

Number 0693-0010, 0348-0043, and 0348-0044).

It has been determined that this rule is not significant for purposes of EO 12866.

Program Execution

(a) Cooperative Agreement. The formal agreement between NIST and the applicant will be in the form of a Cooperative Agreement.

(b) Project Work Plan. All recipients of awards are required to submit a Work Plan within thirty (30) days of the project start date. The work plan is a more detailed statement of work based on project objectives and activities the recipient will undertake to achieve the objectives and incorporates recommendations provided by the evaluation panel and the NIST Program Officer. The Work Plan must be reviewed and approved by NIST and will be incorporated into the cooperative agreement by amendment. Work Plan guidelines will be distributed to award recipients.

(c) Project Reporting. Quarterly reports will be submitted to the NIST Program Manager no later than thirty (30) days after the end of each quarter of the award year. The information provided is used to characterize the projects, develop detailed case studies, and evaluate individual examples of outcomes. Quarterly reporting instructions will be distributed to award recipients.

(d) Program Plan. A Program Plan will be submitted to the NIST Program Manager no later than thirty (30) days after the end of the award period. The Program Plan will discuss how the state will work with industry to develop a program that coordinates and supplements state resources for industrial modernization. The Plan must, at a minimum: characterize the industry in the state and survey their needs; identify and assess the relevance and sophistication of existing modernization resources; and develop a plan for a state-wide industrial modernization infrastructure that coordinates and complements existing relevant services and eliminates duplication. Program plans must be driven by industry needs. Program Plan guidelines will be distributed to award recipients.

Dated: May 1, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95-11123 Filed 5-4-95; 8:45 am]

BILLING CODE 3510-13-M

International Trade Administration

[A-570-834]

Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Todd Hansen, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-0167 or (202) 482-1276, respectively.

Final Determination

We determine that disposable pocket lighters from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice. The U.S. Department of Commerce ("the Department") also determines that critical circumstances exist for all exporters except Gao Yao (HK) Hua Fa Industrial Company Ltd. ("Gao Yao"), Guangdong Light Industrial Products Import & Export Corporation ("GLIP") and PolyCity Industrial Limited ("PolyCity").

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Case History

Since the preliminary determination on December 5, 1994, (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China*, 59 FR 64191 (December 13, 1994)), the following events have occurred:

On December 23, 1994, we issued our preliminary determination of critical circumstances with respect to the subject merchandise (60 FR 436, January 4, 1995).

On December 9 and December 19, 1994, Cli-Claque Company Limited ("Cli-Claque"), China National Overseas Trading Corporation ("COTCO"), Gao Yao and GLIP, requested a

postponement of the final determination, pursuant to 19 CFR 353.20. Accordingly, on January 20, 1995, the deadline for the final determination was extended to April 27, 1995 (60 FR 5899, January 31, 1995).

From February 28 through March 17, 1995, we verified the responses of the exporters and producers of disposable lighters.

Petitioner and respondents filed case briefs on April 6, 10, 11, and 12, and rebuttal briefs on April 13 and 14, 1995. A public hearing was held on April 17, 1995.

Scope of Investigation

The products covered by this investigation are disposable pocket lighters ("lighters"), whether or not refillable, whose fuel is butane, isobutane, propane, or other liquefied hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees Fahrenheit (24 degrees Celsius) exceeds a gauge pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Certain windproof refillable lighters, as described in memoranda to Barbara R. Stafford, dated December 5, 1994, and April 25, 1995, are excluded from the scope of this investigation. Also, excluded from the scope of this investigation are electric lighters (as described in the April 25, 1995 memo) which use two AA batteries to heat a coil for purposes of igniting smoking materials, rather than using butane, isobutane, propane, or other liquefied hydrocarbon to fuel a flame for purposes of igniting smoking materials.

Period of Investigation

The period of investigation ("POI") is December 1, 1993 through May 31, 1994.

Non-market Economy Status

The PRC has been treated as a non-market economy country ("NME") in past antidumping investigations (see, e.g., *Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 59 FR 58818 (November 15, 1994) ("*Saccharin*"). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with section

771(18)(c) of the Act, we are continuing to treat the PRC as an NME for purposes of this investigation.

Separate Rates

All five of the responding companies in this investigation have requested separate antidumping duty rates. In cases involving NMEs, the Department's policy is to assign a separate rate only when an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

In this case, two of the five respondents, PolyCity and Cli-Claque, are Hong Kong companies that are involved in joint ventures in the PRC that manufacture disposable lighters. Since PolyCity and Cli-Claque are located outside the PRC, the PRC government does not have jurisdiction over them. Moreover, the PRC government does not have any ownership interest in these exporters and, therefore, it cannot exercise control through ownership of these companies. On this basis, we determine that there is no need to apply our separate rates analysis to these two companies and that PolyCity and Cli-Claque are entitled to individual rates.

In contrast to PolyCity and Cli-Claque, Gao Yao is a 50/50 joint venture between a Chinese company, owned "by all the people," and a Hong Kong company. The joint venture owns both the production and export facilities used to manufacture and export the disposable lighters it sells to the United States. Given the direct PRC ownership in Gao Yao's export operations, we have determined that it is appropriate to apply our separate rates analysis to this company.

Of the remaining companies, COTCO and GLIP indicated that they were owned "by all the people" during the POI. As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"), "ownership of a company by all the people does not require the application of a single rate." Accordingly, COTCO and GLIP are eligible for consideration for a separate rate under our criteria.

Although GLIP was owned during the POI by "all the people," after the POI it became a shareholding company whose shares are held by a variety of investors. GLIP received approval to become a shareholding company in March 1994, but issued shares after the POI. A portion of the company's shares representing the initial investment in the company are held in trust by the State Asset Management Bureau

("SAMB"). However, the record of the investigation indicates that the SAMB has entrusted voting rights of its shares to the management of the company. In past cases involving similar circumstances, we found that the granting of a separate rate to the responding exporters was not precluded. (See, e.g., *Final Determination of Sales at Less than Fair Value: Certain Cased Pencils from the People's Republic of China*, 59 FR 55625 (November 8, 1994), and *Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the People's Republic of China*, 59 FR 511680 (October 7, 1994).) As stated above, we have applied our separate rates analysis to GLIP.

To establish whether a firm is entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less than Fair Value: Sparklers from the PRC*, 56 FR 20588 (May 6, 1991) ("Sparklers") and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates only where respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of de Jure¹ Control

The respondents submitted a number of documents to demonstrate absence of *de jure* control, including two PRC laws indicating that the responsibility for managing enterprises owned by "all the people" is with the enterprises themselves and not with the government. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("1988 Law"); and the "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 ("1992 Regulations"). Respondents' submission also included the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 ("Export Provisions"). In April 1994, the State Council enacted the "Emergent Notice of Changes in Issuing Authority for Export Licenses Regarding Public Quota Bidding for Certain Commodities" (Quota Measures).

¹ Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measure by the government decentralizing control of companies.

The 1988 Law and 1992 Regulations shifted control of companies owned "by all the people" from the government to the enterprises themselves. The 1988 Law provides that enterprises owned by "all the people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers and purchase their own goods and materials. The 1988 Law contains other provisions which indicate that enterprises have management independence from the government. The 1992 Regulations provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire employees without government approval (Article XVII). The Export Provisions indicate those products that may be subject to direct government control. Lighters do not appear on the Export Provisions list and are not, therefore, subject to export constraints.

Since GLIP was initially a company owned by "all the people," the laws cited above establish that the government devolved control over such companies. The only additional law that is pertinent to the *de jure* analysis of GLIP as a share company is the *Company Law* (effective July 1, 1994). While GLIP indicated that it is now organized consistent with the *Company Law*, the law did not enter into force until two months after the POI. In any event, this law does not alter the government's *de jure* devolution of control that occurred when the company was owned "by all the people." Therefore, we have determined that GLIP is not subject to *de jure* control.

Consistent with *Silicon Carbide*, we determine that the existence of these laws demonstrates that COTCO, GLIP, and Gao Yao are not subject to *de jure* central government control with respect to export sales and pricing decisions. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (see "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93-133 (July 14, 1993)). Therefore, the Department has determined that a *de facto* analysis is critical to determine whether COTCO, Gao Yao and GLIP are

subject to governmental control over export sales and pricing decisions.

2. Absence of *de Facto* Control

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

During the verification proceedings, Department officials viewed evidence in the form of sales documents, company correspondence, and bank statements, and confirmed through inquiries of company representatives and officials from the China Chamber of Commerce for Machinery and Electronic Products Import & Export ("CCME"), that COTCO, GLIP, and Gao Yao:

- Maintain their own bank accounts, including foreign exchange accounts;
- Are not restricted in their access to their bank accounts;
- Make independent business decisions, based on market conditions;
- Set their own prices independently and that the prices are not subject to review by government authorities;
- Are not subject to foreign exchange targets set by either the central or provincial governments; and
- Have the ability to sell, transfer, or acquire assets.

Exporter-Specific Information

Gao Yao

- Is a Sino-Hong Kong 50-50 joint venture whose Chinese participant is a company owned by "all the people";
- Maintains a bank account in Hong Kong where all monies received from Gao Yao's foreign sales are deposited;
- Has management that is selected by the board of directors, without any governmental interference;
- Divides its profits evenly between the joint venture partners according to ownership participation; and
- Retains a general manager who is a Hong Kong resident.

GLIP

- Is owned by "all the people" during the POI, but became a shareholding company in July 1994;

- Has management that is selected by its board of directors;
- Selection and continued employment of management is not subject to government approval;
- May issue additional shares through the company's board of directors with the approval of shareholders; and
- Government contact was limited to the issuance of GLIP's shareholding license and a general notice pertaining to penalties for illegal exporting.

COTCO

- Is owned by "all the people";
- Has managers that are hired following public notices of vacancy, screening, and hiring negotiations; and
- Has management that is evaluated by the employees of the company. The selection and promotion of management are not subject to any governmental entity's review or approval.

Based on the record evidence as verified, we find that there is a *de facto* absence of governmental control of export functions of each of the three companies. Consequently, COTCO, Gao Yao and GLIP have been granted separate rates in our final determination.

Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producers' factors of production, to the extent possible, in one or more market economy countries that are (1) at a level of economic development comparable to that of the NME country, and (2) significant producers of comparable merchandise. The Department has determined that Indonesia is the most suitable surrogate for purposes of this investigation. Based on available statistical information, Indonesia is at a level of economic development comparable to that of the PRC, and is a significant producer of lighters (*see*, memorandum to the file from Todd Hansen, dated December 5, Surrogate Country Selection and memorandum from David Mueller to Susan Kuhbach, dated September 8, 1994, Lighters from the People's Republic of China and Surrogate Country Selection.)

Fair Value Comparisons

To determine whether sales of lighters from the PRC to the United States by respondents were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For all respondents, we based USP on purchase price, in accordance with section 772(b) of the Act, because lighters were sold directly to unrelated parties in the United States prior to importation into the United States and because exporters sales price methodology was not otherwise indicated.

We calculated purchase price based on packed, FOB foreign port prices for unrelated purchasers in the United States and packed, CIF prices, where appropriate. We made deductions for discounts, foreign inland freight, containerization, loading, port handling expenses, ocean freight and marine insurance, as indicated. When these services were purchased from a market economy supplier and paid for in a market economy currency, we used the actual cost. Otherwise, these charges were valued in the surrogate country. In addition, we have relied upon a price quote provided by an unrelated Hong Kong company to value freight in those instances where Cli-Claque used a related trucking company for the delivery of finished lighters.

At the request of the Department, on March 22 and 23, 1995, PolyCity and Cli-Claque submitted revised U.S. sales and factors of production information to reflect minor changes due to errors noted at verification. In addition, PolyCity revised: the U.S. sales listing to include additional sales that had been inadvertently omitted (*see* Comment 8); foreign inland freight to include additional charges incurred at the border; marine insurance and foreign brokerage and handling to reflect costs incurred on a value basis rather than a per piece basis; and ocean freight to reflect additional charges on certain invoices and payment in Hong Kong dollars rather than U.S. dollars. Cli-Claque's submission included small number of additional sales which had been inadvertently omitted and revisions to foreign inland freight figures on deliveries of finished lighters and purchases of inputs. Pursuant to findings at verification, minor revisions were made to COTCO's sales price. For Gao Yao, we adjusted USP for port handling charges that had been paid in a market economy currency to a Hong Kong company.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the subject merchandise for the five responding exporters. The factors used

to produce lighters include materials, labor, and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values from Indonesia for those inputs purchased domestically from PRC suppliers. Where inputs were imported from market economy countries and paid in a market economy currency, we used the actual costs incurred by the producers to value these factors (see, e.g. *Final Determination of Sales at Less Than Fair Value: Oscillating Ceiling Fans from the People's Republic of China*, 56 FR 55271, October 25, 1991). We adjusted these input prices to make them delivered prices. We then added amounts for overhead, general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

In addition, we have made the following changes to our preliminary calculations:

- For PolyCity, we valued certain inputs purchased from market-economy sources with market-economy currency using invoices dated outside the POI. For inputs that were not purchased from market-economy sources with market-economy currency, we used surrogate values (see Comment 11).

- For Cli-Claque, we calculated foreign inland freight based on verified distances for packing materials and finished lighters. In addition, we have relied upon a price quote provided by an unrelated Hong Kong company to value freight in those instances where Cli-Claque used a related trucking company for the delivery of imported inputs. We have adjusted direct labor hours to reflect verified information. Finally, to value the packing trays which were made by a factory located in the PRC with imported inputs, we have used surrogate values.

- For GLIP, we adjusted labor hours, butane usage, electricity usage, certain lighter parts and packing materials to reflect verified information. Also, we adjusted the prices paid to market economy suppliers based on verified information.

- For Gao Yao, we used surrogate values for inputs that we verified were purchased from PRC suppliers, but had originally been reported as purchased from market economy suppliers. We adjusted waste and electricity figures to reflect verified information. In addition, certain consumption figures were changed from a per kilogram basis to a per-piece basis. Finally, the weights of certain lighter parts were changed due to findings at verification.

- For COTCO, we adjusted labor hours and consumption of certain raw materials to reflect verified information. We also adjusted the weights of certain lighter parts and packing materials based on verified information.

In determining the surrogate price to be used for valuing the remaining factors of production, we selected, when available, publicly available published information ("public information") from Indonesia.

With the exception of butane, we used the Indonesian import prices taken from the *Indonesian Foreign Trade Statistical Bulletin—Imports*, December 1993 and April 1994 to value material inputs.

Based on discussions with U.S. Customs officials (see Memorandum to the File from Todd Hansen, dated April 26, 1995, Appropriate HAS Numbers), we have changed certain surrogate values to more accurately reflect the cost of the input used.

For butane, the quantity imported into Indonesia was insignificant. Therefore, for those PRC producers that did not import butane from market economy sources, we relied on Indonesian export statistics, as reported in the *Indonesian Foreign Trade Statistical Bulletin—Exports*, December 1993 and April 1994.

We used Indonesian transportation rates taken from a September 18, 1991, U.S. State Department cable from the U.S. Embassy in Indonesia to value inland freight between the source of the factor and the disposable lighter factory.

To value electricity, we used the public information from the Electric Utilities Data Book for Asian and Pacific Region (January 1993) published by the Asian Development Bank. To value labor amounts, we have used figures for skilled and unskilled labor obtained from *Doing Business in Indonesia* (1991) and the International Labor Office's *1994 Special Supplement to the Bulletin of Labor Statistics*. We have determined that these figure more accurately represent hourly wage rates paid in Indonesia than the rate provided in the Department of Labor's "Foreign Labor Trends," which was the rate used in the preliminary determination.

We adjusted the factor values, when necessary, to the POI using wholesale price indices ("WPIs") published by the International Monetary Fund ("IMF").

Because we were unable to locate appropriate information on factory overhead in Indonesia, we relied upon data published by the Reserve Bank of India pertaining to Manufacturing—metals, chemicals, and products thereof. Because this figure includes indirect expenses and water, we have not calculated separate costs for these inputs.

For general expense percentages, we also used the Reserve Bank of India data. For profit, we used the statutory minimum of eight percent of materials, labor, factory overhead, and general expenses. We could not obtain Indonesian values for either general expenses or profit. The Indian profit rate was less than the statutory minimum of eight percent.

We added packing based on Indonesian values obtained from the *Indonesian Foreign Trade Statistical Bulletin—Imports*, December 1993 and April 1994.

Best Information Available (BIA)

In this investigation, some PRC exporters failed to respond to our questionnaire. We have determined that those exporters should receive rates based on BIA. In addition, because we presume all exporters to be centrally controlled, absent verified information to the contrary, in accordance with section 776(c) of the Act, we have assigned a margin based on BIA to all exporters who have not demonstrated their independence from central control. This determination is consistent with our use of a BIA-based "PRC-Wide" rate in other recent investigations (see e.g., *Saccharin*).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns less adverse margins to those respondents that cooperated in an investigation and more adverse margins for those respondents that did not cooperate in an investigation. As outlined in the *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Administrative Review* (56 FR 31692, 31704-05, July 11, 1991), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, (b) the highest calculated rate of any respondent in the investigation, or (c) the margin from the preliminary determination for that firm.

We consider all PRC exporters that did not respond, or otherwise did not participate in the investigation, to be uncooperative and are assigning to them the highest margin based on information submitted in an amendment to the petition.

Critical Circumstances

In our notice of *Preliminary Determination of Critical*

Circumstances: Disposable Pocket Lighters from the People's Republic of China, 60 FR 436 (January 4, 1995), we found that critical circumstances exist with respect to imports of disposable lighters from COTCO and Cli-Claque.

Pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we based our determination for COTCO on a finding of (1) an imputed knowledge of dumping to the importers because the estimated dumping margins were in excess of 25 percent, and (2) massive imports of disposable lighters over a relatively short period, based on an analysis of respondent's shipment data. Because Cli-Claque did not submit shipment information for the preliminary critical circumstances determination, we determined, as best information available, that critical circumstances exist. Cli-Claque submitted the requested information on January 6, 1995. For non-respondent exporters, we determined that critical circumstances do exist.

Respondents' shipment information has now been verified. The Department affirms the analysis as explained in its preliminary finding with respect to PolyCity, Gao Yao, GLIP and COTCO. Accordingly, we determine that critical circumstances do not exist with respect to imports of disposable lighters from PolyCity, Gao Yao, and GLIP and do exist with respect to COTCO and all non-responding exporters. With respect to Cli-Claque, we also determine that critical circumstances do exist (see Comment 13).

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, and original source documents provided by respondents. Our verification results are outlined in detail in the public version of the verification report, available in Room B-099 of the Main Commerce Building, 14th and Constitution, Washington DC 20230.

Interested Party Comments

General Issues

Comment 1: Separate Rates

Petitioner argues that an exporter should not receive a separate rate unless the producer supplying the exporter can demonstrate that it is also independent of central government control. The fact that an exporter is independent from central government control provides no guarantee that the producer or

producers supplying it are also free of government control. Since respondents have not overcome the presumption that their Chinese disposable lighter producers are government controlled, and the exporters merely serve as middlemen for the sale of lighters to the U.S., the exporters should be assigned the "PRC-Wide" rate.

Petitioner questions whether the Department originally intended to apply the separate rates analysis only to exporters. Petitioner points to the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), where the Department enumerated separate rates for "producer/exporter" combinations. However, in recent cases, such as *Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China* (59 FR 66899, December 28, 1994) (*Coumarin*), the Department has indicated that it is intentionally restricting its analysis of freedom from government control solely to exporters. Petitioner argues that under this policy, the Department could find itself in the position of certifying that an exporter is independent and, therefore, can be assigned a separate rate, while the exporter is purchasing from a producer who would not be allowed a separate rate because of government control. Petitioner does not believe that this is what the Department intended when it enunciated its separate rates analysis in *Sparklers*. Petitioner also questions why the market oriented industry ("MOI") test looks at the producer and not the exporter, while the separate rates test does the opposite.

Gao Yao, GLIP, and COTCO argue that the independence of their suppliers is not relevant to the Department's determination of whether Gao Yao, GLIP, and COTCO should receive separate rates. The Department has sought, received, and verified information concerning the independence of Chinese exporters. Gao Yao, GLIP, and COTCO argue that examining the suppliers is irrelevant and conflicts with well-established Department policy.

Both PolyCity and Cli-Claque argue that they are independent Hong Kong companies, and the Chinese government does not own and cannot control PolyCity's or Cli-Claque's activities. Therefore, they are entitled to separate rates.

DOC Position

The separate rates policy reflects the Department's concern that the Chinese government may interfere in the export

activities of companies selling to the United States and manipulate these companies' export prices. Where an exporter is able to demonstrate that its export activities are not controlled by the government, then the Department will recognize that independence by awarding the exporter a separate rate (see, e.g., *Saccharin*).

Petitioner's argument that trading companies are merely middlemen suggests that the Chinese government manipulates the price of exports to the United States (1) by controlling the price between the factory and the trading company, or (2) by controlling the exporter's price to the United States through the producer. With respect to the first concern, the manufacturer's price to the exporter does not play any role in the Department's calculation. U.S. price is based on the exporter's (usually a trading company's) price to the United States and FMV is based on the producer's factors of production. Therefore, potential government control of prices between the producers and exporters is irrelevant. Moreover, where the producer is not the exporter, we have determined there is no evidence that the producer is involved in the export activities of the exporter.

Because the exporter/trading company sets the export price, it is appropriate to focus the separate rates analysis on the exporter. In contrast, the purpose of the MOI test is to determine whether foreign market value can be determined using prices or costs in the NME. Thus, the test focuses on government control of the domestic industry, rather than on export activities. Thus, petitioner's attempt to draw a parallel between a separate rates analysis and an MOI analysis is misplaced.

Comment 2: "Tied" Antidumping Duty Rates for Exporter/Supplier

Petitioner argues that where the Department issues a separate rate to an exporter, that rate should be applied to the producer/exporter combination that gave rise to the rate. Consequently, if the exporter later purchases from another producer, the "PRC-Wide" rate should apply. Such "tied" rates would prevent producers from channeling merchandise out of the PRC through the exporter with the lowest rate.

Petitioner agrees with the Department's decision to tie Gao Yao and its manufacturer when it assigned them a zero margin in the preliminary determination, making any other manufacturers shipping through Gao Yao subject to the "PRC-Wide" rate. However, petitioner contends that the Department has refused to recognize

that other exporters have been given a free hand to export disposable lighters from any producer in China to the United States at the rate applicable to that exporter. Consequently, producers will sell through exporters with low rates, thereby avoiding the higher rates found in this investigation, particularly the "PRC-Wide" rate. Because of the distinction made for zero margins, petitioner argues that it is more beneficial for an exporter to have a small positive margin than to have a zero margin, as an exporter with a small positive margin may export for any producer at that small margin. Therefore, petitioner requests that the Department issue antidumping duty rates for exporter/producer combinations.

Gao Yao, GLIP, and COTCO state that petitioner's conclusion regarding the channeling of all exports through the exporter with the lowest dumping margin is erroneous. In the past, trading companies which export to the United States have received individual rates irrespective of their suppliers. COTCO and GLIP state that it is appropriate for Gao Yao to receive a "tied" rate for merchandise sold and manufactured by Gao Yao, because Gao Yao is a manufacturer who exports, not a trading company. COTCO and GLIP state that, as trading companies, they should not receive a "tied" rate even if they receive a zero margin. Gao Yao, GLIP, and COTCO argue that even if a new factory made shipments of goods to the United States through an exporter with a lower dumping rate, the subsequent antidumping review would require a factors analysis of the supplying factory.

Cli-Claque maintains that it is an independent Hong Kong company that competes with all other lighter manufacturers. It has no incentive or desire to help its competitors ship to the United States. Moreover, if Cli-Claque shipped other companies' lighters to the United States, Cli-Claque would risk losing its low dumping margin in subsequent reviews.

DOC Position:

We have determined that the pairing of exporters and producers for calculating antidumping rates is inappropriate under the circumstances discussed above. Recent Department practice has been to assign rates only to exporters except in the case of producer/exporter combinations that have been found not to be dumping. (See *e.g.*, *Pencils, Saccharin, Coumarin, and Final Antidumping Duty Determination: Certain Cased Pencils from the People's Republic of China*, 59 FR 55625, November 8, 1994, where the

Department assigned a zero rate to a producer/exporter for purposes of exclusion from the order, but the remaining rates were assigned to exporters only.) Where a producer/exporter combination is found not to be dumping, it is appropriate to publish a rate that applies to that producer/exporter combination because they are excluded from the order and, therefore, future administrative reviews. However, all other exporters remain subject to the order and administrative reviews. Hence, contrary to petitioner's assertion, those exporters have no incentive to export the output of producers that might yield a high FMV unless they adjust their U.S. prices accordingly. If they fail to do so, an administrative review would result in an assessment of additional duties, with interest, and a higher cash deposit rate for future entries.

Comment 3: Overhead and Energy

COTCO, Gao Yao and GLIP argue that the cable from the U.S. Embassy in Jakarta, relied upon by the Department in its preliminary determination, does not state if indirect labor and electricity are included in overhead. Since this is unclear, COTCO, Gao Yao and GLIP argue that the Department should assume, as it has in past cases, that indirect labor and electricity are included in factory overhead. (See *Sebacic Acid from the People's Republic of China*, (59 FR 28053, 28060, May 31, 1994) and *Shop Towels of Cotton from the People's Republic of China* (56 FR 4040, 4042, February 1, 1991).) COTCO, Gao Yao and GLIP also state that the activities of the indirect laborers are not directly related to production and would normally be included in overhead.

PolyCity states that the standard cost accounting treatment throughout the world for electricity and other utilities is to include these items in factory overhead. According to PolyCity, the Department double-counted these items when it separately included values for them in addition to calculating a factory overhead rate.

Petitioner acknowledges that the factory overhead rate in the U.S. Embassy cable does not make clear whether indirect labor is included. However, since COTCO, Gao Yao and GLIP argue that there is very little indirect labor involved in lighter production, petitioner states that there would be little, if any, double counting if indirect labor were valued separately.

DOC Position

For this final determination, we are using information from the *Reserve*

Bank of India Bulletin, ("RBIB") December 1993 to value factory overhead. We were unable to obtain an overhead rate for light manufacturing plants in Indonesia. Therefore, we turned to India, where a manufacturing overhead rate was available. We have determined that this overhead figure represents the best overhead figure for the industry in question because it is industry specific.

In determining what items should be valued separately from factory overhead, we examined the costs included in the particular overhead rate being used. Since the RBIB factory overhead rate does not include indirect labor and energy, we are assigning separate values for these items, notwithstanding respondents' arguments about standard cost accounting practices.

Comment 4: Date of Sale

Petitioner argues that the date of sale should be the date of Cli-Claque's and PolyCity's facsimile confirmation, not the date of invoice. Petitioner contends that Cli-Claque and PolyCity negotiate price, quantity, and estimated delivery date by phone and confirm these terms by facsimile. However, these companies reported the date of invoice as the date of sale. Because of a drastic increase in imports during June and the first half of July, petitioner is particularly concerned about any sales confirmed in the POI, but not invoiced in the POI.

PolyCity and Cli-Claque state that the Department chose the date of sale based on our normal methodology and that they correctly complied with its request.

DOC Position

At verification, we confirmed that the appropriate date of sale was the date PolyCity and Cli-Claque issued the invoice which accompanied the shipping documentation. We noted that changes in delivery terms and quantity did occur between the facsimile confirmation and the date of invoice. Although the verification report stated that the facsimile was a "confirmation" facsimile, that statement was not meant to imply that all the terms of sale were agreed upon and could not change. The facsimile, as verified, is merely an acknowledgement that a sales transactions will occur between the company and its customer.

Generally speaking, the Department will consider the date of sale to be the date on which all substantive terms of the sale are agreed upon by the parties. This normally includes the price and quantity. If the terms of sales agreement or contract permit the revision of prices up to the date of invoice, shipment, or

the purchase order, then it is the Department's practice to base the date of sale on the shipment date, invoice date, or the purchase order date, depending upon which date the revisions are made. Thus, we accept the date of sale as verified.

Comment 5: Non-market Economy Currency

PolyCity and petitioners have advanced arguments regarding the valuation of certain inputs purchased from market economy suppliers, that cannot be addressed in this notice because of their proprietary nature. These comments are addressed in a separate memorandum to the file.

Comment 6: Appropriate BIA Rate

Petitioner maintains that the Department should use the highest rate (*i.e.*, 346.55 percent) alleged in the petition as the "PRC-Wide" rate. Petitioner calculated the FMV used in this margin calculation based on a combination of Indian input values and its own costs. Petitioner states that because the Department believed that it relied too heavily on its own costs and that India may not be the most appropriate surrogate country, the Department requested that petitioner recalculate FMV based on the price of lighters exported from the Philippines. (The Philippines is a known producer of disposable lighters and, in prior cases, the Philippines had been determined to be at a level of economic development comparable to the PRC.) The estimated dumping margin using the Philippine export data is 197.85 percent. Petitioner argues that, although it submitted additional information requested by the Department (offered as an alternative set of documents to supplement the exhibits in the original petition), the margin calculated in the original petition has not been discredited.

DOC Position

We are continuing to use the rate based on Philippine export data. We believe this rate is appropriate because: (1) The original petition rate relies too heavily on petitioner's own costs; (2) we initiated the case on the basis of the Philippine export data; and (3) India is not a significant producer of lighters.

Company Specific Issues

PolyCity Industrial Limited

Comment 7: BIA

Petitioner argues that the Department should use BIA in determining the antidumping duty margin for PolyCity because, due to the numerous corrections submitted to the Department

since the preliminary determination and the errors discovered at verification, the reliability of PolyCity's data is called into question. In particular, petitioner notes: (1) Every sale examined at verification required revision; (2) foreign inland freight, ocean freight, and marine insurance were misreported; (3) PolyCity used an unusual sales process; and (4) PolyCity's method of documenting input purchases lacked consistency. Petitioner contends that PolyCity had more than adequate time to correct these errors in the numerous submissions PolyCity filed between the preliminary determination and verification. Petitioner argues that these facts, along with the inaccuracies uncovered at verification, make PolyCity's data unreliable. Therefore, the Department should use uncooperative BIA in calculating PolyCity's margin.

If the Department does not use total uncooperative BIA, petitioner then argues that the Department should use partial BIA for these costs. Petitioner contends that since PolyCity failed to report certain additional charges for foreign inland freight, reported ocean freight in the wrong currency, and miscalculated marine insurance, using BIA values for these factors is appropriate.

PolyCity maintains that accepting petitioner's allegations would run counter to the Department's practice and regulations. PolyCity states that all of its submissions and corrections have been timely filed. The verification at PolyCity was routine, and the Department treated it routinely. The Department typically makes corrections and adjustments at verification. The corrections discovered at verification were merely errors, not hidden or misrepresented information. In addition, PolyCity maintains that it erred in favor of the petitioner, rounding numbers up on most observations. To use BIA in this situation would be a radical departure from the Department's rules and practice. Hence, the Department should use PolyCity's verified information.

DOC Position

We agree with respondent that the final determination should be based on PolyCity's verified data. The items described by petitioner are minor changes that were corrected for this final determination. Omissions from the response were inadvertent and corrected information was verified. We are satisfied that the record is now complete and accurate regarding this company's sales of subject merchandise during the POI.

Comment 8: New Sales

Petitioner states that the three new invoices discovered at verification should be included in the margin calculations and should be assigned the highest BIA rate. Since these sales were not reported in a timely manner, petitioner argues that the Department should assign a unit margin for each of these sales based on BIA. Due to the numerous errors found at verification, petitioner recommends using the uncooperative BIA rate. For one sale, which was added to PolyCity's sales listing after the preliminary determination, petitioner recommends using the cooperative BIA rate.

PolyCity states that three sales were inadvertently excluded from the sales listing but that they have now been included. Therefore, BIA for these sales is unwarranted. The one sale petitioner alleges was added to PolyCity's sales listing after the preliminary determination was, in fact, included in the first sales listing and every listing since. Therefore, it should not be treated differently than the other sales that have been reported.

DOC Position

We determine that the omissions described above were inadvertent and the corrected information was verified. The new sales represent a small percentage of total sales during the POI and, at verification, were not hidden or misrepresented. Further, we are satisfied that the record is now complete and accurate as to this company's sales during the POI of subject merchandise. Accordingly, the reported information, as corrected based on verification, is the appropriate basis for this LTFV determination for PolyCity.

Comment 9: Untimely Submissions

Petitioner argues that changes and additions to PolyCity's data which were submitted on February 21, 1995, should be rejected as untimely filed with the Department.

PolyCity states that this submission was timely filed in accordance to instructions given by Department officials. PolyCity argues, however, that petitioner's comment should not have been included in the brief filed on April 10, 1995, since only comments on verification reports were to be filed. Accordingly, PolyCity argues that this comment cannot be included in the record.

DOC Position

We agree with respondent, in part. Respondent's submissions were timely filed, in accordance with our instructions. However, we disagree with

respondent that petitioner's comments should have been rejected. Due to miscommunication between the Department and the parties in this case, parties were unclear where to report company-specific issues that were not verification issues. Therefore, we have determined that this argument was properly included in this brief and have allowed it to remain in the record of this investigation.

Comment 10: Use Actual Labor Rates

Respondent argues that the Department should use the actual wage rates paid by PolyCity to its Chinese workers. In the past, the Department has used actual costs for certain factors of production, if these costs represent accurate, market-based values. Since the workers of PolyCity freely negotiate their wages without interference from the central government (e.g. unemployed workers wait at the factory gate to interview for open positions,) respondent believes that there is no basis for the use of surrogate values.

If the Department rejects the use of PolyCity's wage rates, respondent asks that we use the average of the wages on the record for unskilled factory workers in Indonesia. The rate used by the Department in its preliminary determination based on locally engaged U.S. Embassy personnel in Indonesia is not a valid surrogate for the cost of unskilled factor labor in China.

DOC Position

As stated above, we have determined that the PRC is a non-market economy country for purposes of this determination. Moreover, there has been no claim and we have not found that available information would permit us to determine FMV under the market economy provisions of the antidumping duty law (see section 773(c)(1)(b) of the Act). Hence, we are basing FMV on the Chinese factors of production values in a surrogate country.

PolyCity points to *Lasko Metal Prods., Inc. v. United States* 810 F. Sup. 314 (CIT 1992) *aff'd* 43 F.3d 1442 (Fed. Cir. 1994) to support the proposition that the Department can use respondent's actual costs when those costs represent accurate market-economy values. However, *Lasko* addresses Department's practice of using respondent's actual costs in narrow circumstances—i.e., where the input is purchased from a market economy country and paid for in a market economy currency. We do not use values within the non-market economy.

Moreover, in the one case cited by PolyCity (*Final Determination of Sales at Less Than Fair Value: Chrome Plated*

Lug Nuts From the People's Republic of China, 56 FR 46153, 46154, September 10, 1991), the Department was investigating an MOI claim, not a claim that labor was market oriented. In addition, the Department did not find that wages in the PRC were market determined. To the contrary, we stated, " * * * we have concluded that respondent has not overcome the presumption of state control with respect to labor and that the PRC wage rate should not be used for purposes of the factors of production analysis."

Comment 11: Manufactured Parts vs. Purchased Parts

In cases where PolyCity both purchases a part and produces the same part from imported raw materials, it argues that the price it pays for the purchased part should not be used to value this input. Instead, the Department should construct a value using the factors needed to produce the part.

PolyCity contends that valuing the part using the price paid for the finished part would overstate the amount of labor and overhead allocated to PolyCity's other activities. This is because PolyCity's labor and overhead figures include labor and overhead to produce these parts, and the Department does not have the necessary information to back out these amounts.

Alternatively, if the Department does not accept PolyCity's proposal to use solely a constructed value, then it should value the parts on a weight-average basis between the purchased and the manufactured parts.

DOC Position

We disagree with respondent that we should use the factors methodology for all of the parts consumed during the POI. Contrary to PolyCity's assertion, to use the factors methodology for all parts consumed during the POI would understate the labor and overhead because it would not include additional labor and overhead needed to produce those parts. Thus, we have only applied the factors methodology for inputs actually produced by PolyCity.

For the portion of the parts used which PolyCity purchases from market economy suppliers in a market economy currency, we valued the part using an invoice price outside the POI. While our first preference would be an invoice price during the POI, in this investigation we are accepting actual, pre-POI prices paid to a market economy producer in market economy currency because such prices, although outside the POI, are the best available information on the value of these inputs

and are more accurate than surrogate values. In many instances, the Department uses surrogate values that are from pre-POI time periods and are generally further removed from the POI than the pre-POI market economy prices. Using pre-POI market economy prices that the producer actually paid is consistent with that practice.

Comment 12: Jakarta vs. Non-Jakarta Rates

PolyCity maintains that the Department should use a non-Jakarta wage rate in valuing labor. It states that wage rates in Jakarta are not an appropriate surrogate for wages in Chinese factories because Chinese lighter factories are located in small, provincial towns, not major cities like Jakarta. Moreover, PolyCity states that not one of the Indonesian lighter factories is located in Jakarta.

DOC Position

We disagree that we are required "to customize" factor values to reflect the conditions of certain PRC respondents. We have used ILO data pertaining to Indonesian wage rates to value the labor input for all PRC producers. This data reflects an Indonesian-wide average, not the wage rate in Jakarta.

Cli-Claque Company Limited

Comment 13: Electronic Lighters

Cli-Claque claims that its flat, refillable electronic lighter, referred to as a card lighter, is not disposable and should not be included within the scope of the investigation. In contrast to flint lighters, this Cli-Claque lighter uses a piezo electronic lighting mechanism. Further, because of its unique flat shape, the lighter must be produced from a more costly, higher grade of plastic.

With respect to channels of distribution, Cli-Claque sell these lighters at wholesale to tobacco and other companies for use as promotional items. Because these lighters are considerably more costly to produce, Cli-Claque states that it could not sell them at retail in competition with ordinary flint lighters.

Throughout the investigation, petitioner has maintained that the existence of an electric lighting mechanism alone should not be a determining factor in deciding whether a lighter is or is not disposable. Petitioner cites examples of disposable lighters that use the piezo electric ignition mechanism. Regarding ultimate use of the lighter, petitioner maintains that it is the same as the flint lighter—to light various tobacco products. Regarding channels of distribution, petitioner states that Cli-Claque's

lighters could compete at retail with flint lighters, if the manufacturer imprinted designer wraps or logos to entice customers to pay a somewhat higher price.

DOC Position

Although Cli-Claque's card lighters are not currently sold at retail but are sold at wholesale to tobacco and other companies as promotional items, these lighters are not the only type of lighters to be sold to companies as promotional items. The standard, disposable butane lighter is also sold to companies as a promotional item. Thus, the card lighters are not unique in their use as promotional items, because standard, disposable lighters clearly serve this purpose as well.

Also, the existence of a piezo electric ignition mechanism is not decisive. Several brands of disposable lighter employ the piezo mechanism rather than the more common flint ignition system. The fact that a lighter is refillable is also not controlling, as indicated in the scope of this investigation, which recognizes that a disposable lighter may be refillable or non-refillable.

Further, card lighters come in both refillable and non-refillable versions. The lighters are identical in every respect with the exception of the refill valve on the refillable lighter. Both lighters feature the more expensive plastic and the piezo electric lighting mechanism. The addition of a refill value to the card lighter is insufficient to warrant reclassifying it as a non-disposable lighter. Therefore, disposable lighters with refill valves clearly fall within the scope of the investigation.

Comment 14: Critical Circumstances

Cli-Claque argues that critical circumstances do not exist. Cli-Claque maintains that the increase in July 1994 is due to a shipment to a U.S. customer to meet the July 12, 1994 deadline. This deadline, established by the Consumer Products Safety Commission's ("CPSC"). The CPSC barred the import of disposable lighters that did not meet more stringent safety requirements after July 1994. Thus, Cli-Claque argues that this shipment did not result from the filing of the antidumping petition, but from U.S. regulatory requirements imposed by CPSC.

Cli-Claque argues that, with respect to the history of dumping, although the Council of European Communities found dumping of gas-fueled, non-refillable pocket flint lighters, the margin in the case of China was only 16.90 percent, well below the Department's 25 percent threshold. In

addition, according to Cli-Claque, the European determination did not cover piezo-electric lighters, but only flint lighters. Since piezo-electric lighters represent a significant percentage of the lighters exported to the United States by Cli-Claque, the Department should not impute knowledge of dumping to Cli-Claque. Moreover, Cli-Claque maintains that the Department cannot impute knowledge of dumping to Cli-Claque's importers since the Department found a dumping margin of only 7.03 percent. The Department's practice has been to impute such knowledge only where it finds a preliminary margin equal to or greater than 25 percent.

Petitioner argues that although the European determination only covers flint lighters, the Department has preliminarily determined that electronic lighters are in the same class or kind of merchandise as flint lighters. In addition, petitioner argues that, as noted in the verification report, Cli-Claque used the date of sale, rather than the shipment date, for reporting monthly shipments. According to petitioner, this incorrect reporting understates the massiveness of imports by shifting shipments from the post-petition filing period to the pre-petition filing period. Finally, petitioner argues that although Cli-Claque claims that the increase in July 1994 was due to a shipment to a customer to meet the July 12, 1994 deadline established by the CPSC, the Department has repeatedly held that the statute and regulations make no mention of weighing other factors or examining alternative causes as to the reason for increased imports.

Petitioner also argues that the Department should continue to find that critical circumstances exist with respect to imports of lighters from Cli-Claque. Petitioner maintains that the first prong of the statutory requirement for critical circumstances, *i.e.*, knowledge of dumping, is fulfilled. Petitioner states that disposable lighters from the PRC have been found to be dumped in both the European Union and Argentina. In 1991, the European Commission (EC) imposed antidumping duties on gas-fueled, non-refillable pocket flint lighters originating in China. The fact that the margin on lighters from China was only 16.9 percent is irrelevant for this prong of the knowledge test. According to petitioner, the Department requires a 25 percent margin on imports only when the Department is imputing knowledge of dumping under the second alternative criteria for knowledge of dumping, not when the Department is inquiring whether there is a history of dumping in the United States or elsewhere under the first

alternative criteria for knowledge of dumping.

DOC Position

We disagree with petitioner that a history of dumping exists with respect to disposable lighters. We do not require the scope of our proceeding to match exactly the scope of the foreign proceeding. Since the lighters examined by the EC are subject to this investigation, we find that there is a history of dumping with respect to the class or kind of merchandise as a whole and, by extension, with respect to Cli-Claque. We have established a history of dumping with respect to Cli-Claque and we agree with petitioner that in evaluating this criterion, the size of the margin found by the EC is irrelevant. Because there is a history of dumping, we are not required to consider whether the importer knew or should have known that the exporter was selling the subject merchandise at less than fair value.

We have also considered whether imports of the merchandise have been massive over a relatively short period of time in accordance with 19 CFR 353.16(f) and (g). Based on verified information on shipments by Cli-Claque, we find that imports have been massive over a relatively short period of time, even when taking into account the increase in volume in advance of the July 1994 deadline for importing non-childproof lighters. (For a more detailed analysis, see the proprietary Calculation Memorandum for this final determination.) Therefore, we find that critical circumstances exist with respect to imports on behalf of Cli-Claque because a history of dumping exists and because imports have been massive over a relatively short period of time.

Comment 15: Defective Lighters

Cli-Claque argues that there is no need to adjust total production figures to account for defective lighters, as petitioner maintains, since the production figures used in the factor of production calculations are already net of defective lighters sold to customers in the PRC which were later returned to Cli-Claque.

DOC Position

We agree with petitioners and have made an adjustment to the cost of manufacture to account for the defective lighters sold which were later returned to Cli-Claque.

Comment 16: Water and Diesel

Petitioner argues that the Department should not include water and diesel in overhead, but should calculate values

for these inputs separately, using surrogate values. Petitioner maintains that the diesel fuel used to power the generators is a direct factor of production in producing lighters, and not, as in some other cases, an incidental expense. As a direct factor of production, diesel fuel should be included as a separate factor of production and not included as a part of factory overhead.

Cli-Claque argues that water should be treated as an overhead item. With regard to diesel fuel, Cli-Claque has submitted the total kilowatt hours of electricity used because electricity is the direct input used in the production process. Cli-Claque asserts that if the Department were to also include diesel fuel used to produce electricity as a factor of production, it would be double-counting the cost of electricity.

DOC Position

We agree with respondents that water should be included in factory overhead and, therefore, should not be valued separately. Because it is normal practice to include such cost in factory overhead, and the RBIB data did not indicate to the contrary, we find it reasonable to presume that water is included in the overhead value we used (See *Saccharin*).

We also agree with Cli-Claque that, for those companies that generate electricity using diesel-powered generators, inclusion of diesel fuel and electricity as separate factors of production would result in double-counting. Since diesel fuel is the factor actually used by these companies, we have used the diesel fuel input in our calculation of FMV, where possible. However, for some companies this was not possible and, instead, we valued the electrical output of the generators as the best available information.

Comment 17: Labor Hours

Petitioner argues that the Department should adjust labor hours used to make the electronic lighter caps because, at verification, the Department noted differences for the total number of hours worked by unskilled labor in the metal workshop.

Cli-Claque maintains that no adjustment should be made to its labor calculations for the metal workshop and that petitioner's comment on this point is based on a misreading of the verification report. According to Cli-Claque, as stated in the verification report, the labor hours per month for the metal workshop were calculated by multiplying the number of days per month a machine was in operation by the average labor hours worked per day.

The difference, cited by petitioner, was not a discrepancy between the data reported and the figure verified but the difference between the skilled and unskilled hours worked per day in the metal workshop.

DOC Position

We agree with respondent. Our discussion in the verification report was to note only the difference in the number of hours worked between skilled and unskilled workers in the metal workshop. We did not note any discrepancies in the information we reviewed.

Comment 18: Electroplating

Petitioner argues that the Department should assign appropriate surrogate values for electroplating as best information available since electroplating was done by a non-market economy source. In addition, petitioner argues that Cli-Claque likely incurred transportation charges for shipping lighter caps for electroplating. Therefore, surrogate values for these transportation charges should also be included.

Respondent argues that electroplating merely adds a finish to caps produced by Cli-Claque. The Department reviewed the invoice provided by the subcontractor at verification and found that the charges were insignificant.

DOC Position

Based on information reviewed at verification, we agree with respondent that electroplating was an insignificant cost, and would be included in the surrogate overhead value. We disagree with petitioner's characterization of the Department's practice, *i.e.*, if a material is used in the production process, it should be included in the direct materials calculation. As stated in *Saccharin*, it is standard practice to classify certain inputs as variable overhead. Electroplating is infrequently used in the production process, is small in value relative to the total cost of manufacturing the product and, hence, would be included in the surrogate country overhead value. Therefore, we have not valued it separately.

Gao (HK) Hua Fa Industrial Co. Ltd. (Gao Yao)

Comment 19: Market Economy Inputs Originally Reported in Renminbi (RMB)

Petitioner states that the Department should use surrogate values for all inputs Gao Yao reported to the Department in Renminbi (RMB), but actually purchased in Hong Kong dollars. Petitioner argues that Gao Yao incorrectly reported purchases based on

Gao Yao's calculation of the exchange rate.

Gao Yao argues that certain accounting records are maintained in RMB but this should not be grounds for using surrogate values. Gao Yao states that the discrepancy caused by its calculation of the exchange rate had a negligible effect on import prices, and the Department should use market economy prices for material inputs purchased from market economy suppliers.

DOC Position

When a respondent purchases imports from a market economy and pays in a market economy currency, the Department prefers using the actual price of that input rather than a surrogate value, (see, e.g., *Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the PRC*, (56 FR 55271, 55275, October 25, 1991), upheld *Lasko Metal Products v. U.S.* 810 F. Sup. 314, *Aff'd*, 43 F. 3rd 1142 (Fed. Cir. 1994)). For purposes of our final determination, we have used actual, verified prices for those inputs which were purchased by Gao Yao from a market economy supplier and paid for in market economy currencies.

Comment 20: Natural Gas

Petitioner argues that the Department should include natural gas in its calculation of Gao Yao's FMV since it reported that it uses natural gas.

Gao Yao states that the reference in its response to "natural gas" was incorrect. The input in question was butane—a factor which was separately reported. According to Gao Yao, the Department verified that it did not use natural gas as an energy source.

DOC Position

We agree with respondent. At verification, we determined no natural gas was being used in the production process.

Comment 21: Port Handling Charges and Rejected Lighters

Petitioner also asserts that the Department should adjust Gao Yao's production information to reflect lighters which failed internal quality control inspection.

DOC Position

We agree with petitioner. We have adjusted our calculation of FMV to account for lighters which were unsaleable.

Guangdong Light Industrial Products Import and Export Corporation (GLIP)

Comment 22: Governmental Ownership and Independence

Petitioner states that GLIP should not be granted a separate rate because a portion of the company's shares are held by a governmental entity. Petitioner argues that, while no evidence of governmental interference was found during verification, the fact remains that shares of the company are held by the government and, since GLIP only transformed to a shareholding company shortly after the POI, circumstances may change inciting the State Asset Management Bureau to take actions which interfere in the company's operations.

Petitioner states further that not enough is known about the level of governmental control exerted over GLIP during the POI, when the company was still owned by "all the people." Accordingly, petitioner argues that GLIP should not be granted a separate rate in this investigation and should be assigned the "PRC-Wide rate."

DOC Position

During verification, the Department examined all correspondence files pertaining to the period prior to the POI, the POI, and the period after the POI. We also examined bank records during the POI and found no evidence of government control over the company activities. In addition, based on discussions with GLIP officials, described in detail in our verification report, that GLIP's management has not changed since the company's transformation from a company owned by "all the people" to a company owned by shareholders. It is not the Department's practice to deny eligibility for a separate rate based on speculation that a government might someday try to influence a company's operations. If this did occur, a future administrative review would analyze such government influence in its determination of whether to grant a separate rate for this company. Currently, based on our *de facto* analysis of governmental control over the company's export activities, we conclude that GLIP is independent of government control. (See Separate Rates discussion).

Comment 23: Cost Factors Should be Adjusted for Variances

Petitioner states that the Department should adjust the standard usage amounts for materials and labor when calculating FMV for the lighters sold by GLIP to account for variances from standard observed at verification.

Petitioner additionally states that since warehouse withdrawal tickets are the only method for establishing variances for material usage, the Department should use these tickets to calculate variances for material usage.

DOC Position

We have adjusted labor figures to account for variances observed during verification for purposes of our final determination. We have based material usage on reported amounts, however, because the variances calculated using warehouse tickets appeared to be largely influenced by the amount of raw materials in work-in-process. Since the producer of lighters did not maintain records of raw materials inventory in work-in-process, it is not possible to calculate actual consumption.

Comment 24: Butane Consumption

Petitioner states that the Department should use gross consumption figures for butane in calculating GLIP's FMV for purposes of its final determination.

DOC Position

We agree with petitioner, and have made this adjustment for purposes of our final determination with respect to GLIP. Factory officials stated at the beginning of verification that they had inadvertently reported the net amount of butane in the final product in the company's response to the Department's antidumping questionnaire rather than the gross amount of butane used in producing the lighters. We verified the correct amounts and have used them in this determination.

China National Overseas Trading Corporation (COTCO)

Comment 25: Foreign Exchange Controls

Petitioner argues that COTCO should not be granted a separate rate because the company is subject to foreign currency controls which are indicative of a lack of independence from the central government. Petitioner states that in *Sparklers*, the Department stated that for an exporter to be granted a separate rate the company must (1) set its own export prices, and (2) be allowed to keep the proceeds from its sales. Petitioner cites to the Department's verification report, where management states that COTCO must ask permission to refund foreign currency on returned merchandise. Petitioner contends this statement is indicative of a lack of control over earnings and, consequently, a lack of independence.

Respondent argues that there is ample evidence of COTCO's independence

from government control. Respondent adds that Department officials verified that there were no returns or refunds for any subject merchandise during the POI.

DOC Position

Although COTCO must receive permission to purchase foreign currency, during verification we viewed evidence that COTCO regularly purchases foreign exchange to pay for imported merchandise. We saw no evidence of returned merchandise; the statement by COTCO officials concerning returned merchandise was in response to a hypothetical question from Department officials. The PRC's complex system of foreign exchange controls is not *per se* evidence of governmental control (see, e.g., *Coumarin*). The body of evidence gathered at verification indicates that COTCO retains control over its earnings, both foreign and domestic.

Comment 26: Affiliated Companies

Petitioner states that the companies which are affiliated with COTCO did not cooperate in this investigation and it should be assumed that they had unreported lighter sales to U.S. customers during the POI. Accordingly, petitioner argues, COTCO should not be granted a separate rate, and should be assigned the "PRC-Wide" rate as punitive BIA.

Respondent states that COTCO included information for all lighter sales to U.S. customers in its response and that during verification Department officials requested information to confirm that all sales had been reported. Respondent argues that a separate rate based on its verified response is appropriate in the Department's final determination.

DOC Position

We agree with respondent. At verification, consistent with normal verification practices, we verified that no COTCO affiliate, except for the one under investigation, sold the subject merchandise during the POI. COTCO officials cooperated with Department verifiers to the best of their ability and we are satisfied that our tests of the completeness of COTCO's response demonstrates that all sales of subject merchandise have been included.

Comment 27: Shipment After POI

Petitioner states that a shipment made by COTCO after the POI and for which there was no sales contract should be assumed to have been a sale during the POI and should be included in the company's sales listing.

Respondent states that all sales made during the POI were included in the data submitted to the Department, and that sales made after the POI should not be included in the Department's antidumping duty rate calculation.

DOC Position

We agree with respondent. We saw no evidence during verification that the sale relating to the shipment in question was made during the POI. During verification, we viewed another example of a sale by COTCO where a contract was not generated prior to shipment of the merchandise. Given the date of shipment, the invoice date, and based on statements by COTCO officials, we believe the sale should not be included in COTCO's sales data for the POI.

Continuation of Suspension of Liquidation

For Gao Yao, we calculated a zero margin. Consistent with *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China* (59 FR 55625, November 8, 1994), merchandise that is sold by Gao Yao but manufactured by other producers will not receive the zero margin. Instead, such entries will be subject to the "PRC-wide" margin.

In accordance with sections 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of disposable pocket lighters from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage	Critical circumstances
China National Overseas Trading Corporation *	0	Affirmative.
Cli-Claque Company Ltd.	6.15	Affirmative.
Gao Yao (HK) Hua Fa Industrial Co., Ltd.	0	Negative.

Manufacturer/producer/exporter	Weighted-average margin percentage	Critical circumstances
Guangdong Light Industrial Products Import and Export Corporation.	27.91	Negative.
PolyCity Industrial, Ltd.	5.50	Negative.
PRC-Wide	197.85	Affirmative.

* This company has not disclosed for the public record the identity of its supplier or suppliers in the PRC. Upon public disclosure of this information to the Department, we will notify the Customs Service that sales through certain supply channels have an LTFV margin of zero and thus an exclusion from any order resulting from this investigation. Until and unless such disclosure is made, all entries will be subject to the "PRC-wide" deposit rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry in the United States, within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: April 27, 1995.
Susan G. Esserman,
Assistant Secretary for Import Administration.
 [FR Doc. 95-11161 Filed 5-4-95; 8:45 am]
BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 042795C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team (GMT) will hold public meetings on May 23-24, 1995, and May 30 through June 1, 1995.

ADDRESSES: Pacific Fishery Management Council; 2130 SW Fifth Avenue, Suite 224; Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The first meeting will be held in Room 370 West of NMFS Northwest Fisheries Science Center Montlake Laboratory, 2725 Montlake Boulevard East, Seattle, WA. The meeting will begin at 8 a.m. on both days. The May 23 session will not adjourn until the business for the day is completed and may go into the evening. The May 24 session will adjourn by 4 p.m.

The purpose of this meeting is to review draft economic reports and to prepare for the June 27-29 Council meeting in Clackamas, Oregon.

The second meeting, a joint meeting of the GMT and the Groundfish Subcommittee of the Scientific and Statistical Committee, will be held May 30 through June 1, 1995, in the conference room of NMFS Southwest Fisheries Science Center, 3150 Paradise Drive, Tiburon, California. The meeting will begin at 1 p.m. on May 30, and at 8 a.m. on May 31 and on June 1. The sessions are expected to end each day about 5 p.m. This joint meeting, which is held annually, will be devoted to preparation of the groundfish stock assessments that will be presented to the Council in August 1995.

Both meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: April 28, 1995.
Richard W. Surdi,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
 [FR Doc. 95-11071 Filed 5-4-95; 8:45 am]
BILLING CODE 3510-22-F

[I.D. 042695B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.