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the Customs Service to continue to suspend liquidation of all entries of MIDPS from the PRC, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register, except for entries of merchandise manufactured by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order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.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]

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[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

Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess at 870 (1994) (''SAA'').

In this proceeding, we considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for this uncooperative respondent. In accordance with section 776(c) of the Act, we attempted to corroborate the data contained in the petition. Specifically, the petitioner based both the export price and normal value in the petition on Multiraya's ex-factory prices for nine-inch plates obtained from a market research report. We compared the petitioner's submitted price data to actual prices reported in Multiraya's questionnaire response for products of the same size and shape. We found the Multiraya normal value data from the market research report appears to be consistent with the normal value data reported in Multiraya's questionnaire response. Thus, we consider the normal value data in the petition to have been corroborated and will therefore utilize such data in our margin calculation for P.T. Mayer Crocodile.

We did not, however, consider the export price from the petition to be corroborated because the Multiraya export price data in the market research report was substantially different from the data reported by Multiraya in its questionnaire response which was confirmed through verification. Therefore, we have not used the export price in the petition. In selecting from among the facts otherwise available with regard to export price, we have used the lowest ex-factory export price reported by Multiraya for a nine-inch plate. We found this information to be sufficiently adverse to effectuate the purpose of the statute, and we also note that the number of EP sales to select from was small. We compared that export price to the ex-factory normal value used in the petition in order to calculate a margin for P. T. Mayer Crocodile.

B. Multiraya

To determine whether Multiraya's sales of the subject merchandise to the United States were made at less than fair value, we compared the Export Price (''EP'') to the Normal Value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. As set forth in section 773(a)(1)(B)(i) of the Act, we calculated NV based on sales at the same level of trade as the U.S. sale. In accordance with section 777A(d)(1)(A)(i), we compared the weighted-average EP to the weighted-average NV during the POI. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics.

(i) Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the ''*Scope of Investigation*'' section of this notice, produced in Indonesia by Multiraya and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): shape type (*i.e.*, flat, *e.g.*, plates, trays, saucers, etc.; or container, *e.g.*, bowls, cups, etc.), specific shape, diameter (where applicable), length (where applicable), capacity (where applicable), thickness, design (*i.e.*, whether or not a design is stamped into the piece), and glazing (*i.e.*, where a design is present, whether or not it is also glazed).

(ii) Level of Trade

Multiraya did not claim a difference in level of trade. Our findings at verification confirmed that Multiraya performed essentially the same selling activities for each reported home market and U.S. marketing stage. Accordingly, we find that no level of trade differences exists between any sales in either the home market or U.S. market. Therefore, all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) is unwarranted.

Export Price

In accordance with subsections 772(a) and (c) of the Act, we calculated EP for Multiraya where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and use of constructed export price (''CEP'') was not otherwise warranted based on the facts of record (*See* Comment 17).

Normal Value

Cost of Production Analysis

As discussed in the preliminary determination, based on the petitioner's allegations, the Department found reasonable grounds to believe or suspect that Multiraya made sales in the home market at prices below the cost of producing the subject merchandise. As a result, the Department initiated an investigation to determine whether Multiraya made home market sales during the POI at prices below the cost of production (COP) within the meaning of section 773(b) of the Act.

Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Multiraya's reported cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A'') and packing costs in accordance with section 773(b)(3) of the Act.

We adjusted Multiraya's raw material costs to include the change in the work-in-process inventory (*see* Comment 4).

B. Test of Home Market Prices

We used Multiraya's adjusted weighted-average COP for the POI. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at below-cost prices within an extended period of time, in substantial quantities, and not at prices which permit recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and direct selling expenses. As in our preliminary determination, we did not deduct indirect selling expenses from the home market price because these expenses were included in the G&A portion of COP. We recalculated the total material costs by including work-in-process (*see* Comment 4).

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales for a model are at prices less than the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of a respondent's home market sales of a given model during the POI are at prices less than COP, we disregard the below-cost sales because they are (1) made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POI,

were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section

773(b)(2)(D) of the Act. The results of our cost test for Multiraya indicated that for certain home market models less than 20 percent of the sales of the model were at prices below COP. We therefore retained all sales of the model in our analysis and used them as the basis for determining NV. Our cost test for Multiraya also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Act), for certain home market models more than 20 percent of the home market sales were sold at prices below COP. In accordance with section 773(b)(1) of the Act, we therefore excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Calculation of Constructed Value (CV)

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Multiraya's cost of materials, fabrication, selling, general, and administrative expenses (''SG&A''), and profit, plus U.S. packing costs as reported in the U.S. sales database. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We calculated Multiraya's CV based on the methodology described above for the calculation of COP.

Price to Price Comparisons

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses (where appropriate) in accordance with section 773(a)(8) of the Act. We calculated price-based normal value using the same methodology used in the preliminary determination, with the following exceptions: (1) We disallowed Multiraya's warranty claim as a circumstance of sale warranty claim adjustment (*see,* Comment 8) and 2) We recalculated home market credit to reflect verification findings (*see* Comment 7).

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 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, *see Change in Policy Regarding 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 Indonesian rupiah did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Multiraya 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

Comment 1: Scope of Investigation

Respondents argue that the scope of this 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: Alleged Underreporting of U.S. Sales

Petitioner states that information on Multiraya's U.S. invoices reviewed at verification demonstrates that Multiraya seriously underreported its U.S. sales because the data taken from the invoices establishes that the product weight reported by Multiraya is less than that found on the actual invoices. Further, petitioner claims Multiraya compounded its underreporting of U.S sales by not providing the Department with an explanation during the verification to validate the weight discrepancy. Therefore, petitioner asserts the Department should rely on adverse facts available for the final margin calculation for Multiraya. However, if the Department were to determine that facts available should not be applied to Multiraya, petitioner suggests that at a minimum, the Department should apply partial facts available and treat the unreported quantities as ''free merchandise.''

Multiraya argues that it did not underreport any U.S. sales, and that petitioner's arguments claiming Multiraya has underreported its U.S. sales is based on petitioner's misunderstanding of the information on the record. Multiraya adds that the

Department verified that it did not ship anything to the U.S. other than the subject merchandise in the quantities listed. Therefore, Multiraya argues that petitioner's claim that it has ''ghost'' or ''free'' merchandise is false. Finally, Multiraya argues that the differences in weight do not constitute underreporting of its sales to the United States.

DOC Position

We verified that Multiraya sold subject merchandise by the number of pieces and not by weight, and that Multiraya keeps track of its sales by the number of pieces sold. Multiraya's sales reporting was based on the quantity sold, not on the weight of the merchandise. For purposes of responding to the Department's questionnaire, Multiraya reported actual weights, which we verified. Thus, the discrepancies in the weight actually reported to the Department and the ''standard'' weights which were listed on the U.S. invoices for purposes of duty drawback payments to the Indonesian government are not evidence of any misrepresentation on Multiraya's part. Therefore, we disagree with petitioner's allegation that, since the standard weight and the actual weight differed, Multiraya actually shipped additional ''free merchandise'' to the U.S. Accordingly, we have used Multiraya's response for our final determination.

Comment 3: Product Characteristics

Petitioner states that, based on the Department's verification of Multiraya's sales data, Multiraya's reporting of product characteristics (*i.e.*, shape, capacity, weight and thickness) is replete with errors. As a result, petitioner argues that the errors make it impossible for the Department to accurately use home market sales data to identify the proper comparisons to U.S. sales. Therefore, petitioner claims that the Department should rely on the facts available for Multiraya's final margin calculation.

Multiraya argues that, although certain product characteristics were misreported for some products (*i.e.*, capacity and thickness), the Department did not find any discrepancies in more determinative characteristics such as length, width, and diameter. Multiraya argues that such misreporting will have an insignificant effect on model matching.

DOC Position

We agree with petitioner's allegation that Multiraya misreported certain product characteristics such as the weight and thickness of the product. However, we have concluded that these errors are minor with regard to both the product matching criteria and the extent of the incorrect reporting. We have corrected those errors accordingly. We determined that Multiraya misreported the thickness of some of its products because of the point of measurement used for reporting to the Department. We did not specify in the Department's questionnaire where the appropriate point of measurement would be, hence there were differences between the Department's measurement at verification and Multiraya's measurement. We have also determined that the more determinative product characteristics were, in fact, reported correctly (*see* Memorandum from MIDP Team to Louis Apple, Acting Office Director, August 12, 1996). Therefore, we have rejected petitioner's argument that facts available are required as a result of the differences in Multiraya product matching characteristics.

Comment 4: Work-in-Process Inventory (WIP)

Petitioner claims that Multiraya underreported its material costs by excluding the costs of WIP inventory and points to Multiraya's own submission indicating that WIP decreased from the beginning of the year to year-end. Petitioner states that Multiraya reported only those inputs withdrawn from raw material inventory during the POI, but that the change in Multiraya's WIP inventory should also have been included as part of the material costs. Since opening WIP is much greater than closing WIP, petitioner claims that Multiraya's exclusion of the change in WIP significantly distorted the costs. As a result of Multiraya's deficient response, and the inability of the Department to verify the data completely, petitioner claims that the Department should apply total facts available for Multiraya's final margin calculation.

Multiraya argues that the Department performed numerous tests on its production costs at verification and found no information to indicate that Multiraya had under-reported its costs due to changes in WIP or any other factor. Moreover, Multiraya argues that WIP is irrelevant unless raw material costs fluctuate during the year, and the Department verified that Multiraya's cost of raw materials did not fluctuate during that time period.

DOC Position

We agree with petitioner that Multiraya's reported production costs are understated; however, we disagree with petitioner's suggestion that the remedy for this error is to apply total facts available. Multiraya reported its per-unit costs based on the cost incurred during the period (without considering the WIP balances), allocated over the total amount of finished goods produced. Because Multiraya failed to include the change in WIP (which represents the costs of semi-finished goods that were completed during the period) the reported costs are understated. We have corrected for this understatement by allocating the net change in WIP balances to all of the goods produced. This allocation was accomplished by determining the percentage relationship between the change in WIP and the reported material cost.

Further, we disagree with Multiraya's assertion that the change in WIP is only significant when the price of raw materials is fluctuating, because the change in WIP represents costs incurred to produce the units recorded as finished goods in this period, thus the amount can be significant.

Comment 5: Transaction and Product-Specific Yields

Petitioner contends that verification revealed that Multiraya could have calculated product-specific yields for home market sales based on stock cards and sales invoices. By Multiraya maintaining its claim that it could not calculate more specific yields and thus using an average yield, it has in effect minimized its dumping margin. Consequently, petitioner argues that this is another reason for the Department should apply total facts available.

Multiraya states that it did not maintain production records in its normal course of business that would have enabled it to calculate product-specific yields. Multiraya contends that petitioner has misunderstood Multiraya's accounting system. Multiraya explains that, because it tracks its consumption of imported melamine powder for purposes of supporting duty drawback claims with the Indonesian government, it can link the purchase of imported melamine powder specifically to the production of melamine dinnerware sold for export. In so far as, Multiraya does not receive a duty drawback refund for domestic melamine, it had no reason to track yields for products that use domestic melamine powder. Thus, Multiraya states that it cannot link the purchase of domestic melamine powder to specific production and sale of melamine dinnerware products. As a result, Multiraya asserts that would be unable to calculate product-specific or batch-specific production yields for products

manufactured from domestic melamine powder. Accordingly, Multiraya contends that it is unfair for the Department to apply facts available for failure to provide information on product-specific yields that cannot be derived from its records.

DOC Position

The Department's preference is to use product-specific cost data, which includes product specific yield results, for calculating COP and CV. The Department uses the most specific and reasonable allocation methodology possible given the available data (*see Final Determination at Sales Less Than Fair Value: Welded Stainless Steel Pipe From Malaysia*, 59 FR 4023, 4027, January 28, 1994). In this instance, Multiraya reported its costs based on overall yield information because it claimed that its records do not permit it to calculate cost data on a more specific basis. Our verification revealed nothing to contradict Multiraya's claim that it does not maintain product-specific yield data in its normal course of business. The accounting records petitioner identified could arguably be used to calculate an average yield for each specific order. Nevertheless, compiling and aggregating this data would not provide product-specific yield information as petitioner claims. Instead, this calculation would result in average yield data, which would be no more specific than the information provided by Multiraya. Accordingly, we have accepted Multiraya's average yield rate calculation which we tested at verification.

Comment 6: Land Rental

Petitioner claims that Multiraya failed to disclose until verification that it leased land from an affiliated party for use in its dinnerware business, and that Multiraya was unable to demonstrate the arm's length pricing of the land rent. Citing Indonesian financial statistics for support its contention that the rent expense is too low, petitioner argues that this lease amount must be adjusted to reflect the true cost of Multiraya's lease and cites

Multiraya argues that rental payments as affiliated party transactions are merely another form of capital contribution by shareholders and the Department's practice is to ignore such intracompany transfers, regardless of whether they relate to sales or production. Multiraya explains that the land was owned by a company official or ''shareholder'' who contributed the land to Multiraya for a fixed payment. Thus, according to Multiraya, the rent the shareholder receives is equivalent to a dividend or profit sharing amount.

DOC Position

We verified that Multiraya reported the land rental expense that was reflected in its financial statements. We analyzed the amount of the recorded expense in relation to the total costs and the overhead expense and noted that the reported amount is immaterial. Further the effect of adjusting the recorded amount by the inflation rate experienced from 1991 until the POI, as requested by the petitioner, is also immaterial as petitioner has not shown any substantial link between inflation in Indonesia and the land rental costs. Accordingly, we have accepted the land rental amount as the figure recorded in the financial statement.

Comment 7: Home Market Credit Expenses

Petitioner states that Multiraya overstated its home market credit expenses for most reported transactions. Petitioner argues that the Department should either recalculate or disallow entirely the claimed credit expense.

Multiraya argues that the overstatement of home market credit expense is directly related to a computer programming error and should not warrant applying facts available. Multiraya requests that the Department use verified information for its final margin calculation.

DOC Position

We agree with petitioner that Multiraya's home market credit expenses were overstated, and we also agree that it is appropriate to recalculate these expenses to correct the error. At verification, the Department found that, aside from a computer error, the reported credit expenses were accurate. This computer error does not warrant the application of facts available. In response to the Department's request, Multiraya has resubmitted corrected payment dates. Hence, we have recalculated the home market credit expense using the corrected information submitted by Multiraya.

Comment 8: Home Market Warranty Expense

Petitioner claims that Multiraya improperly allocated home market warranty expenses over all sales, instead of on a more specific basis. According to petitioner, verification demonstrated that Multiraya could have calculated this expense on a customer-specific basis. Accordingly, petitioner contends the Department should treat the claimed warranty amount as an indirect selling expense rather than a direct selling expense.

Multiraya argues that the Department's practice with respect to warranty expenses does not require a respondent to report a sale-by-sale breakdown of direct warranty expenses. Contrary to petitioner's claim, Multiraya argues that verification proved its warranty expenses are directly related to the subject merchandise because the expenses were incurred for melamine institutional dinnerware products. In addition, Multiraya argues that given its accounting records, an overall allocation methodology was the only feasible method available for it to calculate its warranty expense. Multiraya argues that a customer-specific methodology would not provide any greater accuracy than an overall warranty expense methodology.

DOC Position

It is the burden of the respondent to demonstrate it is entitled to an adjustment under the Act. At verification, Multiraya was unable to provide any documentation to support its claim for warranty expenses. Rather, the claimed warranty expenses had been derived from Multiraya's best estimate and not based on actual results. Because Multiraya was unable to meet its burden, we are calculating normal value without adjustment for home market warranty expenses.

Comment 9: Home Market Inland Freight

Petitioner claims that Multiraya's reported home market freight expense claim could not be verified and contained many discrepancies. Specifically that Multiraya's reported freight expenses was deficient because it did not reflect: (1) Use of diesel fuel, rather than gasoline as reported, (2) lack of documentation to support an allocation methodology of how it determined the freight per transaction, and (3) inclusion of non subject-merchandise.

Multiraya argues that its reported home market freight expenses were verified. As such, Multiraya states that it has reported its home market inland freight expense to the best of its ability, and recommends that the Department not apply facts available to its final margin calculation.

DOC Position

The Department's preference is that, wherever possible, freight adjustments should be reported on a sale-by-sale basis, rather than an overall basis (*see, e.g., Final Results of Antidumping Duty Administrative Review: Replacement*

Parts for Self-Propelled Bituminous Paving Equipment from Canada 56 FR 47451, 47455, September 19, 1991). If a respondent does not maintain its records to enable freight expense reporting at this level, then our preference is to apply an allocation methodology at the most specific level permitted by a respondent's records, unless a respondent can demonstrate that doing so is overly burdensome or that its alternative methodology is representative and non-distortive of transaction-specific sales. Multiraya allocated all home market freight by weight over all home market sales inclusive of subject and non-subject merchandise. Verification did not contradict Multiraya's claim that it is unable to report freight expenses on a transaction-specific basis. The non-subject merchandise included in the freight allocation is all melamine products not covered by the scope of this investigation. In so far as we find that expense allocation of melamine product weight, it is a reasonable approach to account for the inclusion of non-subject merchandise in the reported freight expenses. We have accepted a Multiraya's methodology as representative and non-distortive of transaction-specific sales information (*see Final Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Korea,* 60 FR 33561, June 28, 1995).

Comment 10: Understating of U.S. Credit Expenses

Petitioner claims that Multiraya improperly calculated reported credit on U.S. sales by reporting shipment date as the date of ocean shipment, rather than as the date of factory shipment. To correct this error, petitioner argues that the Department should recalculate credit using invoice date as shipment date.

Multiraya responds that it correctly reported the shipment date for this expense based on the date from the bill of lading because it is on that date that the merchandise left the factory.

DOC Position

We have accepted Multiraya's reported credit expense, because at verification we found no evidence to indicate any differences between the date of factory shipment and the bill of lading date, *i.e.,* shipment date.

Comment 11: U.S. Dollar Interest Rate vs Rupiah Interest Rate

Petitioner states that, although Multiraya invoices its U.S. customer in U.S. dollars, it ultimately receives payment in Indonesian rupiahs because the bank converts the customer's payment. As a result, petitioner claims that Multiraya's opportunity cost is incurred in rupiah, not dollars. Therefore, petitioner argues that the Department should apply a rupiah interest rate to calculate U.S. credit expenses.

Multiraya argues that the Department properly applied a U.S. dollar rate to the calculation of U.S. credit expenses. Multiraya states that the fact that it ultimately receives payment for its dollar-denominated sales in rupiahs is not determinative. However, Multiraya states that it invoices its customers in U.S. dollars, and its customers pay in U.S. dollars via letter of credit. Therefore, its opportunity costs are properly associated with U.S. dollars.

DOC Position

We agree with Multiraya's claim that based on the facts in this investigation the opportunity cost experienced by Multiraya was in U.S. dollars. The Department's policy is to calculate imputed credit costs using a weighted average short term borrowing which reflects the currency in which the sale was invoiced. Consistent with the Department's practice we have determined no credit cost adjustments are warranted. (*See, e.g., Final Determination at Sales Less Than Fair Value: Pasta from Turkey,* 61 FR 30309, 30324 (June 14, 1996)).

Comment 12: Duty Drawback Claim

Petitioner claims that Multiraya improperly included as an offset to costs, drawbacks on duties paid prior to the POI. Petitioner argues that the Department should deny Multiraya's duty drawback claim entirely. Petitioner argues that Multiraya's duty amount should be lowered because: (1) Multiraya did not include duties associated with opening WIP, (2) Multiraya recorded material costs inclusive of duties, and (3) Multiraya's WIP that was incorporated in materials was not included in reported material costs. Finally, petitioner states that Multiraya did not demonstrate a tie between the quantity of imported melamine powder on which the duty was paid and the quantity of exports of imported melamine upon which the drawback was received. For the above-mentioned reasons, petitioner argues that the Department should reject Multiraya's claim for a duty drawback in its final margin calculation.

Multiraya argues that it reported its duty drawback refund based on duties paid before the POI in an effort to reflect actual refunds received during the POI. Further, Multiraya argues that petitioner's claim with regard to unreported duty on the change in WIP is irrelevant to the reported duty drawback amount because the Department requires a respondent to report duty drawback claims on the same basis as it receives duty drawback refunds. Multiraya states that the absence of WIP costs and quantities from its calculation of reported costs is not beneficial to its final margin calculation. Multiraya states that, at verification, the Department confirmed that all imported melamine was indeed used in exported melamine production during the POI.

DOC Position

As discussed in Comment 4, we believe that the change in WIP should be included in the total material costs, and we have adjusted the total cost of melamine production to take this into account. However, we do not agree with petitioner that Multiraya has not demonstrated that it is entitled to a duty drawback. We verified Multiraya's duty drawback process, its method of tracking total duties paid and weights and quantities of production and determined it was appropriate. Accordingly, there is no basis to deny Multiraya's duty drawback claim (*See* Verification Report at page 11 and Cost Verification Exhibit 109).

Comment 13: Exclusion of Excise Tax From Material Costs

Petitioner argues that Multiraya's claim of an income tax credit for excise taxes paid on exported melamine products is incorrect and should not have been reported as duty drawback because said excise tax is not supported by a link between imports and exports. In addition, petitioner states that Cost Verification Exhibit 111 indicates that the income tax is allocated over a large number of products, including domestic products. Petitioner claims that there is no information on the record to suggest that this tax credit is directly linked to export or export quantities exclusively. Since the burden of proof to support its claim is with Multiraya, petitioner argues the Department must deny Multiraya's duty drawback claim for an income tax credit for paid excise taxes.

Multiraya argues that Cost Verification Exhibit 109 clearly details that import duties and value added tax paid on imported melamine powder were eventually recovered via a tax credit on exported melamine dinnerware products. Thus, Multiraya argues, the Department should accept the duty drawback claim.

DOC Position

We agree with Multiraya. We verified that Multiraya's excise tax was imposed on imported melamine powder (which was used to produce MIDP for export) and was credited through the income tax return upon export of the finished product. Accordingly, the claimed drawback amount was properly classified (*see* Cost Verification Exhibit 111).

Comment 14: Foreign Inland Freight

Petitioner claims that Multiraya improperly reported a U.S. sale without including the foreign inland freight expense incurred on that sale based on the Department's verification information. Because of this exclusion petitioner contends that the Department should apply facts available and assign the highest amount of foreign inland freight to this sale in the calculation of Multiraya's final margin.

Multiraya argues that it properly reported foreign inland freight for all its U.S. sales. Multiraya contends that foreign inland freight should not have been applied to the U.S. sale at issue because it in fact was not shipped via ground transportation.

DOC Position

We agree with Multiraya. We verified that foreign inland freight was properly applied to U.S. sales and, for the sale in question, we find that foreign inland freight expenses were not incurred (*see* Verification Exhibit 13 and 19).

Comment 15: U.S. Warranty Expenses

Petitioner contends that Multiraya failed to report warranty expenses incurred on U.S. sales. Petitioner states that the Department's verification of sales documents and customer files revealed that although Multiraya did not have a formal warranty policy, it allowed customers to return unsatisfactory merchandise, which is the equivalent of a warranty expense. Consequently, petitioner contends that the Department should apply facts available to Multiraya's final margin calculation.

Multiraya responds that it did not incur any warranty expenses on U.S. sales. Multiraya states that the Department verified that it did not grant any warranty-related claims during the POI. In addition, Multiraya contends that the Department's reconciliation of U.S. sales to Multiraya's financial statements at verification proved that its U.S. customer did not receive any credits toward its payment to Multiraya.

DOC Position

Although the Department's verification report indicates that Multiraya's customers are able to return unsatisfactory merchandise, at verification we did not find any evidence to suggest that Multiraya is contractually obligated to provide credit or any other redress for unsatisfactory merchandise. Therefore we do not consider this informal return policy to constitute a warranty obligation associated with Multiraya's sales. Accordingly we determined that Multiraya does not incur warranty expenses and application of facts available is not warranted.

Comment 16: U.S. Containerization Costs

Petitioner states that Multiraya failed to report containerization expenses on U.S. sales. Therefore, petitioner contends that the Department should estimate the expense to be equal to labor costs for packing or use the public record figure for Indonesian containerization and include this amount in the final determination margin calculations.

Multiraya argues that the costs of containerization are included in Multiraya's reported expenses.

DOC Position

We agree with Multiraya. We verified that costs associated with containerization are included in Multiraya's packing expenses. (*See* Verification Exhibit 17).

Comment 17: U.S. Sales Treated as Affiliated Party Sales

Petitioner claims that information on the record indicates a close supplier relationship between Multiraya and its sole U.S. customer. Consequently, petitioner states Multiraya's failure to provide all the information to the Department relevant to its affiliation is equivalent to Multiraya submitting a seriously deficient response. Further, petitioner states that the Department verified all U.S. sales are made to one customer and would fall within the definition of affiliated party set forth in Section 771(33) of the Tariff Act. In addition, petitioner argues that there is clearly an exclusive seller/purchaser relationship with respect to shipments of the subject merchandise from Indonesia to the United States. As a result of Multiraya's failure to provide the Department with the information required to calculate CEP for its U.S. sales, petitioner suggests that the Department apply facts available, as set forth in the petition, to the final margin calculation for Multiraya.

Multiraya states there is not an affiliation with its sole U.S. customer, as neither has the authority or is in the position to exercise restraint or discretion over the other. Multiraya states that Multiraya and its customer do not have an exclusive business relationship, as Multiraya is not the only supplier of the subject merchandise for the U.S. customer. Multiraya states that the Department reviewed supporting documentation that demonstrated that Multiraya, in fact, has sought new business and other customers. In addition, Multiraya states that there is no corporate relationship between it and its U.S. customer. Multiraya states that the Department reviewed its corporate documentation and did not find any reference to the U.S. customer's owners, directors, or managers.

DOC Position

We disagree that Multiraya's U.S. sales should be classified as CEP sales because we do not find that the evidence establishes that the sole U.S. importer and Multiraya are affiliated parties. Section 771(33)(G) of the Act provides, *inter alia,* that parties will be considered affiliated when one controls the other. A person controls another person if the person is ''legally or operationally in a position to exercise restraint or direction over another person.'' SAA at 838. The SAA further states that a company may be in a position to exercise restraint or direction through, among other things, ''close supplier relationships in which the supplier or buyer becomes reliant upon the other.'' *Id.*

Pursuant to section 771(33) of the Act, we reviewed Multiraya's relationship with its U.S. importer. The evidence indicates that there is no corporate or family relationship between the two companies. The Department requested Multiraya to provide evidence to support its assertion that it was not under the control of its sole U.S. customer and it freely negotiated its U.S. prices for the subject merchandise. Multiraya submitted written documentation between Multiraya and this U.S. customer which demonstrated that negotiations occurred between Multiraya and its sole U.S. customer regarding melamine product prices, and that Multiraya was not controlled by the customer in setting the price of the subject merchandise (*See* Multiraya's June 7, 1996, Supplemental Questionnaire Response at Exhibit 1 and 2). We verified that the negotiated prices reflected the prices reported in Multiraya U.S. sales listing. The evidence on the record also

demonstrates that Multiraya does not have an exclusive supplier relationship with its U.S. customer as it attempted to solicit business from other U.S. companies (*See* Multiraya's July 15, 1996, Supplemental Questionnaire Response at Exhibit 3). Therefore, we have determined that the evidence on the record supports the claim that Multiraya is not affiliated with its U.S. customer.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of MIDPs that are entered, or withdrawn from warehouse, for consumption on or after August 22, 1996, the date of publication of our preliminary determination in the Federal Register. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
P. T. Mayer Crocodile	12.90
P. T. Multi Raya Indah Abah	8.10
All Others	8.10

Pursuant to section 733(d)(1)(A) and section 735(c)(5) of the Act, the Department has not included zero, *de minimis* weighted-average dumping margins, and margins determined entirely under section 776 of the Act, in the calculation of the ''all others'' rate.

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. 97–753 Filed 1–10–97; 8:45 am]

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[A–583–825]

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

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, NW., Washington, DC 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 Round Agreements Act (''URAA'').

Final Determination

We determine that melamine institutional dinnerware products (''MIDPs'') from Taiwan 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 Taiwan* (61 FR 43341, August 22, 1996)), the following events have occurred:

In September and October 1996, we verified the questionnaire responses of respondents Yu Cheer Industrial Co., Ltd. (Yu Cheer) and Chen Hao Plastic Industrial Co., Ltd. (Chen Hao Taiwan). On November 23, 1996, the Department requested Chen Hao Taiwan 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 respondents submitted case briefs on November 27, 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 POI is January 1, 1995, through December 31, 1995.

Facts Available

IKEA and Gallant

We did not receive a response to our questionnaire from either IKEA Trading Far East Ltd. (IKEA) or Gallant Chemical Corporation (Gallant). Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner and in the form requested, significantly impedes a proceeding, or provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination. Because IKEA and Gallant failed to submit the information that the Department specifically requested, we must base our determinations for those companies on the facts available.

Section 776(b) of the Act provides that adverse inferences 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. IKEA's and Gallant's failure to respond to our questionnaire demonstrates that IKEA and Gallant have failed to cooperate to the best of their abilities in this investigation. Accordingly, 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