

**FINAL RESULTS OF REDETERMINATION  
PURSUANT TO COURT REMAND**

**A. SUMMARY**

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order from the U.S. Court of International Trade (Court) in Sichuan Changhong Elec. Co. v. United States, Consol. Court No. 04-00265, Slip Op. 06-141 (CIT September 14, 2006) (Changhong). In its remand order the Court directed the Department to provide additional support or explanation for the following: 1) the Indian publication Infodriveindia is an appropriate source of surrogate value information for 25" color picture tubes (CPTs), despite the fact that these data are not contemporaneous with the period of investigation (POI); 2) the use of Infodriveindia to value 25" CPTs is appropriate because these data represent imports of merchandise in commercial quantities; 3) it is appropriate to exclude the prices paid by the respondent Sichuan Changhong Electric Co., Ltd. (Changhong) to suppliers in the Republic of Korea (Korea) and Thailand because a) generally available export subsidies were in effect in those countries during the POI and b) it would be unnatural for a supplier not to take advantage of these subsidies. In addition, the Court directed the Department to clearly set forth the methodology used in the final determination to compute the surrogate financial ratios and justify its conclusions.

The Department issued its draft final results to all interested parties on December 20, 2006. On January 3, 2007, we received comments on these final results from the respondent

Changhong. We did not receive rebuttal comments from any party. Changhong's comments are addressed below.

In accordance with the Court's instructions, we have provided additional explanation on the issues noted above, and we have supplemented the administrative record with information demonstrating that it is reasonable to believe or suspect that broadly available export subsidies may have existed in Korea and Thailand during the POI.

## **B. BACKGROUND**

On September 14, 2006, the Court remanded to the Department its final determination in the less-than-fair-value investigation of certain color television receivers (CTVs) from the People's Republic of China (PRC). See Changhong, Slip Op. 06-141; Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (Apr. 16, 2004) (CTVs Final), *as amended by*, Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers From the People's Republic of China, 69 FR 28879 (May 19, 2004) (CTVs Amended Final). The antidumping duty order in this proceeding was published in the Federal Register on June 3, 2004. See Antidumping Duty Order: Certain Color Television Receivers From the People's Republic of China, 69 FR 31347 (June 3, 2004). The POI covers the period October 1, 2002, to March 31, 2003.

In its remand order, the Court directed the Department to:

- provide record evidence indicating when imports for 25" CPTs reported in Infodriveindia entered India, and, if the imports entered prior to the POI, explain either how this

information is most contemporaneous with the POI or why the non-contemporaneity is outweighed by other factors;

- point to record evidence supporting the conclusion that the quantities shown in the Infodriveindia data represent commercial quantities and explain why this conclusion is valid;
- either use prices for inputs purchased from Korea and Thailand, or, if continuing to find reason to believe or suspect that these prices may be subsidized, search the record for further probative evidence to demonstrate this; or re-open the record and do a literature search to provide additional evidence to support its conclusions that: a) the generally available subsidies were in effect during the POI; and b) it would be unnatural for a supplier not to take advantage of these subsidies; and
- clearly set forth the methodology used in the final determination to compute the surrogate financial ratios and justify its conclusions.

On December 20, 2006, we issued draft final results to all interested parties. We received comments from Changhong on January 3, 2007. We did not receive rebuttal comments from any party. Pursuant to the Court's remand instructions, we have analyzed the information on the record of this investigation. As discussed further below, we have provided additional explanation and evidence as required by items 1 through 4 set out above in the "Summary" section.

## C. ANALYSIS

Issue 1: Contemporaneity of Infodriveindia Values for 25" CPTs

In the final determination, the Department valued 25" curved-screen CPTs using Infodriveindia data for the period February through September 2002, the most contemporaneous data available from this source. See CTVs Final at Comment 11. In its remand order, the Court directed the Department to provide the following information:

On remand, Commerce must provide record evidence indicating when the imports reported in the Infodriveindia data entered India. If indeed the imports entered before the beginning of the POI, and Commerce wishes to rely on these values, it must explain how this information is most contemporaneous with the POI, or why the non-contemporaneity is outweighed by other aspects of the data making it the best available information.

See Changhong, Slip Op. 06-141, at 19.

The dates of the imports underlying the Infodriveindia data are set forth in a November 21, 2003, memorandum to the File from the Team entitled, "Preliminary Determination Factors Valuation Memorandum" (Preliminary Factors Memo). The worksheet showing the calculation of the average surrogate value for 25" CPTs, along with the relevant dates that these products were imported into India, is provided at page 1 to Attachment 6 of this memorandum. See id. The underlying data obtained from Infodriveindia are included in the same attachment at pages 12 and 15. See id. These data show that there were four separate importations of CPTs or cathode ray tubes (CRTs) into India during the time period for which data were available. These importations occurred on February 15, 2002 (see page 12 at line 39), March 15, 2002 (see page 12 at line 53), September 15, 2002 (see page 15 at line 32), and September 23, 2002 (see page 15 at line 68).

Although the imports entered before the POI, the Department chooses to rely on these values as the best available information for three reasons, which are explained more fully in the paragraphs below. First, the imports entered very close to the beginning of the POI. Second, of the information available, the Infodriveindia data met most of the criteria for a surrogate – importantly, the data provided a perfect match for the surrogate value sought. Third, all of the other data sources were flawed in at least one significant manner. These three reasons support the Department’s finding that the Infodriveindia data was the best available information.

First, although the imports did not enter during the POI, they entered on dates very close to the beginning of the POI. The POI in the investigation began on October 1, 2002, and ended on March 31, 2003. Therefore, the earliest entry relied upon in the Infodriveindia data took place seven and a half months before the start of the POI, and the latest entry occurred eight days before the POI. We recognized in our final determination that none of these entries was made within the POI. See CTVs Final at Comment 11. Nonetheless, after examining the alternative surrogate values on the record of the proceeding, we concluded that the Infodriveindia data, when taken as a whole, constituted the best available information for valuing 25" CPTs.

Second, as noted above, the Infodriveindia data met most of the criteria for a surrogate. In making this determination, we considered the requirements of section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), which directs the Department to value the factors of production in a non-market economy case using the best available information. The Department’s determination as to what represents the best available information, when selecting among competing surrogate values, is made on a case-by-case basis. Although the Department generally prefers data that are more contemporaneous with the POI, contemporaneity is not the

only criterion taken into consideration. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000), and accompanying Issues and Decision memorandum at Comment 1 (Bulk Aspirin) (where the Department considered contemporaneity, in addition to whether a surrogate value was distorted by tariffs, when selecting a surrogate value for a particular material); Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 49537 (Aug. 14, 2000), and accompanying Issues and Decision memorandum at Issue 4 (where the Department considered product-specificity in addition to contemporaneity in selecting a surrogate value for a particular material); and Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 6712 (Feb. 10, 2003) (Persulfates from the PRC), and accompanying Issues and Decision memorandum at Comment 8 (where the Department considered production mix more significant than contemporaneity in selecting a surrogate producer in India). Other factors routinely considered by the Department in selecting among surrogate values include the degree to which the surrogate values are: 1) non-export average values; 2) product-specific; and 3) tax exclusive. See, e.g., CTVs Final at Comment 9; and Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China, 68 FR 55589 (Sept. 26, 2003) (RBAO), and accompanying Issues and Decision memorandum at Comment 3.

In this proceeding, the Department valued 25" curved-screen CPTs using surrogate value data for only one of the respondents, Changhong.<sup>1</sup> In selecting the appropriate surrogate value, we considered the following possible sources of data: 1) prices paid to market-economy suppliers by one of the other PRC respondents for 25" curved-screen CPTs during the POI; 2) Infodriveindia data for 25" curved-screen CPTs and CRTs covering the period February through September 2002; 3) data from Monthly Statistics of the Foreign Trade of India (MSFTI) covering a broad basket category of CPT sizes during the POI; 4) theoretical prices for 25" curved-screen CPTs, derived from the prices Changhong paid for other CPT sizes during the POI based on a weight ratio; and 5) Infodriveindia data for 25" flat-screen CPTs imported into India from Malaysia covering the POI. See CTVs Final at Comment 11. Of these alternatives, we found that the Infodriveindia data for 25" curved-screen CPTs to be the most appropriate because they met most of the criteria we normally use to evaluate potential surrogate values: they are import data, reported on a tax-exclusive basis, and are product-specific. Further, regarding contemporaneity, although the imports did not enter during the POI, they entered very close to the beginning of the POI. Of these criteria, we considered product specificity to be the most important, given the alternatives, because the value of CPTs varies significantly by screen size and screen type. See id. Thus, any values based on a variety of screen sizes or types would not be representative of the value of 25" CPTs. The Infodriveindia data, however, provided a perfect match to the input for which we sought a surrogate value.

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<sup>1</sup> We found that Changhong's actual purchase prices for 25" CPTs were unuseable because Changhong purchased this input from countries which the Department has found to provide generally available export subsidies. See CTVs Final at Comment 10. See also Issue 3, below, for further discussion.

In the final determination, the issue of the contemporaneity of the Infodriveindia data was raised with respect to only one of the four entries in question. This entry occurred in March 2002, which was six and a half months prior to the start of the POI. As we stated in our final determination at Comment 11:

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

See id. Therefore, we found that the timing of the data was not so distant as to undermine the benefit of a perfectly matched surrogate value. Thus, the fact that it was not the most contemporaneous alternative did not preclude the Department from determining that it represented the best data available.

Third, in contrast to the closeness of the entries to contemporaneity with the POI, we found each of the other alternatives flawed in at least one significant respect. Specifically, we found that the prices for 25" CPTs paid by another PRC respondent were not publicly available information. The Department has a clear preference for valuing a given respondent's factors of production using publicly available prices, as opposed to specific price quotes (or invoices), unless there is evidence on the record of the proceeding demonstrating that the input used in the production of subject merchandise is of a specific type that would not be accurately represented by the more public data. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (Aug. 11, 2003), and



accompanying Issues and Decision memorandum at Comment 5; and CTVs Final at Comment 13. Because there was a useable source of public surrogate value information on the record of this proceeding, we found that it was unnecessary to resort to the use of non-public information. See CTVs Final at Comment 10.

Moreover, we found that the MSFTI data covered CPTs in a broad range of screen sizes, including some as small as 14" and 21". Because the price of CPTs varies significantly by screen size and the CPT cost is the major component of the cost of producing CTVs, we found that use of this data source would yield less accurate results than the product-specific Infodriveindia data, despite contemporaneity with the POI. See CTVs Final at Comment 11. Further, regarding Changhong's proposed weight-ratio methodology, we found that this alternative was unacceptable because it yielded a theoretical value, not an actual one, and this value was derived from an unsubstantiated methodology which does not appear to be standard in the CTVs industry. Id. Finally, although the Infodriveindia data from Malaysia were more contemporaneous than the Infodriveindia data relied upon in the final determination, they were for 25" flat-screen CPTs, rather than 25" curved-screen CPTs. Thus, we found that it was inappropriate to use this information to value 25" curved-screen CPTs, given that we had data specific to that screen size and type on the record of the proceeding. Id.

In summary, despite the fact that the Infodriveindia data for 25" curved-screen CPTs were not contemporaneous with the POI, we found that these data were close enough to the POI to be useable. Moreover, when combined with the fact that this information was based on actual import data which presented a perfect match (unlike the MSFTI, theoretical, or Malaysian-import alternatives), we found that the advantages of the Infodriveindia data outweighed the fact that

they are not contemporaneous with the POI and, thus, they represent the best available information to value the CPTs in question.

Issue 2: Commercial Quantity Determination for Infodriveindia Data for 25" CPTs

As noted above, in the final determination the Department valued 25" curved-screen CPTs using Infodriveindia data. In its remand order, the Court directed the Department to support its conclusion that these data are valid because they represent imports in commercial quantities. Specifically, the Court stated:

In order to rely on the Infodriveindia statistics, on remand, Commerce must point to record evidence supporting its conclusion that the quantities shown in the Infodriveindia data represent commercial quantities and explain why its conclusion is valid.

See Changhong, Slip Op. 06-141, at 21.

In order to address the Court's remand, we reviewed the Infodriveindia data for the four entries in question. These data are as follows:

<u>Month</u>	<u>Quantity (Pcs.)</u>	<u>Unit Price (Rs.)</u>
February 15, 2002	320	3734.32
March 15, 2002	320	3734.32
September 15, 2002	208	3734.32
September 23, 2002	<u>10</u>	3280.77
Total	858	

See Attachment 6 to the Preliminary Factors Memo at pages 1, 12 and 15.

In determining what constitutes a commercial quantity, the Department generally seeks to establish whether the quantity is not unusual for the trade under consideration. The purpose of such a determination is not to establish a minimum quantity of imports of any given input prior to validating its use as a potential surrogate value. Indeed, the Department does not use quantity per se in its analysis at all. Rather, the purpose of this determination is to ensure that the unit

value associated with the imported quantity is representative of the prices for the input in the surrogate country and, thus, use of these prices in our dumping analysis will yield a reasonable approximation of what a non-market economy (NME) producer might pay for the factor in question if it were operating in a market-economy setting.

For this reason, the Department has established a practice of disregarding individual entries of merchandise (or line items, as in the case of MSFTI data) with unusually small quantities, but only after determining that the values associated with these entries are aberrational. See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews, 60 FR 49251, 49253 (Sept. 22, 1995) (Hand Tools 1995) (where we stated “we agree with respondents' concern about small import quantities, and have, when the import volume is small, compared the import value to other sources of surrogate values to determine whether the value is aberrational”). As the Department described this practice in Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003) (Saccharin), and accompanying Issues and Decision memorandum at Comment 1, volume and value are both considered to determine whether the data are potentially useable:

Regarding respondents' arguments that we should eliminate what they consider to be aberrant data within sources (e.g., adjusting MSFTI data for imports from countries with small import volumes), the Department has considered this issue in the past and found that it is appropriate in some instances. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the People's Republic of China, 67 FR 71137, Issues and Decision Memorandum, at Comment 13 (November 29, 2002); and, Heavy Forged Hand Tools from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 66 FR 48026, Issues and Decision Memorandum, at Comment 11 (September 17, 2001). In this case, upon examining the import data, we have excluded a

small number of observations from the MSFTI data where import volumes from particular countries appeared extremely low in comparison to other import volumes for the same chemical, and the values associated with these low import volumes appeared to break significantly from the distribution of prices for that chemical.

See also CTVs Final at Comment 5.

Because the focus is on representiveness, the Department does not conduct a separate “commercial quantities” analysis for every input/data source combination. To do so would be administratively impossible given our statutory deadlines, especially in cases, like this one, where there are hundreds of individual inputs to be valued using surrogate values. Instead, the Department does this only in instances where the need for this type of analysis is evident on its face or where it is raised in the proceeding by an interested party. In this case, Changhong raised the issue with respect to 25" curved-screen CPTs. After examining the data, we concluded that there was no evidence on the record to cause us to question whether these quantities were commercial quantities. As noted above, by “commercial” quantities, we mean quantities that are not unusual for transactions in the marketplace, as opposed to unusually small quantities of sales which may have been affected by special pricing considerations (e.g., low-volume samples priced at preferential rates in order to garner future business). Specifically, we stated:

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

See CTVs Final at Comment 11.

To support our conclusion that the Infodriveindia entries are of commercial quantities, we note that three of these four entries are of several hundred units each. The size of these sales is roughly consistent with the size of a number of purchases of CPTs by the respondents in this

proceeding. See Attachment 6 to the Preliminary Factors Memo at pages 1, 12, and 15. Because the quantities of these transactions are not public information, we are unable to disclose them here. However, we have summarized this information in a separate memorandum (see the December 19, 2006, memorandum to the file from Elizabeth Eastwood, Senior Analyst, entitled, “Quantity of Purchases of Color Picture Tubes in the Less-Than-Fair-Value Investigation on Certain Color Television Receivers from the People’s Republic of China”), which we have attached to this document at Attachment I. The values associated with each of these importations is relatively consistent (i.e., there is no “significant break in the distribution prices” for this product).

As noted in Issue 1 above, the Infodriveindia data represent the best available information to value 25" curved-screen CPTs. Of the four other data alternatives (i.e., prices paid by another respondent, Infodriveindia data for 25" flat-screen CPTs, MSFTI data, and a theoretical price derived using the weight-ratio of various screen sizes), two are not acceptable sources of surrogate data (i.e., the non-public respondent-specific price and the theoretical derived value). Regarding the former of these, we note that the price in question is not publicly available and, thus, it is not an appropriate source of surrogate value data. Regarding the latter, we note that this value was not determined using any standard accepted in the CTVs industry, nor did Changhong provide any evidence that it was otherwise reliable and accurate. Therefore, use of this value could be potentially distortive.

Regarding the final two alternatives (i.e., import data for flat-screen CPTs and MSFTI data), we find that these import quantities are at best only equivalent, from a commercial-validity standpoint, to those of the Infodriveindia data for 25" curved-screen CPTs. Specifically, while

there were more entries of 25" flat-screen CPTs during the data-collection period, the average size of these entries was only 17 units (which represents less than ten percent of the average entry quantity of the curved-screen CPTs), and the aggregate quantity of these entries represents less than 20 percent of the aggregate quantity of the curved-screen products. With respect to the MSFTI data, while the aggregate quantity of these data is 262,248 units (see Attachment 5 of the Preliminary Factors Memo at page 2), it would be inappropriate to compare this figure to the Infodriveindia quantity because the MSFTI data cover a broad range of CPT sizes in addition to 25" curved-screen CPTs. Moreover, as noted in Issue 1, above, use of either of these sources of surrogate value data is less preferable than the use of the Infodriveindia data for curved-screen CPTs because the data in these sources are less product-specific.

In summary, we continue to find that the Infodriveindia data represent imports into India in commercial quantities because the quantities are in line with quantities purchased by other respondents and, for the reasons noted above, they represent the best available information to value 25" curved-screen CPTs.

Issue 3: Disregarding Surrogate Values Obtained from Countries Maintaining Broadly Available Export Subsidies

For purposes of the final determination, the Department declined to use market-economy purchase prices for inputs purchased by the respondents from Korea and Thailand because we concluded that these countries maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets. In its remand order, the Court held that this conclusion is only valid if the Department can provide specific and objective evidence that the following conditions exist:

- (1) subsidies of the industry in question existed in the supplier countries during the POI;
- (2) the supplier in question is a member of the subsidized industry or could have taken advantage of any available subsidies; and
- (3) it would have been unnatural for a supplier not to have taken advantage of such subsidies.

The Court found that the Department provided sufficient evidence to meet the second condition of this test. However, the Court held that the Department failed to make the showing required to meet the other two conditions. Thus the Court directed the Department to:

either use the prices for inputs purchased from Korea and Thailand, or if it continues to find that it has reason to believe or suspect that these prices may be subsidized, to search the record for further probative evidence; or to re-open the record and do a literature search to provide, if possible, additional evidence to support its conclusions . . . .

See Changhong, Slip Op. 06-141, at 33.

In response to the Court's directive, we have re-opened the record of this proceeding. As a result, we have placed certain evidence on the record supporting our conclusion that there is reason to believe or suspect that export prices of inputs into subject merchandise charged by suppliers in Korea and Thailand may have been subsidized during the POI. This evidence is presented below:

A. Korea

In the final determination, the Department provided a list of certain generally available subsidy programs in Korea. See CTVs Final at Comment 7, referencing an April 12, 2004, memorandum from Elizabeth Eastwood to the file entitled, "Placing Information on the Record Regarding Subsidy Programs In the Investigation of Certain Color Television Receivers from the

People's Republic of China" (Subsidy Programs Memo). In its opinion, the Court held that this list was sufficient to demonstrate that the suppliers in question could have taken advantage of available subsidies. See Changhong, Slip Op. 06-141, at 31. This list contained a description of the following programs: 1) Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates (Duty Drawback); 2) Export Credit Financing from the Export Import Bank of Korea (Korean Export Credit); and 3) Short-Term Export Financing.<sup>2</sup>

In order to confirm that these programs existed during the POI, which began in October 2002 and ran through March 2003, we conducted an internet search. We also searched decisions made by the Department involving Korean exporters with shipments to the United States during the same time period as the POI. Our findings are described below for each program:

- Duty Drawback: The Department did not conduct any CVD investigations or administrative reviews covering the period October 2002 through March 2003 involving Korea. Therefore, we researched this issue with respect to antidumping duty proceedings involving Korea which had periods of review (PORs) or POIs that covered the same

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<sup>2</sup> The program information referenced in the Subsidies Program Memo inadvertently conflated two types of programs by using a description of the program under Article 16 of the Tax Exemption and Reduction Control Act (TERCL) to describe the Short-Term Export Financing program. The correct description of the Short-Term Export Financing program is, in part, that: the Export Import Bank of Korea (KEXIM) supplies two types of short-term loans for exporting companies, short-term trade financing and comprehensive export financing. To obtain the loans, companies must report their export performance periodically to KEXIM for review. See, e.g., Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 53413, 53419 (Sept. 11, 2006) (information regarding the reporting requirements is contained in the December 21, 2005, "Response of the Government of Korea to the U.S. Department of Commerce's October 19, 2005, Countervailing Duty Questionnaire," at Exhibit M-1, a copy of which is available on file at Central Records Unit, Room B-099, in the main Commerce building). Therefore, the program is specific because receipt of the financing is contingent upon exporting.



months either in whole or in part. We found that, in eight out of nine administrative reviews conducted by the Department involving this period, the Korean respondents reported that they received duty drawback on their exports to the United States. See Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 68 FR 62770, 62772 (Nov. 6, 2003) (unchanged in the final results, 69 FR 26361 (May 12, 2004)) (POR: February 1, 2002, through January 31, 2003); Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons From the Republic of Korea, 68 FR 71078, 71080 (Dec. 22, 2003) (unchanged in the final results, 69 FR 17645 (Apr. 5, 2004)) (POR: April 1, 2003, through March 31, 2003); Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 32492 (June 10, 2004), and accompanying Issues and Decision memorandum at Comment 2 (POR: November 1, 2001, through October 31, 2002); Certain Polyester Staple Fiber From Korea: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review and Preliminary Notice of Intent To Revoke, in Part, 69 FR 32497, 32499 (June 10, 2004) (unchanged in final results, 69 FR 61341 (Oct. 18, 2004), as amended, 69 FR 67891 (Nov. 22, 2004)) (POR: May 1, 2002, through April 30, 2003); Structural Steel Beams from Korea: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 53887, 53889 (Sept. 3, 2004) (unchanged in the final results, 70 FR 6837 (Feb. 9, 2005)) (POR: August 1, 2002, through July 31, 2003); Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea:

Notice of Preliminary Results of Antidumping Duty Administrative Review and Antidumping Duty New Shipper Review, 69 FR 54101, 54106 (Sept. 7, 2004) (unchanged in the final results, 70 FR 12443 (Mar. 14, 2005)) (POR: August 1, 2002, through July 31, 2003); Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of ReviewCertain Polyester Staple Fiber From Korea: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review and Preliminary Notice of Intent To Revoke, in Part, 69 FR 32497, 32499 (June 10, 2004) (unchanged in the final results, 69 FR 61341 (Oct. 18, 2004)) (POR: May 1, 2002, through April 30, 2003); and Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review and Antidumping Duty New Shipper Review, 69 FR 54101, 54106 (Sept. 7, 2004) (unchanged in the final results, 70 FR 12443 (Mar. 14, 2005)) (POR: August 31, 2002, through July 31, 2003).

- Korean Export Credit: As noted above, the Department did not issue any Korean CVD determinations covering the time period at issue. Therefore, we searched the internet for information on export credit financing offered by KEXIM. According to KEXIM's website, the Government of Korea continues to offer export loans to Korean companies, providing a total of loans and guarantees in 2002 and 2003 of KRW 15,189 billion and KRW 22,418 billion, respectively. These documents are included in Attachment II to this remand determination.
- Short-Term Export Financing: As noted above, the Department did not issue any Korean CVD determinations covering the time period at issue and, as indicated earlier, this

program is also administered by KEXIM. As with the Korean Export Credit program, we searched the internet for information on short-term export financing offered by KEXIM. Likewise, the relevant information from KEXIM's website indicates that KEXIM continues to provide short-term export financing in 2002 and 2003. This information is also included in Attachment II to this remand determination.

B. Thailand

In the final determination, the Department also provided a list of certain generally available subsidy programs in Thailand. See CTVs Final at Comment 7, referencing the Subsidy Programs Memo. As with the list for Korea, the Court held that this list was sufficient to demonstrate that the suppliers in question could have taken advantage of available subsidies. See Changhong, Slip Op. 06-141, at 31. This list contained a description of the following programs: 1) Export Packing Credits; 2) Duty Exemption for Raw Materials; and 3) Tax Certificate for Exporters.

In order to confirm that these programs existed during the POI, we conducted an internet search. In addition, we searched public records maintained by the Department for certain antidumping duty proceedings involving Thai exporters with shipments to the United States during the same time frame. Our findings are described below for each program:

- Export Packing Credits: The Department conducted one CVD investigation, covering calendar year 2003, involving Thailand. See Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand, 70 FR 13462 (Mar. 21, 2005) (PET Resin). In this proceeding, the Department did not

examine whether the respondents used the export packing credit program established by the Government of Thailand.

Consequently, we researched this issue with respect to antidumping duty investigations involving Thailand with contemporaneous POIs conducted by the Department. We found that, in the antidumping duty investigation on certain frozen warmwater shrimp from Thailand, which had a POI of October 1, 2002, through September 30, 2003, the respondents reported that they used packing credit loans to finance their exports. See, e.g., the public version of the July 8, 2004, submission by the respondent The Union Frozen Products Co. Ltd. at page 19, which is attached to this document at Attachment III, and considered in Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (Dec. 23, 2004) (Shrimp from Thailand). We note that the first six months of this POI is identical to the time period covered in the CTVs case.

- Duty Exemption for Raw Materials: As noted above, the Department conducted one CVD investigation for Thailand covering the time period in question. In this proceeding, the Department found that the "Import Duty Exemptions for Raw and Essential Materials Under IPA Section 30" program existed, although none of the respondents in that case received benefits from this privilege during the POI. See PET Resin and accompanying Issues and Decision memorandum at section III.C.
- Tax Certificate for Exporters: In PET Resin, the Department did not examine whether the respondents used the Tax Certificate for Exporters program established by the

Government of Thailand. However, we confirmed that the tax certificate program continued to exist during the POI by examining the record of the Thai shrimp antidumping duty investigation. Specifically, we found that the respondents reported that they used this program, as indicated in the public version of a June 17, 2004, submission by Andaman Seafood Co., Ltd., Chanthaburi Seafoods Co., Ltd., and Thailand Fishery Cold Storage Public Co., Ltd. at pages SC-40 through SC-42. The relevant excerpt from this submission, attached to this document in Attachment III, states:

. . . the Department often has investigated and made specific findings with respect to Thailand's duty drawback program at issue in this case. It is the so-called "tax certificate" or "blue corner" rebate program. As currently structured, the program rebates to an exporter the import duties incurred in the manufacture of its exported product. (footnote omitted)

We discussed this program in the final determination of the antidumping duty investigation on Thai shrimp, where we stated: "in accordance with the information obtained at verification, we find that these amounts are export incentives which are specifically linked to export sales because they were paid . . . by the Thai government upon exportation." See Shrimp from Thailand at Comment 2.

C. The Court's Requirements

Each of the programs noted in the Subsidies Programs Memo is a general, non-industry-specific export subsidy program available in Korea or Thailand. Because these subsidy programs are based on export performance, the Department reasonably infers that the CTV input suppliers from Korea and Thailand may have benefitted from such programs. Export subsidies that are not bestowed to a specific company or industry, such as those found to exist by the Department's

own investigations, are presumed to benefit all exporters that engage in international trade, such as the CTV-input suppliers from these countries.

Because these programs are non-industry-specific, each of these programs is available to any company engaged in export activities. Considering that both Korea and Thailand are competitive market-economy countries, there is no reason to believe that suppliers of inputs used to produce CTVs would not take advantage of these programs to maximize their competitive advantage in the marketplace. No party to this proceeding has provided any evidence that the suppliers in question are not able to, or have not, taken advantage of these programs. Indeed, the only evidence on the record shows that companies in Korea and Thailand are, in fact, taking advantage of these programs.

In Fuyao Glass Industry Group Co. v. United States, Slip Op. 05-6 (CIT Jan. 25, 2005) (Fuyao II), the Court held that it would have been unnatural for suppliers not to have taken advantage of any available subsidies, “given the competitive nature of market economy countries.” See Fuyao II at page 15. Thus, because: 1) broadly available subsidies existed in the supplier countries during the POI; 2) the suppliers could have taken advantage of any available subsidies; and 3) it would have been unnatural for a supplier not to have taken advantage of such subsidies given the competitive market nature of Korea and Thailand, we find that the requirements identified by the Court have been met in this case.

Finally, the level of evidence proffered above is consistent with the requirements contemplated under the legislative history on this matter. Specifically, the legislative history regarding the selection of surrogate values does not provide any criteria for determining when such values may represent subsidized prices. However, the legislative history expressly states

that the Department is not required to conduct a formal investigation to ensure an actual finding of dumping or subsidization. Instead, Congress instructs the Department to base its decision on information generally available at the time. See H.R. Rep. No. 100-576, at 590-91 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24. As such, Congress implicitly acknowledges that the Department cannot know conclusively that a particular product is, in fact, being subsidized. Therefore, Congress explicitly set out a standard that relies on a lower threshold of evidence rather than requiring an actual finding of subsidization. We note that this interpretation is also consistent with the remand order of the Court, given that the Court stated in its opinion that “Commerce is not required to conduct a full-scale investigation to determine that prices are subsidized.” See Changhong, Slip Op. 06-141, at 33 n.18.

Issue 4: Calculation of the Financial Ratios

For purposes of the final determination, the Department derived the surrogate financial ratios for factory overhead, selling, general, and administrative (SG&A) expenses, and profit from the financial statements of five CTVs producers in India. Changhong challenged certain aspects of these calculations before the Court, including: 1) the rationale behind excluding managerial remuneration from the denominators of the financial ratios computed for one of these producers, BPL Limited (BPL); and 2) whether this exclusion resulted in the double-counting of the compensation paid to several members on BPL’s Board of Directors. Although Changhong did not raise these objections in the administrative proceeding, the Court found that it had jurisdiction to hear them because it found that these claims relate to the Department’s methodology. In its remand order, the Court specifically stated:

It is apparent that Commerce has not articulated its methodology with respect to the calculation of the financial ratios. . . Accordingly, the issue of financial ratios is remanded

to Commerce with instructions to clearly set forth the methodology used in the Final Results, and to justify its conclusions.

See Changhong, Slip Op. 06-141, at 39-40.

We explain our methodology using BPL's financial ratios as an example, below, and justify our conclusion that this methodology is appropriate. In short, the rationale behind excluding managerial and directors' remuneration from the denominator of the financial ratios is that, as further explained below, the labor costs in the denominator of the ratios includes factory labor only, and neither managerial nor directors' compensation is factory labor. BPL's financial statements do not separately list factory labor. As a result, we deducted non-factory labor (i.e., compensation that is related to the company's overall operations rather than to its production) from total labor costs. In addition, regarding the possibility of double counting, our review of the record reveals that there is no evidence to support Changhong's claim that double counting may have in fact occurred. Changhong's argument is based on a speculative interpretation of the data contained in BPL's financial statements.

1. Factory Overhead

In the final determination, we calculated BPL's factory overhead ratio using the data contained in the company's 2001-2002 financial statements. See the April 12, 2004, memorandum from the Team to the File entitled, "Final Determination Factors Valuation Memorandum" (Final Factors Memo). These calculations were subsequently amended to correct certain ministerial errors in the ratios computed for two of the other surrogate producers. Our calculations are set forth as Attachment 2 to the factors-of-production memorandum prepared for the amended final determination. See the May 13, 2004, memorandum from the Team to the File entitled, "Amended Final Determination Factors Valuation Memorandum" (Amended Final



Factors Memo). The relevant worksheets from both the Final Factors Memo and the Amended Final Factors Memo are included in Attachment IV to this remand determination.

As the Amended Final Factors Memo worksheet shows, we derived the numerator of BPL's factory overhead ratio by aggregating the individual components of overhead (e.g., depreciation, repairs to plant and equipment). The source documents for this calculation are contained in the petitioner's November 10, 2003, submission at Attachment 8 and are clearly referenced on the worksheet.

In order to compute the denominator of the factory overhead ratio, we summed the materials, factory labor, and energy costs (also referred to as "MLE") shown on BPL's profit and loss statement. Because factory labor was not separately identified on this statement, we derived it by taking total labor and reducing it by the amount of non-factory labor reported by BPL (i.e., Directors' sitting fees, Directors' remuneration, managerial remuneration). This methodology was also set forth in the Final Factors Memo at page 3, as follows:

. . . we summed the salaries for senior management shown in BPL's financial statements at pages 22 and 23 and included this amount in the calculation of the SG&A expense ratio. See item D., below. We then deducted this amount from the total personnel expenses shown in Schedule 12 to only include the remainder of the personnel expenses in the total MLE expenses used as the denominator of the factory overhead calculation. See Attachment 6.

The financial statements used as the source for this calculation are contained in Exhibit P-3 of the petitioner's May 2, 2003, submission and are clearly referenced on the worksheet. A separate worksheet showing the calculation of the amount of non-factory labor deducted is included in the Final Factors Memo at Attachment 6. See also Attachment IV to this remand determination.

Finally, we calculated the factory overhead ratio used for the final determination by dividing the factory overhead costs, computed as noted above, by BPL's total MLE, in

accordance with our normal practice. This calculation is also shown on the worksheet in Attachment 2 to the Amended Final Factors Memo. See also Attachment IV to this remand determination.

This methodology is the standard methodology used to determine factory overhead in NME cases. See, e.g., Persulfates from the PRC at Comment 9 (where the Department stated that “we calculated Gujarat’s {factory overhead (FOH)} ratio in accordance with the Department’s standard methodology (i.e., by dividing total FOH by total materials, energy, and labor costs)”). Because the components of the denominator of the ratio and the factors to which the ratio is applied are the same, this methodology yields results which are a reasonable approximation of the respondent’s own experience.

## 2. SG&A

In the final determination, we calculated BPL’s SG&A ratio also using the data contained in the company’s 2001-2002 financial statements; these calculations were subsequently amended to correct ministerial errors in the ratios computed for one of the other surrogate producers. Our calculations are set forth as Attachment 2 to the Amended Final Factors Memo. See also Attachment IV to this remand determination.

As this worksheet shows, we derived the numerator of BPL’s SG&A ratio by aggregating the individual components of SG&A (e.g., rent, advertising expenses, etc). We included within this total the compensation paid to BPL’s management and to members on its Board of Directors, because these employee expenses are associated with the general operations of the company, rather than with the operation of the factory. The source documents for this calculation are

contained in the petitioner's May 2, 2003, and November 10, 2003, submissions and are referenced on the worksheet.

As the denominator of the SG&A ratio, we used BPL's cost of sales, in accordance with our normal practice. We computed the cost of sales by adding MLE, factory overhead, and change to work in process inventory. This calculation is also shown on the worksheet in Attachment 2 to the Amended Final Factors Memo. See also Attachment IV to this remand determination. We then computed the SG&A ratio by dividing total SG&A expenses by the company's cost of sales.

This methodology is the standard methodology used to determine SG&A in NME cases. See, e.g., Persulfates from the PRC at Comment 9 (where we stated that "our long-standing practice in both market- and non-market economy cases with respect to allocating general expenses to individual products is to calculate a rate by dividing the company's general expenses by its total cost of sales"). Because the components of the denominator of the ratio and the factors to which the ratio is applied are the same (i.e., MLE plus factory overhead), this methodology yields results which are a reasonable approximation of the respondent's own experience.

### 3. Profit

In the final determination, we calculated BPL's profit ratio also using the data contained in the company's 2001-2002 financial statements. Our calculations are set forth as Attachment 2 to the Amended Final Factors Memo and are identical to the calculations made for the final determination. See also Attachment IV to this remand determination.

As this worksheet shows, we used as the numerator of BPL's profit ratio the total profit (before taxation) shown on BPL's financial statement. The source document for this figure is contained in the petitioner's November 10, 2003, submission at Attachment 8, and is referenced on the worksheet. This figure was taken directly from BPL's 2001-2002 financial statements at page 53.

As the denominator of the profit ratio, we used BPL's cost of sales, in accordance with our normal practice, which was computed using the same formula noted above. This calculation is also shown on the worksheet in Attachment 2 to the Amended Final Factors Memo. See also Attachment IV to this remand determination. We then computed the profit ratio by dividing total profit expenses by the company's cost of sales. This methodology is the standard methodology used to determine profit in NME cases. Again, because the components of the denominator of the ratio and the factors to which the ratio is applied are the same (i.e., MLE plus factory overhead), this methodology yields results which are a reasonable approximation of the respondent's own experience.

#### 4. Derivation of the Average Ratios Used in the Margin Calculations

As noted above, we based the financial ratios on information taken from BPL, as well as four additional surrogate producers of CTVs in India. In order to derive the ratios used in our final determination, we computed the ratios for the other four surrogate companies using the same general methodology articulated above. We then computed a single percentage for each type of ratio (i.e., factory overhead, SG&A, and profit) by taking the simple average of the ratios determined for each of the five surrogate producers. This methodology is set forth in the Final Factors Memo at pages 3-5.

5. The Issue of Double-Counting

The double-counting concern raised by Changhong relates to the treatment of non-factory labor for BPL. Non-factory labor was used as an addition to the numerator of SG&A ratio and a deduction to the MLE portion of the denominators of the financial ratios. Specifically, Changhong questioned the amount the Department calculated for non-factory labor. According to Changhong, because the schedule supporting the managerial remuneration figure contains remuneration paid to three of BPL's directors, it is likely that the remuneration paid to these three individuals was double counted (i.e., once in the category "Remuneration to Directors" and again in the category "Managerial Remuneration").

According to the supporting schedule on page 22 of BPL's 2001-2002 financial statements, the individuals in question are the Chairman/Managing Director, the Chief Executive Officer, and the Director/Chief Technology Officer. This and the following page of the financial statements list BPL's senior management with their respective remuneration. There are 30 senior managers listed. The three senior managers noted above are also listed as members of the Board of Directors on page 97 of BPL's financial statements. Page 97 of BPL's financial statements lists both the names of those who filled the 10 directors' positions during the fiscal year and their committee assignments. Finally, page 59 of BPL's financial statements sets forth "Schedule 12: Salaries, Wages, and Other Benefits." This schedule lists the following categories: 1) "Salaries, Wages & Bonus," 2) "Contribution to PF & Other Funds," 3) "Employee Welfare & Other Expenses," and 4) "Remuneration to Directors," with their respective sums. These pages from BPL's financial statements are included in Attachment IV to this remand determination.

These pages of BPL's financial statements do not indicate that directors' remuneration listed on page 59 was included in managerial remuneration listed on pages 22 and 23. We find it significant that directors' remuneration is listed separately in Schedule 12. Because we interpret the category "Salaries, Wages & Bonus" to include managerial remuneration, we find that there is no basis for assuming that the managerial salaries of the three employees in question are included in directors' remuneration. It is equally likely that excluding the directors' salaries would render the Department's calculations inaccurate because there is no evidence that any of the directors' remuneration is included in managerial remuneration. Thus, Changhong's attempt to divine double counting from the financial statements is speculative, at best. As a result, we find that an assumption that the three manager-directors' salaries were double counted is not supported by the record. Accordingly, we continue to find that the surrogate financial ratios at issue were properly calculated.

#### **D. COMMENTS FROM INTERESTED PARTIES**

On January 3, 2007, Changhong submitted comments on our draft redetermination.

These comments are addressed below.<sup>3</sup>

##### Comment 1: *Whether the Infodriveindia Data are Contemporaneous with the POR*

Changhong disagrees with the Department's conclusion that the Infodriveindia data are for imports which entered India "very close to the POI." Specifically, Changhong claims that, while this conclusion might be valid for the two entries which were made in September 2002, it

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<sup>3</sup> In its submission, Changhong requested that the Department determine whether the domestic CTVs industry continues to exist in the United States before proceeding with this remand redetermination. We have not addressed this request as part of our redetermination because it is beyond the scope of the Court's instructions.

is untrue for the remaining two entries given that they entered India over six and a half months before October 1, 2002 (i.e., the first day of the POI). In addition, Changhong claims that these entry dates are even more remote when considered in relation to the timing of Changhong's production and sale of the subject merchandise. This latter point implies that it is inappropriate to use the surrogate value data in question, given that the majority (by quantity) of the CPTs at issue entered India well before the majority of Changhong CTVs were produced.<sup>4</sup>

Department's Position:

Contemporaneity is only one of the factors weighed by the Department when determining what constitutes the best available information. Here, we base our determination primarily on another factor – product specificity – because Infodriveindia provides an identical match for the input we are valuing. This determination to use Infodriveindia data is strengthened by the fact that the data in question are from a time period very close to the POI. We have further determined that the near contemporaneity does not undermine the importance of product specificity in this case.

As noted above, there were four separate importations of CPTs into India during the time period for which data were available. These importations occurred on February 15, 2002, March 15, 2002, September 15, 2002, and September 23, 2002. Changhong does not dispute that the latter two entries are close enough in time to the POI to be useable. However, it claims that the

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<sup>4</sup> Because Changhong has claimed business proprietary treatment for the months in which it produced and sold the CTVs which incorporated 25" curved-screen CPTs, we are unable to discuss them here. For the specifics of Changhong's argument, see Changhong's January 3, 2007, comments at page 4.

former two entries are too far removed from the beginning of the POI to be relied upon in the Department's analysis.

After considering Changhong's argument, we continue to find that seven months before the start of the POI is not so far removed as to render the data unuseable. The Department has faced similar circumstances in past cases, and we have not rejected data solely on the grounds of non-contemporaneity even when that data preceded the period under review by a year or more. For example, in a recent remand redetermination involving the less-than-fair-value investigation on warmwater shrimp from the PRC, the Department found that the surrogate value data in question was sufficiently contemporaneous with the POI because it was "derived from the fiscal year immediately preceding the period of investigation, and including data up to the day before the start of the period." See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Redetermination Pursuant to Court Remand, October 27, 2006, at page 11 (<http://ia.ita.doc.gov/remands/index.html>). Similarly, in a recent administrative review of the antidumping duty order on honey from the PRC, the Department stated:

While not the most contemporaneous data to the POR, the Department has determined that the EDA data are the "best available information" for this POR because they are more detailed and more reliable than the alternate data submitted by petitioners and respondents. As the U.S. Court of International Trade (CIT) recently held in *Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, 366 F.Supp.2d 1264, 1275 (CIT 2005) (*Hebei Metals*), "{t}hree months of contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI." In this case, the EDA data precedes the POR by only 12 months.

See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 71 FR 34893 (June 16, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (Honey). As noted in Honey, the Court has



upheld the Department's finding that data that is 12 months (or more) prior to the POI is not so old as to be unuseable. See Hebei Metals, 366 F. Supp. 2d at 1275.

Finally, we disagree with Changhong's argument that the Department should consider whether the data are contemporaneous by reference to the timing of the company's production of 24" CTVs (i.e., the CTV model which incorporates the 25" curved-screen CPTs in question). The Department's normal practice is to deem data contemporaneous if they fall within the POR as a whole, rather than making individual findings for specific companies and/or specific models of subject merchandise. See Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at Comment 1 (where we stated that "in a six-month NME investigation or 12-month administrative review, the Department ordinarily attempts to base its surrogate values on investigation or review period-wide price averages"). This practice is also articulated in the Import Administration Policy Bulletin entitled, "Non-Market Economy Surrogate Country Selection Process," which affirms that "it is the Department's stated practice to use investigation or review period-wide price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data." See Policy Bulletin 04.1, Non-Market Economy Surrogate Country Selection Process (<http://ia.ita.doc.gov/policy/index.html>). It would be not only administratively infeasible to calculate model-specific contemporaneity windows, but also arguably inaccurate to define these windows by reference to production dates given that many companies purchase and inventory

inputs, rather than consume the inputs immediately. For these reasons, we disagree with Changhong's arguments on this issue.

Comment 2: *Whether the Infodriveindia Data Represent Commercial Quantities*

Changhong contends that the quantities of the Infodriveindia data do not reflect commercial reality. First, Changhong asserts that these quantities are significantly less than those of Changhong's own purchases. Changhong claims that the value is aberrational, not only because this model is used in one of Changhong's most popular CTVs but also because Indian CTV producers would undoubtedly have imported more CPTs than those listed in the Infodriveindia data. Changhong maintains that, for the 25" curved-screen model of CPTs, a purchase of 320 units would be so small as to be meaningless and not commercially significant.

Furthermore, Changhong asserts that the Department's conclusion that Changhong itself purchased CPTs in similar lot sizes is not valid. Specifically, Changhong maintains that it is inappropriate to compare the import volume of the Infodriveindia data to the volume of Changhong's purchases of other CPT sizes because these purchases were used in the company's lowest-volume products during the POI.

Department's Position:

As noted above, in determining what constitutes a commercial quantity, the Department generally seeks to establish whether the quantity is not unusual for the trade under consideration. The purpose of such a determination is not to establish a minimum quantity of imports of any given input prior to validating its use as a potential surrogate value, but rather to ensure that the unit value associated with the imported quantity is representative of the prices for the input in the surrogate country. For this reason, the Department has established a practice of disregarding

individual entries of merchandise (or line items, as in the case of MSFTI data) with unusually small quantities, only after determining that the values associated with these entries are aberrational. See, e.g., Hand Tools 1995, 60 FR at 49253; Saccharin at Comment 1; and CTVs Final at Comment 5.

In this case, after examining the data, we continue to find that there is no evidence on the record to cause us to question whether the quantities of 25" curved-screen CPTs are commercial quantities. Specifically, we note that three of the four entries reflected in Infodriveindia are of several hundred units each, which is roughly consistent with the size of a number of purchases of CPTs by the respondents in this proceeding. See Attachment 6 to the Preliminary Factors Memo at pages 1, 12, and 15. Moreover, the values associated with each of these importations is relatively consistent (i.e., there is no “significant break in the distribution prices” for this product).

We disagree with Changhong that the above comparison is inappropriate because it involves different CPT models. While Changhong may have purchased 25" curved-screen CPTs in larger lot sizes, the company failed to provide any connection between lot size and price, nor did it demonstrate that the lot sizes of the imports at issue were not commercial. Changhong merely concluded that, because 25" curved-screen CPTs are used in “popular” models, the lot sizes of the Infodriveindia data are not representative of commercial reality and, thus, the data are “aberrational.”<sup>5</sup> We find that this conclusion is based on speculation, given that Changhong did

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<sup>5</sup> In fact, in making its arguments for the final determination in this case, Changhong proposed the selection of an importation in only 30 units as the surrogate value for 25" curved-screen CPTs, implying that it considered this quantity sufficiently large to be deemed commercial. See CTVs Final at Comment 11.

not point to any evidence on the record of this case which supports it. It is well established that mere speculation does not constitute substantial evidence, and that the latter is the standard for substantiating an agency finding. See Asociacion Colombiana Exportadores de Flores v. United States, 40 F. Supp. 2d 466, 472 (CIT 1999). See also Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia, 69 FR 20592 (Apr. 16, 2004), and accompanying Issues and Decision Memorandum at Comment 4.

Finally, we disagree with Changhong that the value is unrepresentative of purchases by Indian CTV producers because these producers “would undoubtedly have imported more CPTs than those listed in Infodriveindia.com.” We similarly find that this argument is based on mere speculation and is not supported by record evidence. Indeed, the only evidence on the record demonstrates that Indian companies did, in fact, import the CPTs in question, and there is no evidence which demonstrates that these transactions were not usual commercial importations or are otherwise unrepresentative of normal import transactions into India. As such, we do not find Changhong’s arguments on this issue to be persuasive.

Comment 3: *Whether the Infodriveindia Data are Acceptable*

Changhong argues that Infodriveindia is not an appropriate source of surrogate value data and should not be used to value its purchases of 25" curved-screen CPTs. According to Changhong, in addition to the problems noted above, these data do not clearly indicate the origin of the goods, nor is it clear whether the goods in question are actual CPTs. Moreover, Changhong argues that it is unclear if the Infodriveindia data include all relevant imports or if they are accurate in terms of the items imported under a given Harmonized Tariff Schedule (HTS) number or under specified search terms. Changhong contends that it is significant that the

Department has never relied upon Infodriveindia as a source corroborating surrogate value information or as a source of information used to discredit a surrogate value. Indeed, Changhong asserts that the Department itself has refused to use this information in other cases because it has held that this information is too incomplete to be useable. As support for this statement, Changhong cites Honey at Comment 1;<sup>6</sup> Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 1; Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comments 11D-11F; and Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

According to Changhong, the Infodriveindia data at issue in this case suffer from the same defects noted in the above cases because there is no evidence that the Infodriveindia data capture all of the entries of 25" curved-screen CPTs entered into India before or during the POI that would serve as the basis for a surrogate value. Changhong claims that, when one considers that India is home to several large producers of hundreds of thousands of CTVs, a large portion of which are manufactured using imported CPTs, the fact that the Infodriveindia data yielded only 858 25" curved-screen CPTs confirms that the database is flawed. Changhong asserts that this conclusion is supported by the fact that official Indian import statistics show that 853,510

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<sup>6</sup> We note that this determination does not reference Infodriveindia data.

CPTs were entered into India during the period April through December 2002 under HTS number 8540.11.00, while the Infodriveindia database reported only 318,490 units (or 37.5 percent) under the same import category. Thus, Changhong contends that acceptance of the Infodriveindia data is contrary to the Department's stated practice.

Finally, Changhong contends that the Department has failed to establish that the alternate sources of surrogate value data are not viable. Changhong maintains that, on a per-unit basis, the MSFTI data are consistent with the values of the other surrogate data for 25" curved-screen CPTs on the record,<sup>7</sup> while the unit value of the Infodriveindia data varies significantly from that of each of these alternatives. Furthermore, Changhong disagrees that it is inappropriate to dismiss its proposed weight-ratio methodology, claiming that the Department stated neither how the methodology was unsubstantiated nor what was standard in the CTVs industry. Changhong asserts that the price yielded by this methodology is virtually identical to that of one of the alternatives.

Department's Position:

We disagree with Changhong. The Court explicitly addressed the majority of Changhong's arguments in its opinion. Specifically, the Court stated:

. . . the court finds reasonable Commerce's preference for Infodriveindia data because that information was more product and size specific than that preferred by plaintiff.

See Changhong, Slip Op. 06-141, at 15. Moreover, the Court also found reasonable the Department's conclusion that Infodriveindia data are reliable and from a valid source, stating:

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<sup>7</sup> Because certain of these values are business proprietary, we are unable to disclose them here. For further discussion, see Changhong's January 3, 2007, submission at page 7.

. . . to verify the reliability of the data collection and the authenticity of the information, Commerce contacted Infodrive India Pvt. Ltd., the party responsible for maintaining the Infodriveindia website. Following this inquiry, the Department place on the record, email correspondence between one of its analysts and a representative from Infodriveindia, reflecting that the company: “(1) obtains the information in question from official Indian customs data; (2) receives daily customs data transmitted each month from the Indian customs department; and (3) presents the Indian customs data exactly as it is received, without additions or deletions.” See Issues & Decision Mem. at 43. Plaintiff has made no showing that seriously calls these representations into question. Thus, the court finds that Commerce has adequately addressed Changhong’s initial allegations of unreliability.

See Changhong, Slip Op. 06-141, at 15-17 (footnotes omitted).

Further, the Court has also addressed the issue of country of origin and upheld the Department’s finding that country of origin is not relevant to our inquiry. Specifically, the Court stated:

Plaintiff next objects to what it calls the “unreliability of the Infodriveindia data . . . [that] is highlighted by the mystery regarding the country of origin of the tubes in question. For 25" curved tubes . . . 538 of the 858 units reported by Infodriveindia were shown as coming from Austria and France. Yet . . . there was no production of curved picture tubes in either . . . countr[y].” . . . On this record it is reasonable to assume that any price anomaly resulting from a sale by a nonmarket producer in its home country has been corrected by the subsequent market economy sale. Commere was, therefore, within its discretion in finding that even if Austria and France did not produce CPTs, because they are market economy countries, imports into the United States that have been the subject of a sale in these countries are legitimate sources of surrogate value data.

See Changhong, Slip Op. 06-141, at 17-18 (all but last alteration in original) (citations omitted).

In its remand order, the Court directed the Department to:

explain how {the Infodrivedindia} information is most contemporaneous with the POI, or why the non-contemporaneity is outweighed by other aspects of the data making it the best available information.

See Changhong, Slip Op. 06-141, at 19.

Because the Court has already ruled that the Infodriveindia data are reliable, we find that Changhong’s arguments as to the acceptability of the data are beyond the scope of this remand

redetermination, and we have not addressed them further here. Specifically, the Court required the Department to justify why one particular aspect of the data (i.e., its non-contemporaneity with the POI) does not disqualify this data as the best available information with which to value 25" curved-screen CPTs, and we have done so. In summary, we find that the Infodriveindia data represent a period of time close enough to the POI to be useable, especially when considered in light of the Department's precedent in this area. Combined with fact that the Infodriveindia data are both reliable and product-specific, we continue to find that these data serve as the best available information on which to base the surrogate value for 25" curved-screen CPTs. For further discussion, see the position to Comment 1, above.

Comment 4: *Inputs Purchased from Korea and Thailand*

As noted above, in its remand order the Court directed the Department to provide specific and objective evidence that: 1) subsidies of the industry in question existed in the supplier countries during the POI; and 2) it would have been unnatural for suppliers not to have taken advantage of these programs. Changhong contends that the information placed on the record in response to these instructions with respect to Korea does not satisfy the Court's requirements. Specifically, Changhong notes that the Department relied on Internet research to confirm the existence of the three programs which the Court accepted as evidence of generally available subsidies. However, Changhong asserts that this research provided no information regarding the actual operation of the programs in question, much less whether the programs could have been used by Changhong's Korean suppliers. In fact, Changhong argues that, given the limited information on the record, the Department could not even determine that the programs were countervailable at all.



Moreover, Changhong notes that the Department also relied on its own determinations in antidumping duty proceedings to show that Korean producers had received duty drawback on exports to the United States during the POI. However, Changhong contends that the fact that Korean firms reported receiving duty drawback in antidumping proceedings does not confirm that the duty drawback was countervailable. Further, Changong points out that none of these reviews involved the electronics industry.

Regarding Thailand, Changhong notes that, although the Department conducted one CVD investigation of exports from Thailand that partially overlapped the POI, it did not investigate any of the programs that it had relied on previously as evidence that generally available export subsidies existed. Changhong notes that, as a result, the Department relied on public information obtained through an administrative review of the antidumping duty order on frozen warmwater shrimp from Thailand.<sup>8</sup> Changhong claims that this information is not relevant to the issue at hand because usage of a program by a member of the Thai shrimp industry says nothing about whether a member of the electronics industry could, or would, have used the same program.

In summary, Changhong argues that the information placed on the record by the Department fails to provide specific and objective evidence that the subsidies in question existed and were available to the industry in question during the POI. Changhong contends that, for this

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<sup>8</sup> We note that Changhong incorrectly references information obtained during an administrative review of the Thai shrimp order. Although the Department is, in fact, currently conducting a review of this order, we did not rely on information reported during that segment of the proceeding because it is not contemporaneous with the CTVs POI. Rather, we relied on information obtained during the less-than-fair-value investigation of the shrimp case because the first six months of the POI in that segment were identical to the POI in the CTVs investigation.

reason, the Department should accept Changhong's purchases from Thai and Korean suppliers for purposes of its analysis.

Department's Position:

After considering Changhong's arguments, we continue to find that it is appropriate to disregard prices from Korea and Thailand because these countries maintain broadly available, non-industry specific subsidies which may benefit all exports to all markets.

Changhong argues two points in its objection to the draft remand results: 1) the Department failed to provide evidence that actual export subsidies existed in Korea and Thailand during the POI; and 2) the Department did not show that the members of the electronics industry could, or would, have used the programs cited in the draft remand results. Regarding the first point, we recognize that the Department issued no CVD findings with regard to the majority of the Korean and Thai programs cited in the CTVs Final which covered precisely the same six-month period as the CTVs POI.<sup>9</sup> Nonetheless, the Department obtained information sufficient to provide a reason to believe or suspect that the programs continued to exist during that period and confer a benefit on the export of goods. Specifically, the information demonstrates that, during the POI, Korea continued to offer the same types of export financing programs and have in place the same type of duty drawback program that the Department has countervailed as export-subsidy programs broadly available to all exporters. Regarding Thailand, the information demonstrates that the programs cited in the CTVs Final not only continued to exist, but that they also were in

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<sup>9</sup> Specifically, the Department did not conduct any CVD investigations involving exports from Korea during the POI, while we conducted only one CVD investigation involving Thailand during the same period. Regarding the Thai CVD investigation, we found that the "Import Duty Exemptions for Raw and Essential Materials Under IPA Section 30" program continued to exist.

fact used by Thai exporters during the POI. While this evidence is not conclusive as to whether the export programs were countervailable, we find that it provides the Department with reasonable grounds to believe or suspect that the subsidy programs at issue continued to exist and confer a benefit on the export of goods. Moreover, the evidence was uncovered through an extensive search using the reference materials available to us which satisfies the “reason to believe or suspect” standard. In remanding this issue to the Department, the Court indicated that

Commerce is not required to conduct a full-scale investigation to determine that prices are subsidized. *See Peer Bearing Corp. v. United States*, 27 CIT \_\_, \_\_ 298 F. Supp. 2d 1328, 1337 (2003) (“[T]he statute does not require Commerce to conduct a formal investigation.”). Indeed, Commerce need only conduct a search using the reference materials available to it.

See Changhong, Slip Op. 06-141 at 33 n.18. This recognition is fully consistent with the requirements contemplated under the legislative history on this matter. Specifically, the legislative history states that the Department is not required to conduct a formal investigation to ensure an actual finding of dumping or subsidization. Instead, Congress instructs the Department to base its decision on information generally available at the time. See H.R. Conf. Rep. No. 100-576 (1988), at 590-591.

Regarding the second point, we disagree that the Court required us to show that members of the electronics industry specifically could have used the cited subsidy programs. The programs listed in the final determination were not specific to particular industries but were generally available to exporters located in the countries at issue. See CTVs Final at Comment 7. In its opinion, the Court held that this list was sufficient to demonstrate that the suppliers in question could have taken advantage of available subsidies. See Changhong, Slip Op. 06-141, at 31. Moreover, considering that both Korea and Thailand are competitive market economy

countries, there is no reason to believe that suppliers of inputs used to produce CTVs would not take advantage of these programs to maximize their competitive position in the marketplace.

This rationale has previously been sanctioned by the Court in Fuyao II, which held that it would have been unnatural for suppliers not to have taken advantage of any available subsidies “given the competitive nature of market economy countries.” See Fuyao II, Slip Op 05-06, at page 15.

Based on the foregoing, we have continued to disregard Changhong’s purchases from Thai and Korean suppliers for purposes of this remand redetermination.

**E. CONCLUSION**

The Department hereby complies with the remand order as directed by the Court in Changhong.

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David M. Spooner  
Assistant Secretary  
for Import Administration

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(Date)