

### *Suspension of Liquidation*

Because the estimated weighted-average dumping margin for the investigated company is 0.75 percent (*de minimis*), we are not directing the Customs Service to suspend liquidation of entries of CTVs from Malaysia.

### *ITC Notification*

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 735(d) and 777(i) of the Act.

Dated: April 12, 2004.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

### **Appendix—Issues in the Decision Memorandum**

1. Unreported Sales and Cost Data
2. Returns of Subject Merchandise
3. Date of Sale/Date of Shipment
4. U.S. Billing Adjustments
5. Unreported Sales Discounts
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9. U.S. Customs Duties
10. U.S. Indirect Warranty Expenses/U.S. International Freight Expense
11. Date of Payment/Letter of Credit Sales
12. Calculation of Imputed Credit Expenses
13. U.S. Indirect Selling Expenses
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17. Home Market Credit Expenses and Commission Offset
18. Clerical Errors in the Preliminary Determination
19. Affiliated Manufacturer of A Major Input
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## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

**[A–570–884]**

#### **Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China**

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

**EFFECTIVE DATE:** April 16, 2004.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

#### **Final Determination**

We determine that certain color television receivers (CTVs) from the People's Republic of China (PRC) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

#### *Case History*

The preliminary determination in this investigation was issued on November 21, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China* FR 66800 (Nov. 28, 2003) (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred. In December 2003 and January 2004, we conducted verification of the questionnaire responses of the four participating respondents in this case, Konka Group Company, Ltd. (Konka); Sichuan Changhong Electric Co., Ltd. (Changhong); TCL Holding Company Ltd. (TCL); and Xiamen Overseas Chinese Electornic Co., Ltd. (XOCECO).

We gave interested parties an opportunity to comment on the

preliminary determination. In February 2004, we received case and rebuttal briefs from the petitioners (Five Rivers Electronic Innovations, LLC, the International Brotherhood of Electrical Workers, and the Industrial Division of the Communications Workers of America), Changhong, Konka, TCL, and XOCECO. We also received case briefs from one additional PRC exporter of subject merchandise, Philips Consumer Electronics Co. of Suzhou Ltd. (Philips), three U.S. importers (*i.e.*, Apex Digital, Inc. (Apex); Sears, Roebuck & Co. (Sears); and Wal-Mart Stores, Inc. (Wal-Mart)), and the China Chamber of Commerce for Imports and Exports of Machinery and Electronic Products (CCME). The Department held a public hearing on March 3, 2004, at the request of Changhong, Konka, and TCL.

On February 23, 2004, Changhong requested that any antidumping order issued by the Department in this proceeding include scope language which states that varieties of CTVs that do not use a cathode ray tube are not included in the scope of this investigation. On April 5, 2004, the petitioners filed comments objecting to Changhong's February 23 request. For further discussion, see the "Scope Comments" section of this notice, below.

#### *Scope of the Investigation*

For purposes of this investigation, the term "certain color television receivers" includes complete and incomplete direct-view or projection-type cathode-ray tube color television receivers, with a video display diagonal exceeding 52 centimeters, whether or not combined with video recording or reproducing apparatus, which are capable of receiving a broadcast television signal and producing a video image. "Incomplete" CTVs are defined as unassembled CTVs with a color picture tube (*i.e.*, cathode ray tube), printed circuit board or ceramic substrate, together with the requisite parts to comprise a complete CTV, when assembled. Specifically excluded from this investigation are computer monitors or other video display devices that are not capable of receiving a broadcast television signal.

The color television receivers subject to this investigation are currently classifiable under subheadings 8528.12.2800, 8528.12.3250, 8528.12.3290, 8528.12.4000, 8528.12.5600, 8528.12.3600, 8528.12.4400, 8528.12.4800, and 8528.12.5200 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs

purposes, the written description of the scope of the merchandise under investigation is dispositive, and parts or imports of assemblages of parts that comprise less than a complete CTV.

#### Scope Comments

On February 13, 2004, the petitioners placed on the record information to clarify the definition of "incomplete" CTVs, as used in the petition. The petitioners note that "incomplete" CTVs are defined as unassembled CTVs with a color picture tube (*i.e.*, cathode ray tube), printed circuit board or ceramic substrate, together with the requisite parts to comprise a complete CTV, when assembled. The petitioners also state that the scope language was not intended to cover parts or imports of assemblages of parts that comprise less than a complete CTV. *See* the petitioners' February 13 letter at page 2. The petitioners also note that the Court of International Trade (CIT) upheld this definition of "incomplete" CTVs in a separate antidumping proceeding on CTVs from the Republic of Korea. *See Goldstar Co., Ltd. v. United States*, 692 F. Supp. 1382, 1386–87 (CIT 1988).

On February 23, 2004, Changhong requested that the scope language be adjusted to include language to specify that varieties of CTVs which do not use a cathode ray tube (*e.g.*, plasma, LCD, DPL, and LCoS CTVs) are not included in the scope of this investigation. Changhong contends that these types of CTVs are not included because the petitioners' February 12 submission makes it clear that only CTVs with a cathode ray tube are covered by the scope of this investigation and, therefore, CTVs that do not include a cathode ray tube are not covered by the scope of this investigation.

On April 5, 2004, the petitioners submitted comments opposing Changhong's request to change the scope language. The petitioners maintain that the scope language contained in the petition, and relied on in the preliminary determination, clearly states that this investigation covers only those CTVs which incorporate a cathode ray tube. Additionally, the petitioners contend that it would be inappropriate to name the types of products that might potentially be excluded (*e.g.*, plasma, LCD, DPL, and LCoS), because these terms are imprecise. After considering Changhong's and the petitioners' comments, we find that the scope language contained in the petition clearly excludes CTVs that do not use a cathode ray tube and, therefore, have not revised the scope language for the final determination.

#### Period of Investigation

The period of investigation is October 1, 2002, through March 31, 2003, which corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, May 2003).

#### Nonmarket Economy Status for the PRC

The Department has treated the PRC as a nonmarket economy (NME) country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395, 61396 (Oct. 28, 2003). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. No party in this investigation has requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, *see Preliminary Determination* 68 FR at 66803.

#### Market Oriented Industry

On July 15, 2003, Changhong requested that the Department make a determination that the CTV industry in the PRC is a market-oriented industry (MOI). After analyzing this claim, we notified Changhong that its claim must be made on behalf of the CTV industry as a whole, rather than on behalf of a specific exporter. Based on this guidance, in August and September 2003, Changhong, Konka, TCL, and XOCECO, as well as three additional PRC exporters of subject merchandise (*i.e.*, Haier Electric Appliances International Co. (Haier), Philips, and Shenzhen Chaungwei-RGB Electronics Co., Ltd. (Skyworth)) submitted additional information to show that the CTVs industry in the PRC is market-oriented. Again, we analyzed this claim and found that it did not sufficiently address the three prongs of the Department's MOI test. As a consequence, we notified the respondents in the preliminary determination that we were unable to conclude that the experiences of the firms making the claim are representative of the CTV industry in the PRC.

In March 2003, XOCECO, Prima Technology, Inc., and the CCME submitted information purportedly delineating the ownership and production levels of the top ten television producers in the PRC.<sup>1</sup> In

<sup>1</sup>This data was originally filed on December 2, 2003, however, XOCECO did not include in this submission any certifications from the companies from whom this information was obtained, nor did

February 2004, the CCME filed a case brief in which it argued that the information submitted by the respondents in this case demonstrates that each prong of the MOI test is met and the Department should find that the CTV industry in the PRC is market-oriented. We also received comments from the petitioners, who maintain that the Department should continue to find that the CTV industry is not an MOI.

In order to consider an MOI claim, the Department requires information on each of the three prongs of the MOI test regarding the situation and experience of the PRC CTV industry as a whole. Specifically, the MOI test requires that: (1) There be virtually no government involvement in production or prices for the industry; (2) the industry is marked by private or collective ownership that behaves in a manner consistent with market considerations; and (3) producers pay market-determined prices for all major inputs, and for all but an insignificant proportion of minor inputs. Additionally, an MOI allegation must cover all (or virtually all) of the producers in the industry in question. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo From the People's Republic of China*, 64 FR 69723, 69725 (Dec. 14, 1999). *See also Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 41347, 41353 (Aug. 1, 1997). As a threshold matter, we note that the industry coverage of the respondents' claims remains uncertain and, in any case, inadequate. Moreover, even if respondents' MOI claim had been sufficient with respect to industry coverage, the data provided by the respondents strongly suggest that the CTV industry does not satisfy the second prong of the MOI test. Because the MOI allegation made in this case has not provided an adequate basis for considering the three factors of the Department's MOI test, we are unable to consider the MOI request. For a further discussion of this issue, see the Decision Memorandum at *Comment 1*.

#### Separate Rates

In our preliminary determination, we found that Changhong, Konka, TCL, and XOCECO had met the criteria for receiving a separate antidumping rate. We have not received any information since the preliminary determination

it submit the majority of the reports on which it relied in making its arguments. As a result, the Department requested that XOCECO and the CCME resubmit this data, which they did on March 17, 2004.

which would warrant reconsideration of our separate-rate determination with respect to these companies. Therefore, we continue to find that each of these exporters should be assigned an individual dumping margin. For a complete discussion of the Department's determination that the respondents are entitled to separate rates, see *Preliminary Determination* at 68 FR 66804.

#### *Margins for Cooperative Exporters Not Selected*

For our final determination, consistent with our preliminary determination, we have calculated a weighted-average margin for Haier, Hisense Import and Export Co., Ltd., Philips, Skyworth, Starlight International Holdings, Ltd., Star Light Electronics Co., Ltd., Star Fair Electronics Co., Ltd., Starlight Marketing Development Ltd., and SVA Group Co., Ltd. based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available. See *Preliminary Determination*, 68 FR at 66805. Companies receiving this rate are identified by name in the "Continuation of Suspension of Liquidation" section of this notice.

#### *Surrogate Country*

For purposes of the final determination, we continue to find that India is the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see *Preliminary Determination*, 68 FR at 66807.

#### *PRC-Wide Rate and Use of Facts Otherwise Available*

As explained in the Department's *Preliminary Determination*, there are numerous producers/exporters of the subject merchandise in the PRC. However, as noted in the preliminary determination, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of the PRC and the fact that U.S. import statistics show that the responding companies did not account for all imports into the United States from the PRC, we have determined that certain PRC exporters of CTVs failed to respond to our questionnaire. For this reason, we determined that some PRC exporters of subject merchandise failed to cooperate in this investigation. In accordance with our standard practice, as adverse facts available, we are assigning as the PRC-wide rate the

higher of: (1) The highest margin listed in the notice of initiation; or (2) the margin calculated for any respondent in this investigation. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Decision Memorandum at *Comment 1*. For purposes of the final determination of this investigation, we are using the margin stated in the notice of initiation (*i.e.*, 78.45 percent) as adverse facts available because it is higher than the margin we calculated for Changhong, Konka, TCL, or XOCECO. In the preliminary determination we examined the price and cost information provided in the petition to corroborate this margin. See the *Preliminary Determination* at 68 FR 66806.

#### *Analysis of Comments Received*

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the Decision Memorandum are identical in content.

#### *Changes Since the Preliminary Determination*

Based on our analysis of comments received, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memorandum.

#### *Critical Circumstances*

In our preliminary determination, we found that critical circumstances existed for all mandatory respondents, companies subject to the "all others" rate, and companies subject to the PRC-wide rate.

After the preliminary determination, each of the mandatory respondents provided additional information regarding their shipments. In addition, Philips, which submitted a voluntary response, reported its shipments for the period January 2001 through September 2003. We received comments on this data from three of the four mandatory respondents (*i.e.*, Changhong, Konka,

and TCL), Philips, and three importers of CTVs (*i.e.*, Apex, Sears, and Wal-Mart). These companies argued that we should no longer find that critical circumstances exist, based on one or more of the following arguments: (1) The Department now has more data on which to base its analysis; (2) the Department should disregard shipments made under pre-petition contracts; (3) the Department should adjust Changhong's shipment data to account for delays due to the severe acute respiratory syndrome (SARS) epidemic; (4) imports of CTVs are heavily seasonal; (5) there is insufficient data on the record to perform a seasonality analysis for certain companies; and (6) there is no evidence that importers had knowledge that PRC companies were dumping. We also received comments from the petitioners, who support the preliminary finding of critical circumstances for all parties.

Based on new information on the record of this investigation and information contained in our preliminary affirmative critical circumstances determinations, we have revised our determination and find that for purposes of the final determination, critical circumstances do not exist with regard to imports of CTVs from the PRC. For further details, see the Decision Memorandum at *Comment 3*; see also the April 12, 2004, memorandum from the Team to Louis Apple entitled, "Antidumping Duty Investigation of Certain Color Television Receivers (CTVs) from the People's Republic of China (PRC)—Final Negative Determination of Critical Circumstances."

#### *Verification*

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

#### *Continuation of Suspension of Liquidation*

Pursuant to section 735(c)(1)(B) of the Act, we will instruct Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after November 28, 2003, the date of publication of our preliminary determination. However, because we find that critical circumstances do not exist with regard to imports of CTVs from the PRC, we

will instruct the CBP to terminate the retroactive suspension of liquidation, between August 30, 2003, (90 days prior to the date of publication of the preliminary determination) and November 28, 2003, which was instituted due to the preliminary affirmative critical circumstances finding. The CBP shall also release any bond or other security, and refund any cash deposit required, under section 733(d)(1)(B) of the Act with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2) of the Act. For entries on or after November 28, 2003, the CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice.

The dumping margins are provided below:

Manufacturer/exporter	Weighted-average margin (in percent)
Haier Electric Appliances International Co .....	21.49
Hisense Import and Export Co., Ltd .....	21.49
Konka Group Company, Ltd .....	11.36
Philips Consumer Electronics Co. of Suzhou Ltd .....	21.49
Shenzhen Chaungwei-RGB Electronics Co., Ltd .....	21.49
Sichuan Changhong Electric Co., Ltd .....	24.48
Starlight International Holdings, Ltd .....	21.49
Star Light Electronics Co., Ltd .....	21.49
Star Fair Electronics Co., Ltd ...	21.49
Starlight Marketing Development Ltd .....	21.49
SVA Group Co., Ltd .....	21.49
TCL Holding Company Ltd .....	22.36
Xiamen Overseas Chinese Electronic Co., Ltd .....	4.35
PRC-wide .....	78.45

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

#### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of

our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. 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 the CBP 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.

#### Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: April 12, 2004.

**Jeffrey A. May,**

*Acting Assistant Secretary for Import Administration.*

#### Appendix—Issues in the Decision Memorandum

##### Comments

##### General Issues

- Market-Oriented Industry (MOI) Claim
- Respondent Selection
- Critical Circumstances
- Updating the PRC Labor Rate
- Indian Imports of Small Quantities
- Surrogate Value for Electricity
- Market Economy Purchases from Indonesia, Korea, and Thailand
- Market-Economy Purchases from Hong Kong Trading Companies
- Surrogate Value Data Obtained from [www.infodriveindia.com](http://www.infodriveindia.com)
- Using Market-Economy Purchases Made by one PRC Respondent to Value the Factors of Production for Other PRC Respondents
- Surrogate Value for 25-inch Curved CPTs
- Surrogate Value for 29-inch CPTs
- Surrogate Value for Speakers
- Selection of the Appropriate Surrogate Financial Statements
- Adjustments to the Surrogate Financial Ratios to Account for Freight, Price Adjustments, Non-Applicable Selling Expenses, Packing, and Taxes

- Adjustments to the Surrogate Factory Overhead Ratios
- Additional Adjustments to the Surrogate Financial Ratios for BPL, Onida Saka, and Videocon
- Additional Adjustments to the Surrogate Financial Ratios for Calcom, Kalyani and Matsushita
- Additional Adjustment to the Surrogate Financial Ratios to Account for Selling, General, and Administrative (SG&A) Labor
- Treatment of Finished Goods in the Surrogate Financial Ratio Calculations
- Weighted- vs. Simple-Average Surrogate Financial Ratios
- Clerical Errors in the Preliminary Determination
- Corrections Arising from Verification

##### Company-Specific Issues

- New Factual Information in Changhong's Surrogate Value Submission
- Changhong Market-Economy Purchases
- Date of Sale for Konka
- TCL's Unreported U.S. Sales
- TCL's Brokerage and Handling Expenses
- Surrogate Value for TCL's Magnetic Circle Inductors
- Surrogate Value for TCL's Aluminum and Iron Heat Sinks and Heating Plates
- Distance from TCL's Factory to TCL Hong Kong
- TCL's Energy Consumption
- Use of TCL's "Actual" SG&A Rate
- Use of Total Adverse Facts Available for XOCECO
- Screen Type Code for XOCECO
- XOCECO's U.S. Warranty Expenses
- XOCECO's U.S. Warehousing and Other Transportation Expenses
- XOCECO's Supplier Distances and Supplier Modes of Transportation
- Reclassification of Certain of XOCECO's Components as "Miscellaneous"
- XOCECO's Packed Weights
- Offset for Sales of Tin Scrap Generated During XOCECO's Production Process
- Labor Hours for XOCECO's Printed Circuit Board (PCB) Factory
- XOCECO's Projection Factory Weights
- XOCECO's Electricity Consumption

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-122-814

#### Pure Magnesium from Canada; Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Review

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

**ACTION:** Notice of Preliminary Results of the 2002-2003 Administrative Review.

**SUMMARY:** In response to requests from interested parties, the Department of