Reports of Sample Shipments of Chemical Weapon Precursors

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Ave., NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information will be used to monitor sample shipments of chemical weapon precursors in order to facilitate and enforce provisions of the Export Administration Regulations that permit limited exports of sample shipments without a validated export license. The reports will be reviewed by the Bureau of Export Administration to monitor quantities and patterns of shipments that might indicate circumvention of the regulation by entities seeking to acquire chemicals for chemical weapons purposes.

II. Method of Collection

Quarterly written report.

III. Data

OMB Number: 0694–0086.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 75.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 225.

Estimated Total Annual Cost: $3,825—no cost to the public other than providing the report.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 7, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–684 Filed 1–10–97; 8:45 am]

BILLING CODE 3510–DEBT–P

International Trade Administration

[A–570–844]

Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From the People's Republic of China

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

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Katherine Johnson, or Everett Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136, (202) 482–4929, or (202) 482–4194, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (''URAA'').

Final Determination

We determine that melamine institutional dinnerware products (''MIDPs'') 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 Act.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination and Postponement of Final Determination: Melamine Institutional Dinnerware Products from the PRC* (61 FR 43337, August 22, 1996)), the following events have occurred:

On August 22, 1996, Chen Hao Xiamen alleged that the Department made a ministerial error in its preliminary determination. The Department found that there was an error made in the preliminary determination; however, this error did not result in a change of at least five absolute percentage points in, but no less than 25 percent of, the weighted-average dumping margin calculated in the preliminary determination. Accordingly, no revision to the preliminary determination was made. (*See* Memorandum from the MIDP/PRC Team to Louis Apple dated September 16, 1996.)

In September through November 1996, we verified the questionnaire responses of the following participating respondents and, where applicable, their affiliates: Chen Hao (Xiamen) Plastic Industrial Co. Ltd. (''Chen Hao Xiamen''), Dongguan Wan Chao Melamine Products Co., Ltd., (''Dongguan''), Gin Harvest Melamine (Heyuan) Enterprises Co. Ltd. (''Gin Harvest''), Sam Choan Plastic Co. Ltd. (''Sam Choan''), and Tar-Hong Melamine Xiamen Co. Ltd. (''Tar Hong'').

Additional published information (PI) on surrogate values was submitted by petitioner and respondents on November 21, 1996. On November 22, 1996, the Department requested that Chen Hao Xiamen, Dongguan, Sam Choan, and Tar Hong submit new computer tapes to include data corrections identified through verification. This information was submitted on December 3 through 6, 1996.

Petitioner, the American Melamine Institutional Tableware Association (''AMITA''), and the respondents submitted case briefs on November 26, 1996, and rebuttal briefs on December 4, 1996. The Department held a public hearing for this investigation on December 6, 1996.

Scope of the Investigation

This investigation covers all items of dinnerware (*e.g.,* plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Excluded from the scope of investigation are flatware products (*e.g.,* knives, forks, and spoons).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) for all participating companies is January 1, 1995, through December 31, 1995.

Separate Rates

Of the five responding exporters in this investigation, three—Gin Harvest, Tar Hong Xiamen, and Chen Hao Xiamen (1) are wholly foreign-owned and (2) make all sales to the United States of merchandise produced by their company through Taiwan parent companies. Thus, we consider the Taiwan-based parent to be the respondent exporter in the proceeding. No separate rates analysis is required for these exporters. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China* (60 FR 22359, 22361, May 5, 1995)).

Sam Choan is wholly foreign owned but its sales to the United States are made from its facilities in the PRC. For this respondent, a separate rates analysis is necessary to determine whether it is independent from PRC government control over its export activities.

To establish whether a firm is sufficiently independent from government control to be 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 People's Republic of China* (56 FR 20588, May 6, 1991) and amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

Respondents have submitted for the record the 1994 Foreign Trade Law of the PRC, enacted by the State Council of the central government of the PRC, which demonstrates absence of *de jure* control over the import and export of goods from the PRC by ''foreign trade operators.'' The term ''foreign trade operators'' refers to legal persons and other organizations engaged in foreign trade activities in accordance with the provisions of the 1994 law. The companies also reported that MIDPs are not included on any list of products that may be subject to central government export constraints.

In prior cases, the Department has analyzed the provisions of the law that the respondents have submitted in this case and found that they establish an absence of *de jure* control (*see Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (61 FR 19026, April 30, 1996) (*Bicycles*)). We have no new information in this proceeding which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Silicon Carbide* and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China (60 FR 22544, May 8, 1995) (*Furfuryl Alcohol*)). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental 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* and *Furfuryl Alcohol*).

Each company asserted, and we verified, the following: (1) it establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, questionnaire responses on the record indicate that pricing was company-specific during the POI, which does not suggest coordination among or common control of exporters. During verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that there is a *de facto* absence of governmental control of export functions. Consequently, we have determined that Dongguan and Sam Choan have met the criteria for the application of separate rates.

PRC-Wide Rate

Because some companies did not respond to the questionnaire, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC (except the five participating exporters) based on our presumption that those companies are under common control by the PRC government. *See, e.g., Bicycles.*

Facts Available

Pursuant to sections 776 (a) and (b) of the Act, we have based the PRC-wide rate on facts available, using adverse inferences, because the non-responding companies have failed to cooperate to the best of their ability. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i)—the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its

ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA, accompanying the URAA, clarifies that the petition is ''secondary information.'' *See*, SAA at 870. The SAA also clarifies that ''corroborate'' means to determine that the information used has probative value. *Id*. However, where corroboration is not practicable, the Department may use uncorroborated information.

The exporters that did not respond in any form to the Department's questionnaire have not cooperated at all. Further, absent a response, we must presume government control of these and all other PRC companies for which we cannot make a separate rates determination. Accordingly, consistent with section 776(b)(1) of the Act, we have applied, as total facts available the margin alleged in the petition, as adjusted by the Department. We considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for these uncooperative respondents. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition.

The petitioner based its allegation of U.S. price on catalog prices of one of the respondents. The factors used in the petition are based on petitioner's own production experience. The factors in the petition consistent with the factors reported by responding companies on the record of this investigation. The surrogate values used by petitioner are based on publicly available information. Therefore, we detemine that further corroboration of the facts available margin is unnecessary.

We also applied adverse facts available to Dongguan based on the fact that we were unable to verify its response. *See* Comment 20 in the ''Interested Party Comments'' section of this notice, below.

Fair Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at less than fair value, we compared the export price (EP) to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i), we compared weighted-average EPs for the POI to the factors of production.

Export Price and Constructed Export Price

For Chen Hao Xiamen, Gin Harvest, Sam Choan, and Tar Hong, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and when constructed export price (''CEP'') methodology was not otherwise indicated, we calculated the price of the subject merchandise in the United States in accordance with section 772(a) of the Act. In addition, for Tar Hong, where sales to the first unaffiliated purchaser took place after importation into the United States, we based the price in the United States on CEP, in accordance with section 772(b) of the Act.

We excluded from our analysis all sales of products with a minimum thickness of less than 0.08 inch to the extent mistakenly or erroneously reported by the exporter in its sales listing. For Tar Hong, we also excluded all sales of three-piece sets where the combined thickness of the three items was less than 0.24 inch because we were unable to determine piece-specific prices and characteristics for such sets. *See* Comment 10, below.

We corrected respondents' data for errors and omissions found at verification. In addition, we made company-specific adjustments as follows:

1. Chen Hao Xiamen

The calculation of EP for purposes of the final determination did not differ from our preliminary calculations.

2. Dongguan

We based Dongguan's final dumping margin on adverse facts available. *See* Comment 20.

3. Gin Harvest

We calculated EP in accordance with our preliminary calculations, except for the following changes based on verification findings: (1) we excluded sales of one product which we found to be outside the scope of investigation; (2) we corrected the reported movement expenses for one sale; and (3) we corrected for all sales the reported distance from the factory to the port for calculating the surrogate value for foreign inland freight.

4. Sam Choan

We calculated EP in accordance with our preliminary calculations, except that we corrected the reported market-economy brokerage expense for sales to one customer based on verification findings.

5. Tar Hong Xiamen

We calculated EP and CEP in accordance with our preliminary calculations, except as follows, based on information derived at verification.

We recalculated discounts by applying the reported discount percentage to the gross unit price of the sale. We also recalculated marine insurance by applying a percentage based on value, rather than based on volume as reported, since this expense was incurred on a value basis.

For CEP sales, we reallocated movement expenses and added an amount for unreported U.S. brokerage expenses. We reallocated and corrected indirect selling expenses, all freight expenses not reported elsewhere (*see* Comment 15), and other expenses not reported elsewhere (*see* Comment 18). In this reallocation, we recalculated by dividing the combined POI expenses of Tar Hong's two U.S. affiliates, by the sum of the POI sales values from these entities. We also recalculated reported credit based on corrections to reported payment dates.

Normal Value

A. Factors of Production

In accordance with section 773(c) of the Act, we compared the NV calculated according to the factors of production methodology, except as noted below for Chen Hao Xiamen. Where an input was sourced from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the factors-based NV in accordance our practice. *See Lasko Metal Products* v. *United States*, 437 F. 3d 1442, 1443 (Fed. Cir.1994) (''*Lasko*''). For all producers, we recalculated the values for materials purchased from market economies, based on our verification findings. We excluded Taiwan VAT assessed on Taiwan material purchases (*see* Comment 3).

Furthermore, for Tar Hong, we added PRC brokerage for market-economy inputs. For Gin Harvest and Sam Choan, the equivalent charges are included in the reported movement expenses as Hong Kong brokerage. In addition, for Tar Hong and Gin Harvest we added freight from the port to the factory for inputs purchased from market economies.

In instances where inputs were sourced domestically, we valued the factors using published publicly available information from Indonesia. Reported unit factor quantities were multiplied by Indonesian values. From the available Indonesian surrogate values we selected the surrogate values based on the quality and contemporaneity of data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. For a complete analysis of surrogate values, *see* the Valuation Memorandum: Preliminary Antidumping Duty Determination of Melamine Institutional Dinnerware Product from the People's Republic of China (PRC) dated August 14, 1996 (Preliminary Valuation Memorandum), and the Valuation Memorandum: Final Antidumping Duty Determination of Melamine Institutional Dinnerware Products (MIDP) from the People's Republic of China (PRC) dated December 20, 1996 (Final Valuation Memorandum).

We added amounts for overhead, general expenses, interest and profit, based on the experience of P.T. Multi Raya Indah Abadi (Multiraya), an MIDP producer in Indonesia (*see*, also, Comment 2), as well as for packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States. We have recalculated the percentages for overhead, selling, general and administrative (SG&A), and interest expenses using the detailed public version of Multiraya's financial statement placed on the record of this investigation by the respondents. In our recalculations, as detailed in the December 20, 1996 Final Valuation Memorandum, we have eliminated the source of possible double counting for electricity alleged by respondents in their case brief. For Tar Hong, we calculated a value for the cost of transporting material purchases from the PRC port to the factory using the surrogate value for truck freight. Based on verification results, we revised calculations for Gin Harvest, as follows. We revised the value of freight for certain material inputs to correct the reported distance from the supplier to the factory. We also revised reported electricity consumption and reported packing material consumption for certain products. For Sam Choan, because freight data for diesel fuel was not reported, we applied facts available based on the furthest distance to a supplier cited in the response.

B. Multinational Corporation Provision

For Chen Hao Xiamen, petitioner alleged that section 773(d)(3) of the Act, the special rule for multinational corporations, should be applied to Chen Hao Xiamen's NV. We have determined that the record evidence for Chen Hao Xiamen supports a finding that the first two criteria of the MNC provision have been met. In order to determine if the third criterion was satisified, we calculated NV for Taiwan-produced merchandise (affiliated party NV) in addition to calculating NV using the factors of production methodology, described above, to determine whether affiliated party NV exceeded PRC NV.

We note that there are several ways in which the third criterion may be applied in this case. In the preliminary determination, we found that the affiliated party NV (price or COP, as appropriate) exceeded the PRC NV for a substantial majority (by quantity) of the U.S. sales. An alternative approach is to match each Taiwan transaction with its most comparable PRC NV. For each Taiwan transaction, the PRC NV and the Taiwan price are compared to each other; if the Taiwan price exceeds the PRC NV for a preponderance of Taiwan sales (by quantity), all comparisons of EP to NV are made using Taiwan sales as NV. Yet another approach is to determine the number of models where the Taiwan NV is higher than the NV based on the factors of production. Whichever approach to apply the third criterion of the MNC provision is used, however, the result in each case would be to use the Taiwan NV. In any event, whether or not the MNC provision applies, the result would be the same—a *de minimis* or zero margin for Chen Hao Xiamen.

In applying Taiwan NV, we compared Taiwan sales to Chen Hao Xiamen's U.S. sales in the same manner as discussed in our preliminary determination, except that we adjusted COP in the following manner: a) we revised the financial expense to exclude foreign exchange gains, and to include the interest expense associated with loans from affiliated parties; and b) we adjusted factory overhead expenses to include an amount for pension expenses. These changes are discussed in detail in the final determination notice in the companion Taiwan investigation.

With regard to the calculation of Chen Hao Xiamen's factors of production, at verification, we found that Chen Hao Xiamen did not account for a rebate in its reported cost of melamine powder purchased from a Taiwan supplier. We do not have sufficient information on the record to accurately allocate this rebate to Chen Hao Xiamen's costs, since neither Chen Hao Xiamen nor Chen Hao Taiwan identified the total amount of purchases from this supplier that were eligible for this rebate, and transferred to Chen Hao Xiamen, as discussed in the Department's verification report of Chen Hao Taiwan. Consequently, we have not adjusted Chen Hao Xiamen's melamine powder costs for the rebate.

In addition, we added PRC brokerage and freight from the port to the factory for market-economy inputs. We also calculated a value for the cost of transporting material purchases from the PRC port to the factory using the surrogage value for truck freight. Finally, we revised the reported consumption of packing materials for certain products, based on our findings at verification.

For comparisons of Chen Hao Xiamen's EP to NV based on Taiwan prices, we made circumstance of sale adjustments for differences in imputed credit, bank charges incurred on U.S. sales, and royalty expenses incurred in Taiwan on Taiwan sales. As Chen Hao Xiamen did not report credit expenses and bank charges in its sales response, we calculated these expenses using payment information obtained during verification. Chen Hao Taiwan, the parent company, reported in its public questionnaire response that it did not borrow in U.S. dollars and thus used the average short-term interest in the United States during the POI of 8.83 percent, as reported in *International Financial Statistics,* published by the International Monetary Fund, to calculate imputed credit for its U.S. sales. We applied this same rate to calculate credit expenses for Chen Hao Xiamen's U.S. sales.

Verification

As provided in section 782(i) 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.

Interested Party Comments

General Comments

Comment 1: Scope of Investigation

Respondents argue that the scope of investigation should be revised to exclude melamine dinnerware that exceeds a thickness of 0.08 inch and is intended for retail markets when such products are accompanied by

appropriate certifications presented upon importation to the United States.

Petitioner objects to respondents'' scope revision proposal because, it believes, it has no legal or factual basis and would result in an order that would be very difficult to administer. Petitioner further contends that antidumping orders based on importer certifications of use, such as the proposal advocated by respondents, are difficult to administer and should be avoided where possible. Petitioner argues that if respondents want to produce merchandise for the retail market that presents no scope issue, respondents can produce merchandise of a thinner wall thickness that falls outside of the scope.

DOC Position. We agree with petitioner. Petitioner has specifically identified which merchandise is to be covered by this proceeding, and the scope reflects petitioner's definition. As we stated in *Final Determination of Sales at Less Than Fair Value: Carbon and Alloy Steel Wire Rod from Brazil* (59 FR 5984, February 9, 1994), [p]etitioners' scope definition is afforded great weight because petitioners can best determine from what products they require relief. The Department generally does not alter the petitioner's scope definition except to clarify ambiguities in the language or address administrability problems. These circumstances are not present here.

The petitioner has used a thickness of more than 0.08 inch, not end use, to define melamine ''institutional'' dinnerware. The physical description in the petition is clear, administrable and not overly broad. Thus, we agree with petitioner that there is no basis for redefining the scope based on intended channel of distribution or end use, as respondents propose.

Comment 2: Calculation of Profit, Overhead, SG&A, and Interest

Petitioner proposes that the Department use a surrogate profit figure based on sales made in the ordinary course of trade by Indonesian producer, Multiraya, the respondent in the concurrent *MIDP from Indonesia* investigation. Petitioner characterizes the profit figure used at the preliminary determination (*i.e.*, as derived from Multiraya's 1995 financial statement) as inappropriate because it covers non-subject merchandise, below-cost sales, and dumped export sales—all of which petitioner contends should not be included in the profit calculation.

Petitioner argues that the current law is very clear in that, when available, profit for a constructed value (CV) calculation is home market profit. Petitioner asserts that the Department's consistent practice has been to use either the former statutory minimum of eight percent or else a domestic, rather than an export, profit value.

Respondents argue that the Department should use the public summaries of Multiraya's 1995 financial statement to calculate surrogate overhead, SG&A, interest expense, and profit. According to respondents, Multiraya exports merchandise that is virtually identical to that exported from the PRC; therefore, Multiraya's company-wide profit rate is pertinent to the valuation of PRC merchandise. To the extent that the Department uses Multiraya's company-wide costs to calculate constructed value in the Indonesian proceeding, respondents contend that it should also base surrogate profit on company-wide Multiraya data.

In addition, respondents argue that petitioner's profit calculation is contrary to the Department's practice of basing NV in NME cases on export data. Respondents contend that the Department's practice is meant to ensure that product disparities like those reflected in petitioner's profit calculation do not undermine the accuracy of the CV. Moreover, respondents claim that there is a disparity between the products sold by Multiraya in the home market and the products exported by the PRC companies; the vast majority of products exported by the PRC respondents were decorated and glazed, unlike Multiraya's home market sales, which were virtually all undecorated and unglazed. Therefore, the respondents argue that the Department should use the company-wide profit from Multiraya's public version financial statement to calculate the applicable surrogate profit percentage.

DOC Position. We agree with petitioner and have used as surrogate profit a percentage derived from Multiraya's public version questionnaire response. In this investigation, we are faced with the unusual situation of having on the record both a public financial statement from the surrogate country as well as the public version questionnaire responses of the Indonesian respondent in the concurrent investigation. The Department's preference is to use the most product-specific information possible from the surrogate market to calculate surrogate profit. Insofar as publicly ranged data may be imprecise, it would be speculative to rely on such data as an accurate measure of whether sales are below cost and outside the ordinary course of trade. Accordingly, for the purpose of deriving a surrogate profit percentage, we have used all sales in the public version, rather than excluding allegedly below cost sales.

Comment 3: Tax Paid on Melamine Purchased From Taiwan

Petitioner argues that the Department should affirm its practice in the preliminary determination and include the tax paid by the PRC respondents on purchases of melamine powder from Taiwan in the valuation of material costs. Petitioner asserts that the respondents pay the Taiwan value added tax (VAT) to unaffiliated suppliers either directly or through affiliated companies in Taiwan, and that the tax imposes a net cost because the PRC companies are not collecting the VAT from their customers. Consequently, petitioner contends that the tax should be included in the material cost calculation. Petitioner claims that even if the Taiwan government rebates to the respondent's affiliate any such tax collected, it does not mean that the purchaser benefits from the rebate.

Respondents argue that the Department should exclude from the market-economy prices of material inputs the Taiwan VAT that was paid upon purchase, but rebated or credited upon export from Taiwan to the PRC. Respondents assert that the Department verified that Taiwan VAT paid on materials purchased from Taiwan suppliers is credited to the purchasers'' VAT liability account. As a result, respondents claim that they receive a benefit equal to the amount of VAT paid. Thus, VAT is effectively not paid on these exports.

DOC Position. We agree with respondents. At verification, we confirmed that Taiwan VAT on melamine powder paid by the Taiwan companies is offset by the VAT owed by the PRC purchaser (respondent). This offset is equivalent to a rebate since the PRC purchaser receives a credit against the VAT owed and does not have to pay a VAT amount (as VAT owed is equal to the amount of VAT paid). The net effect is that the respondent incurs a cost for melamine powder exclusive of VAT. Accordingly, we have not added VAT from the market economy to the value of these inputs.

Comment 4: Use of Taiwan Prices for Melamine Powder Purchased from PRC Suppliers

Petitioner argues that the Department should not use Taiwan prices for all melamine powder purchased by PRC producers if the producer has obtained

some of its melamine powder from the PRC. Petitioner claims that it is not enough to provide that the market-economy price may be disregarded ''where the amount purchased from a market economy supplier is insignificant'' (Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking, 61 FR 7,309, 7,345 (February 27, 1996)). According to petitioner, it should be the other way around—only if the amount purchased within the non-market economy is insignificant will it be appropriate to use the price actually paid to market economy suppliers of the input to represent the overall cost of that factor of production. Or, at a minimum, petitioner argues, the overall value of the factor in question should be a weighted average of the surrogate value and the market-economy price.

Respondents argue that petitioner offers no reasonable justification as to why the Department should not use prices paid to market economy suppliers to value melamine powder purchased from a PRC supplier. Respondents state the Department's practice is to use the price paid to a market economy supplier (*See e.g. Bicycles*) and that this practice has been upheld by the Federal Circuit. *Lasko Metal Products, Inc.* v. *United States,* 43 F.3d 11442 (Fed. Cir. 1994).

DOC Position. We agree with respondents. When melamine powder was purchased from a market economy, we used the prices paid to market economy suppliers to value this input, even though the producer did not purchase 100 percent of the melamine powder from a market economy. We believe that the market economy price is the most appropriate basis for determining the value of melamine powder purchased from PRC suppliers.

Comment 5: Labor Rate Calculation

Petitioner argues that the Department's labor rate calculation should reflect at most 50 weeks of work time, as opposed to the 52-week work year that was used in the preliminary determination, because Attachment 4 of the August 14, 1996, Preliminary Valuation Memorandum notes that employers in Indonesia are required to provide paid annual leave of at least two weeks per annum.

Respondents argue that just because Indonesian employers are required to give two weeks paid leave per year does not mean that workers actually take two weeks leave, but simply reflects the fact that Indonesian workers have the option of taking this time while receiving full pay. Respondents therefore argue that no adjustment is necessary to the labor rate because the Department cannot assume that the amount of leave allowed by employers is actually taken by workers.

DOC Position. We agree with respondents that our labor rate calculation is correct. We used monthly labor rates from the 1995 issue of *Indonesia: A Brief Guide for Investors,* which already include paid leave and other benefits, as detailed in the Preliminary Valuation Memorandum. We subsequently derived an hourly rate from the monthly rates, which already includes some benefits. Accordingly, we believe that it would be speculative to adjust the rate as reported for any potentially used vacation days.

Comment 6: Inflation of Costs Denominated in U.S. Dollars

Petitioner argues that the Department made an error in its preliminary determination by not inflating costs denominated in U.S. dollars, particularly those for cardboard and containerization. Petitioner contends that the costs in question are internal Indonesian costs which which would have been incurred in rupiahs, even if they happened to have been expressed in 1993 U.S. dollars. Petitioner claims that the changes in the rupiah/dollar exchange rate have not reflected the considerable inflation in Indonesia in recent years, so it is not appropriate to leave these adjustments at their original dollar amounts.

Respondents argue that, contrary to petitioner's suggestion, no adjustment or conversion of figures denominated in U.S. dollars is necessary. Respondents argue that the Department has rejected similar requests in other NME cases. In this case, according to respondents, the value and prices denominated in U.S. dollars are subject to the risks and opportunity costs associated with the U.S. dollars, and are not affected by Indonesian inflation. Respondents contend that petitioner's exchange rate inflation adjustments and exchange rate conversions would bring in numerous factors that would distort the factor value.

DOC Position. With regard to the figures for cardboard and containerization, we agree with respondents that no adjustment or conversion of figures denominated in U.S. dollars is necessary. In accordance with Department practice with regard to NMEs, surrogate values reported in U.S. dollars are not adjusted for inflation. *See Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the Republic of Hungary* (56 FR 41819, August 23, 1991) and *Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium from the Russian Federation* (60 FR 27957, 27963, May 26, 1995). *See* Valuation Memorandum: Preliminary Antidumping Duty Determination of Ferrovanadium from Russia dated December 27, 1994.

Comment 7: Duty on Melamine Powder

Petitioner believes that the Department should increase the cost of melamine powder imported into the PRC by the PRC duty rate applicable to such imports. Petitioner argues that import duties are as much a feature of non-market economies as they are of market economies, and that the proper rate in this case is the PRC duty rate. Petitioner argues that inclusion of the PRC duty rate is necessary to reflect the producer's actual cost for the imported input.

Respondents argue that the Department normally disregards such rates since it deems all NME costs to be unreliable. Respondents further argue that the Department cannot accept the valuation of PRC import duties yet disregard all other PRC values and expenses.

DOC Position. We agree with respondents that we normally disregard such a duty because it is a PRC cost denominated in RMB. *See Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China* (56 FR 55271, October 25, 1991). Accordingly, we have not increased the cost of melamine imported into the PRC by this duty rate.

Comment 8: Consumption and Yield Information

Petitioner argues that verification revealed Tar Hong's reported consumption of both melamine powder and LG powder to be grossly unreliable. Petitioner states that if the Department does not reject the factor consumption data entirely, then an appropriate adjustment would be to increase the melamine powder consumption for all Tar Hong products by the largest percentage amount which the Department found to be understated. Petitioner argues that this adjustment is conservative, given that four of the five samples described in the verification report were understated.

Similarly, petitioner claims that verification establishes that Gin Harvest maintains product specific yield information, yet it reported an overall yield figure which it applied to all of its products. Petitioner further argues that, because Gin Harvest produces and sells very different products to the United

States, these products necessarily have dramatically different product-specific yields. This sharply differing yield result is fully consistent with the yield information provided by the domestic industry in this investigation, according to petitioner. Petitioner argues that the Department should not accept the overall yield data supplied by Gin Harvest because the issue of product-specific yields has been raised numerous times in this investigation, yet Gin Harvest ignored its more accurate data and submitted less accurate data in order to obtain a lower margin. Finally, petitioner claims that if the Department accepts Gin Harvest's yield data, it should apply the overall yield to each heat treatment step used to produce each transaction listed in the U.S. sales database.

Tar Hong asserts that the Department verified its melamine powder and LG powder consumption allocation methodology and found no discrepancies. Tar Hong further claims that petitioner attacks the reliability of its melamine powder and LG powder allocations because of the production sampling performed at the verification in Xiamen. Although the Department's product sampling showed that per-unit, product-specific consumption was greater than that reported in some instances, according to Tar Hong, many variables (such as air temperature and moisture content on the day of production and the varying amounts of powder actually put into the mold by the individual workers) affect this production process so that the per-unit consumption figure will not be exactly the same for each production run. Accordingly, Tar Hong argues that the Department should ignore petitioner's request to increase the melamine powder consumption for all products and instead use the figures reported by Tar Hong.

Gin Harvest argues that it and other respondents are unable to report material consumption on a product-specific basis. Gin Harvest claims that although the Department noted that Gin Harvest has some production process records that would permit a calculation of product-specific material consumption, it also noted that such records are not maintained for any extended period of time by respondents in the normal course of business. Gin Harvest argues that it should not be punished for failing to provide data that it does not have.

DOC Position. The Department's preference is to use product-specific data. Where such information does not exist, the Department will use the most specific and reasonable information available (*See, Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia* (59 FR 4023, 4027, January 28, 1994). With regard to consumption, petitioner's argument relies on a selective reading of the Tar Hong verification report. Although our initial sampling, based solely on material withdrawn from inventory, indicated potential under-reporting, a second, more comprehensive sampling, which also accounted for materials returned to inventory, showed no consistent pattern of under-or over-reporting (*See* Tar Hong verification report at pages 24–25.) Although the documents used in our sampling could be used to calculate product-specific yields, the only documents we reviewed were contemporaneous with verification, not the POI. Verification revealed no indication that Tar Hong retained records at this level of detail (records showing materials withdrawn and returned to inventory) for more than a week. Therefore, while our sampling showed some variations between products, there is no information on the record to indicate that Tar Hong's overall production factor methodology is distortive. In the absence of any other, more specific allocation methodology available to Tar Hong, we have accepted its consumption factor reporting.

With regard to Gin Harvest's yield data, it reported an overall yield figure because it claimed that its records do not permit it to calculate product-specific yield data. Our verification revealed nothing to contradict the claim that Gin Harvest does not maintain product-specific yield data in its normal course of business.

Further, petitioner's proposed adjustment methodology of applying the yield percentage at every production stage encountered is inconsistent with the Department's verification findings regarding the manner in which the PRC respondents, including Gin Harvest, calculate yield. Petitioner's methodology incorrectly assumes that, at each step (*i.e.*, heat treatment, decoration, and glazing), the producer inspects the product and discards semi-finished products which do not meet specifications. However, as described in the respondents' questionnaire responses, it is not until all production steps have been completed that the respondents discard off-specification merchandise. That is, the overall yield figure is calculated based on production results after all production steps are completed. There is no information on the record to identify the actual yields at each step of production based on the POI production records maintained by Gin Harvest. Applying this overall yield to each production step would effectively double-or triple-count the rejection rate and thus unduly increase Gin Harvest's consumption factors. Gin Harvest's allocation was reasonable based on the records available to it. Accordingly, we have made no adjustment to its reported material consumption factors.

Company-Specific Comments

Tar Hong

Comment 9: Reporting of CEP and EP Sales

Petitioner believes that Tar Hong incorrectly reported certain CEP sales as EP sales. Petitioner argues that the burden of proof is on respondent to satisfy the Department's four-prong test regarding the classification of U.S. sales as cited in the Department of Commerce, Antidumping Manual, Chapter 7 at page 3 (revised 8/91). Petitioner contends that in this case, Tar Hong has not even addressed two of the Department's four criteria. Petitioner argues that at verification, the Department found that the U.S. entities play a central role in these sales, which resemble reported CEP sales in all aspects, except that they are not introduced into U.S. inventory. According to petitioner, Tar Hong's U.S. affiliates have the authority to set the price and the quantity of the potentially dumped merchandise. Petitioner also disagrees with Tar Hong's contention that the role of the U.S. affiliates is less than that of the U.S. affiliates in the first administrative review of *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18551 (April 26, 1996) (*Carbon Steel*). Petitioner argues that the Korean firms in *Carbon Steel* had full control of the U.S. sales, and the U.S. affiliates were merely paper processors, as evidenced by the information placed on the record by the Korean firms indicating that the U.S. affiliates had no power to negotiate or approve sales. Consequently, petitioner argues that the Tar Hong sales in question should be treated as CEP transactions.

Tar Hong argues that it properly classified certain sales as EP sales in accordance with the Department's three-factor test, as stated in *Carbon Steel*. First, Tar Hong claims that it has demonstrated that the sales transaction occurs prior to importation into the United States. Secondly, Tar Hong states that direct shipment from Tar Hong Xiamen to the unrelated U.S. customers is a normal commercial distribution

channel used for these U.S. customers. Lastly, Tar Hong asserts that the U.S. affiliates perform limited liaison functions serving primarily as processors of sales-related documentation and communication links with the unrelated buyers. Accordingly, Tar Hong claims that the functions performed by its U.S. affiliates are consistent with selling functions that the Department has determined in other cases to be of a kind that would normally be undertaken by the exporter (*see Carbon Steel*).

DOC Position. We agree with respondents that these sales are properly treated as EP sales. Based on the record evidence, Tar Hong's U.S. affiliates are merely processors of sales-related documentation and a communication link with the unrelated customers. Although these entities play an important role in Tar Hong's sales and distribution process, that role is limited to sales documentation processing and communication links. We find no compelling evidence in Tar Hong's responses or in our verification findings to treat these sales as CEP sales. Consistent with our approach in such cases as *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland* (56 FR 56363, November 4, 1991), we have treated these sales as EP sales.

Comment 10: Transactions Involving Dinnerware Sets

Petitioner states that Tar Hong improperly included non-subject merchandise in its reported sales when it added the thicknesses of the individual pieces of a set (plate, bowl, and cup) together to determine whether the dinnerware set was subject merchandise. Similarly, petitioner argues, pricing for dinnerware sets as well as the factors of production was reported on a combined basis using the plate in the dinnerware set as the identified product. Petitioner argues that this grouping of data for sets was contrary to the instructions in the questionnaire and prevents an item-by-item fair value comparison. Petitioner asserts that if the Department uses this data, it should apply the highest margin for any other transaction to all transactions involving sets as facts available.

Tar Hong contends that the Department has data necessary to calculate piece-specific margins for Tar Hong's set sales and factors because the Department verified that Tar Hong reported the data for sales of products sold in sets on the same basis it reported the data for the factors of production for these products.

DOC Position. We agree with Tar Hong and have appropriately adjusted our calculations to ensure a proper comparison. We excluded all sales of sets where the combined thickness is less than 0.24 inch. We have considered all pieces of a set to be subject merchandise when measurements are equal or greater than 0.24 inch.

Comment 11: Unit Price Reporting

Petitioner contends that, in addition to the errors identified by the Department concerning Tar Hong's reporting of U.S. unit prices on a per-piece, rather than on a per-dozen, basis for many sales, there is reason to believe that there are additional errors of this type which were not individually identified by the Department. Accordingly, petitioner asserts that the Department should compare the margin in the final determination for Tar Hong's sales of pieces with the margin calculated on the sale of dozens or cases, and if the margins for the piece sales are lower than the margins for dozens and cases, then, as facts available, the piece calculations should be disregarded and the sales of dozens or cases should be relied upon for the final determination.

Tar Hong argues that the errors found in its unit reporting do not merit application of facts available. Tar Hong contends that the Department verified that no other sales reported contained such errors.

DOC Position. We examined this issue at verification and are satisfied that the record is complete and accurate with respect to the reported quantities and per-unit prices of U.S. sales. Accordingly, we used the corrected information in our calculations for the final determination.

Comment 12: Production Quantity Data

Petitioner claims that the production quantity data submitted by Tar Hong on two prior occasions is grossly inaccurate, and that Tar Hong's shifting stance regarding the amount of merchandise produced during 1995 confirms that its most recent submission on October 23, 1996, is not reliable. Petitioner argues that the total production quantity is a figure that is fundamental to the integrity of the submission, and that Tar Hong's repeated corrections leave no reasonable basis to believe that its latest number is accurate. Accordingly, petitioner argues, the figure should be rejected.

Tar Hong claims that the Department verified its production quantities and confirmed the accuracy of its data.

DOC Position. We agree with Tar Hong. We have accepted Tar Hong's explanation for the discrepancies and have verified its response in this regard. Section 782(e) of the Act states that the Department shall not decline to consider information that does not meet all of its requirements if:

(1) The information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

Tar Hong's information meets all of these requirements. Accordingly, we have no basis to conclude that the earlier responses distorted the Department's analysis or otherwise impeded this proceeding.

Comment 13: Total Sales Value

Petitioner states that Tar Hong has dramatically overstated the unit price on a number of U.S. sales transactions. Petitioner contends that if the Department concludes that the application of general facts available for Tar Hong is inappropriate (*see* Comment 19 below), it must adjust for this exaggeration of submitted prices by assuming that affected sales are of products with margins, and deducting the amount that the CEP and EP sales values were overstated from total U.S. price.

Tar Hong claims that any discrepancy in its U.S. sales value reconciliation is due to petitioner's miscalculation of Tar Hong's sales values. Tar Hong adds that petitioner offers no explanation of its calculation, and suggests that petitioner's calculation failed to properly account for sales sold in units of cases or dozens.

DOC Position. We agree with Tar Hong. Petitioner misinterpreted the information in a verification exhibit. The document does not include the EP sales booked in Taiwan; it applies only to the sales booked in the United States. Moreover, the exhibit cited by petitioner is not the only document the Department used to confirm Tar Hong's sales reporting, as discussed in the verification report. Based on the sum of our verification findings, we found no discrepancies in the total volume and value of sales reported.

Comment 14: Ocean Freight

Petitioner argues that Tar Hong incorrectly assumed that all ocean

freight shipments were made in full container loads and that, the reported volumes of the master pack cartons, which are the basis for the movement charge allocations, are wrong. Petitioner claims that although Tar Hong provided revised information for the master pack cartons at verification, this information was not verified and therefore cannot be used. Petitioner argues that for purposes of the final determination, the container load error must be corrected and that, for the master carton error, either the Department should use general facts available or the highest unit freight reported for each freight adjustment affected by the errors.

Tar Hong contends that the Department should accept its revised allocation because the Department found that Tar Hong's volume-based methodology to recalculate international freight was supported by its records.

DOC Position. With regard to Tar Hong's ocean freight shipments, we found that the majority were in fact made in full container loads. Per our instructions, Tar Hong has reallocated EP ocean freight to account for our verification findings. We have also reallocated CEP ocean freight expenses based on our verification findings. In both situations, we consider the allocations to be proper.

Furthermore, although we did not specifically verify the revised information submitted at verification with regard to the volumes of the master pack cartons, the remainder of Tar Hong's response was verified, and the revised information is consistent with Tar Hong's verified information. Accordingly, we have accepted Tar Hong's information for the purpose of recalculating CEP movement expenses.

Comment 15: U.S. Warehouse to Customer Freight

Petitioner contends that Tar Hong's statements that it does not incur freight charges from the U.S. warehouse to the customer are unsupported. Petitioner claims that the verification report notes that Tar Hong's invoices report terms of CEP sales as ''delivered''. Petitioner therefore asserts that all freight expenses from Tar Hong's financial statements should be allocated to CEP sales.

Tar Hong claims that the Department verified that, notwithstanding the printed ''Delivered'' term on Tar Hong's invoice, Tar Hong's CEP customers either come to Tar Hong's warehouse and pick up their purchased products, or make their own freight arrangements. Tar Hong asserts that the Department verified that, for the few deliveries that it made using its own vehicles, its allocation methodology was reasonable.

DOC Position. We have accepted Tar Hong's explanation, but have recalculated and reclassified freight expenses based on our verification findings. Tar Hong's methodology allocated freight expenses to all CEP sales as a movement expense. That is, Tar Hong made no attempt to identify which particular sales may have actually incurred warehouse to customer freight. Since Tar Hong did not, and could not, allocate this expense only to those sales which incurred the expense, we determine that it is appropriate to treat all movement expenses not otherwise accounted for (*i.e.*, warehouse to customer expenses) as indirect selling expenses. In our recalculation of indirect selling expenses, we have also included an amount for freight expenses identified in the financial statements, but not included in Tar Hong's calculation. (*See* Comment 18 below.) In this manner, we have included all expenses related to freight.

Comment 16: Packing Weights

Petitioner argues that it is clear from the verification report that Tar Hong's packing weights are unreliable. Petitioner contends that the Department should increase the packing costs by the largest percentage of under reporting found at verification or, at the least, increase these weights by an average of the under reporting of the five samples.

Tar Hong argues that packing costs are reliable and require no further adjustment because the measured weights of the packing materials were within acceptable tolerances.

DOC Position. We agree with Tar Hong. We verified that the packing weights were within acceptable tolerances.

Comment 17: Unreported Returns and Claims

Petitioner states that where verification exhibits show evidence of returns and claims for Tar Hong that were not reported as U.S. warranty expenses or allowances, at a minimum, the Department should apply information from the verification and adjust total U.S. price accordingly.

Tar Hong claims that petitioner's discovery of alleged unreported returns and claims relate to nonsubject merchandise. Accordingly, no adjustment by the Department is necessary.

DOC Position. We agree with Tar Hong. We found no evidence at verification of warranty claims for the subject merchandise. Tar Hong's explanation is consistent with our findings.

Comment 18: Unreported Movement Charges

According to petitioner, the financial statements of Tar Hong's U.S. affiliates indicate that there are certain expenses that were incurred by respondent, but not reported as selling expenses or movement charges. Petitioner contends that the Department should account for these expenses by applying the total of these amounts directly against the margins.

Tar Hong states that the Department verified that the allegedly unreported charges were not direct selling expenses or movement charges, as petitioner claims. Accordingly, no adjustment to the margin calculation is warranted.

DOC Position. We agree with petitioner that these expenses should be accounted for. However, we disagree with petitioner's contention that the amount of the expenses should be applied directly against the margins. Petitioner offers no basis to consider this approach and there is no precedent for applying it here. Instead, we have included these expenses as part of our recalculation of indirect selling expenses. As discussed above at Comment 15, we have treated Tar Hong's unreported warehouse-to-customer expenses as indirect selling expenses. The additional expenses identified by petitioner appear properly classified in this instance as indirect selling expenses as well.

Comment 19: Use of Facts Available for Tar Hong

Petitioner argues that Tar Hong's EP and CEP prices are grossly overstated through a series of reporting errors or misstatements, including those addressed above. Accordingly, petitioner contends, the Department cannot reasonably conclude that the U.S. sales data base is reliable. Further, petitioner contends that Tar Hong's NV data is also unreliable because, despite numerous changes, Tar Hong's total production figure is inaccurate, its treatment of sets makes a proper factors analysis impossible, and the weights of the reported products as well as the packing materials are systematically understated. Moreover, petitioner claims that the corrections submitted at verification should be rejected because an entirely new factors database was submitted and petitioner did not have a meaningful opportunity to comment on the new data. Petitioner concludes that the Department should use facts available because Tar Hong's data is unreliable and no acceptable means of correction exists.

Tar Hong argues that the Department was able to verify all corrections to source documents and the reason for the corrections. Furthermore, according to Tar Hong, there is no evidence that Tar Hong failed to cooperate with the Department by not acting to the best of its ability to comply with requests for information. Tar Hong believes that in those situations where there are discrepancies, the Department should weigh the record evidence to determine what type of change, if any, would be the most probative of the issue under consideration.

DOC Position. We do not agree with petitioner's assertion that Tar Hong's data is unreliable and no acceptable means of correction exists. Moreover, we do not agree with petitioner that Tar Hong's revised factors database contains entirely new data. As discussed in our responses above, we have rejected many of petitioner's claims with regard to Tar Hong's data. The remaining errors are minimal and do not undermine the integrity of the response. Thus, consistent with our approach in such cases as *Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review*, 61 FR 59407 (November 22, 1996), the use of facts available is not warranted in this instance.

Dongguan

Comment 20: Facts Available

Petitioner argues that the seriousness of the defects in Dongguan's response is evident in that the Department was unable to verify its U.S. sales. Petitioner claims that the verification report records the Department's efforts on this critical issue, and confirms the suspect nature of the data. For example, petitioner cites the Department's finding in the verification report that no confirmation of sales of the subject merchandise to the corporate tax statement was possible. Furthermore, petitioner argues that the Department was unable to complete a sales quantity document trace and that Dongguan's sales records contained duplicate invoices. Petitioner further contends that a failed verification is basically the same as a failure to respond at all and facts available must be used.

Dongguan argues that, although the Department was unable to tie the sales beyond the general ledger, it also noted that it did not observe any apparent inconsistencies in the sales reporting, as revised through verification. Dongguan claims that all other aspects of the accounting system were verified as accurate and reliable. Dongguan also claims that, although the Department was unable to tie sales to the corporate income tax statement, it was able to verify the general integrity and reliability of the sales reporting data from the invoices to the response and to its accounting system. Dongguan asserts that the Department was also able to verify that non-melamine sales income reported in the accounting system was posted accurately and reliably in the corporate tax system. Accordingly, Dongguan believes that the Department need not apply facts available, given the overall reliability of the accounting system.

*DOC Position.*We agree with petitioner. Dongguan's failure to reconcile its sales response beyond the general ledger, coupled with the absence of reliable alternative support documentation, such as verifiable sequential invoice records, leaves no basis to accept the integrity of the sales response and constitutes a verification failure under Section 776(a)(2)(D) of the Act. A complete verification failure also renders a response unusable under section 782(e) of the statute. A verification failure of this magnitude demonstrates Dongguan's ''failure to cooperate by not acting to the best of its ability to comply with our requests for information.'' Accordingly, for the above-mentioned reasons, and consistent with *Pasta from Turkey*, 61 FR 30309, 30312 (June 14, 1996), we based Dongguan's final dumping margin on adverse facts available. In addition, because this margin is based on facts available, all other issues raised by the parties concerning Dongguan are moot.

Sam Choan

Comment 21: Reporting Errors

Petitioner states that the verification report identifies a large number of sales transactions of nonsubject merchandise that were included in the preliminary determination. Petitioner further contends that the difficulties experienced by the Department in verifying Sam Choan's product weights undermine the reliability of the response and that Sam Choan's response should be rejected because none of these transactions were accurately reported. If the Department decides to use Sam Choan's data, petitioner asserts that the weights for certain product codes must be increased, consistent with the verification findings.

Sam Choan argues that its revised sales listing reflects the weights and thicknesses verified by the Department. Sam Choan further states that the Department should exclude any merchandise that does not fall within the scope of investigation.

DOC Position. We have used the weights, as corrected per our verification, in our final determination. We find no basis to conclude that errors in the weight reporting affect the overall integrity of the response. As described in *Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review*, 61 FR 59407 (November 22, 1996), these errors are not substantial and thus do not affect the integrity of the response.

With regard to the reporting of out-of-scope merchandise, we have excluded this merchandise for purposes of the final determination.

Chen Hao Xiamen

Comment 22: Application of the Multinational Corporation Provision

Chen Hao Xiamen argues that the Department's application of the MNC rule in this case is not supported by the statute because the Department has failed to demonstrate that the special and unique circumstances required for application of the MNC rule are present in this investigation. Furthermore, according to Chen Hao Xiamen, its reported factors of production have been verified and accurate surrogate country information exists to value the factors of production. In addition, Chen Hao Xiamen argues that the Department's application of the MNC provision arbitrarily assumes that a ''proper comparison'' based on the factors of production and surrogate valuation is impossible for Chen Hao Xiamen, but is possible for all other respondents. Accordingly, for purposes of the final determination, Chen Hao Xiamen believes that the Department should not apply the MNC rule to Chen Hao Xiamen and instead should apply the surrogate country data to value its factors of production.

Petitioner objects to respondents' claim that the MNC provision does not apply to the Chen Hao respondents. Petitioner argues that respondents misstate the law when they claim that the MNC provision applies only when a comparison based on the factors of production and surrogate valuation is not possible. According to petitioner, there is no requirement that it be impossible to determine NV in the exporting country. Moreover, petitioner argues that the very close cooperation between the Chen Hao companies, confirmed at verification, makes a compelling case for application of the MNC to prevent the use of the the PRC company as an export platform. Finally, petitioner believes that given the very substantial changes it believes should be made to the factors analysis, the NV for

the PRC may exceed that of Taiwan. However, if the NV for Taiwan remains higher, as was the case in the preliminary determination, the petitioner urges that the Department once again apply the MNC provision.

DOC Position. The MNC rule applies when the criteria of section 773(d) of the Act are met, regardless of whether a comparison based on factors is otherwise possible. For Chen Hao Xiamen, we have determined that the record evidence supports a finding that the first criterion of the MNC provision (ownership of the production facilities in the exporting country by an entity with production facilities located in another country) has been met. The second criterion of the MNC provision (concerning viability of the PRC market) has been met, *per se,* because Chen Hao Xiamen, the PRC exporter, did not make any sales at all in the PRC market during the POI.

The third criterion was also met because Taiwan NV exceeded NV based on the factors of production. See ''B. Multinational Corporation Provision'' section of this notice.

Comment 23: Melamine Consumption

Petitioner states that the verification confirmed that Chen Hao Xiamen used a methodology that leads to an understatement of melamine powder consumption. Petitioner argues that Chen Hao Xiamen's methodology is in contrast to the other PRC respondents and should be restated to include all POI consumption.

Petitioner further argues that the verification report makes clear that Chen Hao Xiamen could have provided yields on a product-specific basis but instead reported an average that hides the peaks and valleys in yields. Petitioner claims that if the Department accepts Chen Hao Xiamen's yield data, it should apply the overall yield to each heat treatment step indicated for each transaction in the U.S. sales database.

Chen Hao Xiamen argues that it accurately reported its melamine powder consumption and petitioner has provided no reasonable basis as to why restating melamine powder consumption from a batch-by-batch basis to a total POI basis would be any more accurate than its current reporting. Accordingly, Chen Hao Xiamen believes that the Department should ignore petitioner's suggestion.

Chen Hao Xiamen further argues that it could not have provided product-specific yields. It provided yields on a production batch basis, which it claims is the most specific data available related to material consumption. Chen Hao Xiamen further argues that it should not be punished for failing to provide data that it does not have.

DOC Position. With regard to consumption, we agree with Chen Hao Xiamen. Our verification results confirm the reliability of Chen Hao Xiamen's data. Accordingly, we have used Chen Hao Xiamen's reported consumption figures, as corrected through verification, in our analysis.

Moreover, although the Department prefers product-specific yield information, where such information does not exist, the Department will use the most specific information available. In this instance, Chen Hao Xiamen reported yields on a batch specific basis. Further, we have no evidence on the record that the Chen Hao Xiamen's methodology is distortive of its experience during the POI. Accordingly, we have rejected petitioner's arguments and accepted Chen Hao Xiamen's reported yield data, as verified by the Department.

Comment 24: Selling Expense Adjustment

Petitioner contends that, for comparisons of EP to NV based on Taiwan sales or Taiwan CV, EP and NV must be adjusted for selling expenses. Petitioner argues that the Department erred in not adjusting for U.S. selling expenses when the basis for NV was Chen Hao Taiwan's price or CV in comparing EP to NV for Chen Hao Xiamen. Although Chen Hao Xiamen did not provide U.S. selling expense information, according to petitioner, credit expense can be calculated from the verification exhibits.

Chen Hao argues that the Department should not adjust Chen Hao Xiamen's EP when the basis for NV is Chen Hao Taiwan's price or CV. Chen Hao further argues that imputing selling expenses where the Department never provided respondents with an opportunity to present that information would be arbitrary and unfair.

DOC Position. We agree with petitioner that for comparisons of EP to NV based on Taiwan sales or Taiwan CV, EP and NV must be adjusted for selling expenses. See ''B. Multinational Corporation Provision'' section of this notice.

Comment 25: Product Weights

Petitioner asserts that because verification showed that for six products sampled, the weight verified was greater than the weight reported, Chen Hao Xiamen thus systematically under-reported its product weights. Petitioner contends that to correct the data, the Department should increase the reported product weights by two percent, which is the degree of under reporting identified for one of the products examined at verification.

Chen Hao Xiamen claims that it did not systematically under report its product weights, as claimed by petitioner. Chen Hao Xiamen argues that, given that products produced from the same production batch may have different weights due to varying amounts of melamine input powder, this degree of discrepancy between the reported and verified weights is well within an acceptable tolerance of reliability.

DOC Position. We agree with Chen Hao Xiamen. We note that the weighing of the subject merchandise is inherently somewhat imprecise, and that the verified weights were within acceptable limits.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency*

Conversions (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan dollar did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Continuation of Suspension of Liquidation

For Chen Hao Xiamen, Gin Harvest, and Sam Choan, we calculated a zero or *de minimis* margin. Consistent with *Pencils*, merchandise that is sold by these producers but manufactured by other producers will be subject to the order, if issued. Entries of such merchandise will be subject to the ''PRC-wide'' rate.

In accordance with section 733(d)(1) of the Act and 735(c)(1), we are directing the Customs Service to continue to suspend liquidation of all entries of MIDPS 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, except for entries of merchandise manufactured by those producers receiving a zero or *de minimis* margin. The Customs Service to require a cash deposit or posting of a bond equal to the estimated amount by which the NV exceeds the EP as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Chen Hao Xiamen	0.97 (de minimis).
Gin Harvest	0.47 (de minimis).
Sam Choan	0.04 (de minimis).
Tar Hong Xiamen	2.74.
PRC-Wide Rate	7.06.

The PRC-Wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. 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 canceled. 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.

Dated: January 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–752 Filed 1–10–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–560–801]

Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Indonesia

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

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194 or (202) 482–4136, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (''URAA'').

Final Determination

We determine that melamine institutional dinnerware products (''MIDPs'') from Indonesia 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 Act.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Indonesia* (61 FR 43333, August 22, 1996), the following events have occurred:

In September 1996, we verified the questionnaire responses of P. T. Multi Raya Indah Abadi (Multiraya). On November 22, 1996, the Department requested Multiraya to submit new computer tapes to include data corrections identified through verification. This information was submitted on December 5, 1996.

Petitioner, the American Melamine Institutional Tableware Association (''AMITA'), and Multiraya submitted case briefs on November 26, 1996, and rebuttal briefs on December 3, 1996. The Department held a public hearing for this investigation on December 5, 1996.

Scope of Investigation

This investigation covers all items of dinnerware (*e.g.*, plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States (''HTSUS'). Excluded from the scope of investigation are flatware products (*e.g.*, knives, forks, and spoons).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1995, through December 31, 1995.

Fair Value Comparisons

A. P.T. Mayer Crocodile

We did not receive a response to our questionnaire from P.T. Mayer Crocodile, an exporter of the subject merchandise during the POI. Because P.T. Mayer Crocodile failed to submit information that the Department specifically requested, we must base our determination for that company on the facts available in accordance with section 776 of the Act. Section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. Because P.T. Mayer Crocodile has failed to respond, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. *See* The