

will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

**FOR FURTHER INFORMATION CONTACT:** Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401-3736.

Dated: May 5, 2004.

**Carol Booker,**  
Legal Counsel.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-867]

#### Automotive Replacement Glass Windshields From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

**DATES:** *Effective Date:* May 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Herzog, Jon Freed or Nazak Nikakhtar, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4271, (202) 482-3818, and (202) 482-9079 respectively.

#### Preliminary Determination

The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on automotive replacement glass windshields ("ARG")

from the People's Republic of China ("PRC") in response to a request by Pilkington North America ("PNA") who requested a review of its Chinese joint ventures, Changchun Pilkington Safety Glass Company Limited ("Changchun"), Guilin Pilkington Safety Glass Company Limited ("Guilin"), Shanghai Yaohua Pilkington Autoglass Company Limited ("Shanghai"), and Wuhan Yaohua Pilkington Safety Glass Company Limited ("Wuhan") (collectively "the Pilkington JVs") (with PNA, collectively "Pilkington"), the Fuyao Group ("Fuyao"), Dongguan Kongwan Automobile Glass Limited ("Dongguan Kongwan"), and Peaceful City Limited ("Peaceful City"). The period of review ("POR") is September 19, 2001 through March 31, 2003.

We preliminarily determine that Pilkington, Fuyao, and Peaceful City have sold subject merchandise at less than normal value ("NV") during the POR. Further, we have preliminarily determined to apply an adverse facts available rate to all sales and entries of Peaceful City's subject merchandise during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument as provided in section 733 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

On April 7, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on ARG from the PRC for the period September 19, 2001 through March 31, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 68 FR 16761 (April 7, 2003). On April 15, 2003, Dongguan Kongwan and Peaceful City, requested an administrative review of their sales to the United States during the POR. On April 21, 2003, an importer, PNA, requested an administrative review of the sales of Changchun, Guilin, Shanghai, and

Wuhan to the United States during the POR. On April 22, 2003, TCG International Inc. ("TCGI"), requested an administrative review of its sales to the United States during the POR. On April 30, 2003, Xinyi Automotive Glass (Shenzhen) Company, Limited ("Xinyi"), Shenzhen CSG Automotive Glass Company, Limited ("Shenzhen CSG") (reported to be the former company Shenzhen Benxun Auto Glass Company, Limited) ("Benxun"), and Fuyao requested an administrative review of their sales to the United States during the POR.

On May 21, 2003, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of ARG from the PRC for the period September 19, 2001 through March 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 27781 (May 21, 2003). On June 3, 2003, the Department issued questionnaires to each Respondent. On September 8, 2003, the Department published a notice in the **Federal Register** rescinding the administrative reviews of TCGI, Xinyi, and Benxun.<sup>1</sup> *See Certain Automotive Replacement Glass Windshields from the People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review*, 68 FR 52893 (September 8, 2003). On October 24, 2003, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review by 60 days. *See Certain Automotive Replacement Glass Windshields from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 60911 (October 24, 2003). On January 30, 2004, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until April 29, 2004. *See Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Certain*

<sup>1</sup> During the investigation, the Department investigated a company called Benxun. When Shenzhen CSG requested review, it indicated it was the company formally known as Benxun, but that it had undergone a name change since the investigation. On July 8, 2003, Shenzhen CSG withdrew its request for review. However, because Shenzhen CSG withdrew its request for review, the Department did not have the information necessary to make a successor-in-interest determination. Therefore the Department did not determine that Shenzhen CSG is entitled to receive the same antidumping cash deposit rate accorded Benxun within the context of this review. On March 8, 2004, the Department initiated a change of circumstance review, and is currently in the process of completing that review.

*Automotive Replacement Glass Windshields from the People's Republic of China*, 69 FR 4488 (January 30, 2004).

#### **Pilkington**

On June 3, 2003, the Department issued its antidumping questionnaire to Pilkington. Pilkington submitted its Section A questionnaire response on June 25, 2003, and its Sections C and D responses on August 5, 2003. To address concerns about separate rates and certain expense and factors of production variables, the Department issued several Sections A, C, and D supplemental questionnaires. The Department issued a Section A supplemental questionnaire to Pilkington on July 31, 2003, to which Pilkington responded on August 28, 2003. The Department issued a Sections C through D supplemental questionnaire to Pilkington on September 9, 2003, to which Pilkington responded on September 30, 2003. The Department issued a second Sections A–D supplemental questionnaire to Pilkington on October 17, 2003, to which Pilkington responded on November 5, 2003. The Department issued a third Sections A–D supplemental questionnaire on December 16, 2003, to which Pilkington responded on January 9, 2004. The Department issued a fourth Section A supplemental questionnaire to Pilkington on January 5, 2004, to which Pilkington responded on January 12, 2004. The Department issued a fifth Section A supplemental questionnaire to Pilkington on January 26, 2004, to which Pilkington responded on February 6, 2004. The Department issued a sixth Section A supplemental questionnaire to Pilkington on February 4, 2004, to which Pilkington responded on February 9, 2004.

#### **Fuyao**

On June 3, 2003, the Department issued its antidumping questionnaire to Fuyao. On July 8, 2003, Fuyao reported that it made sales of subject merchandise to the United States during the POR in its response to Section A of the Department's questionnaire. On July 24, 2003, Fuyao submitted its response to Sections C and D of the Department's questionnaire. To address concerns about separate rates and certain expense and factors of production variables, the Department issued several Sections A, C, and D supplemental questionnaires. On July 31, 2003, the Department issued a Section A supplemental questionnaire to Fuyao. Fuyao submitted its response to the Department's Section A supplemental questionnaire on August 14, 2003. On September 22, 2003, the

Department issued a Sections C and D supplemental questionnaire to Fuyao. Fuyao submitted its response to the Sections C and D supplemental questionnaire on October 17, 2003. The Department issued a second Sections A, C, and D supplemental questionnaire on December 16, 2003. Fuyao submitted its response to the Sections A, C, and D supplemental questionnaire on January 9, 2004. On January 6, 2004, the Department issued a third supplemental questionnaire regarding Fuyao's quantity and value of sales and its financial statements. On January 21, 2004, Fuyao submitted its response to the supplemental questionnaire regarding the quantity and value of sales. On February 4, 2004, the Department issued a third Section D supplemental questionnaire. Fuyao submitted its response to the Section D supplemental questionnaire on February 23, 2004.

#### **Peaceful City and Dongguan Kongwan**

On June 3, 2003, the Department issued its antidumping questionnaire to Peaceful City, the exporter of subject merchandise, and Dongguan Kongwan, the producer of subject merchandise, which is 100% owned by Peaceful City. Due to issues concerning affiliation and factors of production, we issued several supplemental questionnaires to Peaceful City and Dongguan Kongwan. On July 8, 2003, Peaceful City reported that it exported subject merchandise to the United States during the POR, and Dongguan Kongwan reported that it produced the subject merchandise in their respective responses to the Section A questionnaire. On July 22, 2003, the Department issued a Section A supplemental questionnaire to Peaceful City and Dongguan Kongwan. Peaceful City and Dongguan Kongwan submitted their responses to the Department's Section A supplemental questionnaire on August 6, 2003. On September 16, 2003, the Department issued a second Section A supplemental and Sections C and D supplemental questionnaire to Peaceful City and Dongguan Kongwan. On October 15, 2003, the Department received Peaceful City and Dongguan Kongwan's responses to the Section A second supplemental and Sections C and D supplemental questionnaires. On December 15, the Department issued a third Section A supplemental and a second Section C and D supplemental questionnaire to Peaceful City and Dongguan Kongwan, for which the Department received Peaceful City and Dongguan Kongwan's responses on January 5, 2004. On January 16, 2004, the Department issued to Dongguan Kongwan its third Section D

supplemental questionnaire. On January 24, 2004, Dongguan Kongwan submitted its third Section D supplemental questionnaire response. On February 4, 2004, the Department issued to Dongguan Kongwan a fourth Section D supplemental questionnaire. On February 11, 2004, the Department received Dongguan Kongwan's fourth Section D supplemental questionnaire response. On February 23, 2004, the Department issued a fifth Section D supplemental questionnaire to Dongguan Kongwan addressing certain deficiencies in Dongguan Kongwan's fourth Section D supplemental questionnaire response. The Department received Dongguan Kongwan's fifth Section D supplemental questionnaire response on March 2, 2004. On March 3, 2004, the Department submitted to Dongguan Kongwan a third Section C supplemental questionnaire and a sixth Section D supplemental questionnaire. On March 5, 2004, the Department received Dongguan Kongwan's third Section C and sixth Section D supplemental questionnaire response. On March 15, 2004, the Department issued to Peaceful City a fourth Section A supplemental questionnaire, and the Department received Peaceful City's response on March 22, 2004, at the verification of Peaceful City and on March 23, 2004 at the Department.

#### **Period of Review**

The POR is September 19, 2001 through March 31, 2003.

#### **Scope of Investigation**

The products covered by this review are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (*i.e.*, two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (*e.g.*, passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this review are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for

convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

#### Verification

As provided in section 782(i) of the Act, we verified information provided by Pilkington, Fuyao, and Peaceful City. We used standard verification procedures, including on-site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records.

The Department conducted a verification at Pilkington's facilities in both China and the United States. The Department conducted the U.S. verification at Pilkington's headquarters in Toledo, Ohio from March 10 through March 12, 2004. The Department conducted the verification at Pilkington's facilities in Changchun, China from February 16 through February 20, 2004.

The Department conducted a verification at Fuyao's facilities in both China and the United States. The Department conducted the U.S. verification at Greenville Glass Industry Inc. ("GGI") in Greenville, South Carolina from February 26 through February 27, 2004. The Department conducted the verification at Fuyao's facilities in Fuqing City, Fujian Province of China from March 22 through March 26, 2004.

The Department conducted a verification at Peaceful City's headquarters in Hong Kong, on March 22 and 23, 2004, and at Dongguan Kongwan's manufacturing plant in Dongguan City, China, on March 24, 25, and 26, 2004.

Our verification results are outlined in the verification report for each company. For further details see Verification of Sales and Factors of Production of Pilkington North America ("PNA") in the Antidumping Duty Administrative Review of Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China ("PRC"), dated April 29, 2004 (*"Pilkington Chinese Verification Report"*); Verification of Sales of Pilkington North America ("PNA") in the Antidumping Duty Administrative Review of Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China ("PRC"), dated April 29, 2004 (*"Pilkington U.S. Verification Report"*); Verification of Sales and Factors of Production of the Fuyao Group in the Antidumping Duty Administrative Review of Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China ("PRC"), dated April 29, 2004 (*"Fuyao Verification Report"*);

Verification of Sales of Greenville Glass Industries in the Antidumping Duty Administrative Review of Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China ("PRC"), dated April 29, 2004 (*"Greenville Verification Report"*); and, Verification of Sales and Factors of Production of Peaceful City and Dongguan Kongwan in the Antidumping Duty Administrative Review of Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China ("PRC"), dated April 29, 2004 (*"See Peaceful City and Dongguan Kongwan's Verification Report"*).

#### Nonmarket Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. In accordance with to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

#### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and, (2) are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "normal value" section below and in *Preliminary Results of Review of the Order on Automotive Replacement Glass Windshields from the People's Republic of China: Factor Valuation, Memorandum from Jon Freed, Case Analyst, through Edward C. Yang, Program Manager, Office IX, to the File,*

dated April 29, 2004 (*"Factor Valuation Memo"*).

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See *Memorandum from Ron Lorentzen to Robert Bolling: Antidumping Duty Administrative Review of Automotive Replacement Glass Windshields from the People's Republic of China (PRC): Request for a List of Surrogate Countries, ("Policy Letter")*, dated July 29, 2003. Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. For PRC cases, the primary surrogate country has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. See *Memo to File through Ed Yang from Robert Bolling and Nazak Nikahktar: Automotive Replacement Glass Windshields ("ARG") from the People's Republic of China; Selection of a Surrogate Country*, October 15, 2003, (*"Surrogate Country Memo"*).

The Department used India as the primary surrogate country, and, accordingly, has calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. See *Surrogate Country Memo and Factor Valuation Memo*. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value factors of production within 20 days after the date of publication of this preliminary results.

#### Affiliation/Collapsing—The Pilkington Joint Ventures ("JVs")

##### *Affiliation—Pilkington JVs*

Pilkington is comprised of several different corporations and joint ventures including PNA and the Pilkington JVs. During the POR, the Pilkington JVs made sales to PNA and another U.S. customer.

Section 771(33) of the Act, in part, states that the Department considers the following as affiliated: (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; or (G) Any person who controls any other person and such other person. Section 771(33) further provides that, "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person". In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents. To the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy ("NME") provision, section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding. *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004) ("Mushrooms").

The Department has analyzed the information regarding affiliation on the record in this administrative review, and considers the Pilkington JVs affiliated under sections 771(33)(E), (F) and (G) by virtue of Pilkington Plc's control over the four Pilkington JVs. Specifically, Pilkington reported that it controlled a majority interest or near parity-interest in all of the Pilkington JVs, either through outright ownership, or through its ownership share of its partner in the Pilkington JVs, Shanghai Yaohua Pilkington Glass Company Limited ("SYP"). Further, Pilkington also reported that it controls the Chairmanship or Vice-Chairmanship, and more than one director's positions on each of the boards of the Pilkington JVs. Additionally, Pilkington Plc's consolidated financial statements list the Pilkington JVs, as either an affiliated company, defined as a company in which Pilkington retains full control, or as an associated company, defined as a company in which Pilkington does not own a majority interest, but exercises control of the company. *See Pilkington Chinese Verification Report* at 6. Finally, Pilkington reported that sales to PNA by each of the Pilkington JVs were made through Pilkington (Asia) Limited ("Pilkington Asia"), which served as PNA's buying agent. While Pilkington reported that only the general managers of each of the Pilkington JVs had the authority to bind the Pilkington JVs to a sale, at verification, the Department

found that Pilkington Asia's sales and marketing agent decided which of the Pilkington JVs would receive and order, and on occasion, could bind the Pilkington JVs to a sale. *See Pilkington Section A response*, dated June 25, 2003 ("Pilkington Section A response") at A-8. *See also Pilkington Chinese Verification Report* at 7.

The Department considers the affiliations provisions of Section 771(33)(E), (F), and (G) to be met because (1) Pilkington has majority or near-parity ownership in all four of the Pilkington JVs, and Pilkington controls the Chairmanship or Vice-Chairmanship, and more than one director, on each of the Pilkington JVs' Board of Directors, (2) Pilkington considers each of the Pilkington JVs as an affiliated or associated company for its financial report purposes, and (3) Pilkington, through Pilkington Asia, may exercise control over the export sales of each of the Pilkington JVs. Therefore, the Department considers the four Pilkington JVs to be affiliated, because Pilkington exercises control over the Pilkington JVs through its ownership and ability to influence the sales of the Pilkington JVs. Due to the proprietary nature of the information involved in this analysis, please see *Antidumping Duty Administrative Review of Automotive Replacement Glass Windshields from the People's Republic of China: Collapsing of Affiliated Parties*, dated April 29, 2004 ("Collapsing Memo") for a full discussion of our determination.

#### *Collapsing—the Pilkington JVs*

The Department examined whether to collapse the Pilkington JVs for margin calculation purposes.

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) provides that the Department may consider various factors, including (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined. *See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty*

*Administrative Review*, 63 FR 12764, 12774 (March 16, 1998); *Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, the Department notes that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within in the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. *See Mushrooms*, 69 FR 10414 (citing *Hontex Enterprises, Inc. v. United States*, Slip Op. 03-17, 36 (February 13, 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

As discussed in the "affiliation" section above, the Department considers the Pilkington JVs to be affiliated due to Pilkington's control of the Pilkington JVs. Thus, the Department finds that the first collapsing criterion (*i.e.*, that companies be affiliated) to be met. Further, Pilkington reported that all four of the Pilkington JVs' production facilities produce similar or identical products, which would not require substantial retooling to restructure manufacturing priorities. *See Collapsing Memo* at 5. In fact, Pilkington reported at verification that it would likely shift its production to the Pilkington JV which receives the lowest dumping margin if the four Pilkington JVs are not collapsed. *See Pilkington Chinese Verification Report* at 5. *See also Collapsing Memo* at 5. Thus, because the Pilkington JVs produce similar or identical merchandise, which would not require substantial retooling to shift manufacturing priorities, the Department considers the second collapsing criterion under 19 CFR 351.401(f)(1) to be met. Finally, as discussed above in the "affiliation" section, Pilkington exercises control over the Pilkington JVs through its ownership positions on each of the Pilkington JVs' board of directors, and through the ability of Pilkington Asia to influence the export sales to PNA by the Pilkington JVs. Therefore, the Department finds there is a significant potential for manipulation of the

Pilkington JVs', price or production by Pilkington, due to the level of common ownership, the extent to which board members sit on the boards of each of the Pilkington JVs, and the intertwining of the operations of the Pilkington JVs through Pilkington. *See Collapsing Memo* at 5 and 6. Accordingly, the Department considers the third collapsing criterion under 19 CFR 351.401(f)(1) to be met. Due to the proprietary nature of the information provided, please see *Collapsing Memo* for a more detailed discussion of our decision.

The Department finds that the Pilkington JVs are affiliated and should be collapsed because (1) the Pilkington JVs are affiliated, (2) each has production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. Nothing in this determination conflicts with the language of 773(c) of the Act ("the NME statute"). Due to the proprietary nature of the information involved in this determination, please see *Collapsing Memo* for a full discussion of our analysis.

#### Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996). The exporters that the Department selected to review, Pilkington, Fuyao, and Peaceful City, and the PRC producers of the exported goods each provided company-specific separate rates information and stated that they met the standards for the assignment of separate rates. In determining whether companies should receive separate rates, the Department focuses its attention on the exporter, in this case the Pilkington JVs, Fuyao, and Peaceful City, rather than the manufacturer (*i.e.*, Dongguan Kongwan), as our concern is the manipulation of dumping margins. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995). Consequently, the Department analyzed whether the exporters of the subject merchandise,

the Pilkington JVs, Fuyao and Peaceful City, should receive a separate rate.

The Department's separate rate test is not concerned, in general, with macroeconomic, border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61276 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725 (March 20, 1995).

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), as modified by *Notice of 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 NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. *See Silicon Carbide* and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995).

#### A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

#### B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of*

*Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). 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. 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 exporter sets its own export prices independent of the government and without the approval of a government 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 its 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.

#### Pilkington

Pilkington placed on the record statements and documents to demonstrate absence of *de jure* control. In its questionnaire responses, Pilkington reported that it has no relationship with any level of the PRC government. Pilkington states that it has complete independence with respect to its export activities and that neither any PRC legislative enactments nor any other formal measures centralize any aspect of its export activities. Pilkington also reported that the subject merchandise is not subject to export quotas or export control licenses. Further, Pilkington reported that the subject merchandise does not appear on any government list regarding export provisions or export licensing. Furthermore, Pilkington stated that the local Chamber of Commerce in the PRC does not coordinate any export activities for the Pilkington JVs.

Pilkington reported that it is required to obtain a business license, which is issued by the Changchun Industrial and Commercial Administration Bureau for Changchun; the Guilin Industrial and Commercial Administration Bureau for Guilin; the Shanghai Industrial and Commercial Administrative Bureau for Shanghai; and, the Wuhan Industrial and Commercial Administrative Bureau for Wuhan. According to Pilkington, the business license allows a business entity, such as the Pilkington JVs, to operate in the PRC and facilitates the Pilkington JVs export and import

business based in the PRC. In addition, Pilkington submitted the Company Law of the People's Republic of China ("PRC Company Law"), which includes the laws governing joint ventures. See *Pilkington Chinese Verification Report* at Exhibit 5D. We examined each of these laws and determine that they demonstrate an authority for establishing the *de jure* decentralized control over the export activities and evidence in favor of the absence of government control associated with each Pilkington JV's business license. See *Memorandum to the File from Jonathan Herzog, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Automotive Replacement Glass Windshields from the People's Republic of China*, dated April 29, 2004 ("Separate Rates Memo").

In support of an absence of *de facto* control, Pilkington has asserted the following: (1) The Pilkington JVs established their own export prices; (2) the Pilkington JVs negotiated contracts without guidance from any governmental entities or organizations; (3) the Pilkington JVs made their own personnel decisions; and (4) the Pilkington JVs retained the proceeds of their export sales and used profits according to their business needs. Additionally, Pilkington's questionnaire responses indicate that the Pilkington JVs do not coordinate with other exporters in setting prices or in determining which companies will sell to which markets. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of the Pilkington JVs. Consequently, we preliminarily determine that Pilkington has met the criteria for the application of separate rates.

The evidence placed on the record of this administrative review by Pilkington demonstrates an absence of government control, both in law and in fact, with respect to the Pilkington JVs exports of the merchandise under review. As a result, for the purposes of these preliminary results, the Department is granting a separate, company-specific rate to the Pilkington JVs, the exporters which shipped the subject merchandise, ARG, to the United States during the POR. Due to the proprietary nature of the information considered, please see the *Separate Rates Memo* for a full discussion of the Department's separate rates determination.

#### Fuyao

Fuyao has placed on the record statements and documents to

demonstrate absence of *de jure* control. In its questionnaire responses, Fuyao reported that it has no relationship with any level of the PRC government. Fuyao states that it has complete independence with respect to its export activities and that neither any PRC legislative enactments nor any other formal measures centralize any aspect of its export activities. Fuyao also reported that the subject merchandise is not subject to export quotas or export control licenses. Further, Fuyao reported that the subject merchandise does not appear on any government list regarding export provisions or export licensing. Furthermore, Fuyao stated that the local Chamber of Commerce in the PRC does not coordinate any export activities for Fuyao.

Fuyao reported that it is required to obtain a business license, which is issued by the Fuzhou Industrial and Commercial Administration Bureau. According to Fuyao, the business license gives a business entity, such as Fuyao, the right to open bank accounts, conduct business activities, and sign contracts. In addition, Fuyao submitted the *Foreign Trade Law of the PRC* and the *Administrative Regulations of the PRC Governing the Registration of Legal Corporations*. We examined each of these laws and determine that they demonstrate an authority for establishing the *de jure* decentralized control over the export activities and evidence in favor of the absence of government control associated with Fuyao's business license. See *Separate Rates Memo*.

In support of demonstrating an absence of *de facto* control, Fuyao has asserted the following: (1) Fuyao established their own export prices; (2) Fuyao negotiated contracts without guidance from any governmental entities or organizations; (3) Fuyao made their own personnel decisions; and (4) Fuyao retained the proceeds of their export sales and used profits according to their business needs. Additionally, Fuyao's questionnaire responses indicate that it does not coordinate with other exporters in setting prices. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of Fuyao. Consequently, we preliminarily determine that Fuyao has met the criteria for the application of separate rates.

The evidence placed on the record of this administrative review by Fuyao demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review. As a result, for the

purposes of these preliminary results, the Department is granting a separate, company-specific rate to Fuyao, the exporter which shipped the subject merchandise, ARG, to the United States during the POR. Due to the proprietary nature of the information considered, please see the *Separate Rates Memo* for a full discussion of the Department's separate rates determination.

#### Peaceful City and Dongguan Kongwan

Peaceful City has provided the requested company-specific separate rates information and has indicated that there is no element of government ownership or control over their export operations. We have considered whether the mandatory respondent is eligible for a separate rate as discussed below. Because Peaceful City is a privately owned Hong Kong corporation, having its place of business in Hong Kong and being registered in Hong Kong, and because Hong Kong is considered by the Department to be a market economy, the Department determined that a separate rates analysis was not necessary for Peaceful City. As Dongguan Kongwan is wholly owned by Peaceful City, a separate rate analysis is not necessary.

#### Facts Available

As further discussed below, pursuant to sections 776(a)(2)(A), (B), (C) and (D) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for Peaceful City and Dongguan Kongwan.

#### I. Facts Otherwise Available

The Department finds that the use of facts otherwise available is warranted pursuant to section 776(a) of the Act. In general, section 776(a)(1) and (2) of the Act state that the Department may use facts otherwise available in reaching the applicable determination if: (1) The necessary information is not available on the record, or (2) an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this subtitle, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified.

As discussed below, the Department determined that the use of total facts available is warranted because Peaceful City and Dongguan Kongwan withheld certain information that had been requested by the Department, failed to



provide certain information by the Department's and statutory deadlines, significantly impeded the Department's investigation, and failed to provide certain information that could be verified pursuant to section 776(a)(2) (A), (B), (C) and (D) of the Act. As a result of Peaceful City and Dongguan Kongwan's failure, the Department does not have sufficient information on the record to make its determination.

*A. Withholding Information and Failure To Provide Certain Information Requested by the Department in a Timely Manner*

The Department finds that facts available is warranted pursuant to sections 776(a)(2)(A) and (B) of the Act because Peaceful City and Dongguan Kongwan withheld certain information both before verification and during verification, and failed to provide information requested by the Department in a timely manner and in the form required for verification.

The Department submitted its verification outline to Peaceful City and Dongguan Kongwan on March 12, 2004, 10 days prior to the commencement of verification, thereby giving Peaceful City and Dongguan Kongwan sufficient time to prepare their verification exhibits. *See Peaceful City and Dongguan Kongwan's Verification Outline*, dated March 12, 2004 ("Peaceful City and Dongguan Kongwan's Verification Outline"). The purpose of submitting a verification outline to respondents is to give respondents sufficient notice about the types of source documents that the Department will seek to examine during verification, and to afford respondents sufficient time to compile source documents and prepare them as verification exhibits. Peaceful City and Dongguan Kongwan failed to follow the instructions detailed in the Department's verification outline and failed to present source documents in a timely manner for verification. At no time prior to the verification did Peaceful City or Dongguan Kongwan contact the Department with questions about verification procedures, documents to prepare for verification, or the verification outline.

*Peaceful City*

During verification, Peaceful City did not adequately present documents to demonstrate its corporate structure, accounting practices and sales process to the Department according to the instructions specified in the Department's verification outline. *See Peaceful City and Dongguan Kongwan's Verification Outline* at pp. 5–7, and 10–

17. Certain source documents were not initially presented to the Department, and the Department found it necessary to make piecemeal requests for those documents in order to compile a verification record. *See Peaceful City and Dongguan Kongwan's Verification Report* at pp. 4–6, 10–11, and 13–14.

Peaceful City did not report a certain affiliate, which was owned by Peaceful City's shareholders prior to June 2002, in its questionnaire responses. Although Peaceful City stated that this affiliate is merely an automotive glass fitting service supplier and not an ARG producer, Peaceful City was unable to substantiate this claim through reliable evidence. *See Peaceful City and Dongguan Kongwan's Verification Report* at pp. 4–5 and Exhibit 1. Peaceful City also failed to report the brokerage and handling charge that it incurred for its U.S. sale during the POR. During verification, the Department discovered, among Peaceful City's U.S. sales trace documents, an invoice from a Chinese shipping company noting charges for hauling the subject merchandise from Dongguan Kongwan's facility to a certain PRC port, a customs charge for transporting subject merchandise from the certain PRC port to the PRC port of exit, and a handling charge for delivering the bill of lading from the shipping company to Peaceful City. *See Peaceful City and Dongguan Kongwan's Verification Report* at Exhibit 6. Peaceful City also failed to substantiate a related party accounting transaction reported in its Section A questionnaire response. The financial statements submitted in Peaceful City's questionnaire response references "purchases" from Peaceful City's reported affiliate, an automotive glass fitting service supplier. *See Peaceful City's Section A Questionnaire Response*, Exhibit 10, dated June 24, 2003. However, Peaceful City was unable to substantiate this purchase amount with source documents. As a result, the record is unclear as to whether Peaceful City purchased subject merchandise from its affiliate for shipment to the United States during the POR or whether it purchased certain raw materials for consumption in the manufacture of subject merchandise and did not report this purchase as a market economy purchase in Dongguan Kongwan's questionnaire responses. *See Peaceful City and Dongguan Kongwan's Verification Report* at pp. 5, 10–11.

*Dongguan Kongwan*

During verification, Dongguan Kongwan was unable to provide supporting documentation in a timely manner, to demonstrate its corporate

structure, accounting practices, merchandise, sales process, production process, quantity and value of the U.S. sale of subject merchandise during the POR, certain factors of production usage rates, suppliers' freight distances, and certain market economy transportation charges. *See Peaceful City and Dongguan Kongwan's Verification Report*.

During verification, the Department discovered that Dongguan Kongwan failed to report its use of float glass of a certain color in the production of subject merchandise during the POR. Dongguan Kongwan reported that float glass of a certain color "was not used to produce the subject merchandise" and reported the market economy and nonmarket economy purchases of float glass of only one color. *See Dongguan Kongwan's Third Section D Supplemental Questionnaire response* at p. 2, dated January 27, 2004. During verification, the Department examined Dongguan Kongwan's work shift records for the production of subject merchandise and discovered that a significant quantity of float glass used to produce the subject merchandise was of the unreported color. *See Peaceful City and Dongguan Kongwan's Verification Report* at Exhibit I. Further, Dongguan Kongwan did not present the Department with any documents demonstrating the usage rate for the float glass of the unreported color and the usage rate for the float glass of the reported color separately. *See Peaceful City and Dongguan Kongwan's Verification Report* at Exhibit I. Because float glass is the primary component in producing the subject merchandise, the correct reporting of float glass usage rates is integral to establishing a constructed value for subject merchandise and in determining an accurate dumping margin calculation.

The Department's verification outline expressly requested source documents to corroborate Dongguan Kongwan's factor of production usage rates, as reported in its questionnaire responses. *See Peaceful City and Dongguan Kongwan's Verification Outline* at p. 17–21. However, Dongguan Kongwan did not provide the Department with source documents to reconcile the vast majority of its factor input usage rates, including one unreported factor of production and several unreported packing materials that the Department discovered during its plant tour of Dongguan Kongwan's production facility. Dongguan Kongwan also did not provide documents to substantiate the rate at which float glass by-products are derived from the glass cutting process and invoices to substantiate the sales of the float glass

by-products. See *Memorandum Detailing Peaceful City Limited ("Peaceful City") and Dongguan Kongwan Automobile Glass, Limited's ("Dongguan Kongwan") Lack of Preparation for Verification in the Antidumping Administrative Review of Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China ("PRC")* at p. 5-7, dated April 29, 2004 ("Verification Memorandum"); *Peaceful City and Dongguan Kongwan's Verification Report* at p. 29. Also, Dongguan Kongwan's indirect labor hours used in the production of subject merchandise during July 2002, as reported in its questionnaire responses, were not consistent with the total labor hours detailed in its attendance records for production management personnel during July 2002. See *Verification Memorandum* at p. 6.

Additionally, Dongguan Kongwan failed to provide source documents to corroborate its market economy purchases of float glass of the reported color and of PVB. Moreover, certain factors of production were not reported in Dongguan Kongwan's questionnaire responses as being purchased from market economy or nonmarket economy suppliers. At verification, Dongguan Kongwan did not provide supporting documents to indicate whether these certain factors were purchased from market economy or nonmarket economy suppliers. See *Peaceful City and Dongguan Kongwan's Verification Report* at p. 25-27. Additionally, Dongguan Kongwan did not provide documents to demonstrate whether the unreported factors discovered during the plant tour were purchased from market economy or nonmarket economy suppliers. See *Verification Memorandum* at p. 7. Furthermore, during the plant tour, the Department noted that a significant amount of PVB was purchased from Japan, a market economy supplier that was not reported in Dongguan Kongwan's questionnaire responses, and the Department was unable to examine the market economy purchases of PVB during the POR because the Department was not presented with supporting documents identifying such purchases. The Department also learned from a Dongguan Kongwan official that a certain float glass supplier is located in India even though Dongguan Kongwan's questionnaire responses reported this supplier as located in Thailand. See *id.*

Moreover, Dongguan Kongwan failed to provide source documents to corroborate its purchase of market economy transportation services for the transportation of PVB from its supplier to Dongguan Kongwan's production

facility. For the certain factors of production that were not identified as being purchased from market economy or nonmarket economy suppliers in Dongguan Kongwan's questionnaire responses, Dongguan Kongwan failed to provide documents to demonstrate whether these certain factors were transported to Dongguan Kongwan's facility using market economy transportation providers. Additionally, Dongguan Kongwan did not provide documents to indicate whether float glass of the unreported color was delivered to Dongguan Kongwan's facility by a market economy transportation provider, or whether the unreported factors discovered during the plant tour were delivered to Dongguan Kongwan by a market economy transportation provider. See *Verification Memorandum* at p. 27-29.

During verification, Dongguan Kongwan stated that it did not keep any production specification documents for the various models of windshields that it produces, which would have allowed the Department to examine Peaceful City's control number allocation of the various models of subject merchandise. However, the Department discovered that Dongguan Kongwan does in fact keep product specifications records labeled "processing requirements," which describe specific manufacturing techniques for producing windshields of various models. See *Verification Memorandum*, at p. 5.

Lastly, Dongguan Kongwan failed to prepare documents demonstrating its accounting practice, as requested in the Department's verification outline and by the Department during the course of Dongguan Kongwan's verification. See *Peaceful City and Dongguan Kongwan's Verification Outline* at p. 6-7. Specifically, Dongguan Kongwan did not present source documents to substantiate the manner in which expenses are booked throughout the accounting process. See *Verification Memorandum* at p. 4; *Peaceful City and Dongguan Kongwan's Verification Outline* at p. 6-7; *Peaceful City and Dongguan Kongwan's Verification Report* at p. 11.

#### *B. Significantly Impeding Verification*

The Department additionally finds that the use of facts otherwise available is warranted pursuant to section 776(a)(2)(C) of the Act, which states that the Department may use facts otherwise available in reaching the applicable determination if, among other factors, the respondent "significantly impedes a proceeding."

Peaceful City and Dongguan Kongwan were unprepared for verification and

their unpreparedness significantly impeded the verification process. The Department afforded Peaceful City and Dongguan Kongwan sufficient opportunity to subject their documents to a full and complete verification by submitting the verification outline to Peaceful City and Dongguan Kongwan 10 days prior (i.e., March 12, 2004) to the commencement of verification. See *Peaceful City and Dongguan Kongwan's Verification Outline*. At no time prior to the verification did Peaceful City or Dongguan Kongwan contact the Department with questions about verification procedures, documents to prepare for verification, or the verification outline, nor did either company indicate that the time allocated for the verification was insufficient.

During the first day of Peaceful City's two-day sales verification, the Department discovered that Peaceful City did not have many source documents prepared for review pertaining to its corporate structure, accounting process and sales process. The Department had specific instructions in its verification outline describing the items that will be subject to verification. As a result of Peaceful City's unpreparedness, the Department made piecemeal requests for documents in order to compile a verification record for each item subject to verification. See *Verification Memorandum* at p. 2.

On the first day of Dongguan Kongwan's factors of production verification, the Department asked Dongguan Kongwan's counsel whether source document evidentiary packages were prepared for the Department's review. Dongguan Kongwan's counsel responded affirmatively. However, upon beginning verification, the Department discovered that Dongguan Kongwan had few source documents prepared for review and no evidentiary packages to submit to the Department as verification exhibits, despite the specific instructions given in the verification outline. Again, the Department found it necessary to help Dongguan Kongwan compile a verification record by requesting Dongguan Kongwan to provide certain source documents individually. See *Peaceful City and Dongguan Kongwan's Verification Report* at p. 2-3. Often, when the Department requested to review general documents related to a specific verification item, Dongguan Kongwan did not openly or promptly disclose the types of documents it ordinarily retained in relation to the Department's request, but did produce certain documents that were related to the Department's request, after repeated



requests for relevant documents. As a result, Dongguan Kongwan's lack of prompt disclosure delayed the verification process, and hindered the Department's ability to obtain many documents necessary for review of certain verification items in a timely manner. *See Peaceful City and Dongguan Kongwan's Verification Report* at p. 3. Moreover, many times during Dongguan Kongwan's verification, the Department requested certain source documents and waited for significant amounts of time for Dongguan Kongwan officials to search for the requested documents in their business files. Upon retrieving company documents, Dongguan Kongwan officials also spent a considerable amount of time selecting the relevant data, from multiple data sets in the documents, to present to the Department pursuant to its request. *See id.* Since Dongguan Kongwan was unprepared for verification in the manner requested by the Department, and since Dongguan Kongwan used much of the time allotted for verification to retrieve and review source documentation, there remained insufficient time to complete Dongguan Kongwan's factors of production verification. *See Peaceful City and Dongguan Kongwan's Verification Report*, at p. 20–29.

### C. Information Could Not Be Verified

The Department additionally finds that the use of facts otherwise available is warranted pursuant to section 776(a)(D) of the Act, which states that the Department may use facts otherwise available in reaching the applicable determination if, among other factors, the respondent "provides \* \* \* information but the information cannot be verified." The Department was unable to verify the usage rates for the majority of Dongguan Kongwan's factors of production reported in its questionnaire responses because Dongguan Kongwan did not present source documents to substantiate its reported usage rates for these factors. *See Verification Memorandum*. In addition, Dongguan Kongwan did not provide source documents to substantiate its market economy purchase of PVB, its suppliers' freight distances, and its purchases of market economy transportation services for the transportation of PVB from the supplier to Dongguan Kongwan's production facility. As a result, the Department was unable to substantiate any of these data as reported in Dongguan Kongwan's questionnaire responses. *See Peaceful City and Dongguan Kongwan's Verification Report* at p. 20–29.

Moreover, as explained above, Peaceful City was unable to substantiate through source documents the amount paid to an affiliate for purchases that were reported in its audited financial statements, and Dongguan Kongwan did not provide source documents to demonstrate its accounting practices. *See Peaceful City and Dongguan Kongwan's Verification Report* at p. 9–11.

### II. Adverse Facts Available

The Department finds that both Peaceful City and Dongguan Kongwan failed to act to the best of their ability in supplying the Department with the requested information. Section 776(b) of the Act states that if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information by the Department, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available, in reaching the applicable determination.

#### *Peaceful City*

Peaceful City failed to act to the best of its ability in presenting documents, in the manner requested by the Department in its verification outline, to adequately demonstrate its corporate structure, accounting practices and sales process to the Department. *See Peaceful City and Dongguan Kongwan's Verification Outline*. The information necessary to prepare complete verification exhibits pertaining to corporate structure, accounting practices, and sales process was explained in the verification outline, and the verification outline was submitted to Peaceful City 10 days prior to Peaceful City's verification. However, despite having sufficient notice, Peaceful City failed to prepare its source documents prior to the commencement of verification. Peaceful City never contacted the Department with questions concerning the preparation of verification exhibits prior to the Department's verification. Further, the fact that Peaceful City was able to procure certain documents listed in the verification outline, after the Department's verbal requests for them during verification, evidences the fact that Peaceful City did have such documents available and had the ability to comply, but failed to promptly and voluntarily provide the necessary information to the Department. *See Verification Memorandum* at p. 2.

Furthermore, the Department's Section A Questionnaire required Peaceful City to report all companies with which it was affiliated during the

POR, and Peaceful City failed to report an affiliate. References to Peaceful City's affiliate are made in Peaceful City's accounting documents and financial statements. *See Peaceful City and Dongguan Kongwan's Verification Report*, Exhibits 3 and 6. Therefore, it is clear that Peaceful City had knowledge of this affiliate. Also, Peaceful City was able to produce a document showing the cancellation of the unreported affiliates' business license in 2002, suggesting that the manager of Peaceful City, who was conducting Peaceful City's verification, had knowledge of the unreported affiliate but failed to disclose this information in either Peaceful City's questionnaire responses or as a pre-verification correction. Moreover, the unreported affiliate was owned by Peaceful City's shareholders, one of whom is a director of Peaceful City and was present during Peaceful City's verification. This director also failed to disclose the affiliation in Peaceful City's questionnaire responses or as a pre-verification correction. *See Verification Memorandum* at p. 3–6. The facts on the record demonstrate that Peaceful City had knowledge of this affiliate and had the ability to report the affiliate to the Department. Peaceful City's failure to report its affiliate evidences a failure to cooperate to the best of its ability.

Also, Peaceful City failed to act to the best of its ability when it failed to report the brokerage and handling charge that it incurred for its U.S. sale during the POR. The Department's Section C Questionnaire and the verification outline submitted to Peaceful City request documentation of brokerage and handling charges associated with the sale of subject merchandise during the POR. The Department discovered an invoice from a Chinese shipping company that referenced Peaceful City's brokerage and handling charges for the shipment of subject merchandise from Dongguan Kongwan to the port of exit. Although multiple references to this shipping company are made in Peaceful City's accounting records during the POR, this brokerage and handling charge was not reported in any of Peaceful City's responses or as a pre-verification correction. *See Verification Memorandum* at p. 19–20. Based on these failures, the Department determines that Peaceful City failed to cooperate to the best of its ability.

#### *Dongguan Kongwan*

The verification outline submitted to Dongguan Kongwan provided Dongguan Kongwan sufficient notice and time to prepare source documents to corroborate its questionnaire responses for verification, and Dongguan

Kongwan's failure to prepare source documents, despite having adequate notice, evidences its lack of cooperation with the Department's standard requests. Dongguan Kongwan failed to prepare documents in a timely manner to demonstrate its corporate structure. Dongguan Kongwan did not adequately prepare documents to demonstrate its accounting practices, the characteristics of merchandise produced, its sales and production process, its quantity and value of the U.S. sale of subject merchandise during the POR, certain factor of production usage rates, and certain market economy transportation charges. See *Peaceful City and Dongguan Kongwan's Verification Outline* at p. 17–21. Although information necessary to prepare complete verification exhibits pertaining to these verification topics was provided in the verification outline, Dongguan Kongwan did not comply with the requests to prepare all source documents prior to the commencement of verification. Additionally, Dongguan Kongwan never contacted the Department with questions concerning the preparation of verification exhibits prior to the Department's verification. See *Verification Memorandum* at p. 2. Furthermore, the fact that Dongguan Kongwan was able to procure certain documents listed in the verification outline, but only after the Department made a verbal request for them during verification, evidences the fact that Dongguan Kongwan had the ability to prepare the requested documentation, but failed to promptly and voluntarily provide it to the Department. See *Verification Memorandum* at p. 8–9. Therefore, the Department finds that Dongguan Kongwan failed to cooperate to the best of its ability by not providing adequate source documents prior to the commencement of verification.

Specifically, Dongguan Kongwan did not act to the best of its ability in reporting the usage rate of float glass, by color, in its production of subject merchandise during the POR. Dongguan Kongwan stated that it used its work shift records to prepare Dongguan Kongwan's questionnaire responses about its float glass usage rate, and Dongguan Kongwan reported that float glass of a certain color "was not used to produce the subject merchandise." See *Third Section D Supplemental Questionnaire response* at p. 2, dated January 27, 2004. However, during verification, the Department examined the same work shift records that Dongguan Kongwan used to prepare its questionnaire responses and discovered that a significant quantity of float glass

used to produce subject merchandise during the POR was float glass of the unreported color. See *Verification Memorandum* at p. 5–6.

Dongguan Kongwan also failed to report in its questionnaire responses the use of several additional factors of production, which the Department discovered during its plant tour of Dongguan Kongwan's production facility. These unreported factors were in plain view and easily detectable when conducting a simple survey of Dongguan Kongwan's production facility. See *Verification Memorandum* at p. 6.

Although Dongguan Kongwan presumably used source documents to report its factors of production in its questionnaire responses, Dongguan Kongwan failed to prepare and present these source documents to the Department in a timely manner. See *id.* Dongguan Kongwan failed to present documents to reconcile the usage rates for 21 of 25 factors of production, including the unreported factors discovered during the course of verification. See *Peaceful City and Dongguan Kongwan's Verification Report* at p. 20–25. The Department requested to begin its verification of Dongguan Kongwan's factor usage rates and costs of production on the second day of verification. Upon learning that Dongguan Kongwan was unprepared for this segment of verification, the Department explained in detail the importance of having source documents with which to corroborate Dongguan Kongwan's questionnaire responses. The Department also explained to Dongguan Kongwan the process of compiling documents as verification exhibits. See *Verification Memorandum* at p. 9. The verification outline, which was submitted to Dongguan Kongwan 12 days prior to its verification, also detailed instructions on preparing verification packages and provided examples of source documents to be included in its verification package. As a result of its unpreparedness, Dongguan Kongwan had to use time during verification to compile source documents, and Dongguan Kongwan only provided documents to substantiate certain items from its questionnaire responses (e.g., float glass and indirect labor hours) and did not present many source documents until the final day of verification. See *Verification Memorandum* at p. 5–7. Also, Dongguan Kongwan's verification exhibits were inadequate in two respects. First, Dongguan Kongwan did not attempt to explain or evidence its usage rate of the float glass of the reported color for the production of

subject merchandise during the POR. Second, Dongguan Kongwan understated its usage rate of indirect labor hours in its questionnaire responses by approximately 3% when compared with the actual indirect labor hours detailed in Dongguan Kongwan's attendance records for production management personnel. See *Peaceful City and Dongguan Kongwan's Verification Report*, Exhibit L.

Dongguan Kongwan failed to follow the instructions detailed in the verification outline and comply with the Department's requests at verification by failing to substantiate its purchases of float glass of the reported color and of PVB from market economy suppliers. The Department's questionnaire also requires information about whether raw material inputs are purchased from market or nonmarket economy suppliers, and Dongguan Kongwan failed to report whether certain other inputs were purchased from market economy or nonmarket economy suppliers, in its questionnaire responses or as pre-verification correction. See *Peaceful City and Dongguan Kongwan's Verification Report* at p. 11. Further, Dongguan Kongwan never explained during verification nor provided source documents to evidence its usage rate of certain unreported factors, whether these factors were purchased from market economy or nonmarket economy suppliers, any market economy transportation costs paid for the shipment of the raw materials to Dongguan Kongwan's production facility, and the supplier's freight distances to Dongguan Kongwan. See *Peaceful City and Dongguan Kongwan's Verification Report* at p. 25–29.

Dongguan Kongwan also failed to prepare documents demonstrating its accounting practice, as requested in the Department's verification outline and by the Department during the course of Dongguan Kongwan's verification. Even though Dongguan Kongwan was able to prepare a flow chart illustrating its accounting flow of source documents from the invoice level up to its financial statements, Dongguan Kongwan failed to evidence its accounting process through specific source documents. Moreover, during verification, Dongguan Kongwan stated that it would prepare its chart of accounts for the Department's review, but ultimately failed to provide the document before the end of verification. See *Peaceful City and Dongguan Kongwan's Verification Report* at p. 11.

Additionally, Dongguan Kongwan did not cooperate with the Department's request during verification to examine its product specification documents,

which describe manufacturing techniques for producing various windshield models. Dongguan Kongwan replied that it did not possess such documents. However, the Department found that such documents did exist when it discovered product specification documents labeled "processing requirements" during its verification of indirect labor hour usage rates. See *Peaceful City and Dongguan Kongwan's Verification Report* at p. 5.

Dongguan Kongwan failed to follow instructions given in the verification outline to have company officials, who could discuss the production and sales processes of Dongguan Kongwan with the Department, available during verification. The Department also made this request during verification. See *Peaceful City and Dongguan Kongwan's Verification Outline* at p. 2-4; *Peaceful City and Dongguan Kongwan's Verification Report* at p. 15. However, Dongguan Kongwan's production and sales officials were not made available to speak to the Department until the afternoon of the first day and the morning of the second day of Dongguan Kongwan's verification. Although Dongguan Kongwan's accounting official and manager were available during the course of Dongguan Kongwan's entire verification, these officials refused to provide basic information about the manner in which orders arrive from Peaceful City, are relayed to the production department, and whether price lists or production specification lists exist in the ordinary course of business. See *Peaceful City and Dongguan Kongwan's Verification Report* at p. 5.

The result of Peaceful City's and Dongguan Kongwan's verifications was that both companies failed to submit source documents in a timely manner in support of the information reported in their questionnaire responses, impeded verification by being unprepared and therefore slowing the progress of their respective verifications considerably, and did not provide the Department with documents to substantiate the vast majority of its factor usage rates, market economy purchases, suppliers' distances, and purchases of market economy transportation service that were reported in the questionnaire responses. In all of their failures to provide sufficient documentation to support their responses to the Department's questionnaires, Department officials made observations throughout verification that the companies had the ability to comply with the Department's requests but failed to do so. See *Peaceful City and Dongguan Kongwan's Verification*

*Report*. Based on these failures at verification, Peaceful City and Dongguan Kongwan failed to cooperate to the best of their ability with the Department's requests for information. Therefore, the Department determines that the application of total adverse facts available is warranted for Peaceful City and Dongguan Kongwan, pursuant to Section 776(a) and (b) of the Act.

#### D. Adverse Facts Available

In deciding which facts to use when an adverse inference is warranted under Section 776(b) of the Act, the Department is authorized to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. See 19 CFR 351.308(C)(1).

As adverse facts available, we have used the highest margin from any segment of the proceeding, which is the PRC-wide rate established in the less than fair value investigation. This was the highest rate calculated in the initiation stage of the investigation from information provided in the petition. The Department determines that this information is the most appropriate to use in assigning a dumping margin to respondents Peaceful City and Dongguan Kongwan, because the other rates from the investigation and this review are not adverse to the interests of respondents Peaceful City and Dongguan Kongwan, there is no information from a prior review, and the use of any other information placed on the record would yield distortive results, as explained below.

In reaching this decision to use total adverse facts available, the Department has considered the significance of the information that was missing or unverifiable. Usage rates for many factors of production could not be reviewed or corroborated during verification, market economy purchases of certain factors were not substantiated, market economy transportation of certain raw material purchases were not demonstrated, and the suppliers' freight distances to Dongguan Kongwan's production facility were not substantiated. Therefore, the Department could not reasonably construct a reliable and accurate margin using any of respondents' information given that a vast amount of information is missing from the record and information on the record is unsupported by documentary evidence.

### III. Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is defined in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. See *Id.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See *Id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The adverse facts available rate we are applying for the current review was corroborated in the investigation. See *Memorandum from Jon Freed to Robert Bolling: Preliminary Results in the Antidumping Administrative Review of Automotive Replacement Glass Windshields from the People's Republic of China: First Administrative Review Corroboration Memorandum*, dated April 29, 2004, ("First Review Corroboration Memo"), with attached, *Memorandum from Edward Yang to Joseph Spetrini: Preliminary Determination in the Antidumping Investigation of Automotive Replacement Glass Windshields from the People's Republic of China: Total Facts Available Corroboration Memorandum for All Others Rate*, dated September 10, 2001 ("Corroboration Memo"). The Department received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. See e.g.,

*Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41307–41308 (July 11, 2003) (The Department relied on the corroboration memorandum from the investigation to assess the reliability of the petition rate as the basis for an adverse facts available rate in the administrative review). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See *D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated).

To assess the relevancy of the rate used, the Department compared the margin calculations of other respondents in this administrative review with the petition rate. The Department found that the petition rate was within the range of the highest margins reported on the record of this administrative review. See *First Review Corroboration Memo* at Attachment 2. Since the record of this administrative review contains margins within the range of the petition margin, we determine that the rate from the petition continues to be relevant for use in this administrative review. Further, the rate used is currently applicable to all exporters subject to the PRC-wide rate.

As the petition rate is both reliable and relevant, we determine that it has probative value. As a result, the Department determines that the petition rate is corroborated for the purposes of this administrative review and may

reasonably be applied to Peaceful City and Dongguan Kongwan as a total adverse facts available rate. Accordingly, we determine that the highest rate from any segment of this administrative proceeding (i.e., the calculated rate of 124.50 percent) is in accord with section 776(c)'s requirement that secondary information be corroborated (i.e., have probative value).

Consequently, we are applying a single antidumping rate—the highest rate from any segment of this administrative proceeding—to Peaceful City and Dongguan Kongwan's exports based on Peaceful City and Dongguan Kongwan's failure to be reasonably prepared during the verification and their resulting failure to substantiate the majority of their factors and costs of productions, which were reported in their questionnaire responses. See, e.g., *Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000).

Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final results for the purpose of determining the most appropriate final margin based on total adverse facts available. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000).

#### *Date of Sale*

Section 351.401(i) of the Department's regulations state that "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business."

#### *Pilkington*

After examining the sales documentation placed on the record by the respondent, we preliminarily determine that invoice date is the most appropriate date of sale for this respondent. We made this determination based on evidence on the record which demonstrates that the contracts used by the respondent establish the material terms of sale to the extent required by our regulations in order to rebut the presumption that invoice date is the proper date of sale. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79054 (December 27, 2002).

#### *Fuyao*

After examining the questionnaire responses and the sales documentation placed on the record by this respondent, we preliminarily determine that invoice date is the most appropriate date of sale for the respondent. The purchase order date is the only other point on which the date of sale could be based for Fuyao's U.S. sales. However, the record of this administrative review indicates that the material terms of Fuyao's U.S. transactions do change between the purchase order date and the invoice date. Thus, the Department preliminarily determines that invoice date is the most appropriate date of sale for Fuyao.

#### *Fair Value Comparisons*

To determine whether sales of ARG to the United States by Pilkington and Fuyao were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value, as described in the "Export Price," "Constructed Export Price" and "Normal Value" sections of this notice.

#### *Export Price*

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act.

#### *Constructed Export Price*

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) after the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act.

In accordance with section 772(a) of the Act, we used EP for those sales of Pilkington and Fuyao where the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated for those transactions. In accordance with section 772(b) of the Act, we used CEP for those sales of Pilkington and Fuyao where the subject merchandise was first sold to the unaffiliated U.S. customer after importation to the United States. We compared normal value to

individual EP and CEP transactions, in accordance with section 777A(d)(2) of the Act.

#### Pilkington

We calculated EP for Pilkington based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sale price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation.

For Pilkington's CEP sales, we based the CEP on FOB, or delivered, prices to unaffiliated purchasers in the United States and, where appropriate, we deducted discounts. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses, inventory carrying costs, and indirect selling expenses, which related to commercial activity in the United States. We also made deductions for movement expenses, which included foreign inland freight from the plant to the port of exportation, domestic brokerage, ocean freight, marine insurance, U.S. brokerage, and inland freight from warehouse to unaffiliated U.S. customer. Where appropriate, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit. In addition, at the U.S. verification of PNA's sales data, the Department found that Pilkington had short-term loans and kept subject merchandise in a warehouse in the United States during the POR. Based on these findings, the Department has calculated U.S. credit expenses and U.S. inventory carrying costs from information provided by PNA during verification and deducted these expenses from the reported CEP sales price. *See Pilkington U.S. Verification Report* at pp 7 and 11, Analysis Memo at 2.

#### Fuyao

We calculated EP for Fuyao based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sale price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, domestic brokerage, ocean freight, marine insurance, U.S. brokerage, inland freight from port to unaffiliated U.S. customer, and other freight revenue.

For Fuyao's CEP sales, we based the CEP on FOB, or delivered, prices to unaffiliated purchasers in the United States and, where appropriate, we deducted discounts. In accordance with

section 772(d)(1) of the Act, the Department deducted credit expenses and indirect selling expenses, which related to commercial activity in the United States. We also made deductions for movement expenses, which included foreign inland freight from the plant to the port of exportation, domestic brokerage, ocean freight, marine insurance, U.S. brokerage, inland freight from port to unaffiliated U.S. customer, and other freight revenue. Finally, where appropriate, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a factors-of-production methodology if: (1) The merchandise is exported from a non-market economy country; and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base normal value on factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production reported by respondents for materials, energy, labor, by-products, and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value factors of production, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Lasko Metal Products v. United States*, 43 F. 3d 1442, 1445–1446 (Fed. Cir. 1994). However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use surrogate values to determine the normal value. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China ("PRC")*, 67 FR 11670 (March 15, 2002).

Fuyao and Pilkington reported that some of their inputs were sourced from market economies and paid for in a market economy currency. *See Factor Valuation Memorandum* for a listing of these inputs. Pursuant to section 351.408(c)(1) of our regulations, we used the actual price paid by respondents for inputs purchased from a market-economy supplier and paid for in a market-economy currency, except when prices may have been distorted by subsidies. Specifically, we did not include any market economy purchases from Indonesia, Thailand or South Korea (nor import statistics from the these countries, *i.e.*, for material inputs and packing materials, by-product credits) because the Department determined in the investigation that Indonesia, Korea, and Thailand maintain broadly available, non-industry specific export subsidies that may benefit all exporters to all markets. The Department is not in a position to verify whether or not the reported market economy purchases were distorted in fact by these non-industry specific export subsidies. However, the fact that each of these countries maintain non-industry specific export subsidies to all exporters gives rise to the Department's presumption that the exporters of float glass and other reported market economy inputs to Fuyao and Pilkington may have benefitted from these non-industry specific export subsidies. Therefore, we will not use export prices from these countries, either as market economy purchases or import statistics into India, the surrogate country. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying *Issues and Decision Memorandum* at Comment 1.

#### Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POR. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the

distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market economy inputs were not delivered to the factory). This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, see *Factor Valuation Memorandum*.

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from the World Trade Atlas® online ("Indian Import Statistics"). See *Factor Valuation Memorandum*. The Indian Import Statistics obtained from the World Trade Atlas were published by the DGCI&S, Ministry of Commerce of India in August 2003 and were reported in U.S. dollars. Where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund.

#### Pilkington

Pilkington reported that it sourced all of its raw material inputs from market economy suppliers and paid for them in market economy currencies. Pilkington reported market economy purchases for clear float glass, colored float glass, PVB, ceramic ink, mirror buttons, silver paste, and powder. For these preliminary results, the Department has used the market economy prices for the inputs listed above, in accordance with 19 CFR 351.408(c)(1), with one exception. At verification, the Department found that Pilkington's reported market economy purchases of float glass were made from suppliers based in Thailand, and Indonesia. See *Pilkington Chinese Verification Report* at 18. Based on the fact that the Department has reason to believe or suspect that market economy prices from Indonesia, Thailand, and South Korea may be subsidized, we have disallowed the use of the companies' reported actual prices for float glass and have valued clear float glass and colored float glass using Indian Import Statistics.

Pilkington reported that it recovers shattered glass. The Department has offset the respondents' cost of production by the amount of a reported by-product (or a portion thereof) where respondents indicated that the by-product was sold and/or where the record evidence clearly demonstrates

that the by-product was re-entered into the production process. See *Factor Valuation Memorandum* for a complete discussion of by-product credits given and the surrogate values used. To value recovered shattered glass, the Department inflated the values used in the investigation. In the investigation, the Department valued recovered scrap glass by using data from India Infoline for the period of April 1999–March 2000. See *Factor Valuation Memorandum* for a full discussion.

To value electricity, we used values from the International Energy Agency to calculate a surrogate value in India for 1997, and adjusted for inflation. The Department used these figures in the investigation. No interested parties submitted information or comments regarding surrogate values and the Department was unable to find a more contemporaneous surrogate value. Therefore, the Department inflated the values used in the investigation, which results in a surrogate value for electricity of \$0.0759/kilowatt-hour.

To value water, we used the same information as used in the investigation. In the investigation, the Department used the average water tariff rate as reported in the Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (published in 1997), based on the average of the Indian rupee per cubic meter rate for three cities in India during 1997. No interested parties submitted information or comments regarding surrogate values and the Department was unable to find a more contemporaneous surrogate value. Therefore, the Department inflated the values used in the investigation, which results in a surrogate value for water of \$0.4416/metric ton.

For direct, indirect, crate building labor, and packing labor, consistent with section 351.408(c)(3) of the Department's regulations, we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2003, <http://ia.ita.doc.gov/wages/01wages/01wages.html>. The source of these wage rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2002, ILO, (Geneva: 2002), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1996 to 2001. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.

To value factory overhead, and selling, general and administrative expenses ("SG&A"), we used the audited financial statements for the 2002 financial statement from an Indian producer of laminated and tempered automotive safety glass, Saint-Gobain Sekurit India Limited ("St.-Gobain"). See *Factor Valuation Memorandum* for a full discussion of the calculation of these ratios from St.-Gobain's financial statements.

To value profit, we used the profit experience of Asahi India Safety Glass Limited ("Asahi") for the period April 2002–March 2003, because St.-Gobain's 2002 financial statement shows that it experienced a loss for that time period. St.-Gobain's financial statement was the only surrogate financial statement submitted on the record of this administrative review by an interested party. In order to account for an element of profit in the normal value calculation, the Department obtained Asahi's financial statement from <http://www.asahiindia.com>. We note that the decision to use Asahi's profit experience only (*i.e.*, as opposed to using an average of all profit figures from the financial statements on the record) is in accordance with Department practice. See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the People's Republic of China*, 66 FR 33522 (June 22, 2001) and accompanying Issues and Decision Memorandum at Comment 8. The Department disregarded the use of SAIL's financial statements in order to derive "an element of profit as intended by the Statement of Administrative Action (SAA) accompanying the Uruguay Agreements Act."). Furthermore, this practice has been affirmed by the Court of International Trade ("CIT"). See also *Rhodia Inc. v. United States*, 240 F. Supp. 2d 1247, 1251, 1254 (CIT 2002). For a further discussion of the surrogate value for profit, see *Factor Valuation Memorandum*.

Finally, we used *Indian Import Statistics* to value material inputs for packing. We used *Indian Import Statistics* data for the period September 2001 through March 31, 2003. See *Factor Valuation Memorandum*.

#### Fuyao

Fuyao reported that it sourced all of its raw material inputs from market economy suppliers and paid for them in market economy currencies. See *Factor Valuation Memorandum* at page 3. For these preliminary results, in accordance with 19 CFR 351.408(c)(1), the Department has used the market economy prices for Fuyao's inputs with



one exception. Specifically, based on the fact that the Department has reason to believe or suspect that market economy prices from Indonesia, Thailand, and South Korea may be subsidized, we have disallowed the use of the companies' reported actual prices for clear float glass and have valued it using Indian Import Statistics.

As explained in the preamble to 19 CFR 351.408(c)(1), where the quantity of the input purchased from market economy suppliers was insignificant, we do not rely on the price paid by an NME producer to a market economy supplier. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997). Fuyao's reported information demonstrates that the quantity of one of its inputs which it sourced from market economy suppliers was so small as to be insignificant when compared to the quantity of the same input it sourced from PRC suppliers. *See Factor Valuation Memorandum* for Fuyao's reported percentage from market economy suppliers. Therefore, as the amount of this reported market economy input is insignificant, we did not use the price paid by Fuyao for this input and instead used *Indian Import Statistics* data.

Fuyao reported that it recovered scrap PVB, glass pieces, and shattered glass. The Department has offset the respondents' cost of production by the amount of a reported by-product (or a portion thereof) where Fuyao indicated that the by-product was sold and/or where the record evidence clearly demonstrates that the by-product was re-entered into the production process. *See Factor Valuation Memorandum* for a complete discussion of by-product credits given and the surrogate values used. To value recovered shattered glass and glass pieces, the Department inflated the values used in the investigation. In the investigation, the Department valued recovered scrap glass and glass pieces by using data from India Infoline for the period of April 1999–March 2000. *See Factor Valuation Memorandum* for a full discussion. In finding surrogate values for recovered scrap PVB, the Department used the HTS number for Recovered PVB that was used in the investigation to derive a surrogate value from Indian Import Statistics.

The surrogate values for packing, labor, electricity, water, overhead, SG&A, and profit were applied in the same manner as explained above in the Pilkington section.

#### Weighted-Average Dumping Margin

The weighted-average dumping margins are as follows:

#### AUTOMOTIVE REPLACEMENT GLASS WINDSHIELDS FROM THE PRC

Producer/manufacturer/exporter	Weighted-average margin (percent)
Fuyao .....	0.13
Peaceful City/Dongguan Kongwan .....	124.50
Pilkington .....	3.18

#### Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Further, we would appreciate that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and Customs and Border Protection shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs and Border Protection upon completion of this review. If these preliminary results are adopted in our final results of review, we will direct Customs and Border Protection to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR.

#### Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular company is *de minimis*, i.e., less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "PRC-wide" rate of 124.5 percent, which was established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification To Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act, and 19 CFR 351.221(b).

Dated: April 29, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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