision Memorandum. Accordingly, the Petitioners assert, the Department should rely on import data from the 2003 Indian import statistics that are outside the POI because such data are more contemporaneous to the POI than data for the previous year and the HTS classifications cited by Dorbest do not exist in the 2002 Indian HTS.

Department's Position: The Department has determined to recalculate surrogate values for certain inputs based on POI data. Also, for those HTS numbers for which Indian import statistics contained no imports during the POI, the Department has used the closest period to the POI, April 2002 through September 2002, and inflated those values to represent POI figures. For a complete listing of these HTS categories, please see Dorbest Final Analysis Memo. Additionally, for the Preliminary Determination, we based some of the factor product descriptions on HTS numbers listed in the 2002 Indian import statistics which expired prior to the POI. Thus, we have recalculated surrogate values for those inputs using the closest HTS number listed in 2003 Indian import statistics. See Surrogate Value discussion at Comment 19.

Comment 37: Free-of-Charge Merchandise

The Petitioners argue that Dorbest's methodology for calculating the price of free-of-charge merchandise does not capture all the discounts applicable to sales of subject merchandise. The Petitioners argue that Dorbest's methodology overlooks the impact on the final net price paid, and the final value received, by the U.S. customer when an invoice included free-of-charge items that may or may not be part of the subject merchandise. The Petitioners allege that Dorbest's methodology excluded the value of free-of-charge items, which contain some value, from the reported sales transaction. The Petitioners argue that, as a result of Dorbest's methodology, Dorbest reported inflated prices for sales of subject merchandise and shifted arbitrary discounts to non-subject merchandise because it did not deduct the value of free-of-charge items from the reported price of the subject merchandise. To demonstrate their argument, the Petitioners explain that a certain invoice which the Department examined at verification contained several free-of-charge items and that, because the customer's request exceeded Dorbest's general allowance of a certain percentage of spare parts at no charge, the free-of-charge items represent not only a certain portion of the total value of the invoice but also a substantial value in the form of a free-goods discount. Additionally, the Petitioners argue that Dorbest's free-of-charge methodology results in an understatement of the normal value and an overstatement of the U.S. net price. The Petitioners contend that the Department should reject Dorbest's attempt to limit the value of the free-of-charge items artificially to only those items that belong to sales of subject merchandise.

Further, the Petitioners argue, Dorbest's methodology only captures a portion of the total value of items provided free of charge. The Petitioners state that, if Dorbest produces free-of-charge items, its reported factors of production for the items within a specific control number will include the total

quantity of wood, glue, labor, etc. required to produce that free-of-charge item. As such, the Petitioners argue, the per-unit factors of production will reflect the use of different items in the quantity (i.e., a complete item and a spare part will be weighted equally). Also, the Petitioners argue, if Dorbest did not produce a free-of-charge piece but instead purchased it from a supplier and then provided it free of charge to the U.S. customer, the factors relating to the free-of-charge piece are not reflected anywhere in the factors of production information. Furthermore, the Petitioners argue, Dorbest's methodology treats the free-goods discount incorrectly as an increase in the factors of production for the control-number grouping. Referring to the Department's long-standing practice concerning the transaction-specific reporting of discounts, the Petitioners allege that Dorbest's reporting methodology is also deficient in reporting data, citing, among others, Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy, 64 FR 30750, 30768 (June 8, 1999) ("the Department prefers that discounts, rebates and other price adjustments be reported on a transaction-specific basis"). In addition, the Petitioners contend, Dorbest's sales invoices which the Department collected during verification and its data systems allow Dorbest to report data on transaction-specific basis. They assert that Dorbest's methodology of reporting these items moves what is more appropriately a U.S. price adjustment from the U.S. price calculation into the normal-value calculation. Thus, the Petitioners allege, acceptance of Dorbest's methodology of reporting data without an adjustment will result in a distortion of the product-specific margins. The Petitioners argue that, because Dorbest did not report the free-goods discounts it provides to its U.S. customers on a transaction-specific basis, the Department should calculate a free-goods discount using verified information and apply it to all of Dorbest's U.S. sales as an adjustment to price.

Dorbest states that the Department should reject the Petitioners' argument regarding free-of-charge spare parts in light of the Federal Circuit's opinion in NSK Ltd. v. United States, 115 F.3d 965, 975 (Fed. Cir. 1997) ("NSK"), where the court ruled conclusively that transactions for no consideration are not sales. Dorbest contends that the Petitioners acknowledge that Dorbest provided some of its parts "free of charge" which means that the Petitioners agree that Dorbest's transactions lacked consideration. Therefore, Dorbest asserts, the Petitioners' argument is flawed at the very outset because the Federal Circuit decided in NSK that transactions such as these are not sales.

Dorbest disagrees with the Petitioners' allegation and argues that the Petitioners take the opposite approach when asking the Department to reject Dorbest's attempt to limit the value of the free-of-charge items to only those products that are subject merchandise control numbers. Dorbest contends that, at the Petitioners' insistence, the Department requested Dorbest to include spare parts in the same product-control number to which they relate. Dorbest states that it complied with the Department's request and confirmed that the factors of production for spare parts that were simply purchased and resold were reflected within the applicable control number. Also, Dorbest disagrees with the Petitioners' statement that its description in its June 15, 2004, submission does not specifically mention spare parts it purchased (rather than self-produced) and then provided free of charge. Dorbest contends that the Department can see from the detailed factors-of-production sheet pertaining to the sale the Department examined at verification that Dorbest included spare parts it purchased, such as hinges, knobs, and door-holder catches, within the reported factors of production even when it provided them free of charge to its customers. Therefore, Dorbest asserts, the normal values the

Department calculated include costs for spare parts provided free of charge, regardless of whether Dorbest purchased or produced them.

Dorbest asserts that the omission of a specific and individual reference to a part on the factors-of-production buildup for the main item the Department reviewed at verification indicates that Dorbest produced the part and the factors-of-production to produce the part is included in the relevant raw materials, labor, and energy factors, as stated in Dorbest's June 15, 2004, response at page 9. Dorbest alleges that, contrary to the Petitioners' suggestion, Dorbest included all spare parts, whether sold or provided free of charge, in the factors of production buildup for the grouping to which the spare part relates, which is exactly what the Petitioners requested in their April 30, 2004, comments.

With respect to the Petitioners' allegation that the Department should calculate a free-of-charge discount ratio based on the invoice information in the verification exhibits, Dorbest disagrees. Dorbest alleges that the Petitioners' calculation is fundamentally flawed and distortive by nearly 400 percent because the Petitioners use a simple average of their calculated rates rather than a calculation of the weighted-average discount which is possible to derive from Dorberst's U.S. sales information. Additionally, Dorbest asserts, the Petitioners also erred in their calculation because the calculation does not distinguish between spare parts and full pieces of furniture described as "Sample: Free-of-charge, No Comm. Value" in the Petitioners' brief. Dorbest contends that it shipped these pieces as single units, corroborating the fact that these are not spare-parts discounts as the Petitioners suggest but rather zero-priced transactions of a sample product. Also, Dorbest claims, the Petitioners' worksheet omitted a significant number of invoices in the verification exhibits which had no free-of-charge spare parts. Dorbest alleges that, because the Petitioners are proposing an across-the-board adjustment, the

Department must include these invoices which had no alleged "discounts" in the weighted-average adjustment as well as the selected invoices appearing on the Petitioners' worksheet. Finally, Dorbest claims that the Petitioners calculated a simple-average adjustment ratio without regard to the weighted-average impact and this simple average is inconsistent with application of the adjustment factor to all sales.

Department's Position: The Department has determined to treat Dorbest's free-of-charge items as sales discounts. At verification, Dorbest officials acknowledged that they include such free-of-charge items on a frequent basis in shipments to their customers (see Dorbest verification report). We also saw that these free-of-charge items resulted in an effective reduction of U.S. price of the subject merchandise due to the inclusion of these free spare parts in the invoices. See Verification Exhibits 8-10. Thus, as a result of Dorbest's reduction to U.S. price due to these spare parts, we have reduced the U.S. gross price by an allocated amount.

The Department calculated a free-of-charge discount using the invoice information it collected during the verification regarding sales destined to the United States. Because the Department could not distinguish whether the free-of-charge items were of subject or non-subject merchandise, it used the total value of the free-of-charge items and divided it by the total value of all merchandise contained in the invoices from the verification exhibits. See Dorbest Final Analysis Memo. The Department has applied the resulting ratio to all of Dorbest's U.S. sales.

Comment 38: Wood Inputs

The Petitioners allege that Dorbest does not capture all of its wood inputs in its warehouse receipts because, the Department learned at verification from a warehouse employee that the

warehouse discards wood that is mostly bad and does not keep track of it. The Petitioners contend that, because it did not report all of its wood use, Dorbest failed verification of this element. The Petitioners assert that, in its final margin calculation, the Department must capture the waste that Dorbest did not report. The Petitioners conclude that, in recognizing the lack of cooperation by Dorbest in providing accurate and complete information, the Department should use an adverse inference when accounting for Dorbest's wood usage.

Dorbest contends that, unlike the other mandatory respondents in this case, it reported its costs on a batch-specific basis using actual raw-material withdrawals from inventory to calculate the per-unit consumption. Dorbest claims that its reporting methodology corresponds with the company's cost-accounting methodology and that the resulting per-unit costs are based on actual consumption rather than a hypothetical standard consumption with an across-the-board variance adjustment. Dorbest contends that its factors-of-production quantities are based on withdrawals of raw material instead of inventory value, such that its warehouse employee's statement during the Department's verification regarding warehouse turnaround principles and the treatment of defective wood within the warehouse is meaningless in Dorbest's reported factors of production. Dorbest contends that the Petitioners' assertion that it failed verification on wood usage is simply not true and the Department should reject it.

Department's Position: Dorbest demonstrated at verification that its per-unit factors of production are based on warehouse-withdrawal slips of raw materials and not on the value of inventory. See Exhibits 12-14 of the Department's Dorbest Verification Report. Additionally, at verification, we saw that wood waste which was specific to production is included in Dorbest's factors of production for wood consumption and any pre-withdrawal waste would be included as a cost in Dorbest's overhead

expenses. Therefore, for the final determination, we have not adjusted Dorbest's wood-usage rates as the Petitioners suggest.

Comment 39: Cardboard and Wood Scrap Figures

The Petitioners cite a pre-verification correction the Department discussed at page 2 of its Dorbest Verification Report stating that Dorbest acknowledged that its reported cardboard and wood scrap amount was incorrect due to a change in the allocation ratio. The Petitioners state that the Department's notes on Verification Exhibit 40 demonstrate that there is a difference in the scrap ratio of a certain percentage and they contend that the Department should increase the reported scrap quantities in the factors of production data by this ratio. Dorbest agrees with the Petitioners' underlying presumption that a scrap cardboard and wood adjustment is warranted in this case.

Department's Position: The Department has increased the reported cardboard and wood scrap amount Dorbest presented at the verification to reflect the corrected allocation ratio Dorbest presented at verification.

Comment 40: Diesel Fuel

The Petitioners cite a pre-verification correction in the Department's Dorbest Verification Report at page 2 stating that Dorbest understated its usage of diesel fuel when it omitted consumption by forklift trucks. The Petitioners state that they agree with Dorbest's suggestion to the Department to increase the existing fuel variable for products from the applicable plant by a certain percentage to correct the error. Dorbest agrees.

Department's Position: We have corrected the fuel-usage factor to reflect this understatement of Dorbest's fuel consumption.

Comment 41: Packing Labor

The Petitioners contend that the Department should use the correct packing labor figures in its margin calculations since Dorbest acknowledged that it understated its packing labor due to the omission of the labor hours required to load containers. Dorbest did not comment on this issue.

Department's Position: The Department has made this correction to Dorbest's figures for packing labor.

Comment 42: Factors Information for a Certain Item

The Petitioners allege that, at verification, the Department discovered that Dorbest did not report the correct factors-of-production information for a certain product-control number. Citing the Department's verification report, the Petitioners contend that Dorbest officials admitted that they omitted this product-control number from the company's factors-of-production data. The Petitioners state that a failure to provide complete datasets leads to a lack of cooperation by Dorbest to the best of its ability in providing information that the Department needs to calculate an accurate normal value. Thus, the Petitioners call for application of partial adverse facts available, asserting that the Department should increase normal value by a certain percentage for every product-control number that represents this certain item.

Dorbest disagrees with the Petitioners' assertion that the Department should increase normal value by a certain percentage on every product-control number that represents the particular item. Dorbest states that, under the methodology applied by its Shenzhen factory where the product-control number in question was produced, it used one method to report the factors-of-production data for this product-control number to match to sales of this product-control number and used a second method to

report the factors of production data for this product-control number when it was sold in a different way. Dorbest asserts that the issue relates only to those instances in which Dorbest sold the certain item from the Shenzhen factory that was produced using the second method. Dorbest contends that, at verification, it demonstrated that the reporting issue caused no material distortion to the factors of production, citing the last page of Verification Exhibit 28. Dorbest asserts that, if the Department agrees with the Petitioners, then the Department should apply their proposed adjustment only to the applicable product-control number produced at the Shenzhen factory where this issue arose.

Department's Position: Because Dorbest's method of reporting factors data for the specific item resulted in incomplete and inaccurate data for purposes of calculating normal value, we have increased Dorbest's normal value by a certain percentage using Dorbest's information as facts available for the specific product-control number that represents the above-discussed item produced only at the Shenzhen factory. Dorbest officials explained that the reporting issue only occurred at the Shenzhen factory. See Dorbest Verification Report at 30. For further discussion of this business-proprietary issue, see Dorbest Final Analysis Memo.

B. Lacquer Craft Issues

Comment 43: Rubberwood and Marupa

The Petitioners argue that during verification the Department discovered that Lacquer Craft uses rubberwood and marupa interchangeably and averaged the data for these inputs to calculate a single variance. Because Lacquer Craft treats these inputs interchangeably, both in fact and for reporting purposes, the Petitioners argue that the Department should use a single, weighted-average price for these inputs.

Lacquer Craft argues that an average price for marupa and rubberwood would be distortive. Lacquer Craft argues that the Petitioners' comments refer to Lacquer Craft's attempt to report conservative values by calculating weighted-average variances for rubberwood and marupa since it occasionally uses marupa when an item's bill of materials calls for rubberwood. At verification, Lacquer Craft reports, the Department sought proof of its use of marupa in place of rubberwood, but the Department did not find any such substitutions during the POI. Accordingly, Lacquer Craft contends, the Department made a reference to the discrepancy and determined that the information necessary to apply the individual variances was on the record and verified. Therefore, Lacquer Craft argues, the appropriate correction for the noted discrepancy is to apply individual prices and individual variances to rubberwood and marupa as the Department briefly discussed at verification.

Therefore, Lacquer Craft argues that, in order to produce the most accurate result, the Department should apply to each of Lacquer Craft's factors the specific individual value as reported and verified for each factor. Lacquer Craft argues that a weighted-average factor value would distort Lacquer Craft's normal values by inflating the value of a commonly used factor (rubberwood) artificially by averaging it with the much higher price of a relatively infrequently used factor (marupa).

Alternatively, Lacquer Craft argues that, if the Department accepts the Petitioners' argument for use of weighted-average prices, it should then apply the factor-specific variance. To do otherwise, Lacquer Craft contends, would distort the normal-value calculation by raising the price of rubberwood artificially and increasing its usage rate.

Department's Position: We have determined to average the rubberwood and marupa values because Lacquer Craft applied the same average variance of the two inputs. At verification, Lacquer

Craft explained that it averaged the variance for rubberwood and marupa because it considered the woods to be interchangeable. We saw that the variance was averaged for rubberwood and marupa. See Lacquer Craft Verification Exhibit 25. Thus, Lacquer Craft had the ability to report rubberwood and marupa separately as it did for its wood inputs. Accordingly, for the final determination, we have recalculated the value of rubberwood and marupa by using a single, weighted-average price for these inputs.

Comment 44: CEP Offset

Lacquer Craft argues that the Department should apply a CEP offset to Lacquer Craft's CEP sales in accordance with section 773(a)(7)(B) of the Act, which states: "{w}hen normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine...a level-of-trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred on the sale of foreign like product."

Lacquer Craft argues further that, in past NME cases, the Department has recognized the legitimacy of granting such CEP offsets. For example, Lacquer Craft asserts that in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 62 FR 6189, 6203 (February 11, 1997) ("TRBs 1997 from China"), the Department stated that it had re-evaluated its practice concerning the deduction of expenses incurred by U.S. affiliates of respondent companies in NME cases and concluded that such deductions are explicitly required by the statue.

Lacquer Craft contends that it sells wooden bedroom furniture at four different levels of trade (in order of proximity to the end-user): (1) to OEM customers, (2) to importers and distributors, (3) to retailers, (4) to end users. Lacquer Craft argues that the seller's marketing and selling expenses increase as the level of trade for the sale moves closer to the end-user. Thus, according to Lacquer Craft, the selling expenses for sales of subject merchandise to OEM customers are less than for direct sales to end-users.

Lacquer Craft states that, during the POI, it made a few direct sales to end-users in the United States whereas its U.S. affiliates Legacy and UFII, sold the majority of the subject merchandise to distributors and retailers in the United States. Lacquer Craft argues that, in contrast, the Indian companies selected by the Department as surrogate companies for the purposes of calculating financial ratios sell merchandise directly to end-users such as Nizamuddin or Fusion Design or to retailers such as IFP. Lacquer Craft contends that, in calculating the CEP of Lacquer Craft's sales through Legacy and UFII in the Preliminary Determination, the Department deducted the expenses incurred in the United States by both companies without making any CEP offset to account for different levels of selling expenses incurred by the Indian surrogate companies.

Lacquer Craft contends that the selling function performed by Lacquer Craft for its CEP sales are qualitatively and quantitatively different than those performed by the Indian surrogate companies. Lacquer Craft argues that its sales to UFII and Legacy are ex-factory sales involving little more than the logistical transfer of merchandise. It contends that those sales occur at the beginning of the distribution chain and the merchandise then flows from UFII/Legacy to U.S. retailers and then to the end-user. Lacquer Craft argues that the selling functions performed by the Indian surrogate companies such as

marketing, design, warehousing, shipping arrangement, and warranty services are all performed by either UFII and Legacy or by their unaffiliated customers. Lacquer Craft contends that, in keeping with TRBs 1997 from China, the CEP offset should be in the form of selling-expense deductions from the SG&A items listed on the financial statements of the Indian surrogate companies. Lacquer Craft argues, however, that it is impossible to calculate such a level-of-trade adjustment under section 7773(A)(ii) of the Act because, in NME cases, normal value is based on surrogate values and home-market sales cannot be used to determine whether there is a pattern of consistent price differences between levels of trade. Therefore, Lacquer Craft argues, the facts do not permit a price-based level-of-trade adjustment. As a result, Lacquer Craft contends, the Department must make a CEP offset in accordance with section 773(a)(7)(B) of the Act.

Lacquer Craft argues that the Department should make a CEP-offset adjustment for Lacquer Craft's CEP sales by adjusting the normal value for the indirect selling expenses incurred by surrogate companies selling at more remote levels of trade. Specifically, Lacquer Craft argues, the Department must deduct indirect selling expenses from the financial ratios for each of the four Indian surrogate companies before determining the average financial ratio. In addition, Lacquer Craft argues that the Department should use certain companies' financial ratios adjusted for the CEP offset in calculating its normal value.

The Petitioners argue that Lacquer Craft's claim for a CEP-offset adjustment is flawed because it did not provide evidence of different levels of trade or the performance of different selling functions. Citing Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Administrative Review, 66 FR 14887 (March 14, 2001), and accompanying Decision Memorandum, the Petitioners argue that

the respondent bears the burdon of proving entitlement to a CEP-offset adjustment and Lacquer Craft did not claim entitlement to a CEP-offset adjustment in its initial questionnaire responses, supplemental questionnaire response, or at any point prior to its case brief. The Petitioners state that the same "insufficient information" exists in this case that the Department found in Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China, 68 FR 10685 (March 6, 2003) ("BBs from the PRC"). The Petitioners assert that the Department cannot identify, based on the Indian financial statements on the record, the specific selling activities performed by Indian producers or the expenses associated with those functions. In addition, the Petitioners assert that there is insufficient evidence on which the Department could conclude that any of the surrogate Indian producers sell at a more advanced level of trade than Lacquer Craft. Further, the Petitioners state that, even if the Department were able to conclude that Indian producers sell at a more advanced level of trade than Lacquer Craft, there is no evidence that the selling functions performed by Lacquer Craft are qualitatively and quantitatively different than those performed by the Indian surrogate companies. Therefore, the Petitioners state that the Department should deny Lacquer Craft's claim for a CEP-offset adjustment.

Department's Position: We have determined to deny Lacquer Craft's claim to a CEP-offset adjustment. Lacquer Craft did not claim entitlement to a CEP-offset adjustment in its initial questionnaire responses, supplemental questionnaire response, or at any point prior to its case brief. As a result, the Department had no opportunity to investigate or verify Lacquer Craft's claims. In addition, Lacquer Craft did not provide sufficient evidence of different levels of trade or the performance of different selling functions. See BBs from the PRC.

In order to determine whether the normal value is at a different level of trade than the CEP sales, the Department must examine the marketing process and selling functions between the CEP sales and the home market sales or in this investigation surrogate companies used to calculate the financial ratios.

In this investigation, we find that Lacquer Craft did not provide its selling functions or the Indian surrogate companies' selling functions from which we could compare. Because there is no record evidence of Lacquer Craft's selling functions or the Indian surrogates companies we find that we are unable to determine whether Lacquer Craft and the Indian surrogate companies sell at a different level of trade. Therefore, we have not granted Lacquer Craft a CEP offset.

Comment 45: Negative Allowances

The Petitioners allege that record evidence demonstrates that Legacy's and UFII's reported negative allowances in Lacquer Craft's CEP data should be corrected to prevent any distortions that the allowances might have caused.

Legacy

The Petitioners allege that the information collected by the Department with regard to Legacy's negative allowances shows that Legacy did not report all of its sales of subject merchandise. According to the Petitioners, a review of the record shows that almost all of the negative allowances resulted from non-inventory sales debited to Legacy's allowance account.

The Petitioners contend that examination of the negative allowances uncovered a methodological reporting error that extended across all of Legacy's customers, not only those customers with negative balances. Thus, the Petitioners contend that the percentage of gross sales

accounted for by customers with negative allowances is indicative of the magnitude of the unreported invoice values captured in the allowance account for all of Legacy's U.S. customers. Therefore, the Petitioners argue that, in order to correct this reporting error, the Department should make two adjustments to Lacquer's U.S. sales listing.

First, the Petitioners contend that the Department should adjust the allowances in the discount adjustment to remove the impact of debit notes associated with the invoices of finished goods. The Petitioners contend that the Department does not have the information to make an exact adjustment and, using the information that it collected, the Petitioners propose a neutral facts available adjustment.

Second, because Laquer Craft did not report certain sales of subject merchandise, the Petitioners contend that the Department must apply partial adverse facts available to Legacy's unreported U.S. sales and they propose such an adjustment. Using information from the Department's Verification Report, the Petitioners added a subtotal of the customer-specific figures in order to calculate the total negative allowances as a percentage of gross sales value for the customers the Department examined. The Petitioners allege that the Department should deduct this percentage from the total gross U.S. sales value.

Lacquer Craft argues that the Department verified all of Legacy's negative allowances and found that they were the result of salvage sales that had been credited to the allowance account to offset the allowance expenses. Lacquer Craft contends that there was no other reason for negative allowances. According to Lacquer Craft, the Petitioners' assertion that the Department should assume all allowances are understated is false. Lacquer Craft adds that at verification the Department did extensive testing of Legacy's customers with zero or positive allowances to confirm that these

customers had not made salvage-sale purchases. Lacquer Craft argues that the Department found that none of the customers with zero or positive allowances had any salvage sales or other transactions that would offset their positive allowances. Thus, Lacquer Craft contends that there is no reason for the Department to assume that any of the non-negative allowances are incorrect or understated in any way.

Lacquer Craft argues that the Department should not add the Petitioners' percentage of gross sales accounted for by customers with negative allowances to all of Legacy's allowances. According to Lacquer Craft, reported offsets to the allowances are captured in the negative allowances identified by the Department. Lacquer Craft alleges that to impute the value of those limited salvage sales to all customers would inflate Legacy's allowance expenses improperly. Furthermore, Lacquer Craft adds that, even if the Petitioners are correct in assuming all customers had salvage sales, their calculation is in error because Legacy used the calendar-year 2003 figure to calculate its allowances and not the POI.

Additionally, Lacquer Craft contends that including the resale of damaged merchandise in Legacy's sales database is inconsistent with Department practice. According to Lacquer Craft, it reported the sale to the first customer, which sought and received an allowance from Legacy because the merchandise was damaged. Rather than the customer returning the merchandise, Lacquer Craft explains that Legacy sold the damaged merchandise as scrap or salvage to a dealer who picked it up from the original customer's place of business and paid Legacy. Lacquer Craft contends that had the merchandise been considered "saleable" by Legacy it would have been treated as a return and entered into Legacy's inventory and resold. Because these salvage sales are not in the normal course of trade and are resales of pieces of merchandise already sold, Lacquer Craft argues that including them in the sales file would not reflect Legacy's normal business practices. Essentially, Lacquer Craft contends

that the Petitioners' proposed changes would involve double-counting sales of the same product and would count sales of scrap or seconds as prime product.

UFII

The Petitioners contend that the record evidence also demonstrates that UFII reported its allowance percentages incorrectly and did not report all of its subject sales. The Petitioners argue that the Department should make the same adjustments to UFII's sales data that it makes to Legacy's sales data.

Lacquer Craft argues that UFII issues allowances to customers who make claims for damaged goods or other issues relating to delivery. According to Lacquer Craft, the resulting reduction of the allowance to price was reported properly by UFII in its sales database. Lacquer Craft explains that UFII accepts the return of merchandise that is still saleable and refunds the purchase price to the customer. In the return situation, Lacquer Craft states, UFII did not report an allowance but a quantity adjustment. Lacquer Craft explains that when merchandise was returned it was resold and reported as a sale in the sales database. According to Lacquer Craft and contrary to the Petitioners' assertion, UFII did not book any salvage sales in its allowance account. Lacquer Craft contends that it recorded all salvage sales in its miscellaneous sales account, which the Department checked at verification. With regard to the Petitioners' other allegations, Lacquer Craft argues that it reported the negative allowances correctly in the U.S. sales database.

According to Lacquer Craft, none of Petitioners' examples demonstrates the need for correction to UFII's reported sales or allowances. Lacquer Craft contends that UFII's negative allowances all arose from the write-off of certain credits issued to the customers in error or credits that

were not taken by customer. Lacquer Craft argues that such write-offs legitimately offset allowances issued to customers and reflect the reality of UFII's transactions with its customers.

Finally, Lacquer Craft argues that the Department should not reject UFII's and Legacy's allowance and discount offsets. Lacquer Craft explains that the Department determined that Legacy's negative allowances (i.e., those that increased gross unit price) were the result of salvage sales credited to the allowance account. Lacquer Craft explains that the Department also determined that some of UFII's allowances were negative due to its write-off of certain credits issued to the customers in error or credits that were not taken by customer. Lacquer Craft argues that the Department should not disallow these negative allowances because they are legitimate offsets to its allowances since the salvage sales allow Legacy to recover some of its allowance expenses or are an offset to those credits UFII issued to customers as a result of quality or other claims. In both cases, Lacquer Craft explains that the companies reported their allowance expenses in a manner consistent with their audited accounting books.

According to Lacquer Craft, if the Department determines that the negative allowances are not permitted, it should apply the total negative allowance amount as an offset to the company's indirect selling expenses because the negative allowances were generated by activity that reduces the companies' overall allowance (or warranty) expenses or, if the Department disallows the company-specific allowances, it should, at a minimum, offset Legacy's indirect selling expenses by the amount of the negative allowances.

The Petitioners respond by arguing that the Department should correct for the distortions in U.S. price caused by Lacquer Craft's failure to report UFII's and Legacy's allowances properly.

The Petitioners contend that Lacquer Craft provides no support for its argument that its use of negative allowances is proper. To the contrary, the Petitioners argue, Lacquer Craft's errors in this regard actually distort the sales data and these errors should be corrected by the Department before the data are used to determine Lacquer Craft's margin. The Petitioners argue that the Department's normal practice is to allow the removal of sales from the database for customers who rejected the merchandise and require that resales of returned merchandise be reported as sales of subject merchandise, citing, among others, Notice of Final Determination of Sales at Less than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products From France, 67 FR 62114 (October 11, 2003), and accompanying Issues and Decision Memorandum.

Department's Position: The Department has determined that Legacy's and UFII's reported negative allowances are distortive and should be corrected.

As the Department stated in its verification report, the reported negative allowances Legacy reported were the "result of non-inventory sales (e.g., salvaged items) debited {sic credited}" to the allowance account. See the Department's Legacy CEP Verification Report at 2. Specifically, Lacquer Craft explained that Legacy reported the sale to the first customer, which sought and received an allowance from Legacy because the merchandise was damaged. Rather than the customer returning the merchandise, Legacy then sold the damaged subject merchandise as scrap or salvage to a dealer who picked up the subject merchandise from the original customer's place of business. The scrap or salvage dealer then paid Legacy for the damaged merchandise and Legacy accounted for this payment in its allowance account. At verification the Department found that, had the merchandise been considered as "saleable" by Legacy, it would have been treated as a return and entered into Legacy's

inventory and resold. Additionally, the Department determined that these salvage sales were resales of pieces of merchandise already sold and reported in the U.S. sales database. The Department did not require Lacquer Craft to re-report its U.S. sales database because Laquer Craft was unable to trace the allowance given to the original customer to a specific invoice.

The Department finds, however, that the net result of Lacquer Craft's salvage allowance is distortive. We find that these are not legitimate offsets to the company's allowance account because the customer that receives the offset was not the customer that was given the original allowance. Lacquer Craft's reporting methodology of the salvages inappropriately distorts the salvage customers' ordinary sales by increasing the unit price artificially for which the merchandise was sold. On the other hand, the Department disagrees with the Petitioners that these distortions affect other customers. The Department reviewed other customer-allowance accounts and found no discrepancies with the provided information. See the Department's Legacy Verification Report. Therefore, for the final determination we have removed all salvage sale offsets associated with Legacy sales from Lacquer Craft's calculated margin.

As the Department found at verification, UFII's negative discounts and allowances were due to write-offs for certain credits issued to the customers in error or credits that were not taken by the customer. Specifically, UFII explained that prior to 2003 it maintained open credit accounts for its customers. Because many of its customers never took the open credits, UFII wrote off the credits in order to balance the customers' accounts. See UFII Verification Report at 9. The Department finds that these write-offs are distortive because they have the net effect of increasing the gross unit price of the customers' sales prices during the POI for credits that were given well outside the POI.

Additionally, the Department found that other miscellaneous adjustments to the allowance account were the result of return adjustments. In these cases, UFII made adjustments to the reported quantity and also reported a negative adjustment which had the net effect of increasing the customers' gross unit price. See UFII Verification Report at 9. Because the negative adjustments in UFII's sales database were either the result of the write-offs for credits given prior to the POI or were the result of already-counted returns, the Department has determined to exclude these discount adjustments from Lacquer Craft's calculated margin in this final determination. The Department also reviewed other positive or zero reported discounts and allowances for other customers and found no discrepancies.

Finally, the Department disagrees with Lacquer Craft's argument that if the Department decides to deny the negative adjustment then it should be used as an offset amount such as a warranty expense or, in the case of Legacy, indirect selling expense. Other than asserting that the Department offset these expenses, however, Lacquer Craft provides no argument or analysis to supports its claim. The respondent has the burden of justifying any claims which it may make for an adjustment in the calculation of its dumping margin. Lacquer Craft has not met its burden here.

Comment 46: Market-Economy Purchases for Paint Inputs

Lacquer Craft argues that the Department's decision not to treat its paint inputs as market-economy purchases is distortive and produces results contrary to the Department's obligation to calculate dumping margins "as accurately as possible," citing Rhone Poulenc v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990). Also, Lacquer Craft contends that the Antidumping Duties; Countervailing Duties: Final Rule at 27365, states that in the interest of such accuracy, the Department's regulations make an exception to the general rule that surrogate values should be used to value factors

of production in non-market economies. Lacquer Craft asserts that any interpretation of the regulations that rejects its purchase price in favor of surrogate values is contrary to the Department's obligation to calculate the most accurate margins possible, citing Shakeproof at1382. Lacquer Craft further claims that, in the Department's Preliminary Determination, its citing PRC Bags and accompanying Issues and Decision Memorandum, is not applicable because Lacquer Craft's paint inputs are indeed purchased (and supplied) by a market-economy paint producer and the concerns raised about manipulation and paper companies are not relevant in this case. Therefore, Lacquer Craft argues that the Department must use Lacquer Craft's purchase price for paint to determine normal value.

The Petitioners argue that the Department should reach the same conclusion in the final determination as the Department made in the Preliminary Determination regarding Lacquer Craft's paint purchases. The Petitioners observe that the Department has a clear and unambiguous policy of not using prices of inputs that were produced in an NME no matter if the product is ultimately sold through a market-economy entity, citing PRC Bags. The Petitioners argue that the costs associated with the operations of Lacquer Craft's supplier, Akzo Nobel, in the PRC are subject to "the inherent distortions in an economy that is not controlled by market forces," and, thus, must be rejected.

Further, the Petitioners argue that the Department should not value Lacquer Craft's finishes factors of production using market-economy price, because Lacquer Craft did not purchase its factors of production from Akzo Nobel. Rather, according to the Petitioners, Lacquer Craft purchased approximately 230 different ingredients from Akzo Nobel in order to make glaze, lacquer, sealer, stain, and thinner. The Petitioners allege that Lacquer Craft cannot both refuse to separately report, describe, and classify the 230 inputs it purchased from Akzo Nobel on the grounds that its true factors of

production are the glaze, lacquer, sealer, stain, and thinner it applies to furniture and, at the same time, claim that those five factors of production were purchased from market-economy suppliers.

Department's Position: The preamble to the regulations states that, "where the NME producer purchases inputs from a market economy producer and these inputs are paid for in a market economy currency, we would use the price paid by the NME producer to value that input." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997) (emphasis added). In our decision in PRC Bags, we explained that we interpret the preamble to indicate that the regulation is applicable to those inputs which were produced in a market economy. As a result, we found there and again here that the regulation does not apply to inputs that were produced in an NME. Lacquer Craft's paint purchases were produced in an NME and therefore are not market-economy purchases. As a result we have applied a surrogate value from the Indian import statistics to value Lacquer Craft's paints.

Comment 47: Overhead Expenses

Lacquer Craft contends that its position concerning the valuation of abrasives holds true for veneer tape and shrink wrap as well. Lacquer Craft asserts that veneer tape is used only to hold pieces of veneer together in patterns until the veneer is affixed to the furniture and shrink wrap is used to wrap pallets of furniture pieces when they are moved between the various production lines. Lacquer Craft argues that, as with sandpaper, if the Department elects to treat these items as factors of production, it must justify its departure from prior practice and demonstrate that veneer tape and shrink wrap are not included in the factory overhead of the Indian surrogate companies.

Lacquer Craft contends further that in the Preliminary Determination the Department erred by treating glue as a factor of production. Lacquer Craft asserts that this is contrary to its cost accounting and is inconsistent with the Department's own definition of factory overhead expenses. Citing Final Determination of Sales at Less than Fair Value, Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum ("PVA from the PRC"), Lacquer Craft asserts that the Department has stated that inputs that are physically incorporated into a product are generally treated as factory overhead (i.e., indirect materials) if those inputs are small enough that tracing them to individual products would not improve accuracy and the Department specifically mentioned the cost of glue used in furniture manufacturing as an example.

Lacquer Craft concludes that, accordingly, treating sandpaper, veneer tape, shrink wrap, and glue as a factors of production rather than factory overhead results in impermissible counting.

The Petitioners argue that abrasives, veneer tape, shrink wrap, glue, and sandpaper should be valued as direct expenses. The Petitioners contend that veneer tape is used to transform raw materials into wooden furniture, its consumption depends on production volume, it is expended during production, and there is no evidence put forth by Lacquer Craft that it is not incorporated into the product. The Petitioners argue that, likewise, shrinkwrap should be valued as a direct expense because there is no evidence that it is used for anything other than the production of wooden furniture and because packaging materials are considered direct inputs by the Department, as it stated in Brake Rotors 1997.

Finally, the Petitioners argue that glue should be considered a direct input because it is physically incorporated into the subject merchandise, it is a significant input, and it is used in every piece of subject merchandise, citing Bicycles.

Department's Position: The Department has determined to value abrasives, including sandpaper, as a factor of production for the final determination rather than as part of factory overhead. For a detailed explanation of the treatment of abrasives, see Comment 6 of this Decision Memorandum. Similarly, the Department has determined to treat veneer tape and glue as direct inputs to be valued as separate factors of production. The Department's practice does not dictate that inputs that are not physically incorporated into subject merchandise must be valued in overhead. In ARG Windshields we explained that physical incorporation is not an essential requirement for considering an input to be a direct input. See ARG Windshields and Comment 6 of this Decision Memorandum.

Further, the Department disagrees with Lacquer Craft that the CIT has placed the burden on the Department to demonstrate that an input is not included in the surrogate company's factory overhead. In Fuyao Glass, the CIT remanded this issue to the Department because a unique factual situation indicated that certain inputs were likely valued outside the raw materials line-item. See Fuyao Glass. In a normal situation, the Department has broad discretion and is not required to dissect the surrogate company's financial information when valuing factory overhead in a NME case. See Magnesium Corp. at 1372.

Nevertheless, the record shows that the Department is not double-counting in this investigation by valuing veneer tape and glue separately. As explained in response to Comment 6, only three of the nine surrogate companies' factory-overhead calculations possess even the potential for double-

counting. It is most likely that the glue and veneer tape are valued in the raw materials consumed of the surrogate companies. Given the amount of consumption and its importance to the production of wooden bedroom furniture, we find that glue and veneer tape would not be valued in the "stores and spares consumed" of the surrogate company. No party to this proceeding has disputed that glue and veneer tape are essential to the production of subject merchandise. In addition, these inputs are not incidently or occasionally consumed in the production of subject merchandise. To the contrary, they are consumed in large quantities and their consumption is tied directly to the amount of subject merchandise each respondent produced. Therefore, we find that glue and veneer tape are direct inputs and we have valued them as such.

Finally, for the shrink wrap discussed in the verification report, we find that it was not used as a packing material as described by the Petitioners nor is it a direct material used in the production of wooden bedroom furniture. Therefore, we have not valued shrink wrap to calculate the normal value.

Comment 48: Warehousing Expenses

The Petitioners contend that, during verification, the Department discovered that an affiliated party charges Legacy and UFII a fee for warehousing service that are incidental to the affiliated party's handling of Legacy's and UFII's purchases from Lacquer Craft. The Petitioners contend that Lacquer Craft did not report these warehousing charges to the Department in its questionnaire responses.

The Petitioners contend that, pursuant to 19 CFR 351.401(e)(2), the Department treats pre-sale warehousing expenses as movement or transportation expenses if such expenses occur after the merchandise leaves the original place of shipment and if the expenses can be directly attributable to particular sites. The Petitioners contend further that the fees applicable to Legacy and UFII meet the

fact pattern described in 19 CFR 351.401(e)(2). Further, the Petitioners contend that Final Results and Partial Rescission of Antidumping Duty Administrative Review, Certain Welded Carbon Steel Pipe and Tube From Turkey, 63 FR 35190 (June 29, 1998), and accompanying Issues and Decision Memorandum ("Certain Welded Carbon Steel Pipe from Turkey 1998") provides an instance where the Department applied this regulation. Accordingly, the Petitioners argue that, in the final determination, the Department should make an appropriate adjustment to Lacquer Craft's CEP starting price, pursuant to section 772(c)(2)(A) of the Act.

The Petitioners claim that the first indication of the record of this investigation that Legacy and UFII incurred charges for warehousing services appears in the Department's verification reports. Thus, the Petitioners argue, it is clear the Lacquer Craft failed to report this expense in its responses to the Department's questionnaires.

The Petitioners contend further that the only evidence on the record regarding the warehousing charges, other than the brief discussion in the verification reports, is the Warehouse Services Agreement the Department received at verification. The Petitioners argue that analysis of that agreement and document implementing the agreement provides sufficient evidence for the Department to determine that the warehousing charge should be treated as movement expense as contemplated by 19 CFR 351.401(e)(2) and Certain Welded Carbon Steel Pipe from Turkey 1998.

Further, the Petitioners argue that there is "adequate record evidence demonstrating that the subject expenses can be tied to specific sales" in accordance with Al Tech Specialty Steel Corp. V. United States, 947 F.Supp. 510, 521 (CIT 1996), which affirmed the Department's treatment of pre-sale inventory costs as a movement expense.

Accordingly, the Petitioners argue that, because Lacquer Craft did not report this expense in its response and did not provide a full discussion of these fees and the precise circumstances under which they are incurred and because the sales listing does not reflect the warehouse fee, the Department should calculate the necessary adjustment by multiplying gross unit price by the percentage amount of the warehouse fee and then subtract that amount from the CEP starting price.

Lacquer Craft contends that the warehousing fee is an inter-company transfer and the Petitioner's argument that the percentage warehouse fee it paid to an affiliated party should be included as a selling expense is incorrect. Lacquer Craft contends that, because the warehouse fee is an intercompany transfer between related parties, it is not a payment for any expense that Lacquer Craft had not already accounted for elsewhere in its response. Thus, Lacquer Craft contends, the Petitioners' arguments rely on a mis-characterization of the facts.

First, Lacquer Craft argues, the Petitioners' description of the affiliated party's role is distorted. Lacquer Craft contends that the affiliated party does not consolidate the goods as the Petitioners suggest. As the agreement states, Lacquer Craft asserts that the affiliated party gets a commitment from the manufacturing companies to consolidate the goods at the factories' warehouses. Lacquer Craft asserts that the affiliated party does not take physical possession of the Lacquer Craft-manufactured goods at any point in the transaction. Further, Lacquer Craft argues that the warehouse fee is not invoiced until the goods are loaded and shipped to Legacy and UFII. Thus, Lacquer Craft contends, no warehousing expenses or other movement expenses were incurred after the merchandise leaves the original place of shipment.

Second, Lacquer Craft argues that, when it was the producer of the merchandise, it consolidated the orders at its warehouse. Thus, Lacquer Craft asserts, at no point did it move goods from one location to another in the PRC or otherwise position goods more effectively for shipment to the United States. Lacquer Craft contends that all products it shipped to UFII and Legacy during the POI were produced in its factory, warehoused in the finished-goods warehouse adjacent to the factory, packed in containers at the factory warehouse, and shipped directly to UFII and Legacy or their customers. Thus, according to Lacquer Craft, it reported all costs and expenses related to Lacquer Craft's packing, warehousing, and inland freight in its questionnaire responses.

Department's Position: We have determined that certain warehousing expenses that were not reported by Legacy or UFII should have been reported because both companies have an agreement with an affiliated party (i.e., Company A) that provides warehousing services for each. At verification, we found that both Legacy and UFII had warehouse services agreements with Company A. See the Department's Legacy Verification Report and the Department's UFII Verification Report. Specifically, at Legacy we found that the warehouse services agreement states that Legacy pays Company A a warehousing fee and this charge appears on invoices from Company A to Legacy. See Legacy Verification Report at page 8. Also, at UFII we found a similar warehouse services agreement which provided the identical fact pattern. See UFII Verification Report at page 3. The Department's regulation at 19 CFR 351.401(e)(2) states, "the Secretary will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leave the original place of shipment as movement expenses." At verification, we saw that Legacy and UFII paid a fee to Company A for warehousing subject-merchandise purchases from Lacquer Craft. Furthermore, Lacquer Craft did not

report these warehousing expenses to the Department in its questionnaire responses. Therefore, in accordance with our regulations, for the final determination, we have made an adjustment to the starting price of Lacquer Craft's CEP sales. See Lacquer Craft Final Analysis Memo. Also, due to the proprietary nature of the warehousing services agreement, see Lacquer Craft Final Analysis Memo for a complete description of this agreement.

C. Lung Dong

Comment 49: Surrogate Value for Medium-Density Fiberboard

Lung Dong argues that the Department should use a more appropriate surrogate value for MDF than the value it used in the Preliminary Determination. Lung Dong argues that the surrogate value used in the Preliminary Determination is an inappropriate basis on which to value MDF for purposes of the final determination because the corresponding HTS heading (44112900) represents a narrow sub-category of MDF that appears to include only fiberboard that is "(t)ongued, grooved or rabbetted continuously along any of its edges and {that is} dedicated for use in the construction of walls, ceilings or other parts of buildings" citing the Harmonized Tariff Schedule of the United States (2004) Supplement 1, Chapter 44, "Articles of Wood; Wood Charcoal." Lung Dong argues that the HTS heading 44112900 should not be used and the Department should apply instead the surrogate value for MDF that counsel to Shing Mark placed on the record on August 17, 2004. Lung Dong claims that Shing Mark's MDF surrogate value is more appropriate than that used in the Department's Preliminary Determination because Shing Mark's proposed per-unit value for MDF is derived from Indian MDF imports under a broad four-digit HTS heading (4411) that includes the narrow eight-digit HTS heading from which the Department derived its MDF surrogate value applied in the Preliminary

Determination. Lung Dong asserts that the MDF surrogate value used in the Preliminary Determination appears to represent MDF intended specifically for the construction of "walls, ceilings, and other parts of buildings," not wooden bedroom furniture, and therefore that Shing Mark's MDF surrogate value is a more broadly based and appropriate basis on which to value Lung Dong's consumption of MDF for purposes of the final determination.

The Petitioners argue that the Department should use adverse facts available to value MDF because Lung Dong failed to provide a detailed description of the input that would allow a precise classification in either its May 26, 2004 HTS submission or in its case brief. The Petitioners assert that Lung Dong's description of MDF permits only the broadest possible classifications at the four-digit level and that MDF, which is used for wooden bedroom furniture, could fit within any number of six-digit subheadings and eight-digit items regarding fiberboard, the precise selection of which is made impossible by Lung Dong's failure to provide sufficient information. Accordingly, the Petitioners contend that the Department should apply as adverse facts available the highest average unit value among the eight-digit items in heading 4411 or, alternatively, the selection of adverse facts available should include the average unit value of eligible merchandise entered during the POI under heading 4411.

Department's Position: The Department has continued to use the HTS category it used in the Preliminary Determination to value Lung Dong's consumption of MDF. The Department used the HTS category that Lung Dong provided its May 26, 2004, HTS submission. In its August 17, 2004, Surrogate Value submission, Lung Dong submitted an alternative price for MDF derived from the financial statements of an Indian purchaser and an Indian seller of MDF. In that submission, Lung Dong

did not argue that the HTS category that it had reported for MDF was distortive. In its October 6, 2004, case brief, Lung Dong argues that the HTS category it provided to value MDF is not appropriate and requests that the Department use a value submitted by Shing Mark. If Lung Dong believed that the HTS category was distortive it should have made such argument prior to the case brief so that the Department would have an opportunity to consider which HTS category to use. Nevertheless HTS 4411 is not a reliable basis for valuing MDF because the category includes high-density fiberboard and low-density fiberboard. We disagree with the Petitioners that the use of adverse facts available is appropriate because the HTS category we used in the Preliminary Determination is a reliable basis on which to value Lung Dong's MDF usage.

Comment 50: Minor Corrections from Verification

Lung Dong urges the Department to incorporate the minor corrections that it provided at the beginning of verification. Lung Dong stated that it is the Department's practice to correct errors presented at verification when the errors are isolated to particular areas and do not affect the integrity of the data. It cites Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada, 62 FR 2173, 2177 (January 13, 1999), to support its request. The Petitioners did not comment on this issue.

Department's Position: The Department agrees with Lung Dong and has incorporated the minor corrections that it provided at the beginning of verification in the final margin calculation. See Lung Dong Final Analysis Memo.

Comment 51: Clerical-Error Allegations

Lung Dong argues that the Department should correct in the final determination the ministerial errors it alleged in its letter of June 29, 2004.

Department's Position: The Department agrees with Lung Dong and has incorporated in the final margin calculation the ministerial errors recognized by the Department in the Memorandum to Laurie Parkhill from Jon Freed: Analysis of Allegation of Ministerial Errors for Lung Dong, dated July 29, 2004.

Comment 52: Exclusion of Potentially Non-Subject Merchandise

Lung Dong argues that the Department should exclude from the calculation of its margin all sales of merchandise that the Department deems not to be subject to the investigation. In reporting its total sales of subject merchandise to the Department, Lung Dong asserts that it was conservative and reported sales of certain furniture items that might or might not be within the scope of the investigation. Lung Dong asserts that these furniture pieces were entertainment-center pieces or computer-armoire pieces that were not necessarily designed for use in a bedroom but which could be used in a bedroom. Lung Dong asserts that at verification the Department collected a list of these products and the furniture drawings that corresponded with the product codes included on the list. In the final determination, Lung Dong requests that the Department exclude sales of these products from Lung Dong's margin calculation to the degree that the Department determines that these products reported in its U.S. sales listing are non-subject merchandise.

The Petitioners contend that Lung Dong has not established that the merchandise is not subject to the investigation and that there is insufficient information on the record for the Department to make

that determination. The Petitioners argue that the Department should retain these products and use the associated data for purposes of the final determination.

Department's Position: The Department has determined to include the products identified by Lung Dong in its margin calculation. If Lung Dong believed that it may have included non-subject merchandise in its sales and factors-of-production databases, there were many opportunities prior to verification at which it could have raised this issue, such as in its original or supplemental questionnaire responses. Although the Department is not asserting that Lung Dong intended to undermine the investigation process, the removal of these products from the margin calculation after numerous questionnaires (i.e., original and supplemental) and verification would encourage a respondent to include sales of potentially non-subject merchandise in its initial response and then request its exclusion depending on its impact on the margin calculation. There is insufficient information on the record of this investigation for the Department to determine whether these products are either subject or non-subject merchandise.

Comment 53: Correction of Reported Control Number for Certain Product Codes

Lung Dong argues that the Department should correct the control numbers Lung Dong reported for product codes 593D-H, 593D-F, and 593D-R. Lung Dong explains that initially it reported the first two digits of the control numbers for these products as "01" (complete bed) but that, as the Department found at verification (Lung Dong Verification Report, at 2), the first product characteristic for these products should have been reported as "02" (bed headboard), "03" (bed footboard), and "04" (bed rails), respectively. Lung Dong argues that the Department should revise the control

numbers for these products citing the evidence of record. Lung Dong argues that it has cooperated in this investigation and the application of any adverse facts available is not warranted.

The Petitioners argue that the Department's practice and clear instructions in this investigation were that the respondents were to base control numbers on products and sets as they were listed and sold on each respondent's actual invoices. The Petitioners assert that Lung Dong acted in an uncooperative manner and misreported its data intentionally by reporting sales of headboards, footboards, and rails as complete beds. Thus, when conducting its final margin calculations, the Petitioners urge the Department to use the highest non-aberrational margin for a single sale within each misreported control number as partial adverse facts available.

Lung Dong asserts that the Petitioners misunderstand the Department's discussion on page 2 of its verification report regarding the incorrect assignment of certain control numbers. Lung Dong contends that its sales database reflects the individual line-item pieces and set sales identified on each actual invoice but that it misreported the initial characteristic for three control numbers in its sales listing. Lung Dong states that, because there was only one sale within each of the three misreported control numbers, it agrees with the Petitioners that the Department should calculate the margins for these sales based on the margins for these sales.

Department's Position: The Department has determined to assign the correct control number to the product codes 593D-H, 593D-F, and 593D-R. At verification, the Department saw that for sales that Lung Dong reported as "01" (complete bed), the company had invoiced the sale as a set. In addition, the Department saw that the prices Lung Dong reported for product codes 593D-H, 593D-F, and 593D-R were based on the individual component piece rather than the complete bed but that Lung

Dong had reported them as complete beds. Since Lung Dong only made one sale of each of these control numbers and every other complete bed it reported was assigned the proper control number, the Department has determined not to apply partial adverse facts available because the mistake was limited to only three sales observations and Lung Dong reported all other control numbers correctly.

Comment 54: Conversion Ratios for Veneer, Polyester Fabric, and Glass

Lung Dong states that, in the Preliminary Determination, the Department calculated surrogate values for veneer, polyester fabric, and glass consumed by using standard kilogram-to-square-meter conversion ratios rather than conversion ratios that reflect the actual specifications of veneer, polyester fabric, and glass which Lung Dong used. Lung Dong argues that the Department should use in the final determination the actual kilogram-to-square meter conversion ratios for these materials consumed by Lung Dong as it provided in its July 6, 2004, submission. Lung Dong states that the conversion data that it provided was timely submitted and was subject to verification and, as such, the Department should use these conversion ratios in calculating the surrogate values to assign to those veneer, polyester fabric, and glass inputs reported in Lung Dong's factors-of-production database.

In the final determination, Lung Dong argues, the Department should calculate the surrogate value for polyester fabric using the average kilogram-to-square meter factor of 0.162 kg./m^2 for the polyester fabric it actually used and the Department should convert from kilograms-to-square meters using the rate of 0.499 kg./m^2. For veneers, Lung Dong argues, the Department should use the simple average of the actual thicknesses and kilogram-to-square meter weights of the veneer Lung Dong used rather than the conversion the Department used on the assumption that the veneer Lung Dong used is 1/42 inch or .6 millimeters (mm). In addition, Lung Dong argues that the Department should make an

adjustment to the surrogate price for veneers if the surrogate veneer thickness is different from that Lung Dong used. Lung Dong provided an example showing that, if the surrogate value for cherry veneer is based on veneer with a thickness of 0.6 and the average thickness of cherry veneer used by Lung Dong has a thickness of 0.45, then the surrogate value should be adjusted downwards to 75 percent of the original surrogate value.

The Petitioners argue that Lung Dong has provided the Department with conversion ratios based on simple averages without providing any supporting documentation to justify the use of simple averages for each of its material inputs. Additionally, the Petitioners contend that Lung Dong's proposal to use simple-average conversion ratios for polyester fabric, veneer, and glass would be distortive because Lung Dong did not provide evidence that each input in the same field was used in precisely equal proportions. Further, the Petitioners argue, because Lung Dong has provided no documentation supporting the use of simple averages for kilogram-to-square meter conversion ratios, the Department should use as facts available the single conversion ratio that results in the highest cost for each input.

Department's Position: The Department has determined to use the conversions based on the materials that Lung Dong actually used. Lung Dong's company-specific conversion ratios were submitted in a timely fashion and were subject to verification. Although the simple-average conversion ratios Lung Dong provided may not be the perfect conversion in every instance, these conversion ratios are the best available information on the record and result in the most accurate calculation of normal value. Although it did not test the conversion ratios for these particular inputs specifically at verification, the Department did test the conversions Lung Dong used on other inputs and tested the methods Lung

Dong used in reporting its conversion ratios generally. The Department found that the ratios it tested were accurate. See Lung Dong Verification Report at page 17.

Comment 55: Medium-Density Fiberboard Used for Packing

Lung Dong argues that the Department should not include in the calculation of normal value the factors this company reported for the scrap MDF pieces Lung Dong used to build frames to pack subject merchandise. Lung Dong contends that the Department's valuation of this factor in the calculation of normal values in the Preliminary Determination resulted in double-counting because Lung Dong had already included the scrap MDF amounts in its MDF consumption ratio. Lung Dong states that, in its verification report, the Department confirmed that Lung Dong reported its total MDF consumption in its MDF consumption ratio and that Lung Dong did not consume additional MDF to build frames for packing the subject merchandise. Rather, Lung Dong contends, it built the packing frames using scrap MDF the consumption of which it had already captured in the calculation of the MDF consumption ratio. Lung Dong reiterates that it did not report data for scrap MDF in its factors-of-production database initially but reported data for scrap MDF only after receiving specific instructions from the Department to do so. Lung Dong argues that, because the Department has now verified Lung Dong's production and packing process and has verified the methodology Lung Dong used to report its factors of production, the Department should not value scrap MDF as a packing cost because the Department already calculates the cost of all MDF, scrap or otherwise, Lung Dong consumed when it applies a surrogate value to the consumption factors the company reported for its MDF consumption ratio. The Petitioners did not comment on this issue.

Department's Position: At verification, the Department confirmed that Lung Dong had captured all of the MDF it consumed in the MDF consumption ratio. See Lung Dong Verification Report at pages 14-15. The Department's verification of Lung Dong's reporting methodology reveals that the inclusion of scrap MDF in the calculation of normal value would result in double-counting. Thus, for the final determination, we have not included an amount for scrap MDF used for packing in the calculation of normal value for Lung Dong. See Lung Dong Final Analysis Memo.

Comment 56: Lung Dong's Market-Economy Purchases of Adhesives and Other Inputs

Lung Dong disagrees with the Department's decision in the Preliminary Determination to use surrogate values for certain inputs instead of the company's market-economy purchase prices because the Department found that Lung Dong's submissions on its purchases did not indicate clearly the factor to which Lung Dong's market-economy purchases applied. Lung Dong explains that it submitted a revised market-economy vendor list that identified the factors-of-production field numbers and names, thus clarifying the factors to which its market-economy purchases applied in Exhibit 5 of its July 9, 2004, supplemental questionnaire response. Lung Dong argues that the Department should value these inputs using the amounts Lung Dong actually paid. The Petitioners did not comment on this issue.

Department's Position: In the Preliminary Determination, the Department did not use some of Lung Dong's reported market purchases because the company had not indicated clearly the inputs to which each market purchase corresponded. Lung Dong's July 9, 2004, supplemental response clearly identified the inputs to which each market purchase corresponded. Thus, the Department has valued Lung Dong's inputs using its reported market-economy purchases. See Lung Dong Final Analysis Memo.

Comment 57: Weight-Averaging the Factors of Production

Lung Dong explains that, in the Preliminary Determination, the Department calculated weighted-average U.S. values for each of Lung Dong's unique product codes. Lung Dong argues that, if the Department decides to calculate weighted-average control number-specific normal values, it should use the quantities the company reported in the sales listing as the weighting base. An alternative approach, Lung Dong argues, would be to use production quantities as the weighting base. Lung Dong explains that, because it sold its furniture products during the POI both as individual pieces and sometimes as part of a set, it is difficult to assign to each product a control number in the factors-of-production database listing the correct production quantity when an individual product could belong to more than one control number depending on whether it was sold individually or as part of a set.

The Petitioners argue that the Department should apply partial adverse facts available to Lung Dong for this circumstance. The Petitioners argue that Lung Dong formatted its factors-of-production database intentionally in accordance with its unique internal product codes and not the Department's control-number methodology as explained in the Department's antidumping questionnaire. The Petitioners argue that Lung Dong's responses to three supplemental questionnaires in addition to the initial questionnaire gave it the opportunity to provide the Department with data allowing a control-number matching calculation. The Petitioners assert that Lung Dong refused to provide the Department with the production-quantity data needed to weight-average values on a control-number basis. Also, the Petitioners argue that the Department's practice requires respondents to format their factors data in a manner that allows weight-averaging on a control-number basis, citing Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675

(September 2, 2004), and accompanying Issues and Decision Memorandum.

The Petitioners argue that Lung Dong has not disputed that it maintains the necessary production-quantity data and that it easily could have provided this data to the Department. In addition, the Petitioners contend that Lung Dong's failure to provide production-quantity data prevented the Department from verifying the requested information. Also, the Petitioners assert that the Department has applied a facts-available usage rate when the respondent did not provide usage rates on a control-number-specific basis, citing Certain Tissue Paper Products and Certain Crepe Paper Products From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, 69 FR 56407, 56411-12 (September 21, 2004). The Petitioners argue that, as partial adverse facts available, the Department should use the highest reported product-code value within each control number for its calculations.

Lung Dong disputes the Petitioners' claim that the record does not contain actual, verified production data that would permit the Department to calculate weighted-average factors of production for each of Lung Dong's control numbers. Lung Dong contends that product-specific production-quantity data are in Exhibit 31 of the Department's verification report if the Department decides to use such data to calculate weighted-average factors-of-production amounts for each control number. Lung

Dong also contends that it provided sales-quantity information for calculating weighted-average factors in all of its submitted sales listings.

Additionally, Lung Dong argues that the Petitioners' request to use adverse facts available to calculate control-number factors is misguided. Lung Dong asserts that the Department's preliminary decision to use product codes to calculate Lung Dong's weighted-average margin reflected a conscious decision that using product codes rather than control number to compare U.S. prices to normal values might be more appropriate in Lung Dong's case because of the particular pieces and sets that Lung Dong sold and because the control number as structured did not account for varying product weights. In addition, Lung Dong argues that it explained in its responses why it reported the factors as it did and the Department did not request Lung Dong to revise its factor-reporting methodology. Lung Dong argues that, if the Department decides to weight-average Lung Dong's reported factors for the final determination, it can rely on facts available which are its sales quantity contending, however, that it has done nothing in this investigation that warrants adverse inferences or the application of adverse facts available.

The Petitioners argue that Lung Dong's suggested use of sales quantity as the basis for deriving control-number-specific weighted-average factors of production would be distortive. The Petitioners contend that the Department's long-standing practice is to require that respondents provide weighted-average factors-of-production data on the basis of the physical characteristics the Department specifies in its questionnaire. The Petitioners assert that Lung Dong ignored the Department's clear instructions with regard to the reporting of its factors-of-production data on a control-number basis and this should be grounds for the application of partial adverse facts available. The Petitioners contend that, had Lung

Dong provided production-quantity information, the Department would have been able to calculate weighted-average factors of production by control number.

Additionally, the Petitioners argue that Lung Dong's suggestion to use sales quantity as the weighting basis does not recognize that the correct weights for use in the derivation of the weighted-average factors-of-production values are production quantities, not sales quantities. The Petitioners assert that the Department's questionnaire is clear that respondents are to report the inputs they used to produce the subject merchandise. Also, the Petitioners contend, using sales quantity may result in distortions in the per-unit factors-of-production figures because there may be differences between the production quantity and the sales quantity during the POI. Further, the Petitioners argue, Lung Dong's suggested alternative approach for weight-averaging its control number through the use of the production quantities in Verification Exhibit 31 is not appropriate. The Petitioners highlight that Lung Dong's production-quantity data does not account for the fact that some product codes are identified as both pieces and sets (e.g., as complete beds) in Lung Dong's sales and factors databases. The Petitioners assert that this fact prevents the Department from identifying the correct quantity of product codes Lung Dong produced. The Petitioners argue that Lung Dong should not be allowed to dictate what data the Department will collect and how the Department will achieve its weight-averaging. As a result, the Petitioners assert, the Department should draw an adverse inference from Lung Dong's failure to report the average factors-of-production data weighted by production quantity for each control number.

Finally, the Petitioners argue that, as partial adverse facts available, the Department should use the highest reported product-code value within each control number for its calculations. Alternatively, if

the Department decides to use the data Lung Dong submitted to derive an average value for each of the factors of production, the Petitioners argue the Department should calculate the weighted-average quantity for each factor of production, using the weight as the weighing factor since the weight amount is the only quantity indicator in Lung Dong's factors-of-production information.

Department's Position: The Department has determined to average Lung Dong's factors of production for each control number and weight the product code-specific consumption rates on the basis of sales quantity reported for each product code. The Department finds that Lung Dong was reasonable in reporting its factors of production on a product-code basis considering the difficulty in averaging factors on a control-number basis when the same product codes may be sold as individual pieces in one instance and as a part of a set in another. At verification, the Department saw that Lung Dong was able to track the production quantity for each product code it produced but that it had no way of knowing whether the particular product would be sold individually or as a part of a set. See Lung Dong Verification Report, Exhibit 31. Rather than "roll-up" the product-code consumption rates to the control-number level using an imperfect method, Lung Dong left the issue open so that the Department could determine the appropriate method to "roll-up" the consumption rate.

The Department has determined that the best information available to weight the "roll-up" of Lung Dong's factors is sales quantity. Given Lung Dong's sales and production process, a strong correlation exists between its sales quantity and production quantity. See Lung Dong Verification Report at Exhibit 31 and Lung Dong's U.S. sales listing. Additionally, the Petitioners recognize that the use of Lung Dong's production-quantity data is not appropriate because it cannot account for the fact that some product codes are identified as both pieces and sets (e.g., as complete beds) in Lung Dong's

sales and factors information. Thus, we have determined to use Lung Dong's sales-quantity data as the best information available on which to weight the averaging of its factors from a product-code basis to a control-number basis.

Further, for the Preliminary Determination the Department calculated Lung Dong's weighted-average margin by comparing U.S. prices to normal values on a product-code basis. The Department has been aware of the manner in which Lung Dong had reported its factors of production since Lung Dong's first questionnaire response of March 29, 2004. Additional questionnaires and the verification showed that Lung Dong submitted its factors-of-production data in the most accurate format possible. The form and manner in which Lung Dong reported its factors was reasonable and has not impeded the Department's ability to calculate accurate dumping margins. Therefore, we have determined that adverse inferences are not warranted because Lung Dong acted to the best of its ability in providing its sales and factors data for this investigation.

D. Markor

Comment 58: Affiliation

The Petitioners argue that the dumping margins for Markor and Lacquer Craft should be calculated using adverse facts available because both entities affirmatively misrepresented their affiliation. The Petitioners argue that the record contains overwhelming evidence of affiliation and that the evidence submitted by Markor after the Preliminary Determination is suspect and does not outweigh the overwhelming record evidence of affiliation. In addition, the Petitioners argue that Lacquer Craft intentionally misled and deceived the Department. Therefore, the Petitioners argue that dumping

margins for both Markor and Lacquer Craft should be calculated using adverse facts available because both entities affirmatively misrepresented their affiliation.

Markor argues that the facts upon which the Petitioners rely to assert affiliation have been proved false. Markor argues that, even if the Petitioners' factual assertions are accurate, the facts cannot lead to a determination that Markor is affiliated with its customer. If the Department finds that Markor is affiliated with its customer, Markor argues, the application of adverse facts is not warranted because it cooperated to the best of its ability. In addition, Markor argues that the Department is required to give a respondent an opportunity to submit CEP data once it decides that a respondent is affiliated with its customer. Markor contends that, if the Department finds affiliation, it must use the CEP data submitted by Markor. Lacquer Craft argues that it cooperated fully with the Department and that the Petitioners' request to apply adverse facts available to Lacquer Craft is baseless.

Department Position: Because the subject matter and the parties' comments on the issue are largely business proprietary information, the Department's full analysis is contained in a separate memorandum. See Memorandum from Robert Bolling to Laurie Parkhill: Markor Affiliation, dated November 8, 2004. The Department has determined that Markor and its customer were not affiliated. Therefore, we have treated Markor's sales to its customer as export-price sales. Furthermore, application of adverse facts is not warranted because Markor and Lacquer Craft did not fail to cooperate to the best of their ability.

E. Shing Mark

Comment 59: Ministerial Errors

Shing Mark contends that it found that the Department made a number of ministerial errors in the preliminary dumping margin calculation and filed a timely request that the Department adjust Shing Mark's margin accordingly. Shing Mark contends that the Department agreed with the allegations and, thus, for the final determination, Shing Mark requests that the Department adopt all the corrections concerning the following items: (1) incorrect calculations regarding the currency conversion rate and the inflation rate for inland freight; (2) incorrect surrogate values from the World Trade Atlas for alder, bolts, corrugated paper, expansible polystyrene sheet, oak veneer strip, particle board, pine veneer strip, plastic bubble sheet, polyethylene bag, polyethylene film, sponge pad, and white wood veneer; (3) incorrect conversion rates for weights of cherry veneer, plywood, and plywood special as described in the Department's Analysis of Allegation of Ministerial Errors for Shing Mark, dated July 29, 2004.

Furthermore, as discussed in its August 17, 2004, factors-of-production comments at 11-13, Shing Mark explains that there were numerous typographical or other input errors in the Department's Preliminary Determination data from the World Trade Atlas. Shing Mark contends that the Department's Factors Valuation Memorandum includes incorrect data for the cited Indian HTSC or the World Trade Atlas provides data that are irreconcilable when compared to the MSFTI. Shing Mark contends that, since the MSFTI is published by the Director General of Commercial Intelligence and Statistics, Ministry of Commerce and Industry, it is also an official government publication of import statistics. Hence, it contends that, if the Department uses Indian import data to value cast iron, fiberglass, and iron ingot, then it should use also data from the MSFTI, rather than World Trade Atlas

data, to calculate the surrogate value for these factors of production. Shing Mark refers to its examples of the data flaws in its case brief.

Department's Position: We have determined that Shing Mark's allegation of ministerial errors is correct and have made the appropriate changes for the final determination. For the final determination the Department has reviewed the Indian import data for cast iron, fiberglass, and iron ingot. For a complete discussion of these claimed calculation errors, see Shing Mark Final Analysis Memo.

Comment 60: U.S. Movement Expense

The Petitioners argue that the Department should apply partial adverse facts available to the U.S. movement expenses for Shing Mark's U.S. affiliate, Top-Line Furniture Inc. ("Top-Line"), because they contend, the Department was unable to verify the reported freight expenses against any invoices from unaffiliated freight carriers. Thus, the Petitioners argue, Top-Line's freight expenses were not verifiable and cannot be used by the Department in its margin calculation in accordance with section 782(i) of the Act.

The Petitioners contend that Shing Mark did not cooperate to best of its ability because it did not provide the freight bills or other supporting invoices for Top-Line's reported freight expenses. Thus, the Petitioners recommend that the Department use the highest reported per-unit international freight expense for Top-Line transactions as partial adverse facts available. Alternatively, the Petitioners argue that the Department could apply the highest reported international freight expense by piece to Top-Line's U.S. sales.

Shing Mark argues that the Department examined the movement charges incurred by Top-Line at verification. Shing Mark contends that Top-Line explained at verification that it determined these

freight expenses on an item-series basis by reference to landed cost of the products sold. Shing Mark contends that Top-Line company officials explained that, after this landed cost is incorporated into the company's computer system, it does not retain the associated freight bills. Shing Mark contends that the Petitioners have distorted this explanation and asserts that the Department cannot expect Top-Line to produce documents that no longer exist, particularly given that this is an antidumping duty investigation covering April through September 2003, a period in which Top-Line did not know it needed to keep such records. Shing Mark contends that the fact that Top-Line was unable to produce such documentation to tie directly to the international freight expenses does not mean that it did not act to the best of its ability.

Furthermore, Shing Mark contends that the fact that the Department was unable to view these invoices (for the simple reason that they no longer exist) does not mean that it was unable to verify Top-Line's freight expenses. First, it asserts, the Department's verification report demonstrates that the Department confirmed the methodology Top-Line used to calculate freight expenses against other documents. Second, Shing Mark argues that FAG Kugelfischer Georg Schafer AG v. United States, 131 F.Supp.2d 104 (CIT 2001), established that "verification is a spot check and is not intended to be an exhaustive examination of the respondent's business." As a result, Shing Mark contends, the Department is not required to examine every document supporting a respondent's questionnaire response in order to conclude the response has been verified. Thus, Shing Mark argues that the fact that the Department did not see Top-Line's freight invoices does not mean that it did not verify these expenses. To the contrary, Shing Mark contends, Top-Line acted to the best of its ability in this

investigation, its freight expenses were verified, and, for these reasons, the Petitioners' claim that the Department should apply facts available with respect to Top-Line's freight expenses.

Department's Position: Although we were unable to review the freight bills for Top-Line's U.S. movement expenses, we have determined that Shing Mark acted to the best of its ability in reporting these expenses. At verification, we saw that Top-Line reported its movement expenses by item series, tracked the landed cost by its purchase-order number, and uses its computer system to retain its landed costs. Additionally, at verification, we reviewed the methodology Top-Line used to calculate its freight expenses with other documentation which were part of Top-Line's "minor corrections" and we found no discrepancies in the reporting of this data. See the Department's Top-Line Verification Report at 7. Given that we were able to review Top-Line's methodology for reporting its freight expenses by examining this expense in its computer system thoroughly, we find that Top-Line has not engage in conduct that would indicate it had not acted to the best of its ability with respect to its freight expenses. Therefore, for the final determination, we have accepted the freight expenses applicable to Shing Mark's sales through Top-Line.

Comment 61: Market-Economy Purchases

The Petitioners contend that a review of Shing Mark's verification exhibits demonstrates that two market-economy prices used in the Preliminary Determination contain discrepancies with information provided at verification. The Petitioners argue that the Department should use the successfully verified market-economy purchase prices in the final determination, and disregard the two prices which the Department could not verify.

Shing Mark contends that it provided ample details about its purchases of raw material inputs from market-economy countries. Further, although it did not identify these as market-economy purchases, Shing Mark contends that it described all factors used in the subject merchandise in its May 26, 2004, comments. Therefore, Shing Mark argues that the Department should use the purchase prices derived from these values as the basis for valuing the factors of production. Shing Mark contends further that the Petitioners agree that this is the Department's normal practice, in accordance with 19 CFR 351.408(c)(1), which should be followed for the final determination in this investigation.

In the Memorandum from Michael Holton, Case Analyst, through Robert Bolling, Program Manager, re: Wooden Bedroom Furniture from the People's Republic of China: Shing Mark Co. Ltd and its Affiliates ("Shing Mark"), dated June 24, 2004 ("Preliminary Calculation Memorandum"), Shing Mark contends that the Department stated that, "{w}here Shing Mark Group sources significant amounts of inputs from market economy suppliers, the Department values the input using the amounts Shing Mark actually paid." Shing Mark contends that, in the Preliminary Determination, the Department never identified Shing Mark's market economy purchases as too vaguely described to serve as the basis for valuing its remaining NME purchases. Thus, Shing Mark contends, the Department did not use facts available to value Shing Mark's inputs in the Preliminary Determination.

Furthermore, Shing Mark argues, the Department subsequently verified its purchases of inputs from market economies and page 34-36 of the verification report indicated that there were no deficiencies in the descriptions. In addition, Shing Mark contends, the plant tour included the Shing Mark's materials warehouse, in which market-economy-sourced raw material inputs were stacked side-by-side with NME-sourced inputs and inputs from market-economy countries whose prices are

deemed unreliable because of subsidies. Thus, Shing Mark argues, demonstrated that raw material inputs were commingled in inventory, physically identical, and could not be considered different factors of production. Further, Shing Mark argues, because these market-economy purchases are "significant," Shing Mark should continue to receive the imported purchase price for these factors of production.

Shing Mark contends that, although the Petitioners complain about the alleged "over-breadth and over-inclusiveness" of Shing Mark's market-economy purchases, the Department found that Shing Mark's reporting of market-economy purchases served as a reliable basis for valuing its factors of production in the Preliminary Determination. Further, Shing Mark contends that these market economy-purchases were subsequently inspected and verified as reported. Therefore, Shing Mark Group contends, absent any evidence that its reporting was deficient, the Department should continue to use these market-economy purchase prices as the basis for valuing particular factors of production for the Department's final determination.

Department's Position: We agree with the Petitioners. For the Preliminary Determination we used the market-economy prices Shing Mark reported. At verification, we examined a worksheet Shing Mark prepared for verification of its market-economy purchases consumed during the POI. See Shing Mark Verification Report Exhibit 47 at 2101-2102. Additionally, we examined these market-economy purchases in these worksheets; we traced these purchases through Shing Mark's accounting system and to the worksheet. For two of the purchases Shing Mark had reported different prices than those it presented in the verification worksheet. Therefore, for the final determination, we have used the

market-economy purchase prices as corrected by the information in Shing Mark's verification worksheet.

Comment 62: Transportation Distances

The Petitioners argue that verification exhibits demonstrate transportation distances for certain market-economy purchases used in Preliminary Determination contain discrepancies with verified information. Thus, the Petitioners contend that the Department should used the verified transportation distances for these market economy purchases in its calculations for the final determination. Shing Mark did not comment on this issue.

Department's Position: We agree with the Petitioners. At verification, we saw the actual distances that certain market-economy purchases travel to Shing Mark's plant. See Shing Mark Verification Report Exhibit 48 at 5001-5018. Therefore, for the final determination, we have use the actual distances for these market-economy purchase prices.

Comment 63: Control-Number Errors

At verification of Shing Mark's U.S. affiliate, the Department discovered that there were two types of errors in Shing Mark's designation of product-control numbers. The Department uses these identifiers to associate sales of products to their respective factors of production and resulting normal values to calculate the margin. One of the errors was the result of a computer function which had gone awry ("VLOOKUP"). The other error involved the assignment of single-piece control numbers to sales of multiple-piece items. The Petitioners and Shing Mark presented comments and rebuttals on

these two issues. Because the nature of their respective comments are intertwined, the Department has addressed both situations in this single comment.

Shing Mark argues that, given the scale and complexity of the merchandise covered by this investigation, it is understandable that inadvertent errors in preparation of the questionnaire response occurred. Shing Mark contends that, before the verification of each of its entities, it acknowledged errors candidly and endeavored to correct them. In this regard, Shing Mark explains that the Department should accept all changes proposed as "minor corrections" it submitted in its final U.S. sales factors-of-production data.

Shing Mark explains that at verification the Department learned that Shing Mark reported incorrect product-control numbers in its U.S. sales database because of problems it had with the VLOOKUP function of Microsoft Excel and CEP misclassifications of invoices for complete beds, armoires, and dressers.

The Petitioners argue that Shing Mark's unverifiable control numbers are unreliable and must be replaced by partial adverse facts available. In addition, the Petitioners contend that they have identified a significant number of sales in the resubmittted allegedly corrected data with incorrect control numbers or control numbers that cannot be verified. For these reasons the Petitioners argue that the Department should apply the highest non-aberrational dumping margin it has calculated for Shing Mark as the partial adverse facts available for all of Shing Mark's sales affected by these errors.

The Petitioners argue that this error affected a large number of U.S. sales observations and a substantial gross value of sales and pieces of Shing Mark's U.S. sales. The Petitioners allege that, despite the magnitude of the problem with the data, Shing Mark did not bring the error to the

Department's attention prior to verification. The Petitioners argue that the Department should expect a sophisticated respondent acting to the best of its ability to review its multiple responses and to notice that it had reported a substantial number of observations incorrectly. Additionally, the Petitioners argue they had submitted pre-verification comments identifying problems with Shing Mark's assignment of control numbers. Furthermore, the Petitioners argue that the Department provided some of the pre-selected sales it would verify to Shing Mark two weeks before verification began and preparation of the required sales traces should have revealed the affected observations to Shing Mark. Therefore, the Petitioners argue that, notwithstanding the numerous opportunities to review its responses and confirm the accuracy of its data, Shing Mark did not act to the best of its ability.

The Petitioners argue that the Department should also apply partial adverse facts available to sales with an incorrect control number due to an additional miscoding of CEP sales. The Petitioners contend that at verification the Department discovered that Shing Mark miscoded certain CEP sales and reported the incorrect product code number for certain CEP observations such that the sales of complete beds, for example, were identified an analyzed as sales of headboards. According to the Petitioners, a cursory review of the data by Shing Mark should have revealed to the respondent that the reported sales price for the incorrectly described sales was absurdly high, citing among others Speciali Terni S.P.A. v. United States, 142 F.Supp.2d 969 (CIT 2001) ("Acciai"). The Petitioners argue that, for all of the reasons they have explained for the VLOOKUP error, the CEP errors in Shing Mark's database also do not meet the Department's six-part test for the correction of clerical errors.

The Petitioners allege that the errors in Shing Mark's database resulted in the understatement of the company's margin in the Preliminary Determination and, thus, a beneficial lower cash-deposit rate.

Because of this, the Petitioners argue that they are not receiving the full provisional relief to which they are entitled under the law. According to the Petitioners, in cases with similar facts, the CIT has upheld the Department's refusal to correct the errors in the respondent's data that were discovered at verification and its subsequent decision to apply adverse facts available to the respondent, citing Acciai, where the court upheld the Department's decision to partial apply adverse facts available because the respondent's "inaccurate reporting of data is a substantive error, not a clerical one," and because it is the respondent's burden to provide accurate and complete data to the Department. The Petitioners argue that, in Acciai at 975, the court stated that, "not only do such fundamental errors as found at verification raise concerns as to the validity of the data not directly tested, but they also demonstrate that the respondent failed to act to the best of its ability to report such information." The Petitioners contend that the errors in Shing Mark's database are far more pervasive than the errors present in Acciai.

The Petitioners contend that, in order to fulfill its statutory mandate, the Department must be able to rely on the data provided by the respondent, the party in the best position to organize, prepare, and check its own information. According to the Petitioners, the CIT has stated that, "if the burden of compiling, checking, rechecking, and finding mistakes in the submission of {respondents} were placed upon Commerce, it would transform the administrative process into a futility . . . . This Court cannot permit {respondents} to stymie the work that Commerce has been mandated to perform by Congress on account of what appears to be the slovenly submission of data," citing among others Sugiyama Chain Co., Ltd. v. United States, 797 F. Supp. 989, 994 (CIT 1992) ("Sugiyama"). The Petitioners

contend that Shing Mark failed to cooperate by not acting to the best of its ability in the preparation of its data and its failure to recognize the control-number errors in its database.

Furthermore, the Petitioners argue that neither they nor Department can have any confidence that Shing Mark has provided a complete list of the affected product-control numbers. Because the significant errors emerged at verification, the Petitioners allege that the Department could not verify the accuracy of the purported corrections. Moreover, the Petitioners contend that they have had no opportunity to review the new information and provide deficiency comments concerning the data, despite the fact that this data should have been provided in Shing Mark's first submission to the Department. The Petitioners argue, however, that they have identified a significant problem with the control numbers in Shing Mark's September 27, 2004, purported correction submission such that the Department cannot accept Shing Mark's purported corrections because Shing Mark did not try to correct the data according to the information it presented at verification. As a result, they contend, the Department cannot conclude that Shing Mark has corrected the data.

The Petitioners refer to section 776 of the Act which permits the Department to apply adverse facts available when it finds that a respondent fails to cooperate by not acting to the best of its ability in complying with the Department's requests for information. Citing Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances, Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350 (December 8, 2003), the Petitioners allege that the Department's practice in the final determination of an investigation is to apply adverse facts available when questionnaire responses are unverifiable. The Petitioners contend that this applies both where a respondent fails to provide a complete response and where a respondent makes an effort to provide

responses but does not submit information that is reliable enough to serve as a basis for reaching a determination, citing among others CTL Plate from Indonesia at 73166. At a minimum, the Petitioners argue, the Department should apply partial adverse facts available to Shing Mark's affected sales. Specifically, the Petitioners contend that the Department should apply to all affected sales the highest non-aberrational margin calculated as partial adverse facts available in the final determination.

The Petitioners also argue that the errors in Shing Mark's U.S. sales database caused by the VLOOKUP function problem do not constitute mere "clerical errors" that meet the Department's six-part test for the correction of clerical errors. According to the Petitioners, the Department will only determine that a respondent's errors are "clerical" in nature and correct them if all of the following criteria are met: (1) the error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical-error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. The Petitioners cite Final Results of Antidumping Duty Administrative Reviews, Certain Fresh Cut Flowers From Colombia; 61 FR 42833, 42834 (August 19, 1996) ("Flowers from Colombia").

The Petitioners allege that Shing Mark's flawed database does not meet at least five of these six criteria. First, the Petitioners argue that the errors in Shing Mark's database amount to a substantive

error in its response, citing Final Results of Antidumping Administrative Review, Porcelain-on-Steel Cookware From Mexico, 66 FR 12926 (March 1, 2001), to argue that Shing Mark's failure to conduct a reasonable check of its data constituted an error in judgment and, thus, it has not met the first criterion of the Department's test. Second, the Petitioners allege that the Department cannot be satisfied that the corrective documentation provided by Shing Mark is reliable because this information was never verified. Moreover, the Petitioners argue that the corrections are inconsistent with the information provided in the verification exhibits about the error. Third, the Petitioners contend that Shing Mark did not avail itself of the earliest reasonable opportunity to correct the error because Shing Mark did not check its own information despite numerous revisions and resubmissions of its data. Fourth, the Petitioners allege that correcting the errors in Shing Mark's U.S. sales database would constitute a substantial revision of the response. Fifth, the Petitioners argue that the database Shing Mark provided to correct the errors is inconsistent with and contradicts the information it provided at verification about the errors and is, therefore, not reliable. Because they do not meet at least five of the Department's six criteria, the Petitioners assert that the errors in Shing Mark's database cannot simply be corrected as "clerical errors."

The Petitioners argue that the Department should reject Shing Mark's new factors-of-production data or, at a minimum, should apply partial adverse facts available to sales of control numbers reported for the first time in the last submission. The Petitioners contend that Shing Mark's new database includes new information that Shing Mark did not present as a minor correction at verification. The Petitioners remark that the Department's admonitions in the verification outline are clear regarding the collection of new information while verifying the company and that, given that the

new data cannot be construed as a minor correction, the Department should reject Shing Mark's latest submission and use the information the Department verified.

The Petitioners argue that, even if the Department were to accept Shing Mark's new data, the Department should not accept the factors-of-production data for these new control numbers. The Petitioners contend that Shing Mark had ample opportunity in its five previous data filings to incorporate the missing information. Moreover, the Petitioners allege that new data was not subject to verification by the Department and, as such, the Department cannot rely on unverified data in its final determination, citing to section 782 of the Act and 19 CFR 351.307(b)(1)(i). Therefore, the Petitioners argue, for the affected U.S. sales the Department should apply the highest non-aberrational dumping margin as partial adverse facts available.

In preparing for verification, Shing Mark explains, it discovered that several item numbers which had been reported correctly to the Department in an earlier response had somehow been assigned an incorrect control number in a later U.S. sales files database it provided to the Department. Shing Mark argues that above error should be accepted by the Department as a "minor correction" because the errors were the result of Microsoft's Excel VLOOKUP function. Shing Mark explains that it used this computer program to assign product-control numbers to its U.S. sales and, inexplicably, the exercise proved unsuccessful at a certain point in the U.S. sales database. Shing Mark provides a detailed explanation of the error and the efforts it has made to correct the error, including the Department's examination of those efforts at verification. Shing Mark states that on the first day of the Department's verification in the PRC it demonstrated its VLOOKUP methodology and resulting malfunction in a visual, real-time simulation. Shing Mark explains that in the process of verifying the

pre-selected sales traces, Department officials confirmed that the items number for the affected transactions were now coded with the correct control number.

Given that much information was already on the record in the form of the original control number list, Shing Mark argues that the Department should accept the revisions as a minor correction. Shing Mark cites to Notice of Final Determination of Sales at Less Than Fair Value, Stainless Steel Sheet and Strip in Coils From France, 64 FR 30820 (June 8, 1999), and accompanying Issues and Decision Memorandum ("Steel Coils from France"), in which the Department accepted corrections to databases resulting from unintentional computer-related programming errors as minor corrections. Thus, Shing Mark explains, the Department has the full discretion to incorporate all changes relating to the VLOOKUP error as a minor correction and use that data for calculating the final dumping margin for Shing Mark.

Shing Mark also argues that the Department should accept its modifications correcting the control numbers for different groupings of products it sold in either piece or set form. Shing Mark explained that, during the verification of its U.S. affiliate, Homerica, Inc., the Department and Shing Mark discovered that several sales observation in its U.S. sales file were coded incorrectly with the wrong control number. Shing Mark contends that this error arose because Shing Mark sells nearly all the subject merchandise as separate pieces but, for certain CEP sales, Shing Mark's U.S. affiliates, Homerica, Inc., grouped the headboard, footboard, and rail together and sold them as a complete bed. Shing Mark acknowledges that the invoice the Department examined at verification provided a price for a headboard and zero price beside each invoice line for footboard and rails. For the Department's verification of Top-Line, Shing Mark explains that it created a verification exhibit which identified all

item numbers which should be combined as a result of zero-priced sales on the invoices. Shing Mark asserts that at both CEP verifications the Department informed Shing Mark that it would need to address the control-number problem prior to the factors-of-production verification in the PRC.

Shing Mark states that it provided a worksheet to the Department on the first day of the PRC verification which identified the proposed corrections for the error. Shing Mark argues that the Department verified that the factors associated with new item number and associated control numbers were correct. Shing Mark argues that these "grouped" costs were not new information because the components of these "grouped" costs were already on the record as individual pieces. Shing Mark argues that the correction did not change its reporting methodology but simply corroborated, supported, and clarified data on the record that the Department examined.

The Petitioners respond that, for the reasons they identified in their affirmative comments, the Department should reject as untimely the new information submitted by Shing Mark and apply total facts available to Shing Mark for its failure to cooperate to the best of its ability to the Department's requests for information. Alternatively, the Petitioners contend that the Department should apply the highest non-aberrational margin calculated as partial adverse facts available to the affected sales in the final determination.

Furthermore, contrary to Shing Mark's assertions, the Petitioners argue there is no reliable data on the record to correct the VLOOKUP errors in the U.S. sales database. The Petitioners allege that the Department has not placed the revised files on the record of the investigation pending its consideration of the issue nor has the Department had the opportunity to verify the September 27, 2004, data Shing Mark submitted. The Petitioners continue to argue that the Department should not

accept the new information, information that should have been presented to the Department in the first data submission or in the subsequent revisions to the databases prior to verification. Therefore, the Petitioners contend that this submission of new factual information by Shing Mark is untimely and should be rejected by the Department and removed from the record in accordance with 19 CFR 351.302(d). Petitioners argue that, because the first time the explanation of the VLOOKUP error was provided on the record was in Shing Mark's case brief, the Petitioners have had no opportunity to review purported methodology or the accuracy of its explanation. In short, the Petitioners reassert that Shing Mark's sales databases are clearly unreliable and the respondent did not cooperate to the best of its ability, a situation which requires the application of total facts available. The Petitioners also reassert their arguments for the application of adverse facts available due to the CEP control number errors concerning sales of pieces and sets.

Shing Mark responds to the Petitioners' comments by reviewing its presentation of the facts in its affirmative comments. Contrary to the Petitioners' suggestions, Shing Mark contends, all information regarding these minor corrections has been fully verified. Shing Mark also argues that its final U.S. sales files are complete and accurate and reflect only changes that were fully explained to the Department during its verification of Shing Mark. Third, Shing Mark argues that, even with all minor corrections presented to the Department at verification, including the VLOOKUP flaw and CEP control-number errors, the resulting dumping margin database resulted in the slight understatement of its preliminary dumping margin. Therefore, Shing Mark argues, the Petitioners' argument that the these data are significant, fundamental, and substantive errors for which Shing Mark should be given total or partial adverse facts available is simply not credible and the Department should reject it for the final

determination. Instead, Shing Mark contends, the Department should use the corrected data to calculate the company's margin. Shing Mark also explains that the Petitioners' comparison and analysis of certain verification exhibits with the revised sales files is incorrect because they attempt to analyze figures that are simply not comparable and should not be identical.

Shing Mark argues that it is standard Department practice to allow a respondent to make revisions to information if those revisions are submitted at the outset of verification, verified to be accurate and complete, isolated in nature, minor in impact, and do not affect the overall integrity of its response, citing among others Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review, Brake Rotors from the People's Republic of China, 68 FR 25861 (May 14, 2003), and accompanying Issues and Decision Memorandum ("Brake Rotors 2003"). Shing Mark claims that, if the errors presented by respondents meet this standard, the Department accepts such changes as minor corrections in post-verification submissions. Shing Mark contends that because the information it has presented to correct the product-coding errors meets this standard, the Department should accept its revised sales data as well as the changes to the factors-of-production database.

Shing Mark argues that the Department has determined on several previous occasions that inadvertent errors caused by a flaw in a computer program and offered to be corrected should be viewed as a "minor correction," citing Steel Coils from France. In that case, Shing Mark states, the Department accepted information because it determined that the change concerned the correction of existing information. Shing Mark claims that the situation is similar in this instance. Shing Mark argues that the Flowers from Colombia test does not apply to "minor corrections" submitted at verification or

govern the analysis for whether the Department should accept "minor corrections." Shing Mark contends that the six-part test only applies when a respondent attempts to correct obvious clerical errors in its data after verification, after all information has been submitted, and after the record has closed.

Shing Mark alleges that in Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, Canned Pineapple Fruit From Thailand, 66 FR 52744 (October 17, 2001), and accompanying Issues and Decision Memorandum ("Pineapple From Thailand"), the Department accepted the respondent's "minor corrections" and accepted the respondent's assertion that it had made a clerical error after applying the six-part Flowers from Colombia test. While Shing Mark does not concede that the six-part test applies in antidumping investigations (it contends that the test appears only to be applied in administrative reviews), even if the Department applies the Flowers from Colombia test to Shing Mark's situation, like the respondent in Pineapple from Thailand, Shing Mark would pass the test.

Shing Mark contends that the Petitioners' argument that price variations within a given control number should have been a signal that something was wrong with its reporting is unfounded. Shing Mark claims that substantial price variations within control numbers are normal. Shing Mark also argues that its situation is distinguishable from the cases the Petitioners cited in which respondents should have been alerted to problems in their submitted data because of patently obvious errors in their submitted data, for example, "an obvious physical impossibility," citing Acciai, 142 F.Supp.2d at 983.

Shing Mark contends that the record of this investigation demonstrates that Shing Mark acted to the best of its ability in preparing and submitting data to the Department and the fact that it presented certain errors at verification does not contradict that conclusion. Shing Mark argues that section 782 of the Act requires that certain conditions be met before the Department may resort to the facts available. Shing Mark argues that under this standard, the Department must reject using adverse facts available where they are not warranted because Shing Mark has cooperated fully with the Department's investigation and acted to the best of its ability to respond to questionnaires. Shing Mark argues that the Department has no basis on which to apply full or partial adverse facts available to those specific sales affected by the miscoded control numbers. Furthermore, Shing Mark claims that the Department should accept the corrected databases because Shing Mark notified the Department of the problem at the outset of verification, the Department verified the complete information presented by Shing Mark, which can be used reliably to calculate an accurate antidumping margin, and the Department can use this information without undue difficulty.

Department's Position: After a thorough review of the record evidence, the Department has determined that, in the first instance, Shing Mark's VLOOKUP error does not rise to the level of total or partial adverse facts available and has used the correction to the U.S. sales database for the affected control numbers for the final determination. The Department determines, however, that, in the second instance, Shing Mark did not act to the best of its ability in reporting certain mis-coded CEP control numbers and finds it is appropriate to apply adverse facts available to those items affected by this error.

Under a different record we may have determined that, due to Shing Mark's inability to catch this error from the first instance, it had not acted to the best of its ability. We find that, given the

magnitude and the complexity of this investigation along with the fact Shing Mark demonstrated no pattern of not complying with its obligations to respond to our request for information, we have determined to accept and use the corrected information which Shing Mark submitted pursuant to our request. Additionally, even though the Department discovered this error and the CEP control-number error at the verification of Homerica Inc., it was clear to the Department's verifiers that information needed to understand the VLOOKUP error fully was in the PRC.

The Department declined to accept as a minor correction a corrected U.S. database which Shing Mark attempted to submit at verification in the PRC. After the verification the Department made a specific request that Shing Mark provide a corrected U.S. sales database for the sales affected by the VLOOKUP error. Shing Mark made that submission as requested.

The Department finds that the VLOOKUP error was not the result of a methodological reporting error on the part of Shing Mark. Furthermore, we were able to use the requested VLOOKUP corrected information because all the necessary sales information and factors-of-production information for these sales was complete and we were able to review it. In fact, the Department found no discrepancies with regard to Shing Mark's specific sales and factors-of-production information. Given these circumstances, the Department finds that Shing Mark did not engage in conduct that would indicate it had not acted to the best of its ability with respect to the sales data and factors-of-production data that were affected by the VLOOKUP error. Furthermore, because the VLOOKUP error affected only one data item out of numerous pieces of information (such as sales price, date and invoice information, product codes, production inputs, etc.), the Department is satisfied that it was an inadvertent error. Therefore we have used the information which Shing Mark

provided after verification in the calculation of Shing Mark's final dumping margin. See Shing Mark Final Analysis Memo.

The Department determines, however, that Shing Mark did not act to the best of its ability with respect to second instance of error, the CEP control-number error. Additionally, the Department determines that Shing Mark did not act to the best of its ability in reporting the sales information with respect to certain CEP sales and the corrected data.

First, although the Department indicated in its April 28, 2004, supplemental questionnaire and again in its June 4, 2004, supplemental questionnaire, that it had found problems with its reported control numbers, Shing Mark did not address those problems fully or in a timely manner. We find that the significant price variation with respect to the CEP errors within a given control number was beyond what any reasonable person would consider normal. At the very least, even if wide price variations are normal within a control number, such price variations should have caused Shing Mark to at least double-check the accuracy of the information it reported to the Department. Additionally, we find that, at a minimum, before the first CEP verification Shing Mark should have reviewed the invoices of our pre-selected sales which would have also alerted Shing Mark to the problem. Furthermore, the Department alerted the Respondent on several different occasions either explicitly (through its supplemental questionnaires) or implicitly (the very reason for the Department's selection of certain CEP sales for verification was due to wide price variations) to the problems with certain sales. Thus, because Shing Mark was in the best position to check and report its information accurately plus the fact Shing Mark reported continually that it had corrected its information or that there were no problems, we relied upon its information until we discovered the errors at the first CEP verification. It is not the

Department's burden to find the mistakes and in this case the Department did everything it could to alert Shing Mark to the problem. See Sugiyama. Indeed, after verification, the Department requested that Shing Mark provide a separate U.S. sales database with corrected CEP control numbers.

The fundamental difference between these two instances of errors is that the CEP errors are the result of Shing Mark's methodology for reporting its CEP sales information and the VLOOKUP error was the result of an unrecognizable flaw in the computer software. As Shing Mark describes and the Department found at verification, all item numbers which should have been combined (i.e., headboard, footboard, and rails should have been reported as a complete bed, the top and bottom of an armoire should have been reported as a single piece, etc.) reflected zero-priced sales on the invoices of the non-reported pieces (e..g, rails, footboard, armoire tops, and mirrors). For these combined pieces it was Shing Mark's methodology to exclude all zero-priced sales from its U.S. sales list. Not only is there no explanation on the record for Shing Mark's reason to exclude these sales, but the fact that they were excluded indicates that Shing Mark did not report all of its U.S. sales. Additionally, unlike the VLOOKUP function error, the Department finds that the allegedly corrected CEP information is, in fact, incomplete and unreliable, as discussed below.

Unlike the VLOOKUP function error, the error with respect to Shing Mark's CEP sales that should have been reported as combined pieces was systemic to all of Shing Mark's affiliated resellers. Furthermore, Shing Mark's allegation that the Department reviewed the corrections at the Top-Line and PRC verifications and found no discrepancies with the corrected information is not supported by the record evidence. See Top-Line Verification Report at 10, Exhibits TL-12, TL-13, and TL-19. Even if the Department has accepted certain corrected combined CEP sales which Shing Mark

attempted to submit at the PRC verification, the Department would have been unable to review these sales because the verification for these particular sales had already occurred weeks earlier where the Department discovered the problem initially. Furthermore, the corrections Shing Mark attempted to submit were for CEP sales, which the Department reviewed at verification in the United States, not the PRC. Additionally, the Department also finds that the corrected U.S. sales file which Shing Mark submitted after verification pursuant to the Department's request is not accurate or reliable. The Department's review of several sales indicates that Shing Mark has not corrected the control numbers for several of the sales traces the Department conducted at both Homerica, Inc., and Top-Line. See Homerica Verification Report at page 11, Exhibit HI-16, and Top-Line Verification Report at page 10, Exhibit TL-12. See also Shing Mark's submission on September 27, 2004, of its Revised U.S. Sales Database and Revised FOP Database.

Therefore, in accordance with section 776 of the Act, the Department has applied adverse facts available for certain CEP sales whose control numbers were reported incorrectly because Shing Mark did not act to the best of its ability to find and correct the errors, the allegedly corrected U.S. sales data for these errors which the Department requested is unverifiable, and the data remains so incomplete that it cannot be used as a reliable basis for reaching an accurate margin in this investigation. For the aforementioned reasons the Department has applied the adverse facts-available rate of 198.08 percent to all of Shing Mark's CEP pieces where the control-number misclassification occurred.

F. Starcorp

Comment 64: Unreported Sale

The Petitioners assert that Starcorp did not report an invoice in its U.S. sales listing that it should have reported as subject merchandise. The Petitioners argue that the Department issued Starcorp four supplemental questionnaires after the initial questionnaire and, therefore, by the time of verification, Starcorp had ample opportunity to review its sales listing for completeness yet it did not identify and include all requested sales data.

The Petitioners argue that, when unreported sales are first discovered during verification, the Department's practice is to apply adverse facts available for the unreported sales by substituting the highest non-aberrational margin calculated for a single sale, citing Final Determination of Sales at Less Than Fair Value, Certain Cut-to-Length Carbon Steel Plate From South Africa, 61 FR 61731 (November 19, 1997), and accompanying Issues and Decision Memorandum. The Petitioners argue that the Department should apply partial adverse facts available in this instance.

Starcorp did not respond to this issue.

Department's Position: The Department has determined that the non-reporting of the sale at issue was an insignificant clerical error. At verification, the Department discovered that Starcorp had not reported one invoice to the United States. Starcorp had reported that it used the container date, which is usually the same date as the invoice date, to separate certain invoices as within or outside the POI. In this case, the container date was one day before the invoice date and Starcorp classified the sale as a non-POI sale. See Starcorp Verification Report at 13. The Department examined this invoice at verification and found it to be insignificant. Additionally, the Department examined numerous other invoices at verification to ascertain whether this clerical error occurred elsewhere in the U.S. sales database and found that this error did not occur elsewhere. See the Department's Starcorp

Verification Report at 13. Therefore, we determine that we have no basis on which to apply adverse facts available for the non-reporting of one invoice as it was an isolated administrative error by Starcorp which cooperated to the best of its ability at verification. Accordingly, we have not made any changes from the Preliminary Determination with regard to this issue for the final determination.

Comment 65: Certain Wood Input

The Petitioners argue that the Department should use the market-economy price for a certain wood input. The Petitioners assert that this valuation approach is necessitated by the Department's findings during verification that Starcorp was unable to differentiate between the domestic and imported wood input. The Petitioners cite to the Department's verification report which describes the findings with regard to this wood input. (Please see the proprietary final analysis memorandum for Starcorp for a more detailed discussion of this issue.)

Starcorp argues that the Department verified the specificity of actual wood consumption for all types of wood in the company's records at the production-order level. Starcorp argues that each piece of furniture within a specific purchase order ("P.O.") was deemed to be made of the types of wood used in the P.O. in total and Starcorp used those woods in the same proportion as the P.O. in total. Starcorp asserts that it demonstrated at verification that this approach represented the best available information. Starcorp contends that it reported the exact consumption of each species of wood lumber it used during the POI at the highest specificity level available from the company's records. Starcorp argues that the Department cannot ignore the actual and verified consumption information and assign to one input the value for another input for which more appropriate value data are available. Starcorp argues that for a certain wood input the domestically purchased wood represents a different species of

wood than the imported wood or any other wood used and, Starcorp contends, the Department should value it separately.

Starcorp argues that, in its request for comments on the appropriate considerations for defining control numbers in this case, the Department chose to identify types of primary exposed solid wood surface as a key determiner of the control number and indicated its preference for identifying the particular species of wood used as the primary exposed surface of the furniture. Starcorp contends that, concerning primary exposed surface solid woods, ultimately the Department accepted this degree of precision and the types of primary exposed surface solid woods included separately enumerated species of woods to be reported in the factors of production. Starcorp states that the Department's control-number sub-codes included species-specific separate codes for several types of wood.

Starcorp argues that, because the wood input is clearly a wood of a different species, the Department should not value it at the price of a different, specifically identified species from another origin. Starcorp argues that it is appropriate to value this wood in an import category that covers every different species of wood from a common family using a public source that covers as broad a range of similar species as possible from a variety of origins. Starcorp asserts that to use a single source that is demonstrably not the same species would result in a known and avoidable inaccuracy in the calculation of Starcorp's dumping margin.

Finally, Starcorp argues that the two different species of wood at issue clearly have different costs associated with their very different origins and that it would be improper to attribute the higher cost of the imported wood to the Chinese-origin wood of a different species.

Department's Position: The Department has determined that Starcorp's allocation method regarding the wood inputs at issue is reasonable and is the most specific allocation possible based on its books and records. At verification, we examined several production orders and found Starcorp's reporting methodology was reasonable. See Starcorp Final Analysis Memo for a more detailed description of this issue.

Additionally, in response to the Petitioners' concerns early in the investigation about the specificity of the species of wood that the respondents should provide, the Department requested that the respondents provided species-specific information. The Department asked each mandatory respondent to provide information regarding Type of Primary Exposed Surface Solid Wood and identified 32 species designations. It also asked respondents to specify the commercial name and the scientific name if they used a species beyond the 32 listed. Starcorp provided species-specific factors-of-production information and allocated these factors in a reasonable matter using the most specific information regarding species. Therefore, we have continued to value Starcorp's inputs with regard to this issue as in the Preliminary Determination and, thus, we have made no changes from the Preliminary Determination with respect to this issue. See Starcorp Final Analysis Memo for specific valuation information.

Comment 66: Other Metal Fittings

Starcorp contends that the Department should use information on the record and value its metal fittings on a per-kilogram basis and not on a per-piece basis as the Department did erroneously in the Preliminary Determination. Starcorp argues that the Department should not use the per-piece price

because the sample invoice it provided was based on purchases only of handles and is not a representative sample of the broad range of metal fittings which Starcorp used.

Starcorp argues that during verification the Department spent considerable time reviewing the metal fittings and other hardware items used in Starcorp's production of subject merchandise and Starcorp demonstrated that many types of items are included in the category "other metal fittings." Further, Starcorp asserts, the Department spent considerable time reviewing the detail of Starcorp's weight information and found no discrepancies. Starcorp argues that the Department should reject the use of the average price per piece in favor of a methodology that allocates value on the basis of the weights of the various metal fittings which it used in its production of subject merchandise.

The Petitioners argue that Starcorp did not demonstrate that its proposed methodology is more accurate than the Department's current methodology and that Starcorp's arguments rest on the unproven hypothesis that the actual piece cost of an item varies proportionally based on weight. The Petitioners argue that this assumption is unjustified. The Petitioners contend that the Department should maintain its preliminary methodology when valuing Starcorp's other metal fittings, especially in light of the fact that the reported market-economy value is reported on a cost-per-piece basis.

The Petitioners assert that, if the Department determines that Starcorp documented its conversions of other metal fittings from pieces to kilograms sufficiently and that valuing Starcorp's other metal fittings on a kilogram, rather than a piece, basis is more accurate, then the Department should value this factor based on the market-economy information in Starcorp's June 9, 2004, response. The Petitioners argue that, while the market-economy information in Starcorp's June 9, 2004, submission for these three purchases includes the combined value per piece, it does not provide the value per

kilogram. The Petitioners argue that this same exhibit provides the invoice and certificate of origin for one of the three market-economy purchases. The Petitioners allege that, from these documents, it is possible to calculate the market-economy value for other metal fittings on a kilogram basis. The Petitioners argue that, because the Department does not have information to calculate a per-kilogram price for the other two invoices, the Department should use the information on the record from the one invoice that has enough information to calculate a price per kilogram to value other metal fittings.

Department's Position: In the Preliminary Determination, the Department valued Starcorp's other metal fittings on a per-piece basis because Starcorp did not explain its conversion from pieces to kilograms fully. At verification, the Department examined Starcorp's method of calculating the kilogram weight for all hardware, including other metal fittings, and found no discrepancies. Therefore, for purposes of the final determination, to value other metal fittings we have used the weight information for this input on a kilogram basis for each product-control number.

In our examination of other metal fittings we saw that the items which comprised this category were of varying weights. Therefore, we find it inappropriate to value smaller items at the same price as larger items. We also examined all market-economy purchases of other metal fittings and found no discrepancies. Although only one market-economy purchase contained enough information to calculate a per-kilogram price, we did examine all other information from all of the purchases along with reviewing Starcorp's weighing methodology; we find that Starcorp provided accurate information to convert this input from pieces to kilograms.

In the Preliminary Determination, we stated that Starcorp did not make significant purchases of this input from market-economy countries and that we would examine the appropriateness of using a

market-economy price for the final determination. Neither the Petitioners nor Starcorp has argued that the Department should use an Indian surrogate value for this input. Although the Department's practice is to value only significant purchases from a market-economy country with a market-economy price, in this case it is not feasible to do so. Starcorp grouped many different types of other metal fittings into one reported category. The Department does not have the additional information or resources necessary to segregate the many types of metal fittings and apply a different surrogate value to each one. Therefore, in this case the Department has used a market-economy price to value other metal fittings, as it would be too difficult and burdensome on the respondent and Department to do otherwise, and has used the weight information for the reasons described above. See Starcorp Final Analysis Memo.

Comment 67: Mirrors

Starcorp argues that, in calculating the preliminary margin, the Department valued Starcorp's mirror usage erroneously based on the value of framed rather than unframed mirrors. Starcorp argues that at the beginning of verification, it brought this error to the Department's attention. Starcorp also states that the Department toured Starcorp's production facilities and included in its verification report that Starcorp produced frames for mirrors. Starcorp contends that in the verification report the Department confirmed that Starcorp allocated wood withdrawn for mirrors using the same methodology as for other furniture. The Petitioners did not respond to this issue.

Department's Position: In the Preliminary Determination the Department used HTS 70099200 "Other Glass Mirrors, Framed" to value Starcorp's mirrors. At verification, the Department reviewed documents confirming that Starcorp does not purchase framed mirrors but only purchases unframed

glass mirrors. Also, at verification the Department found that Starcorp produced the wooden frames for its purchased glass mirrors. See Starcorp Verification Report at 23. Therefore, for the final determination, the Department has used a surrogate value for unframed mirrors to value Starcorp's reported mirror input. See Starcorp Final Analysis Memo.

Comment 68: Paint Price

Starcorp argues that the Department erred by using a surrogate value for paint instead of a market-economy price. Starcorp argues that it submitted information on the record which explained that certain purchases of paint were produced in Dongguan, PRC, but were made from inputs that the producing company imported "in bond." Starcorp asserts that the paint producer is required to export 100 percent of its production; thus, it contends, Starcorp must re-import the finished product and make entry of the merchandise into the PRC. Starcorp asserts that it pays this supplier in U.S. dollars, the price is similar for the same purchase from a third-country supplier, and, as a result, these purchases are tantamount to purchasing from a market-economy producer and supplier, particularly given the similar prices for the identical paints provided by the identical supplier but from its third-country source of supply.

Starcorp argues that, even if the Department rejcts the argument to accept indirect market-economy purchases in the final determination, the Department should use the third-country equivalent and essentially reach the same result based on the direct market-economy purchases of paint from the same supplier reflected in the third-country invoice of Starcorp supplied to the Department. Starcorp argues that to do otherwise would overlook the commercial realities of this case and would not lead to the calculation of an accurate dumping margin.

Starcorp cites to Shakeproof and states that there the Federal Circuit indicated that the Department is required to use the best available information to determine the value of non-market goods.

Starcorp also cites to Shandong Huarong General Corp. v. United States, 159 F. Supp.2d 714, 719-720 (CIT 2001), and asserts that the court held that, "despite the broad latitude afforded Commerce and its substantial discretion in choosing the information it relies upon, the agency must act in a manner consistent with the underlying objective of Section 773 of the Act, which is to obtain the most accurate dumping margins possible."

Starcorp asserts that the only reasonable thing to do here is to accept the actual market-based price established by Starcorp's paint supplier regardless of the location where its final mixing processes occur. Starcorp states that to do otherwise would constitute an unreasonable and overt attempt to increase margins through the selective use of values otherwise demonstrated to be aberrant as compared to other values on the record.

The Petitioners allege that the Department has a clear and unambiguous policy of not using prices of inputs that were produced in non-market economies, regardless of whether the product is ultimately sold through a market-economy entity, citing PRC Bags. The Petitioners allege that the costs associated with the Chinese operations of Starcorp's market-economy supplier are subject to the inherent distortions in a non-market economy. The Petitioners contend that, for this reason, the Department must reject the prices of the Chinese-origin inputs.

The Petitioners also assert that the Department must reject Starcorp's arguments that the Department should use other information instead of a surrogate value. The Petitioners contend that

Starcorp neither stated directly nor provided information supporting that its so-called alternative "direct market-economy purchases" were of paints produced in a market economy. The Petitioners allege that the invoices Starcorp provided do not support a finding that any of the purchased paint was produced in a market economy and, furthermore, reflect purchases made outside the POI. The Petitioners argue that the Department does not compare whether the normal value it calculates under its NME methodology is similar to the home-market prices paid in the PRC and, if so, then use PRC home-market prices to determine normal value. The Petitioners contend that it is equally illogical to limit the surrogate value for inputs produced in the PRC to prices at which the same product sells in a market economy.

The Petitioners assert that the Department should value Starcorp's reported paint factor using the Indian surrogate value. To do otherwise, they contend, would not constitute the calculation of a dumping margin in the most accurate manner, i.e., by using a surrogate value for paint during the POI from a market economy.

Department's Position: Consistent with the decision in PRC Bags the Department has not used prices of inputs that were produced in non-market economies, regardless of whether the product is ultimately sold through a market-economy entity. The Department's practice addresses concerns that, were the Department to use the prices of inputs that were produced in a NME country, the methodology for valuing the factors of production would become easily open to manipulation. Therefore, we do not use the prices of inputs that originated in a NME country even if the input is sourced from a market-economy supplier. See PRC Bags. Additionally, we do not compare prices from the NME producer to other market prices. Further, our practice is to disregard the prices

reported by the respondents for those inputs that were produced in the PRC and to use surrogate-value information to value such inputs. Therefore, we have made no changes from the Preliminary Determination for this issue and have valued Starcorp's PRC-produced paint using an Indian surrogate value.

Comment 69: Wooden Veneer

The Petitioners argue that the wooden veneer factor data which Starcorp submitted prior to the Preliminary Determination were reported in a different unit of measure than the unit of measure it used for the surrogate data. The Petitioners allege that on August 24, 2004, Starcorp submitted a revised factors-of-production database. The Petitioners argue that these newly submitted consumption data are reported in the same unit of measure as the surrogate value for the reported factors and the Department should use the other unit of measure to value Starcorp's wooden veneers in the final determination. (Due to the proprietary nature of this issue see Starcorp Final Analysis Memo for a more detailed discussion.)

Starcorp argues that in the Preliminary Determination the Department used the alternate unit of measure to value certain wooden veneers and that the Department converted this data to the proper unit of measure as appropriate. Starcorp argues that, at verification, the Department verified that Starcorp's weight-based conversion of this input was accurate and argues that the Department should perform its calculations for the final determination on the basis of the revised database it provided which incorporates all weight-based consumption rates necessary to calculate Starcorp's margin properly. Starcorp argues that, for other certain wooden veneers, converting the unit of measure is unnecessary

because the reported consumption rates for these inputs are valued properly on the basis of their actual cost to Starcorp.

Department's Position: The Department has determined to use Starcorps's reported unit of measure for wooden veneers that corresponds to the valuation of this input. In the Preliminary Determination the Department converted the unit of measure with respect to wooden veneers properly where it was necessary and has done so for the final determination. See Starcorp Final Analysis Memo for a more detailed explanation of this proprietary issue.

Comment 70: Plywood

Starcorp argues that in the Preliminary Determination the Department averaged values from two different HTS categories and that the resulting figure is in error. Starcorp argues that the calculation of the unit value for HTS item 441219 is incorrect and the inclusion of 44121490, which is for a different commodity, includes an aberrant value for an exceedingly small quantity that destroys the integrity of the average the Department used in the Preliminary Determination. Starcorp argues that the Department included Myanmar data in the calculation improperly since it is a NME. Starcorp also contends that the Department should exclude the figure for Hong Kong from the calculation as it is an aberrantly small quantity.

Starcorp asserts that data HTS item 44121490 yields the same data as 441214 and that only a single country, Finland, exported non-coniferous plywood to India during the entire six-month POI and exported a mere 150 cubic meters in one quarter and only four cubic meters in the other quarter.

Starcorp argues that the only plied wood it used was plain, standard pine plywood, which is a coniferous wood, and that it reported any non-coniferous plied wood it used by name as a veneer

material. Starcorp asserts that the Finland value for 44121490 is aberrational as it is nearly seven times the value of the France-sourced coniferous plywood like that which Starcorp used. Starcorp argues that the Department should eliminate the Finland data which comprises all of the HTS item 44121490 data from the calculation of the average unit surrogate value for plywood.

Starcorp asserts that the average unit values for plywood in the calculation of its dumping margin should be limited to the France value alone or alternatively to the France and Malaysia values. Starcorp argues that this is consistent with the Department's aversion to using values that vary widely within the same HTS category, an aversion that should naturally extend to mixing HTS item categories that reflect significantly different products with significantly different values.

The Petitioners argue that the Department has not found Myanmar to be an NME country and therefore should not exclude it from any calculations. The Petitioners argue that the France data is aberrationally low and should be excluded. The Petitioners argue that the Department must correct its calculation of the weighted-average value for 441219 and assert that the appropriate method for correcting this calculation is to exclude the aberrational imports from France.

The Petitioners argue that Starcorp cites no record information supporting its claim that the only plied wood it used was plain, standard pine plywood and that the Department should reject this unfounded assertion. The Petitioners assert that the Department should continue to average the same two HTS categories which it averaged in the Preliminary Determination.

Department's Position: The Department has determined not to make any changes from the Preliminary Determination to the valuation of plywood for Starcorp. On May 10, 2004, the Department requested that Starcorp provide the HTS category for each of its inputs and provide a

detailed narrative response explaining why the selected HTS heading is the most appropriate for the reported factor input. Additionally, the Department asked Starcorp to provide, where more than one HTS heading is applicable, a detailed narrative response explaining why more than one HTS was appropriate. See Letter to Starcorp, Request for Further Information Regarding Surrogate Values and Factors of Production dated May 10, 2004. In its response to this letter, Starcorp provided the Department with two HTS categories for plywood. In addition, Starcorp did not provide any narrative explanation as to which category was the most appropriate or why the Department should include two categories. See Starcorp's August 17, 2004, submission. Therefore, the Department had no additional information to determine which category to use to value Starcorp's plywood usage.

Further, Starcorp did not provide any record evidence stating the type of plywood it used during the POI other than the thickness used. Starcorp asserted for the first time in its case brief that it uses standard pine plywood and that this is a coniferous wood. Furthermore, Starcorp has provided no record evidence to support its claim that it only used coniferous plywood during the POI. Additionally, as discussed in Comment 18: Exclusion of Aberrational Data, the Department is not considering whether certain data in the import statistics are aberrational. The Department selected the two categories it thought most appropriate to value this input in the Preliminary Determination and has not made a change for the final determination as there is no record evidence that another HTS category would be more appropriate.

IV. Section A Issues

Comment 71: Section A Rate-Weighting

FBI and Importers' Coalition argue that the Department used an improper method to calculate the weighted-average dumping margin for the Section A rate. FBI states that the Department used the number of reported pieces as the basis for the weighted-average rate but that, because Lacquer Craft and Markor reported some of their quantities in completed items rather than pieces, weight-averaging based on pieces causes distortion of the weighted-average dumping margin by lowering the quantities reported by Lacquer Craft and Markor relative to those companies that reported in pieces. Furthermore, they assert that the Department has recognized this distortion in its Respondent Selection Memorandum where Department stated that "basing volume on the number of pieces shipped {} would not be adequate indication of total volume" for purposes of identifying the largest Chinese producers.

Importers' Coalition adds that the Department is required to calculate a respondent's antidumping duty margin as accurately as possible. Citing Rubberflex DSN. BHD v. United States, 59 F. Supp2d 1338 (CIT 1999), and Ipsco v. United States, 14 CIT 265, Slip Op. 90-37 (April 16, 1990), the Coalition maintains that the courts have consistently maintained that it is axiomatic that a fair and accurate determination is fundamental to the proper administration of the dumping laws. In addition, the Coalition asserts that the Department's decision to limit the number of respondents does not diminish the Department's requirement to calculate an accurate dumping margin for the separate-rate respondents. Citing sections735(c)(1)(B)(i)((II) and 735(c)(5)(A) of the Act, the Coalition emphasizes that the Department must "determine, in accordance with paragraph (5), the estimated all-others rate for all exporters and producers not individually investigated...." and that "the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average

dumping margins established for exporter and producers individually investigated, excluding any zero and de minimis margins, and any margins determined . . . on the basis of facts available."

Importers' Coalition argues that, in Yantai 2003, the court concluded that the Department's method of calculating the subject companies' rate was not internally consistent, that the Department must adequately explain its decision to use its chosen method of calculation, and such calculation must be reasonable and consistent with law. Importers' Coalition contends that by relying on pieces as the basis for a comparative analysis across companies the Department used a methodology it has already determined to be unreasonable and one that is unsupported by the law.

Importers' Coalition and FBI argue that the Department should use kilograms or value, rather that pieces, as weighting factor. They assert that weight in kilograms is an objective, non-distortive measure and that it is reported consistently by all mandatory respondents. Alternatively, they argue, the Department should base the weighting on value. Importers' Coalition contends that value is objective, easily identifiable, and consistently reported, and the Department has already used value as the means to measure the relative size of the companies for the purposes of this investigation.

The Petitioners contend that the Department calculated the Section A rate in the Preliminary Determination by weight-averaging the dumping margins of the mandatory respondents properly on the basis of reported pieces. The Petitioners contend that, because the Department used pieces to evaluate and calculate each mandatory respondent's U.S. price, constructed value, and dumping margin, the Department must also use pieces as the basis for the calculation of the Section A rate. The Petitioners argue that it is the Department's practice to use the same factor to calculate company-specific margins and the Section A rate, citing Color TV Receivers from the PRC. The Petitioners argue that it would

be distortive not to use the same factor to weight the Section A rate the Department used to calculate the underlying dumping margins.

The Petitioners point out that generally the furniture industry sells furniture by pieces and invoices sales by pieces. The Petitioners contend that, as a result, the Department used pieces in the dumping margin calculations and therefore the Department should use pieces in calculating the Section A rate. The Petitioners contend that the Importers' Coalition acknowledges that the Department required the respondents to report quantities on the basis of pieces properly. The Petitioners argue that any distortions that may be caused by certain respondents reporting sets rather than pieces should be addressed by the Department in the final determination and that, as a matter of policy, the Department should not let uncooperative respondents or inconsistent accounting dictate the methodology it uses in calculating dumping margins and implementing the Act, citing Antidumping Duties; Countervailing Duties; Final Rule at 27348.

The Petitioners next contend that the mandatory respondents' quantity and value reconciliations were verified on a piece basis, not a weight basis, and therefore pieces are more reliable on case-specific bases. The Petitioners argue further that weighting by kilograms would distort the actual market disruption caused by dumped wooden bedroom furniture in the U.S. market because furniture competes on a piece-basis at retail. The Petitioners argue that, as a result, using weight to calculate the Section A rate would undermine the statutory intent of offsetting the actual impact of dumping and would not address the actual market impact of respondents' dumping practices.

Finally, the Petitioners argue that using a value-based weighting methodology is inherently unreliable because the purpose of the antidumping investigation is to determine the under-valuation of

subject merchandise being sold in the United States. The Petitioners contend that, because it found in the Preliminary Determination that all of the mandatory respondents were dumping subject merchandise, it is nonsensical to use the same figures that are known to be undervalued by the mandatory respondents for purposes of establishing the Section A rate.

Department's Position: Due to the range of products and varying weights of products subject to this investigation, there is no single most-accurate basis upon which to weight-average the mandatory respondents' margins for the purpose of calculating the Section A rate. We have used pieces to evaluate and calculate each mandatory respondent's U.S. price, normal value, and dumping margin, and we examined the mandatory respondents' quantity and value reconciliations on a piece basis. Therefore, the Department has determined that it is reasonable to calculate the Section A rate using the weighted-average dumping margins of the mandatory respondents based on the number of pieces they reported.

Comment 72: Adverse Facts Available for Section A Companies

Citing section 776 of the Act, the Petitioners argue that the Department should apply adverse facts available to fifteen separate-rate respondents that failed to file any response to the December 30, 2003, Quantity and Value questionnaire,[7] six companies that filed an untimely response to the Department's Quantity and Value questionnaire,[8] and untimely supplemental Section A questionnaire responses from Fujian Lianfu and Guangming Group Wumahe because these companies failed to cooperate fully with the Department's requests for information.

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[7] The Petitioners identify these companies as COE, Joyce Art, Dream Rooms, Fujian Lianfu, Yuexing, Lehouse, Kuan Lin, Dongfang, Dongxing, Starwood, Yeh Brothers, Yida, Yihua, Guohui and Golden King.

[8] The Petitioners identify these companies as Changshu, Hamilton, Nathan, Qingdao, Jiafa and Fullwin.

Citing sections 776(a)(1) and (2) and section 776(b) of the Act, certain Section A respondents argue that a dumping rate based on adverse facts available is a punitive rate for application only to respondents that did not act to the best of their ability to comply with the Department's requests for information. Daye, Huanghekou, Nanhai Baiyi, PuTian, Shanghai Ideal, and Shanghai Jian Pu argue that they cooperated to the best of their ability to comply with the Department's requests for evidence of price negotiations and their participation does not meet the conditions that the Act specifies for applying adverse facts available because they did not withhold any information, they filed all their submissions in a timely manner, they did not significantly impede the proceeding, and they provided information that can be verified.

Hong Yu argues that it has acted to the best of its ability to comply with the Department's requests for information. Hong Yu states that on May 17, 2004, it received a supplemental questionnaire from the Department which was due on May 21, 2004. Hong Yu states that it prepared the supplemental Section A questionnaire response in four days, approximately ten days fewer than most other Section A respondent companies, and contacted the Department seeking a three-day extension to ensure its response's arrival at the Department on time. Hong Yu argues that it had every reason to believe that the Department had accepted its extension.

Decca states that the Department must find that the party has failed to cooperate by not acting to the best of its ability to comply with a request for information before applying adverse facts available. Decca contends that it was never asked for the information because, although the Department indicates in its September 16, 2004, Memorandum that its February 26, 2004, rejection letter went to counsel for Decca, it actually went directly to Decca's Hong Kong address. Decca contends that, although the

Department's letter did state that "the rejection of this information does not prevent parties from filing additional information in this investigation," the letter did not specify any particular information requested and the letter did not specify any particular date by which information must be submitted. Decca states that it received the Department's letter on March 2, 2004, after the Department's extended deadline for submission of a quantity and value ("Q&V") questionnaire response. Decca argues that this letter could not have provided notice to Decca that it was permissible to submit a timely Section A questionnaire response even if the letter had mentioned this fact.

Maria Yee also argues that it did not receive any requests for information from the Department and therefore it did not fail to cooperate with any of the Department's requests.

Citing Nippon Steel, HKFDTA states that the Department may not make an adverse facts available determination unless it finds "either a willful decision not to comply or behavior below the standard for a reasonable respondent." HKFDTA argues that the Department cannot conclude that its members' lack of awareness of those requirements constitutes either a willful decision not to comply or behavior below the standard for reasonable respondents. HKFDTA asserts that, even if the Department does not accept its September 27, 2004, factual-information submission, the Department may not deny HKFDTA's members consideration for separate-rates treatment, as such a decision is equivalent to an adverse facts available determination.

Also citing Nippon Steel, Pulaski, a U.S. importer, argues that the Petitioners' request to the Department to reverse its decision of granting Fujian Lianfu a separate rate must be rejected because Fujian Lianfu acted to the best of its ability. Pulaski argues that the technical deficiencies in Fujian

Lianfu's Q&V response which the Department rejected could not be used as the reason for applying adverse facts available.

Citing section 782(d) of the Act, Daye, Huanghekou, Nanhai Baiyi, PuTian, Shanghai Ideal, and Shanghai Jian Pu argue that, even if their submissions of sales packages were found insufficient, the Department is required to give a party an opportunity to remedy or explain deficiencies in their submissions. Likewise, Pulaski argues that, even if the Department concludes that Fujian Lianfu's initial submission of information is deficient, the Department cannot resort to adverse facts available without providing the respondent with the opportunity to remedy the defect. Similarly, Fujian Lianfu, Yeh Brothers, Kuan Lin, Yida, and Yuexing argue that it is the Department's long-standing policy not only to make a first request from a respondent but to notify the respondent when it fails to meet the standard for a response and to make a second request for a response prior to using adverse facts available.

Citing section 782(c)(2) of the Act, Hong Yu argues that the Department is required to take into account any difficulties interested parties experience, particularly small and pro se companies like itself. Citing Final Determination of Sales at Less Than Fair Value: Extruded Robber Thread from Indonesia, 64 FR 14690 (March 26, 1999), Pulaski argues that the Department should take into consideration the size of the company responding to the Department's questionnaire and the Department should "attempt to provide guidance to small responding companies" like Fujian Lianfu which filed Q&V questionnaire pro se.

Department's Position: As a preliminary matter, we have determined that, because Shanghai Ideal did not ship subject merchandise to the United States during the POI, we have not granted it a Section A rate. Therefore, we address this issue and the following issues in regard to its exporter, Shanghai

Jian Pu, and not Shanghai Ideal. See the Department's position in Comment 75: Shanghai Ideal and Shanghai Jian Pu. The Department has determined to grant Daye, Huanghekou, Nanhai Baiyi, PuTian, and Shanghai Jian Pu a separate rate because these companies have submitted satisfactory evidence of independent price negotiation, therefore satisfying the Department's requirement that they demonstrated absence of de jure and de facto government control. See our response to Comment 79. Also, the Department has determined to continue to grant Fujian Lianfu a separate rate because the Department granted Fujian Lianfu an extension of the deadline for the Supplemental Section A response and therefore its Supplemental Section A response was timely. See our response to Comment 82.

Additionally, the Department has determined to reject the submissions of Hong Yu, Decca, Maria Yee, and HKFDTA because these companies did not submit responses in a timely manner. See Memorandum from Jeffrey May to James J. Jochum: Wooden Bedroom Furniture from the People's Republic of China ("PRC"): Untimely Request for Separate-Rate Status of Certain PRC Exporters, dated September 16, 2004 ("Sept. 16, 2004 Memorandum"), and our response to Comment 82. Because Decca and HKFDTA did not submit Section A questionnaire responses, the Department has not considered whether Decca and HKFDTA's members are eligible for a separate rate. See our response to Comment 77. Therefore, Hong Yu, Decca, Maria Yee, and HKFDTA have not been granted separate rates. The Department has determined to accept timely Section A responses even if companies did not submit timely Q&V questionnaire responses. Despite not receiving a Q&V questionnaire response or receiving it in a untimely manner, we have not disqualified COE, Joyce Art, Dream Rooms, Fujian Lianfu, Yuexing, Lehouse, Kuan Lin, Dongfang, Dongxing, Starwood, Yeh Brothers, Yida, Yihua, Guohui, Golden King, Changshu, Hamilton, Nathan, Qingdao, Jiafa, and Fullwin

from separate-rate consideration. Moreover, we have determined that these respondents should maintain their separate-rate status due to the fact that each of them previously provided sufficient evidence in timely filed Section A and supplemental Section A questionnaire responses to qualify for separate rates. See our response to Comment 82.

Comment 73: Locke Furniture

The Petitioners argue that the Department should determine that Locke failed verification and assign Locke the PRC-wide rate. The Petitioners assert that the purported minor corrections Locke submitted at verification were, in fact, substantial new factual information which the Department should reject as untimely pursuant to 19 CFR 351.301(b). The Petitioners contend, furthermore, that this information was not verifiable because it was so substantially different from that presented in Locke's questionnaire responses.

The Petitioners assert that the information Locke submitted was critical to the Department's separate-rate analysis because it dealt with ownership and its quantity and value. The Petitioners refer to the Department's Sept. 16, 2004 Memorandum for this investigation in which the Department stated specifically that even for market-economy companies it examines ownership of and the volume and value of sales by the respondent.

The Petitioners assert that the Department told Locke that it required this information and that the Department informed Locke that verification is not an opportunity to submit new factual information. The Petitioners argue that it is the Department's practice to reject so-called minor corrections that contain significant new information or represent major changes, citing Final Results of Antidumping Duty

Administrative Review, Titanium Sponge From the Russian Federation, 61 FR 58525, 58531 (November 15, 1996) and accompanying Issues and Decision Memorandum.

First, the Petitioners argue that Locke misrepresented the identities of its owners in pre-verification questionnaire responses and only corrected this misrepresentation because it underwent verification. Second, the Petitioners argue that Locke reported Q&V data at verification that differs so significantly from that it reported in its submissions as to make it a major and untimely revision rather than a minor correction. The Petitioners contend that for these reasons Locke's questionnaire responses and data were unverifiable. The Petitioners argue further that the Department should deny a separate rate to Locke to demonstrate that Section A respondents must provide accurate and verifiable information in order to qualify for a separate rate.

The respondents did not respond to this issue.

Department's Position: After reviewing the information on the record, we have determined to grant Locke a separate rate. While all companies seeking a separate rate must submit accurate and timely Section A responses, we have determined that the discrepancies between Locke's submitted responses and the information it provided at verification regarding its ownership and its Q&V of sales do not justify the denial of a separate rate for this company.

At verification we examined the certificate of association of Locke's parent company, Kai Chan (Hong Kong) Enterprise Limited, and found it to be a registered Hong Kong entity. Additionally, we examined numerous documents that showed that Locke operates absent any *de jure* or *de facto* government control. See Memorandum to the File From Will Dickerson: Antidumping Duty

Investigation of Wooden Bedroom Furniture from the People's Republic of China ("PRC") Verification for Locke Furniture Factory, dated September 14, 2004 ("Locke Verification Report").

Furthermore, while Locke's minor correction regarding its quantity of sales resulted in a significant change in the number of pieces it reported as having sold, we found at verification that this was due to Locke reporting "sets" as "pieces" incorrectly. Significantly, we found that the reported value of Locke's sales did not increase. See Locke Verification Report, at 2. Accordingly, we find Locke's corrections to be minor in nature. Therefore, for the final determination, we have determined that Locke is entitled to the Section A separate rate.

Comment 74: Techniwood's Affiliates

Techniwood states that although the Department granted Techniwood a separate rate, the Department did not include the names of Techniwood's affiliates in the Federal Register and CBP instructions. Techniwood argues that in its submission, Techniwood stated that Ningbo Furniture Industries Limited, a.k.a. Ningbo Hengrun Furniture Co., Ltd., is also an exporter of the subject merchandise. Techniwood argues that pursuant to section 777A of the Act, the rate applicable to Techniwood should apply to all affiliated entities that export subject merchandise to the United States. Techniwood contends that the Department's oversight has made it very difficult for Techniwood's affiliates to ship products to the United States under the separate rate. Techniwood requests that the Department modify the Federal Register notice to add "Ningbo Furniture Industries Limited and Ningbo Hengrun Furniture Co., Ltd." along with Techniwood's names as currently listed. Techniwood requests further that the Department modify the corresponding CBP module adding the names "Ningbo Furniture Industries Limited and Ningbo Hengrun Furniture Co., Ltd." after "Techniwood Industries

Ltd." under the companies' nine digit code A-570-890-067, rather than on a "supplemental lookup page" where they are currently listed.

Department's Position: The Department has determined to include in the Federal Register the names "Ningbo Furniture Industries Limited and Ningbo Hengrun Furniture Co., Ltd." with Techniwood's name. The Department is not modifying the CBP module for the final determination because the names will not fit in the appropriate space on page one of the module. We will ensure that the module will refer parties to the notice of final determination in the Federal Register for a comprehensive list of Techniwood and its affiliates' names.

Comment 75: Shanghai Ideal and Shanghai Jian Pu

Shanghai Ideal and Shanghai Jian Pu argue that they submitted ample evidence demonstrating freedom from de jure and de facto government control and should be granted a separate rate. Citing Explanation of Final Rules, 62 FR 27303 (May 19, 1997), Shanghai Ideal requests that the Department grant a separate rate to its unaffiliated exporter, Shanghai Jian Pu.

The Petitioners did not address this issue directly but argue that the Department should maintain its determination in the Preliminary Determination and not grant Shanghai Ideal a Section A rate in this investigation.

Department's Position: The Department has determined to grant only Shanghai Jian Pu a separate rate for the final determination. Shanghai Ideal and Shanghai Jian Pu submitted timely responses to the Department's Section A questionnaire and Section A supplemental questionnaires. These two unaffiliated companies submitted consolidated responses giving distinct answers to each of the Department's requests for information and submitting supporting documentation from each company.

In its original Section A submission, the companies acknowledged that Shanghai Ideal did not have an export license during the POI and Shanghai Jian Pu exported all of Shanghai Ideal's subject merchandise reported in their submissions. See Shanghai Ideal's and Shanghai Jian Pu's March 1, 2004, Section A response at 1. In determining whether companies should receive separate rates, we focus our attention on the exporter rather than the manufacturer, as our concern is the manipulation of dumping margins. See Final Determination of Sales at Less Than Fair Value, Manganese Metal from the People's Republic of China, 60 FR 56045 (November 6, 1995). Because Shanghai Jian Pu has demonstrated that it is free of de jure and de facto government control and it exported sales of subject merchandise to the United States, we have determined to grant it a separate rate for this final determination. Because Shanghai Ideal did not export subject merchandise during the POI, we have not given it a separate rate.

Comment 76: Sunrise's Request for Refund for Cash Deposit Overpayment

Sunrise requests that the Department amend its instructions to the CBP to make the cash deposit and bonding requirement for Sunrise at the rate of 12.91 percent effective retroactively from June 24, 2004, and to return all excess deposits and release all excess bonds immediately.

Sunrise states that on August 5, 2004, the Department acknowledged a ministerial error in denying Sunrise a separate rate in its Preliminary Determination. Sunrise states that on September 9, 2004, the Department again acknowledged a ministerial error by not including Sunrise's affiliated companies when it granted Sunrise a separate rate. Sunrise states that the Department's instructions to the CBP to collect a cash deposit or bond at 12.91 percent rate should have been effective on June 24,

2004. Sunrise contends that its parent company Fairmont Design incurred millions of dollars in cash deposits based on the erroneous rate of 198.08 percent.

Citing section 733(d)(1) of the Act, Sunrise contends that the Department's ministerial errors have contravened the statutory provision that requires the Department to order the suspension of liquidation on the date on which the notice is published in the Federal Register regardless of any changes in the applicable rate.

Citing 19 CFR 351.224, Sunrise states that the Department's regulations provide for the correction of significant ministerial errors. Sunrise contends that the regulation specifically states that any correction made by amending the Preliminary Determination will not alter the anniversary month of an order or suspended investigation for purposes of requesting an administrative review or a new shipper review or initiating a sunset review. Sunrise states that, by clearly and unequivocally stating the importance of the original date of the final determination, the regulation implies that the original date of the Preliminary Determination also cannot be altered. In addition, citing Enron Oil Trading & Transportation Co., v. The United States, 17 CIT 589 (June 16, 1993) ("Enron"), Sunrise argues that the CIT amended a judgment "nunc pro tunc," making the order retroactive back to the date of the original court order.

The Petitioners argue that ministerial-error corrections should not be made retroactive to the date of the Preliminary Determination. Citing sections 737 and 778 of the Act, the Petitioners argue that for any overpayment of amounts deposited, the party will receive a refund plus interest through the date that the entry is liquidated. The Petitioners argue that the Department should address any

overpayment of duties by Sunrise or its affiliates in the same way that it addresses all overpayment consistent with the statute.

Department's Position: Section 733(d)(2)(A) of the Act requires the Department to order the suspension of liquidation on or after "the date on which notice of the determination is published in the Federal Register." We published our determination to grant Sunrise a separate rate on August 5, 2004 (see Amendment 1). On September 5, 2004, we clarified that Sunrise and its affiliates had demonstrated their collective eligibility for a separate rate (see Amendment 2). Therefore, in accordance with the statutory requirements, the Department correctly ordered Sunrise's new cash deposit rate effective September 9, 2004, the date of publication of the Department's determination.

Additionally, the cited case, Enron, does not require the Department to change the effective date of Sunrise's cash deposit rate retroactively. Indeed, the Enron case cited involved the CIT's application of its own amendment to its judgement back to the date of the original judgement (i.e., "nunc pro tunc"). As a procedural matter, the Court's order in the Enron case was granted specifically upon consideration of the Defendant's Motion to Alter or Amend Judgement Pursuant to CIT Rule 59(e). Application of the "nunc pro tunc" principle highlighted in Enron is not applicable here as the Department's determination is not a judicial order and furthermore, as discussed above, the Department has acted in accordance with the statutory requirements. Additionally, Sunrise's citation to 19 CFR 351.224 for any implied principle regarding the retroactive application of amendments to the Department's determinations is misplaced.

The statute has established the basis for addressing cash deposits that interested parties believe are not an accurate estimate of the duties to be assessed. Section 751(a) allows parties to request an

administrative review and section 737 allows parties to obtain interest on overpayment of such duties based the results of review. Taken together these provisions provide the mechanism for parties to obtain accurate assessment of duties where they believe there is a difference between the deposit of estimated antidumping duties and final assessment of antidumping duties.

Comment 77: Necessity of Submissions

The Petitioners contend that the Q&V questionnaire response is necessary because the Department requires quantity and value information from all respondents in order to have accurate and complete information with which to select mandatory respondents during its investigation. Citing Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, Polyethylene Retail Carrier Bags from Thailand, 69 FR 3552 (January 26, 2004) ("Carrier Bags from Thailand"), Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, Polyethylene Retail Carrier Bags from Malaysia, 69 FR 3557, 3558 (January 26, 2004) ("Carrier Bags from Malaysia"), and Preliminary Determination of Sales at Less Than Fair Value, Certain Folding Gift Boxes From the People's Republic of China, 66 FR 40973 (August 6, 2001) ("Gift Boxes from the PRC 2001"), the Petitioners argue that it is the Department's practice to assign adverse facts available to respondents which fail to file Q&V questionnaire responses. Therefore, the Petitioners assert that the following respondents should be subject to the PRC-wide rate because they did not file Q&V questionnaire responses: COE, Joyce Art, Dream Rooms, Fujian Lianfu, Yuexing, Lehouse, Kuan Lin, Dongfang, Dongxing, Starwood, Yeh Brothers, Yida, Yihua, Guohui, and Golden King.

Maria Yee argues that a Section A response is not required for the Department to determine that a respondent is a market-economy company. Maria Yee states that neither the Department's statute, regulations, nor any published notices in this or any prior investigations establish a specific requirement or deadline for the submission of information substantiating the market-economy status of a respondent in a NME investigation. Maria Yee contends that, as a result, the Department should consider information indicating the market-economy status of a company that is submitted within the general time for the submission of information in an investigation. Maria Yee contends that its submission qualifies as such and must be accepted.

HKFDTA states that the Department does not have an established practice of requiring parties in NME proceedings to submit a complete Section A response in order to receive a separate rate in the cases where those parties are either market-economy entities or are PRC companies that are wholly owned by market-economy entities. HKFDTA argues that any Department decision to grant only separate rates status to foreign or foreign-owned companies that filed full Section A responses would be arbitrary and capricious, as such a decision would require companies to prepare wholly irrelevant information even to be considered for separate-rate eligibility. Citing Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, Fresh Garlic from the People's Republic of China, 68 FR 4758 (January 30, 2003) ("Fresh Garlic"), HKFDTA and Hong Yu argue that the Department's actions in this case reveal that it has not always required submission of a Section A response for foreign companies to be granted a separate rate. In addition, citing Point 1 in the Appendix to Separate-Rates Practice in Antidumping Proceedings involving Non-Market Economy Countries, 69 FR 56188 (September 20, 2004), HKFDTA and Hong Yu point to a Department

proposal in which PRC companies would not be required to submit a full Section A questionnaire response but rather participate in a streamlined application process that would not require them to provide much of the irrelevant information requested currently in the Department's Section A questionnaire. Therefore, HKFDTA and Hong Yu assert, a Section A response is not necessary to establish entitlement to a separate rate for a market-economy company.

Hong Yu argues that the Department has never stated a policy or practice that a market-economy company (e.g., a Hong Kong company that exports from Hong Kong but produces subject merchandise in the PRC) must demonstrate its status as a market-economy entity by submitting a Section A questionnaire response or that it must do so by the deadline set by the Department for such responses from mandatory respondents.

Maria Yee argues that it should be granted a separate rate in this investigation because it has satisfied the requirements for a separate rate. Citing Application of U.S. Antidumping and Countervailing Duty Law to Hong Kong, 62 FR 42965 (August 11, 1997), and the Preliminary Determination, Maria Yee states that the Department has treated companies located in the PRC but controlled by a Hong Kong entity as market-economy companies. Maria Yee argues that, because it and its affiliates are either Hong Kong entities or wholly owned subsidiaries of a Hong Kong entity, no separate-rate analysis is required and exports from Maria Yee should not be subject to the country-wide rate.

HKFDTA cites the Department's Memorandum to Laurie Parkhill from Will Dickerson et al. re: Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China; Analysis of Allegations of Ministerial Error from Section A Respondents, dated July 29, 2004

("Ministerial Error Memorandum") at p. 2, where it is stated that it is the Department's practice that a separate-rates analysis is not necessary for market-economy-owned companies and to treat Hong Kong companies as market-economy companies for purposes of the separate-rates analysis. HKFDTA argues that, because it has presented irrefutable evidence in its September 27, 2004, submission that its members are either Hong Kong entities or are wholly foreign-owned by a Hong Kong entity, they are entitled to a separate rate.

Hong Yu argues that the Department's assertion that it was unable to conduct a separate-rate analysis because Hong Yu did not file a timely response to the Section A supplemental questionnaire is inconsistent with the Department's practice that no separate-rate analysis is necessary for a market-economy company. Hong Yu contends that the Department asked no supplemental questions as to whether Hong Yu is wholly foreign-owned. Citing Preliminary Determination of Sales at Less Than Fair Value, Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation, 65 FR 1139, 1140 (January 7, 2000), Hong Yu argues that the only other standard requirement for a company wholly owned by a market-economy entity to qualify for a separate rate is that the company made sales or shipments during the POI. Hong Yu asserts that it provided information in its Section A response showing that it exported subject merchandise during the POI.

CF Kent argues that it is entitled to a separate rate because it has met the Department's standards for the assignment of a separate rate outlined in the Preliminary Determination. CF Kent states that the CF Kent companies are either wholly or majority-owned and controlled by an American business entity and, therefore, the Department need not even apply the separate-rates test but rather grant CF Kent a separate rate, consistent with past practice.

Nanhai Jiantai states that the Department's Antidumping Manual describes the "foreign-owned" business entity as a situation where the business may operate in the NME but its majority ownership and control is located outside the NME. Nanhai Jiantai argues that, in its Section A response, it revealed that the entire corporation is controlled by a Hong Kong company. Thus, Nanhai Jiantai argues, the entire exercise of rebutting the adverse presumption of Chinese governmental control and influence is irrelevant and unnecessary.

Decca states that, as it established in a submission of July 2, 2004, Decca is a Hong Kong company, organized under Hong Kong law, and based in Hong Kong. Therefore, Decca argues, it should get a separate rate, regardless of its late submission.

The Petitioners argue that the respondents' claims that they are not required to submit a Section A questionnaire response because they are wholly foreign-owned is incorrect. The Petitioners cite the Department's Sept. 16, 2004 Memorandum at 4:

> "The Department's consistent practice has been to require companies, regardless of whether wholly owned by a market-economy entity, to respond to the Department's Section A questionnaire...While the Department's practice has been to treat Hong Kong-based companies as market-economy companies for which, in those cases, a full-blown separate-rate analysis is not required, the Department still needs to analyze the company's Section A questionnaire response to examine information such as whether the company is registered for business in Hong Kong or the PRC, the ownership interests of each branch of the company, the type of working relationship between the exporter, producer and other affiliates, and the volume and value of sales that were made to the United States during the POI."

Additionally, the Petitioners contend that the Department should continue to deny separate-rate status to companies that did not file timely questionnaire responses regardless of whether these

companies are wholly foreign-owned. Thus, the Petitioners argue, the Department requires all companies requesting a separate rate to submit a Section A questionnaire response.

Starwood, Dongxing, COE, Joyce Art, Golden King, and Dream Rooms argue that, because their small volume of exports during the POI precluded their selection as mandatory respondents, the proceeding was not significantly impeded in any way by their failure to submit Q&V questionnaire responses. Jiafa, Nathan, Fullwin, Qingdao, and Hamilton contend that, because the Department would never have selected them as mandatory respondents based on their small-scale quantity and value figures reported in their Section A submissions, the proceeding was not significantly impeded in any way by the late submissions (February 17-23, 2004) of their Q&V questionnaire responses. Dream Rooms states that it is a wholly U.S.-owned company and did not file a Q&V questionnaire response because it never received a Q&V questionnaire.

Maria Yee argues further that the Department has not established that the Section A response is the appropriate vehicle for submitting factual information to the Department to rebut the presumption of NME government control or to demonstrate entitlement to treatment as a market-economy country. Maria Yee states that the Department granted a separate rate to Dongguan Chunsan on the basis of a July 6, 2004, submission in which Dongguan Chunsan established its status as a wholly (Hong Kong) owned exporter of subject merchandise. Maria Yee asserts that the Department's decision to grant a separate rate to Dongguan Chunsan on the basis of its July 6, 2004, submission, subsequent to its Section A and supplemental Section A responses, suggests that a Section A response is not required for the Department's evaluation of a respondent's separate-rate status.

Further, citing Fresh Garlic, Maria Yee states that the Department qualified a participant as eligible for a separate rate based on its Hong Kong address despite the fact that the company did not respond to the Department's Q&V questionnaire. Maria Yee contends that these examples negate any assertion by the Department that its practice is to require a Section A questionnaire response to determine separate-rate eligibility. Maria Yee argues that because its separate-rate submissions were filed before the general deadline of July 6, 2004, for submission of factual information and in light of the separate-rate treatment accorded to Dongguan Chunsan, the Department should assign Maria Yee a separate rate.

Citing the Preliminary Determination, Jiafa, Nathan, and Hamilton assert that their Section A questionnaire responses included evidence demonstrating that they are Hong Kong (Jiafa, Nathan) and Canadian (Hamilton) companies and are therefore entitled to a separate rate.

Department's Position: The purpose of the Department's Q&V questionnaire is to identify those companies that exported the subject merchandise during the POI and to determine the quantity and value of their sales in order to select mandatory respondents. See section 777A(c)(2) of the Act. In this proceeding, however, if a company did not respond or provide a timely response to the Q&V questionnaire, it was not automatically disqualified for consideration for a separate rate. See Letter from the Department to Decca Furniture Ltd., dated February 26, 2004. Therefore, for purposes of determining eligibility for a separate rate, we have not considered whether those respondents filed a Q&V questionnaire response or whether they did so in a timely manner. See our response to Comment 82: Timeliness.

The Department's consistent practice has been to require companies to respond to the Department's Section A questionnaire regardless of whether wholly owned by a market-economy entity. Information we request in the Section A questionnaire is necessary to conduct the *de jure* and *de facto* analysis and assess whether a particular respondent is entitled to a separate rate. While the Department's practice has not been to conduct a full-blown separate-rate analysis for market-economy companies, the Department still needs to analyze the company's Section A questionnaire response to examine information such as where the company is registered for business, the ownership interests of each branch of the company, the type of working relationship between the exporter, producer and other affiliates, and the volume and value of sales that were made to the United States during the POI. See, e.g., Memorandum to the File: Antidumping Duty Investigation on Polyethylene Retail Carrier Bags from the People's Republic of China, Untimely Section A Questionnaire Submission (December 18, 2003), Bicycles, and Gift Boxes from the PRC 2001.

In its Sept. 16, 2004 Memorandum, the Department stated that its practice is to require a Section A response as a prerequisite for a separate rate. See also Bicycles and Gift Boxes from the PRC 2001. Therefore, because Decca and HKFDTA did not submit Section A questionnaire responses, the Department is unable to carry out its separate-rates analysis and has not considered whether Decca and HKFDTA's members are eligible for a separate rate. In addition, the Department has not considered the untimely responses submitted by Maria Yee and CF Kent in this final determination. See our response to Comment 82.

Hong Yu's Section A questionnaire response did not provide sufficient evidence to qualify it for a separate rate. Thus, the Department sent Hong Yu a supplemental Section A questionnaire,

requesting further information in order to conduct a complete separate-rates analysis. Hong Yu did not submit its supplemental Section A questionnaire response in a timely manner. See our response to Comment 82. Having rejected Hong Yu's supplemental Section A questionnaire response as untimely, the Department does not have sufficient information to conduct a complete separate-rates analysis. Therefore, Hong Yu does not qualify for a separate rate.

While we disagree with the arguments by Nanhai Jiantai, Jiafa, Nathan, and Hamilton, we have determined that these respondents will maintain their separate-rate status due to the fact that each of them provided sufficient evidence in timely filed Section A and supplemental Section A questionnaire responses to qualify for separate rates. See our response to Comment 82.

Comment 78: Notification

The Petitioners state that the Department served its Q&V questionnaire on December 30, 2003, on representatives of the PRC government with instructions that it be forwarded to all producers and/or exporters of bedroom furniture. The Petitioners cite Gift Boxes from the PRC 2001 as support that, until a PRC entity demonstrates its entitlement to a separate rate, the Department presumes such entities constitute a single enterprise under common control by the Chinese government. The Petitioners argue that notice to an NME country constitutes notice to all producers and exporters. The Petitioners contend that the Department requires quantity and value information of all respondents seeking a dumping rate other than the PRC-wide rate because the Department must have accurate and complete information from which to select mandatory respondents for investigation. The Petitioners argue that lack of notice of the Q&V questionnaire is not a valid excuse for not filing a response with the Department in a timely fashion.

Best King and HKFDTA state that, pursuant to Article 6, paragraph 1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Antidumping Agreement"), the Department is required to give notice to "all interested parties" of the information which it requires. Best King and HKFDTA contend that the Department's February 2, 2004, issuance of the Section A questionnaire to the Chinese Ministry of Commerce does not fulfill the Department's WTO obligations to serve notice of its informational requirements to all exporters and producers in addition to the foreign government. Best King states that the Department must be aware of its existence because the Department received its Q&V questionnaire response on January 8, 2004. HKFDTA argues that the official record reveals that the Department did not inform HKFDTA or its respective associations of its requirements for qualifying for a separate rate.

Maria Yee argues that because the Department's Sept. 16, 2004 Memorandum, stating that its practice is to require a Section A response as a prerequisite for a separate rate, including in the case of an NME respondent, was issued during the course of the investigation and it does not constitute adequate notice of such a requirement and deadline for purposes of the investigation. Maria Yee states that, consistent with the provisions of the U.S. antidumping statue in the implementation of the Antidumping Agreement, the Department is required to provide adequate public notice of any policy or practice imposing procedures or deadlines that affect the determination of deposit or duty rates for any group of potential respondents.

Maria Yee, Best King, HKFDTA, and Decca argue that the Department's notification to the Chinese Ministry of Commerce ("MOFCOM") is not the same as having informed the respondents themselves and it is unreasonable to presume that the PRC Government would forward the

questionnaire to all potential respondents qualifying for a separate rate. Decca argues further that notice of the initiation of the investigation does not constitute notice of the Department's Section A questionnaire response.

Maria Yee and HKFDTA state that they did not receive a Section A questionnaire from MOFCOM. Best King, HKFDTA, and Decca assert that the Department did not notify them properly of its informational requirements to qualify for a separate rate until it was too late to file a Section A response by the Department's deadline of February 23, 2004. Decca argues that MOFCOM did not distribute the Section A questionnaire to it prior to the February 23, 2004, deadline. Decca contends that it was not provided notice, either as a statutory or a constitutional matter, that the Department would enforce a special deadline for respondents to demonstrate their market-economy status, in order to qualify for a separate rate.

Maria Yee states that, in its Sept. 16, 2004 Memorandum, the Department implies that it had provided notice to all eligible producers and exporters in the PRC that they must file a Section A response by the deadline it established for mandatory respondents to be eligible for a separate rate. Maria Yee argues that the Department's implication is unfounded because there is nothing in the record indicating that the PRC Government or any other party was notified specifically of this requirement.

Best King and HKFDTA interpret the mailing of these questionnaires to the mandatory respondents as reflecting the Department's belief that it was obligated to inform these exporters/producers of their requirements in submitting information in accordance with the WTO. Best King and HKFDTA state that there is no provision within the WTO allowing for disparate identification

of companies as interested parties depending on whether they have been selected as mandatory respondents.

Citing section 776(b) of the Act, Decca argues that, in order to make an adverse inference against a party, the Department must find that the party "has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority." Maria Yee and Decca assert that, as a result of having received no notice from either the Department or MOFCOM of a requirement to respond to a Section A questionnaire to qualify for a separate rate and having received no specific request for information from the Department in this investigation, they cannot be determined to have been uncooperative with the investigation. Best King argues that, similar to Fresh Garlic, it would be unreasonable for the Department to reject its factual information submission given that Best King also did not receive formal notification.

Citing the Sept. 16, 2004 Memorandum, Decca argues that the Department's assertion that Decca had actual notice of the investigation is irrelevant. Decca argues that although it was aware that there was a U.S. antidumping investigation of Chinese wooden bedroom furniture, the Department did not notify Decca directly of the Section A questionnaire and the deadline for responding to it and, therefore, the Department has no basis to apply adverse facts available to Decca in the final determination. Additionally, Decca argues, if there is a PRC government-controlled entity that produces and exports subject merchandise, as the Department presumes, providing notice of a special deadline for a separate-rate request to that entity cannot serve as notice to market-economy companies like Decca which are necessarily separate from that entity.

The Petitioners point out that the Department's policy that notice to the PRC government constitutes notice to all producers and exporters is based on the Department's presumption that all companies within a NME country are subject to government control. Citing the Sept. 16, 2004 Memorandum, the Petitioners state that the Department provided adequate notice of the ensuing investigation by publishing a Notice of Initiation in the Federal Register. In addition, the Petitioners state that over 120 foreign-owned and Chinese companies were able to comply with the Department's request for information in a timely manner. The Petitioners argue that lack of notice is therefore no excuse for not filing a timely Section A questionnaire response and the Department should continue to deny these companies a separate rate in the final determination.

Citing Certain Hot-Rolled Flat Rolled Carbon Quality Steel Products from Brazil, Preliminary Results of Antidumping Duty Order, Review of Suspension Agreement, 66 FR 41500, 41502-03 (August 8, 2001), Yeh Brothers, Kuan Lin, Yida, and Yuexing argue that it is the longstanding policy of the Department to not only first request information from a respondent but to notify that respondent when it does not meet the standard for a response and to make a second request for a response prior to using adverse facts available. Yeh Brothers, Kuan Lin, Yida, and Yuexing argue that, by not issuing a first request directly to these companies, the Department did not meet this burden. Yeh Brothers argue that it did not receive a Q&V questionnaire either directly or indirectly from the Department.

Hamilton states that it never received a Q&V questionnaire from the Department nor did it receive notice that it was required to provide such a response. Citing the Department's December 30, 2003, Letter to Mr. Liu Danyang of the Ministry of Commerce, Hamilton argues that the Department's notification to the Chinese Government of its responsibility to provide the Q&V questionnaire was

limited to Chinese producers/exporters of the merchandise under investigation. Because Hamilton is a Canadian exporter of the subject merchandise, it argues that the Department could not hold Hamilton "guilty" of not providing a quick response to a questionnaire which it never received.

Starwood, Dongxing, COE, Joyce Art, and Golden King argue that they were unaware of the existence of the Q&V questionnaire by the January 9, 2004, deadline to file a response. Citing Carrier Bags from Malaysia, Starwood, Dongxing, COE, Joyce Art, and Golden King argue that the situation of this investigation is very different from each of the cases cited by the Petitioners in support of their request for adverse facts available because in those cases the respondents were provided the questionnaire directly by the Department. Starwood, Dongxing, COE, Joyce Art, and Golden King argue that, in the cases cited by the Petitioners, the respondents also received letters directly from the Department, reminding them specifically of their obligations to reply to the Q&V questionnaire before the Department applied adverse facts available.

Starwood, Dongxing, COE, Joyce Art, and Golden King rebut the Petitioners' argument that they should be subject to the adverse facts available rate because they did not file a Q&V questionnaire response. They argue that they cooperated with the Department fully by providing timely and complete responses to the Section A questionnaire. Starwood, Dongxing, COE, Joyce Art, and Golden King argue that most of the cases cited by the Petitioners involved situations in which the respondents' submissions to the Department were insufficient. For example, they assert, the Petitioners' reference to Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from India, 58 FR 41729 (August 5, 1993) ("SSWR from India 1993") does not apply to them. They state that, in SSWR from India 1993, the Department applied adverse facts available to a respondent because the

information filed with the Department was not in "proper number and form," not because it missed the deadline for submitting a Q&V questionnaire response. Therefore, these respondents contend, the Department should maintain their separate-rate status.

Department's Position: We have determined that our actions with regard to notification of potential respondents was timely and conformed with our standard practice. On December 17, 2003, the Department published its Notice of Initiation of this investigation in the Federal Register, thereby affording parties adequate notice of the ensuing investigation. See Initiation of Antidumping Duty Investigation: Wooden Bedroom Furniture from the People's Republic of China, 68 FR 70228 (December 17, 2003). On December 30, 2003, the Department issued a letter to MOFCOM requesting information with respect to the quantity and value of exports to the United States of wooden bedroom furniture. In its letter, the Department included the names of known producers and/or exporters of subject merchandise, explained that it had issued Q&V questionnaires to the exporters and/or producers named in the letter, and requested MOFCOM's support in identifying and transmitting this request for information to any Chinese producer and/or exporter of subject merchandise during the POI. See December 30, 2003, letter to MOFCOM: Quantity and Value Questionnaire ("December 30 Letter").

On February 2, 2004, the Department issued a Section A questionnaire to the mandatory respondents, as well as MOFCOM, stating that "all parties are requested to respond to Section A" of the questionnaire. See February 2, 2004, letter to MOFCOM: Section A Questionnaire ("February 2 Letter").

The Department's consistent practice has been to provide its Section A questionnaire to MOFCOM, in this manner, for distribution to the domestic companies in order to give the relevant industry members sufficient notice and opportunity to respond to the Department's Section A questionnaire (if such companies wish to request a separate rate by demonstrating the absence of *de jure* and *de facto* government control over their operations). Subsequently, the Department received 126 Section A responses submitted by various Chinese and foreign-owned producers and/or exporters of subject merchandise who were able to comply with the Department's information request and filing requirements in a timely manner. See Sept. 16, 2004 Memorandum.

It is the Department's practice to send questionnaires to mandatory respondents. See Gift Boxes. As discussed above, the Department relied on MOFCOM to forward its Q&V questionnaire and Section A questionnaire to all eligible producers or exporters. See December 30 Letter and February 2 Letter. Additionally, we note that the Department's Section A questionnaire is publicly available on the Department of Commerce's web-site. See http://ia.ita.doc.gov/questionnaires/questionnaires-ad.html. The Department's long-standing practice is consistent with United States law and United States law is consistent the WTO obligations of the United States.

Best King, Maria Yee, HKFDTA, and Decca had sufficient notice of the investigation by virtue of the Department's Notice of Initiation. Furthermore, Best King and Decca submitted Q&V questionnaire responses on January 8, 2004, further demonstrating that they were aware of the investigation. The February 2 Letter provided sufficient notice of the requirement to respond to the Department's Section A questionnaire. Therefore, we have determined to reject Decca's and

HKFTDTA's untimely submissions. We have also determined to reject Best King's and Maria Yee's Section A questionnaire responses as untimely. See our response to Comment 82 and Memorandum from Jeffrey May to James J. Jochum: Wooden Bedroom Furniture from the People's Republic of China ("PRC"): Untimely Section A Questionnaire Submission of Decca Furniture Ltd., dated September 16, 2004 ("Decca Rejection Memorandum"). Therefore, we continue to deny a separate rate to Best King, Decca, Maria Yee, and HKFDTA.

Additionally, we have determined that Hamilton was responsible for finding out the Department's requirements for the submission of Q&V questionnaires. Although it is a Canadian exporter of the subject merchandise, Hamilton relied on a Chinese producer for its wooden bedroom furniture and the Chinese producer should have been aware of the Department's requirement's for filing a Q&V questionnaire response. Not submitting a Q&V questionnaire response does not disqualify Hamilton from consideration for a separate rate. See our response to Comment 77. Despite the untimely submission of its Q&V questionnaire response, we determine that Hamilton will maintain its separate-rate status due to the fact that it provided sufficient evidence previously in timely filed Section A and supplemental Section A questionnaire responses to qualify for a separate rate. See our response to Comment 82. In addition, we determine that all respondents to which we granted a separate rate will maintain their separate-rate status, despite not submitting a Q&V questionnaire response or not filing it in a timely manner. See our response to Comment 77.

Comment 79: Independence in Price Negotiation, Valid Business License, and Autonomy in Management Selection

Daye, Dongying, Nanhai Baiyi, PuTia, Shanghai Ideal, and Shanghai Jian Pu argue that they have provided sufficient evidence of independent price negotiations.

Citing the Department's Ministerial Error Memorandum at 4, Daye, Dongying, Nanhai Baiyi, PuTian, Shanghai Ideal, and Shanghai Jian Pu state that the Department has determined that the submission of a purchase order and invoice is sufficient evidence of independent price negotiations. They argue that, in their respective Section A responses, they provided purchase orders and commercial invoices. The respondents state that, upon receiving the Department's Supplemental Section A questionnaire requesting evidence of price negotiation, they reiterated their responses to the original Section A questionnaire that they negotiated prices over the telephone or through face-to-face contact and they could not provide additional evidence of price negotiation. Citing the Preliminary Determination, Daye, Dongying, Nanhai Baiyi, PuTian, Shanghai Ideal, and Shanghai Jian Pu point out that the Department had determined to deny a separate rate to companies that stated "the data requested was not available" in their supplemental response. These companies argue that the Department cannot penalize them for failure to submit documents that do not exist.

Daye, Dongying, PuTian, Shanghai Ideal, and Shanghai Jian Pu state that on July 6, 2004, they submitted sworn affidavits signed by unaffiliated U.S. customers, confirming that price negotiations in connection with the sales discussed in their Section A responses occurred by telephone or in face-to-face meetings. Nanhai Baiyi states that it submitted another purchase order and two more invoices in its July 6, 2004, submission.

Citing Fuyao Glass at 4, Daye, Dongying, Nanhai Baiyi, PuTian, Shanghai Ideal, and Shanghai Jian Pu argue that the Department is required to apply the dumping laws in a fair, impartial and uniform

matter. Citing submissions filed by other Section A respondents on March 1, 2004, these companies argue that the Department denied them a separate rate while at the same time granting separate rates to some companies that submitted sales packages identical or substantially similar to the ones they had submitted. These companies contend that the Department's denial of a separate rate to them has resulted in an unfair and internally inconsistent application of antidumping law.

Daye, Dongying, Nanhai Baiyi, PuTian, Shanghai Ideal, and Shanghai Jian Pu argue that the sales packages they submitted in their Section A responses painted a complete picture of a sales transaction from the beginning to the end and thus their submissions constitute sufficient evidence that the sales transactions were conducted free from any government control. These respondents contend that the Department's decision not to grant separate rates to them runs contrary to the Department's long-standing precedent of accepting the sales documents as evidence of independent price negotiations.

Citing Memorandum to James C. Doyle from Hallie Noel Zink Concerning Separate Rates in Certain Tissue Paper Products and Certain Crepe Paper Products From the People's Republic of China (September 14, 2004), OIH states that the Department granted separate rates to several Section A questionnaire respondents finding that purchase orders alone were sufficient to demonstrate independent price negotiation. OIH argues that, in its Section A response, it provided a sales contract, purchase orders, and other related sales documents. OIH states that on July 6, 2004, it submitted all the documents related to a purchase from a European seller, including the documents showing price negotiation and payments in Euros. OIH argues that, consequently, it has demonstrated independent price negotiation both as a seller and as a buyer from market-economy suppliers.

JKI argues that the documents it placed on the record at the time of the Preliminary Determination provided ample evidence for the Department to conclude that there is an absence of government control with respect to JKI's sales of subject merchandise to the United States. JKI states that, in its July 6, 2004 submission, it provided a clear and complete sales trace between JKI and a major U.S. purchaser of subject merchandise, multiple examples of negotiation and sales documentation with at least three other large U.S. purchasers of subject merchandise, and correspondence from JKI's unaffiliated sales agents outlining the steps they have taken in negotiating with U.S. customers. JKI states that the extensive sales information on the record demonstrates its unfettered ability to negotiate all of the terms of sale with its U.S. customers.

Daye and Nanhai Baiyi argue further that the Department's denial of a separate rate because their business licenses lack an expiration date was incorrect. Specifically, Daye and Nanhai Baiyi argue that the Department misread the "operation term" on the business licenses as the validity term of those business licenses. Daye and Nanhai Baiyi assert that the "operation term" applies only to the operation of Daye and Nanhai Baiyi from their founding dates. The two companies contend that they stated in their Section A responses that they must renew their business license annually.

OIH states that it provided an acknowledgment in its submission that certain board members could be nominated by the local government but emphasized that none of OIH's own board members were nominated by the local government. OIH argues further that none of the board members were involved in the day-to-day management of the company. OIH reiterates its explanation from its Section A response that the selection of its president is subject to the approval by the Employee Representative

Committee ("ERC") and the president has the authority to appoint vice presidents and managers, subject to approval by the ERC. OIH argues that, although it is a state-owned company, the company is held in trust for the Chinese people by managers that operate the company independently of the government under a profit-motivated system. OIH explains that day-to-day managerial decisions are made by the management of the company with limited oversight from the board of directors and that none of the individual managers has any relationship with any national, provincial, or local governments.

OIH states that it submitted additional information on July 6, 2004, showing the manner and process by which the current management was selected originally in 1997 and the manner and process by which the current management was re-confirmed most recently in November 2003. OIH states that its management-selection process began with the evaluation of several candidates drawn from within OIH and several outside candidates introduced by a management-search firm. OIH argues that, by revealing the manner in which its management was selected, it provided strong evidence to prove that the selection process is free of government interference.

The Petitioners state that the Department should stand by its preliminary decision and continue to deny separate rates to Daye, Dongying, Nanhai Baiyi, PuTian, Shanghai Ideal, OIH, and JKI. The Petitioners contend that the Department should not consider any untimely factual information that purports to cure the deficiencies which was submitted after the deadlines for the filing of Section A and Supplemental Section A questionnaire responses.

Department's Position: The Department has determined that Daye, Dongying, PuTian, Shanghai Ideal, and Shanghai Jian Pu have demonstrated their independence in price negotiation by submitting

affidavits signed by their respective customers. JKI also demonstrated its price negotiation by explaining that its pro forma invoice serves as a purchase order and by submitting e-mail messages showing negotiation with customers. Upon further examination of submissions from Nanhai Baiyi, the Department has determined that it provided sufficient evidence of price negotiation in the form of price quotations to customers. Additionally, we have determined that our analysis for the Preliminary Determination overlooked evidence that Daye and Nanhai Baiyi must renew their business licenses annually. Because Daye and Nanhai Baiyi have provided evidence that their business licenses must be renewed periodically in accordance with Chinese laws, we have determined that their business licenses are valid. See Amendment 1. Further, the Department has determined that OIH has demonstrated autonomy in making decisions regarding the selection of management by providing extensive documentation concerning the selection of management, including advertisements, lists of candidates, and notes from interviews. Therefore, we have determined that Daye, Dongying, PuTian, Shanghai Jian Pu, Nanhai Baiyi, OIH, and JKI have demonstrated an absence of de jure and de facto government control and qualify for separate rates. As we explained in our response to Comment 75, we have not granted Shanghai Ideal a separate rate because it did not have shipments during the POI.

Comment 80: Corporate Structure and Affiliations

Kunshan Lee, Shanghai SMEC, and Superwood state that they submitted additional information on the record addressing the issues concerning their ownership, corporate structure and affiliations.

Nanhai Jiantai argues that a slight misspelling in its translation of a Chinese document was not a fundamental mistake and that it has remedied the inconsequential translation error.

The Petitioners state that the Department should stand by its Preliminary Determination and continue to deny Superwood and Nanhai Jiantai separate rates. The Petitioners contend that the Department should not consider any untimely factual information that purports to cure the deficiencies which was submitted after the deadlines for the filing of Section A and Supplemental Section A questionnaire responses.

Department's Position: The Department questioned Kunshan Lee's corporate structure based on seemingly contradictory information on the record. The Department now has sufficient evidence to determine the reliability of the information which Kunshan Lee submitted with regard to its corporate structure. Additionally, the Department has determined that, based on the record evidence, Superwood is a foreign-owned company. Also, the Department has found that Nanhai Jiantai's corrected English version of the Certificate of Approval for Establishment of Enterprises with Investment of Taiwan, Hong Kong, Macao and Overseas Chinese in the People's Republic of China submitted on July 1, 2004, has named the same entity as in the Chinese document. Thus, Nanhai Jiantai has provided sufficient evidence of its corporate structure. Therefore, we have determined Kunshan Lee, Superwood, and Nanhai Jiantai have demonstrated an absence of government control and qualify for separate rates.

Additionally, the Department has not considered Shanghai SMEC's supplemental information submitted on June 30, 2004, because it is significantly different from its original Section A submission

and is essentially an entirely new response. The Department considers only unsolicited new information that clarifies information which was filed previously with the Department in a timely manner. Therefore, we have not granted Shanghai SMEC a separate rate.

Comment 81: Independence of Retaining Sales Proceeds

JFK argues that it has submitted all documentation the Department requires to determine that JFK retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses. JFK also states that it included in its July 6, 2004, submission an English translation of its 2003 income statement.

Department's Position: The Department has accepted JFK's English translation of its 2003 income statement and, therefore, it has determined that JFK has demonstrated an absence of de jure and de facto government control and qualifies for a separate rate.

Comment 82: Timeliness

The Petitioners argue that the separate-rates respondents which filed untimely responses to the Department's request for information should receive the PRC-wide rate. The Petitioners argue that the applicable deadlines for submission of responses are January 9, 2004, for Q&V questionnaire responses, February 23, 2004, for Section A responses unless granted an extension with a new deadline of March 1, 2004, and May 24 to May 28, 2004, for supplemental Section A responses if the Department granted an extension. The Petitioners argue that sections 776(a)(2)(A) and (B) of the Act require that the Department use facts otherwise available when an interested party "withholds information that has been requested" or "fails to provide such information by the deadlines for

submission of the information or in the form and manner requested." Furthermore, the Petitioners cite Carrier Bags from Thailand, Carrier Bags from Malaysia, and Gift Boxes from the PRC 2001 as precedent in which the Department applied adverse facts available to respondents which did not submit Q&V questionnaire responses.

The Petitioners contend that the Department should act consistent with its policy to reject all untimely submissions. The Petitioners point out that the Department has rejected the Q&V questionnaire responses by Nathan International Ltd./Nathan Rattan Factory, Shenzhen Jiafa High Grade Furniture Co., Ltd., and Zhong Shan Fullwin Furniture Co., Ltd., as having been made in an untimely manner.

Maria Yee and Best King argue that the Department never established, through adequate notice, specific requirements or a deadline for companies to submit factual information to rebut the presumption of NME-government control or to demonstrate entitlement to treatment as a market-economy country.

Maria Yee, Best King, CF Kent, and Decca argue that, in the absence of such requirements or deadline, the Department must consider as timely those submissions made before the general deadline for submission of information made in investigations. Citing 19 CFR 351.301(b)(1), they contend that the general deadline for submitting information is seven days prior to the commencement of the first verification and that, in this investigation, that date was July 6, 2004.

Therefore, Maria Yee asserts, the Department has no lawful basis for rejecting and returning its July 2, 2004, separate-rate submissions and must accept them as timely filed. Best King argues that the

Department should not have rejected its July 6 submission of its Section A questionnaire response. CF Kent contends that the Department's internal Section A deadline cannot override a party's right to submit factual information, and it maintains that the Department's decision to reject CF Kent's Section A response was arbitrary and does not justify the denial of a separate rate for CF Kent. Decca argues that, because the Department never provided it with a written request to provide a questionnaire response and never communicated any specific deadline directly to Decca or any of its representatives, no exception applies, the general regulation must prevail, and, therefore, Decca's submission of factual information on July 2, 2004, must be timely.

Decca argues that the cases to which the Department refers in its September 16, 2004 Separate Rate Memorandum are not supportive to the Department's position. In Peer Bearing Co. v. United States, 182 F. Supp.2d 1285 (CIT 2001) ("Peer Bearing"), it contends, the Department accepted a Chinese company's submission several months after both the general deadline for factual information and the specific deadline for questionnaire responses. Also citing Yue Pak, Ltd. v. United States, 20 CIT 495, 505-506 (1996) ("Yue Pak"), Decca argues that the Department accepted new factual information well after any regulatory deadline.

Best King, HKFDTA, and Hong Yu argue that the Department has exercised its discretion in a past case where case-specific facts warranted the acceptance of information submitted at a later point in the proceeding. Best King, HKFDTA, and Hong Yu state that, in Fresh Garlic, the Department accepted a respondent's submission after the preliminary results of review due to the fact that the respondent had not received the questionnaire because the Department had been using an incorrect

address. Additionally, Best King and HKFDTA argue that, as in Fresh Garlic, it would be unreasonable for the Department to reject their factual-information submissions given that they did not receive formal notification from either the Department or MOFCOM regarding the Department's informational requirements.

Hong Yu states that it shipped its supplemental Section A questionnaire response to the Department on May 21, 2004, under the reasonable expectation that it would be delivered to the Department by May 24, 2004. Citing Initiation of Expedited Reviews of the Countervailing Duty Order, Certain Softwood Lumber Products from Canada, 67 FR 59252 (September 20, 2002), Hong Yu states that the Department accepted an untimely submission after review of the record indicated a good-faith effort to submit a timely application was made. Hong Yu argues that it also made a good-faith effort to submit its supplemental Section A response on time and thus the Department must accept and analyze its supplemental Section A response for a separate rate.

Hong Yu argues that, in its Ministerial-Error Memo, the Department stated that it "...received numerous submissions containing 'supplemental information' from certain Section A respondents on or before the July 6, 2004 deadline...this supplemental information will be addressed in the Department's final determination on November 6, 2004." Hong Yu argues that the Department will undoubtedly use significant information received after June 8, 2004, for its final determination and it would not be unreasonable to consider Hong Yu's supplemental questionnaire information in light of the deadline for completing the investigation.

Moreover, Hong Yu argues, under section 782 (c)(2) of the Act, the Department is required to take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority in connection with investigations and reviews. Hong Yu argues that it is a small, pro se company and therefore should be accorded this consideration pursuant to this statutory provision.

Best King and HKFDTA argue that good cause exists for the Department to extend its time limit in order to accept HKFDTA's September 27, 2004, submission and to rectify its denial of Best King's July 6, 2004, information. Best King and HKFDTA cite 19 CFR 351.302(b) to validate the Secretary's authority to, "unless expressly precluded by statute, for good cause, extend any time limit established by this part." Best King and HKFDTA contend that good cause exists unquestionably, based on the Department's neglect to notify them properly of its requirements of non-selected producers and exporters of subject merchandise. HKFDTA concludes that the Department should consider and analyze its September 27, 2004, factual-information submission and Best King concludes that the Department should request re-submission of Best King's July 6, 2004, response and, upon receipt, analyze the submission for the separate-rates analysis of its final determination.

The Petitioners respond that the Department should continue to deny a separate rate to those companies which did not file timely Section A responses or supplemental Section A responses. The Petitioners assert that 19 CFR 351.301(c)(2) provides that factual information provided in response to questionnaires must be submitted by the deadline stated in the questionnaire and 19 CFR 351.302(d) states that untimely filed submissions will not be retained on the record in an investigation unless an

applicable time limit is extended. The Petitioners state that responses to the Department's Section A questionnaire were due by February 23, 2004, unless a company filed an official extension request, in which case they were due by March 1, 2004. The Petitioners argue that the Department must reject untimely Section A questionnaire responses submitted between June 25, 2004, and September 28, 2004, and deny those companies a separate rate.[11]

The Petitioners argue that the Department's July 6, 2004, deadline for the submission of new factual information should not be interpreted as an extension of the established deadlines to submit Section A and supplemental Section A questionnaire responses. Accordingly, the Petitioners assert that the Department should reject all the submissions it received after their respective deadlines and should continue to deny these companies a separate rate. Citing the Letters from Laurie Parkhill to Gainwell Industrial Ltd., et. al. (October 6, 2004)[12], Decca Furnishings Ltd. (September 30, 2004), Ga Xing and Best King International Ltd. (September 30, 2004), Maria Yee (September 30, 2004), and CF Kent (September 30, 2004), the Petitioners state that the Department has already rejected as untimely the Section A questionnaire responses of these companies.

Jiafa, Nathan, Fullwin, Qingdao, and Hamilton argue that the Department should reject the Petitioners' allegation that they should not receive a separate rate based on the fact that the Department rejected their Q&V questionnaire responses submitted between February 13-23, 2004. Jiafa, Nathan, Fullwin, Qingdao, and Hamilton contend that the Petitioners' comments constitute a blatant attempt to elevate a minor procedural question over the actual substance of their responses.

[11] The Petitioners contend these companies include CF Kent, Decca, HKFDTA, Maria Yee, Best King and Hong Yu.

Changshu and Dongfang argue that the Petitioners are incorrect in their assertion that they filed untimely Q&V questionnaire responses. Changshu and Dongfang assert that they filed Q&V questionnaire responses on January 9, 2004, in a timely manner and attach a copy of the submission's cover letter with the Department's "received" date-stamp on it. Changshu and Dongfang argue that, because the Petitioners' facts are incorrect, their argument is invalid and the Department should continue to assign Changshu and Dongfang separate rates.

Citing Shangdong Huarong General Group Corp. v. United States, 2003 WL 22757937 (CIT 2003), Pulaski and Dream Rooms assert that the CIT held expressly that the Department's decision to deny a separate rate to a Chinese respondent could only be based on the failure to provide satisfactory evidence relating to the issues of state control as distinguished from evidence relating to other issues. Pulaski argues that the Department's rejection of Fujian Lianfu's Q&V questionnaire response does not constitute sufficient reason to deny Fujian Lianfu a separate rate. Dream Rooms argues that the fact that its Q&V questionnaire response is not part of the record does not present sufficient reason for the Department to subject Dream Rooms to the adverse facts available rate.

Pulaski rebuts the Petitioners' assertion that Fujian Lianfu did not file a timely response to the Department's supplemental Section A questionnaire. Pulaski states 23 companies, represented by the same counsel, including Fujian Lianfu, requested an extension of the deadline for the supplemental Section A response. Pulaski argues that the Department's omission of Fujian Lianfu's name from its May 17, 2004, letter was an oversight and not an intentional singling-out of Fujian Lianfu for denial of the extension request. Additionally, Pulaski argues, the Department did not inform counsel that it was

granting the extension to only some clients; rather Pulaski asserts, the Department stated that it had extended the deadline date for counsel's clients' response to the questionnaire.

Starwood, Dongxing, COE, Joyce Art, and Golden King dispute the Petitioners' assertion that it is the Department's practice to apply adverse facts available to respondents which do not file Q&V questionnaire responses. Starwood, Dongxing, COE, Joyce Art, and Golden King argue that their submission of timely Section A and supplemental Section A questionnaire responses should not disqualify them from consideration for a separate rate.

Jiafa, Nathan, Fullwin, Qingdao, and Hamilton state that they submitted timely responses to the Department's Section A and supplemental Section A questionnaires, thereby fulfilling the Department's requirements for the submission of information. Jiafa, Nathan, Fullwin, Qingdao, and Hamilton argue that the Department may not "turn back the clock" and decide now not to consider their Section A and supplemental Section A responses due to the fact that the Department rejected their untimely submitted Q&V questionnaire responses. Jiafa, Nathan, Fullwin, Qingdao, and Hamilton contend that, because the information the Department requested in its Q&V questionnaire was also requested in the Department's Section A and supplemental Section A questionnaires and because their Section A and supplemental Section A responses contained that information, the Department would possess the same information on the record even if the Department had chosen not to reject their Q&V questionnaire responses.

Maria Yee argues that clearly there is confusion as to the requirements and deadlines for requests for a separate rate in NME cases as evidenced by the numerous submissions the Department

received in this investigation. Maria Yee asserts that the disparate interpretations of the parties make clear that the Department has never established, through adequate notice, a requirement or deadline for companies to submit factual information to rebut the presumption of NME government control or to demonstrate entitlement to treatment as a market-economy company in order to qualify for a separate rate. Maria Yee asserts that the only requirement and deadline the Department should enforce in this investigation is that a party must have submitted information prior to the general deadline of July 6, 2004, for submission of factual information.

Jiafa, Nathan, Fullwin, Qingdao, and Hamilton assert that there is no legal basis for the Department not to consider them for a separate rate in its final determination because the Department has already rejected the Petitioners' May 19, 2004, submission requesting that the Department remove from the record untimely questionnaire responses from Section A respondents. Jiafa, Nathan, Fullwin, Qingdao, and Hamilton contend that, because the Petitioners did not argue that the Department had made any ministerial error and because the Petitioners have offered no new arguments as to why the Department should now reverse itself and deny them a separate rate, the Department has no basis for arriving at a different conclusion than that of its Preliminary Determination, and should maintain its decision to grant Jiafa, Nathan, Fullwin, Qingdao, and Hamilton separate rates.

Department's Position: The Department has determined to accept timely Section A responses even if companies did not submit timely Q&V questionnaire responses. See our response to Comment 77.

In this proceeding, the Department has considered for a separate rate 26 companies which did not file a Q&V questionnaire response and ten companies whose Q&V questionnaire responses it

rejected after receiving them after the deadline. Despite not receiving a Q&V questionnaire response or receiving it in a untimely manner, we have not disqualified Starwood, Dongxing, COE, Joyce Art, Golden King, Dream Rooms, Fujian Lianfu, Jiafa, Nathan, Fullwin, Qingdao, and Hamilton from separate-rate consideration. Moreover, we have determined that these respondents will maintain their separate-rate status due to the fact that each of them previously provided sufficient evidence in timely filed Section A and supplemental Section A questionnaire responses to qualify for separate rates. See Preliminary Determination.

In addition, we have determined that Changshu and Dongfang submitted their respective Q&V questionnaire responses in a timely manner. Therefore the Petitioners' comments are inapposite. Because Changshu and Dongfang made timely submissions and because the Department previously determined to grant them separate rates, both Changshu and Dongfang will maintain their separate-rates status. See Amendment 2 and Preliminary Determination.

The Department's antidumping regulations provide that factual information solicited through the use of questionnaires must be submitted by the deadline stated in such questionnaires. See 19 CFR 351.301(c)(2), Peer Bearing, and Yue Pak. By not submitting complete questionnaire responses in a timely manner, the respondents did not provide the Department with the information necessary to perform a separate-rates analysis. See Bicycles. Furthermore, section 351.302(d) of the Department's regulations addresses untimely filed submissions and states that, unless an applicable time limit is extended, the Department will not consider or retain on the record untimely filed factual information. Otherwise, any party would be allowed to provide the Department with "information at

the party's leisure and yet can expect the agency to review the information timely and issue a binding determination." See Decca Rejection Memorandum and Peer Bearing at 1298.

Therefore, we have not considered any Section A and supplemental Section A questionnaire responses that parties did not file by their respective deadlines of February 23, 2004 and May 24-28, 2004, for a separate rate in this final determination. Further, we reiterate our rejection of the untimely Section A questionnaire responses submitted by Maria Yee, Best King, CF Kent, HKFDTA, and Decca. See Sept. 16, 2004 Memorandum and Decca Rejection Memorandum. Therefore, Maria Yee, Best King, CF Kent, HKFDTA, and Decca have not been considered for separate rates.

Hong Yu's supplemental Section A questionnaire response was due on May 21, 2004, but we did not receive it until June 8, 2004, and we rejected it as untimely. Under section 782(c)(2) of the Act, the Department provided Hong Yu, a small, pro se company, with detailed instructions on how to file its supplemental Section A questionnaire response and corresponding extension request. See Memorandum to the File from Eugene Degan: E-mails between Eugene Degnan and Hong Yu, dated November 8, 2004. Hong Yu did not file its extension request properly and, therefore, the Department did not grant it an extension of the May 21, 2004, deadline for filing a supplemental Section A questionnaire response. The Department received Hong Yu's supplemental Section A questionnaire response on June 8, 2004, well past the Department's established deadline. See our response to Comment 77. Despite allegations of a courier delay, Hong Yu shipped its supplemental Section A questionnaire response on May 21, 2004, which would not have been delivered to the Department the same day. We uphold our decision to reject Hong Yu's supplemental Section A questionnaire

response because Hong Yu did not make a good-faith effort to submit its supplemental Section A questionnaire response on time. In addition, there is insufficient evidence on the record to determine whether Hong Yu is a Hong Kong company. Therefore, Hong Yu does not qualify for a separate rate.

On May 19, 2004, the Department extended the deadline to May 26, 2004, for Guangming Wumahe to submit its supplemental Section A questionnaire response. See Letter from Robert Bolling to Peter Koenig: Extension Request for Section A of the Questionnaire for the Antidumping Duty Investigation on Wooden Bedroom Furniture from the People's Republic of China, dated May 19, 2004. On May 26, 2004, Guangming Wumahe submitted a one-day extension request to file its supplemental Section A questionnaire response. See Letter from Peter Koenig to Robert Bolling: Wood Bedroom Furniture from the PRC, dated May 26, 2004. Given the high volume of incoming responses at the time, we overlooked Guangming Wumahe's extension request and proceeded to analyze its supplemental Section A questionnaire response, which we received on May 27, 2004. In this instance, we inadvertently did not respond to Guangming Wumahe's extension request. Considering that its supplemental Section A questionnaire response was submitted on May 27, 2004, as it asserted it would in its extension request, we have determined to accept Guangming Wumahe's supplemental Section A questionnaire response as timely. Therefore, we have determined that Guangming Wumahe will maintain its separate-rate status due to the fact that it provided sufficient evidence in its Section A and supplemental Section A questionnaire responses to qualify for a separate rate. See Preliminary Determination.

With respect to the Petitioners' argument concerning the Department's July 6, 2004, deadline for the submission of factual information, in accordance with 19 CFR 351.301(b)(1), the Department has consistently and routinely accepted information submitted to it seven days or more prior to verification if the information was submitted to clarify other information that had been filed previously with the Department in a timely manner. Therefore, the Department has only accepted such clarifying factual information submitted on or prior to the deadline of July 6, 2004. Because we provided sufficient notification of its submission requirement and deadlines, we find no reason to extend the July 6, 2004, time limit for submission of factual information. See our response to Comment 78. Therefore, we determine that the submissions of Maria Yee, Best King, CF Kent, HKFDTA, and Decca are untimely and have not considered them for separate rates in this final determination.

RECOMMENDATION

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

AGREE_____ DISAGREE_____

_____

James J. Jochum
Assistant Secretary
for Import Administration

_____

Date