

A-570-901
First Administrative Review
Period of Review (POR):
04/17/2006-08/31/2007
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DATE: April 6, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Certain Lined Paper Products from the People's Republic of China

SUBJECT: Issues and Decisions for the Final Results of the First
Administrative Review of the Antidumping Duty Order on Certain
Line Paper Products from the People's Republic of China (Final
Results)

I. Summary

We have analyzed the case and rebuttal briefs submitted by the Association of American School Paper Suppliers ("petitioner"), Shanghai Lian Li Paper Products Co., Ltd. ("Lian Li"), and Watanabe Paper Products (Shanghai) Co., Ltd., Watanabe Paper Products (Linging) Co., Ltd., and Hotrock Stationery (Sennzhen) Co., Ltd., (collectively, "Watanabe").¹ As a result of our analysis, we have made changes from the preliminary results in the margin calculations. We recommend that you approve the positions described in the complete list of the issues in this review for which we have received comments from the interested parties.

¹ Case briefs and rebuttal briefs were submitted by the petitioner and respondent: On March 6, 2009, the petitioner and Lian Li filed its case briefs. On March 13, 2009, Watanabe filed its case brief. On March 16, 2008, petitioner and Lian Li filed the rebuttal briefs. On March 18, 2009, petitioner filed its rebuttal brief in response to the Watanabe Group's brief.

II. Background

The Department of Commerce (“the Department”) initiated this administrative review of the antidumping duty order on certain lined paper products (“CLPP”) from the People’s Republic of China (“PRC”) on October 31, 2007, for each of the aforementioned respondents. The Department initiated this review with respect to all requested companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 61621 (October 31, 2007). On September 9, 2008, the Department published the preliminary results of the antidumping duty administrative review for CLPP from the PRC. *See Certain Lined Paper Products from the People’s Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 58540 (October 7, 2008) (*Preliminary Results*). In this review we individually investigated one manufacturer/exporter Lian Li and its two unaffiliated suppliers: Shanghai Sentian Paper Product Co., Ltd. (“Sentian”), and Shanghai Miaopanfang Paper Product Co., Ltd. (“MPF”).

On December 31, 2008, the Department published the extension of the final results in the antidumping administrative review of CLPP from the PRC. *See Certain Lined Paper Products from the People’s Republic of China: Extension of Time Limits for Final Results of Antidumping Duty Administrative Review*, 73 FR 80366 (December 31, 2008). The Department conducts its verification of Lian Li, Sentian, and MPF on January 12-13, 2009; January 14-15, 2009; and January 16 and 19, 2009, respectively, in Shanghai, PRC. On November 6, 2008, and on March 6, 2009, Lian Li and the petitioner requested a hearing on CLPP from the PRC, respectively. The Department conducted the hearing on March 18, 2009.

III. List of Comments

Below is the complete list of issues for which we received comments.

Comment 1: Whether to Apply Adverse Facts Available (“AFA”) in Calculating Normal Value

Comment 2: Whether to Apply Partial AFA for The Labor and Electricity Data Submitted Sentian and MPF

Comment 3: Whether to Revise Certain Surrogate Values to Incorporate More Accurate Values and Whether to Apply Adverse Inferences with Respect to Other Values for the Final Results

Comment 4: Surrogate Financial Ratios

Comment 5: Inland Freight and Sigma Cap

Comment 6: The Inclusion of Graph Paper in the Review

Comment 7: Selection of Single Mandatory Respondent

Comment 8: Application of Partial AFA Margin

Comment 9: Whether Or Not Watanabe Was Deprived of Its Full Opportunity to Participate in the Review

Comment 1: Whether to Apply Adverse Facts Available in Calculating Normal Value

The petitioner asserts that the Department cannot use the record established by Lian Li to calculate an accurate margin because its data is unreliable, incomplete, and inaccurate. The petitioner states that Lian Li’s individual supplier’s financial statements are inaccurate and the inter-company transfers are false.² Thus, petitioner states that despite Lian Li’s attempts to create a combined cost for its suppliers,³ Lian Li cannot reconcile the suppliers’ production quantities.

² For clarification, the term “inter-company transfers” refers to instances where finished products were produced at one company, *e.g.*, Sentian, but the production costs and the sales revenue were recorded on the books of the other company, *e.g.*, MPF.

³ *See* Lian Li’s October 16, 2008, Post-Preliminary Supplemental Questionnaire Submission at 2 (Fifth Supplemental Response).

The petitioner further explains that Lian Li has admitted that its suppliers' financial statements are inaccurate and has misled the Department. The petitioner states that Sentian and MPF admitted on the record that its financial statements were unreliable because they stated that "all production, warehouse and sales records were collectively gathered by the same accountant, and the accountant just arbitrarily distributed the sales and manufacturing costs to the two companies' accounting books. As a result, either one company's cost accounts are not complete and the calculations for usage rates based on one's company's books are not accurate."⁴ The petitioner claims that despite Lian Li's explanation of its data, including its sales and cost transfer scheme, utilized in order to take advantage of the two companies' different incomes tax rates the explanation remains convoluted and deficient. Moreover, the petitioner argues that no such tax advantage existed.

The petitioner further claims that Lian Li failed to provide verifiable production quantity information. The petitioner argues that Lian Li's suppliers' financial statements are inaccurate on an individual basis and that its suppliers do not maintain consolidated financial statements. Moreover, even though there is not a consolidated financial statement that can be used to support the reported data, the individual financial statements are themselves unreliable. Thus, the petitioner alleges that the combined database is inaccurate, unreliable, and unusable because it is unaudited and it cannot be reconciled to any of the company's records.

Moreover, the petitioner states that it is impossible to reconcile Lian Li's reported per-unit usage quantities for its suppliers to any official books and records without accurate production quantities in the submitted factors of production (FOP) database. The petitioner claims that the production quantities are missing from the FOP data files, and that the actual

⁴ See Petitioner's March 6, 2009, case brief at 11 citing to Lian Li's April 11, 2009, Fourth Supplemental Questionnaire Response at page 12 (Fourth Supplemental).

production quantities cannot be found in any of Lian Li's supplier's accounting records. In addition, the petitioner argues that the warehouse slips provided by Lian Li at verification do not provide a reliable measure of these production quantities. Furthermore, the petitioner states that while the Department tied some warehouse slips for June 2006 to a worksheet Lian Li provided at verification,⁵ it is impossible to say for certain whether the per-unit factors were properly reported based on this review of the production quantities.

The petitioner states that Lian Li's sales, costs, and quantities are booked and recorded at different companies and at different time periods,⁶ making it impossible to know if Lian Li's submission at verification was reliable or fulfilled the completeness test⁷ of the Department's FOP verification check. The petitioner argues that there is no way to determine whether all of the warehouse slips for 2006 were provided at verification; because of this, none of the production quantity information could be tied to the financial statements. The petitioner contends that the Department attempted to verify information that was impossible to verify because Lian Li did not provide a reconciliation of the data submitted.

In addition, petitioner asserts that Lian Li failed to report its cost information for its suppliers in 2007 and that no reconciliation attempt was ever made on any 2007 information.⁸ The petitioner alleges that the Department has no idea whether significant quantities of subject merchandise were produced in 2007 and went unreported and unverified. Lastly, given that 2007 constitutes more than half the POR, the petitioner urges that a potentially significant portion of the cost of subject merchandise was unreported. Petitioner argues that Sentian's assertion that it

⁵ See MPF's February 26, 2009, Verification Report at 2.

⁶ See Id.

⁷ See The Antidumping Duty Manual, Chapter 13 "Verification" at 53.

⁸ See MPF's February 26, 2009, Verification Report at 7.

had no production in 2007, and that it closed its factory and transferred the machinery to MPF is inaccurate and contradicted by its 2007 financial statement which shows significant assets and sales.

The petitioner claims that there does not appear to be any tax reason for failing to shift the ownership of fixed assets on the two companies' books to match the alleged physical transfer. Thus, the petitioner asserts that the factory did not close and its equipment was not moved to MPF. Furthermore, the petitioner claims that Lian Li and its suppliers have no proof that subject merchandise was not produced in 2007, or that Sentian did in fact close.

The petitioner claims that it is difficult to reconcile or independently check whether this is true because the accounting records at Sentian and MPF do not identify merchandise produced as subject or non-subject. Thus there is no way to use these accounting records to determine whether subject merchandise was produced in 2007. Moreover, the petitioner asserts that this deficiency was not cleared at verification.

Moreover, the petitioner states that Lian Li did not prepare a formal report for its production, inventory, sales or shipments for its 2006 sales. Thus, petitioner contests the validity of Lian Li's reporting for all of its in-scope production for 2006.

The petitioner contends that Lian Li failed to fully explain or support its suppliers' inter-company transfers. The petitioner claims that Lian Li's suppliers' inter-company transfer system is flawed and the attempts to report its suppliers' information on a combined basis, in an unaudited concoction of the company's own devising, is unreliable. In particular, the petitioner asserts that Lian Li inadequately explained and failed to document Sentian and MPF's tax scheme.

Likewise, the petitioner continues to argue that Lian Li failed to provide complete sales/cost reconciliation packages to the Department prior to verification. The petitioner claims that Lian Li failed to provide the Department with the required production quantities or verifiable reconciliation of its submitted data and the petitioner asserts that the record evidence shows that Lian Li misled the Department regarding Sentian's costs in particular. The petitioner asserts that the Sentian's books and records are distorted by their practice of booking only post-transfer quantities and by its failure to book the production of merchandise until after the merchandise was sold-often many months after it was produced.⁹ The petitioner claims that this is troublesome because there is a wide time lag between when Sentian produces and books its sales.

Moreover, the petitioner urges the Department to apply partial AFA if it does not apply total AFA in the final results. In particular, the petitioner argues that partial AFA should be applied to the missing movement costs related to the inter-company transfers¹⁰ between Sentian and MPF, labor and electricity usage, and Sentian's unreported costs. The petitioner insists that Lian Li and its suppliers have not fully cooperated by not submitting information on movement costs related to the suppliers' inter-company transfer scheme and that the Department should include an amount for unreported freight in its margin calculations.¹¹ The petitioner claims that the Department should assume that every input and every finished good was transferred from one factory to the other because Lian Li never quantified the number or magnitude of the transfers. For the missing costs, the petitioner asserts that the Department should increase normal value by the amount of the missing movement cost.

⁹ See MPF's February 26, 2009, Verification Report at 2 and 7.

¹⁰ See MPF's February 26, 2009, Verification Report at 1-2.

¹¹ See MPF's February 26, 2009, Verification Report at 2, 5, 6, 7, and 10.

In addition to the factual issues discussed described above, the petitioner argues that the Office of Policy, part of Import Administration, should review the verification reports and questionnaire response to ensure that the Department's findings were accurate.

Lian Li argues that the petitioner's arguments completely ignore the two-post preliminary questionnaire responses¹² submitted by Lian Li and the Department's verification of Lian Li's responses. Lian Li states that the two issues since the *Preliminary Results* have been resolved and that AFA is not appropriate for the final results. Lian Li claims that the Department issued two supplemental questionnaires, which it responded to, and since then verified Lian Li and its two suppliers.

Lian Li asserts that it corrected certain copying errors for certain missing control numbers in its post-preliminary supplemental questionnaire. In addition, Lian Li explains that it provided an adequately response as to how the sales and manufacturing costs were distributed between Sentian and MPF. Lian Li also argues that it provided full FOP reconciliations between Lian Li's sales and Lian Li's financial statements, Lian Li's reported FOPs and Lian Li's financial statements, Sentian's reported FOP and Sentian's financial statement, and MPF's reported FOP and MPF's financial statements. Lian Li declares that it never admitted or implied that its financial records were unreliable. Lian Li asserts that in its Fifth Supplemental Response, it stated that the accounting records of Lian Li and its suppliers were completely reliable and can be reconciled to its financial records.¹³ Lian Li also states that the petitioner's arguments are

¹² See Lian Li's Fifth Supplemental Response and Lian Li's November 25, 2008, Post-Preliminary Supplemental Questionnaire Response (Sixth Supplemental Response).

¹³ See Sentian's February 26, 2009, Verification Report at 5-6 and MPF's February 26, 2009, Verification Report at 8.

based solely on a single sentence in one of Lian Li's responses which was taken entirely out of context. In its response, Lian Li stated:

“All production, warehouse and sales records were collectively gathered by the same accountant, and the accountant just arbitrarily distributed the sales and manufacturing costs to the two companies' accounting books. As a result, either one company's cost accounts are not complete and the calculations for usage rates based on one's company's books are not accurate.”¹⁴

Furthermore, Lian Li claims that using a single supplier's books would not be complete and that the method would be inaccurate in reporting the FOPs of Sentian and MPF because it would not adequately take account of the transfers of sales and costs between them. Lian Li asserts that the only way to report the FOPs accurately is to combine the total production and total consumption of these companies together. Lastly, Lian Li states that the Department verified the transfers of sales between Sentian and MPF.¹⁵ Lian Li asserts that Sentian and MPF's records during verification properly accounted for the transfers of sales and production costs between Sentian and MPF.

Moreover, Lian Li rebuts the petitioner's claim that it did not report production quantities information. Lian Li asserts that prior to the *Preliminary Results*, Lian Li reported its production quantities for all products/control numbers in its FOP worksheets, first in Appendix S2-3 of its January 23, 2008, submission and second, in its Appendix S4-6 Fourth Supplemental Response. In addition, Lian Li argues that it provided the production quantities for all products in its FOP calculation worksheets in the November 25, 2008, submission at Exhibit P2-13. Moreover, Lian

¹⁴ See Lian Li's Fourth Supplemental Response at 12.

¹⁵ See Lian Li's Sixth Supplemental Response at Exhibit P2-4.

Li verified Sentian and MPF's books and records in its normal course of business and found no discrepancies in the per control number production quantity data. Lian Li contends that the Department successfully verified Sentian's and MPF's production records.¹⁶ Pursuant to 19 CFR 351.401(f), Lian Li argues that Sentian and MPF should be treated as a single entity, and the Department should treat its books and records on an aggregate basis in the final results.

Lian Li states that the petitioner's argument about Sentian's factory not closing at the end of 2006 is unsubstantiated. Lian Li argues that Sentian did shut down its production operations and transferred its production to MPF in December 2006 and that this was verified by the Department. Lian Li explains that although Sentian's production equipment was transferred physically to MPF, Sentian did not record the transfer on its books. Lian Li describes that Sentian was kept as an active corporate entity and did not cancel its company registration. Furthermore, Lian Li contends that in order to continue its inter-company transfers of materials and finished products, Sentian had to exist as a corporate entity and that this explains why Sentian had 2007 financial reports and tax returns.

Lastly, Lian Li argues that the Department should reject petitioner's request to apply partial AFA in the final results. For the final results, Lian Li suggests that the Department calculate the FOPs for both Sentian and MPF on a combined basis. Moreover, Lian Li asserts that the Department should not use a methodology of facts available, or AFA, that will result in a higher expense amount than the total amount verified by the Department.¹⁷

Moreover, Lian Li urges the Department to rely on MPF's tax return for the final results as the basis for understanding the rationale for the inter-company transfers. Lian Li argues that

¹⁶ See Sentian and MPF's February 26, 2009, Verification Reports at 6 and 8, respectively.

¹⁷ See Polyethylene Retail Carrier Bag Committee, et. al. v. United States, 30 CIT Slip Op. 06-94 at 8 (June 21, 2006).

the Department should reject petitioner's argument that MPF and Sentian have the same tax rate because it is false. Lian Li explains that the records show that the magnitude of the tax benefits dictates why Sentian and MPF transferred materials and products between Sentian and MPF. Lastly, Lian Li argues that the Department successfully tied the suppliers' entire months' warehouse slips to its production during the verification and that the Department also made numerous other checks to satisfy itself that the reported production quantities of the suppliers could be tied or reconciled to the financial statements.¹⁸

In addition to the factual issues described above, Lian Li countered the petitioner's argument that the Office of Policy should review the verification reports and questionnaire response on the grounds that all those steps had already been taken by the Department, and a second round of review was unnecessary.

The Department's Position:

We disagree with the petitioner that the Department should apply AFA in calculating normal value. At the *Preliminary Results*, we used AFA because of difficulties in the questionnaire response. Subsequent to the *Preliminary Results*, these problems were rectified and Lian Li and its suppliers have provided supporting documentation demonstrating that the reported FOP data with regard to raw materials are complete, accurate and reconciled to the companies' financial records. See Comment 2 for our discussion of the FOP for labor and electricity. As an initial matter, we note that Lian Li and its suppliers have actively participated in this review and have provided adequate responses to numerous requests for information.

Regarding the petitioner's assertion that Lian Li has admitted that its suppliers' unaudited financial statements are unusable because the costs are "arbitrarily distributed," we disagree.

¹⁸ See Sentian's February 26, 2009, Verification Report at 5-6.

Lian Li made certain clarifications in a post-preliminary submission that showed that the financial statements were in fact useable. Specifically, they clarified that because Sentian and MPF are owned by the same people, they are under common control; Sentian and MPF indicated that the owners treated them as a consolidated entity, and that to lower the overall tax burden on the two companies they would occasionally transfer sales and cost information between the two of them. However, even though the owners treat them as a consolidated entity, they do not have a consolidated financial statement. Rather, the two companies are separate legal entities with separate financial statements. According to Lian Li, these transfers do not undermine the credibility and reliability of the financial statements. At verification, we found that when goods were transferred between the companies for purposes of reporting the companies' activities to taxing authorities, the appropriate raw material consumption costs and quantities, were likewise transferred. Thus, revenues and raw material expenses were appropriately matched on each company's financial statements.¹⁹

Consequently, we disagree that the inter-company transfers between Sentian and MPF are inaccurate and incomplete. As detailed in the verification reports, in some instances, a product was produced at one company but the raw material production costs and the sales revenue associated with those products was recorded on the other company's books and records. Each company based its unaudited financial statements and reported FOP databases on the actual quantities recorded in its financial accounting records, which included the transfers in quantities. The companies referred to these quantities as the "post-transfer production" quantities. As detailed in the verification report, we found the inter-company transfers accurately reflected the

¹⁹ See Sentian's February 26, 2009, Verification Report at 5-8, and 11-12, and MPF's February 26, 2009, Verification Report at 5-9, and 12-13.

quantities transferred and the related raw material consumption quantities associated with the production of the subject merchandise that was transferred.²⁰

Regarding the petitioner's assertion that Lian Li and its suppliers failed to report production quantities to the Department, we agree. As detailed in the verification reports, the "post-transfer production" quantities on which the financial statements and the reported FOPs are based reflect the companies' POR sales quantities and the actual raw material consumption quantities related to the production of the merchandise that was sold. While the use of sales quantities in lieu of production quantities is unusual, such methodologies have been accepted by the Department in limited circumstances where the company's normal record-keeping necessitated the use of sales quantities and where the reliance on the reported costs (or in the case of NME countries, the production factors) of quantities sold were not distortive. In this case, Sentian and MPF demonstrated that the raw material quantities and values recorded in the companies' normal books and records were appropriately matched to the sold quantities and values in its books. Thus, the raw material consumption quantities recorded by Sentian and MPF were product-specific and reflected the actual production experience of each product sold. These quantities then formed the basis of the reported FOPs for raw materials. However, in the case of certain overhead costs, which were reported in the companies' financial records in the month in which incurred, we found that expenses were not appropriately matched to the underlying production. For reporting to the Department, Sentian and MPF distributed the labor and electricity consumption, as incurred in production for a given month, to the quantities sold in the month. *See* Comment 2 for our detailed discussion of this issue.

²⁰ *See* Sentian's February 26, 2009, Verification Report at 7, and MPF's February 26, 2009, Verification Report at 5-6.

The petitioner further asserts that the per-unit material consumption figures cannot be reconciled to the financial statement. We disagree. As detailed in the verification reports, the per-unit material consumption was detailed and accurate. In its post-preliminary responses, Sentian and MPF provided worksheets that reconciled the cost of sales from the companies' 2006 financial statements to the quantity and value of raw materials consumed in the production of the goods sold per the financial accounting inventory records. The total raw material inventory consumption quantities were then relied on as the total actual consumption in the construction of the per-unit raw material FOPs reported to the Department. Specifically, the company developed and applied a standard consumption methodology and adjusted it to actual based on the total of the actual consumption for each product sold.

As noted above, Sentian and MPF normally track the actual raw material consumption costs (and quantities) for each product. Then, at the time of sale, the actual raw material costs are reported as the product's cost of sales in the companies' financial statements. We reviewed the calculation of standard and actual material consumption extensively at verification and found that these detailed calculations accurately reflect the actual materials used to produce each product. It is important to note that, in the underlying investigation, the per-unit material consumption from these two companies was found to be inaccurate at verification and the Department applied AFA to this consumption.²¹ The companies explained that, as a result of the Department's finding during the verification at the investigation stage, they developed a new accounting method to accurately account for this.

²¹ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from People's Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 18.

Regarding petitioner's assertion that the time lag between when products were produced and when the costs were recorded in the accounting records (*i.e.*, when the products were sold), renders the financial statements unreliable, we disagree. Sentian and MPF's accounting practices are not in accordance with generally accepted accounting practices; however, the companies did not, nor were they required to, prepare audited financial statements. Nevertheless, with regard to raw material costs (and quantities), at verification we found that even though there may be several months between when a product was produced and when it was entered into the companies' cost of sales records, the actual records themselves accurately reflected the raw material production costs of the products that were sold. Thus, even though their accounting methods are not ideal, the underlying material and production cost data in the financial statements accurately reflects the actual raw material costs incurred to produce subject merchandise.²²

We further disagree with the petitioner's argument that Lian Li and its suppliers failed to provide reconciliation for costs incurred to produce subject merchandise in 2007. The record clearly shows that there was no production of subject merchandise in 2007.²³ Lian Li and its suppliers indicated so in their response several times. The lack of production in 2007 is further corroborated by the almost complete lack of shipments of subject merchandise from the PRC in 2007.²⁴ In the respondent selection memorandum for this review, which includes the months of January through August in 2007, we only selected one respondent, Lian Li, because it accounted

²² See Lian Li's, Sentian's, and MPF's company specific FOP databases.

²³ See Id.

²⁴ Because some of the underlying data is BPI, see Final Calculation Memorandum for Lian Li, dated April 6, 2009, for a detailed discussion of additional relevant information (Lian Li Calculation Memo).

for the great majority of sales to the United States during the POR.²⁵ As evidenced in Lian Li's U.S. sales database, almost all of Lian Li's shipments were made in 2006. Of the few shipments which were made in 2007, almost all purchase invoices were dated in 2006. See Lian Li Calculation Memo for further details.

Because of the companies' statements and other information indicating there was no production in 2007, the Department focused its verification on the 2006 period. Furthermore, at verification, Sentian officials informed us that the factory was closed and that there was no production in 2007. We agree with the petitioner that the fact that Sentian produced a financial statement for 2007, which shows production and sales, is inconsistent with the closure of factory and that its machinery was taken to the MPF facility. However, based on the record and our findings at verification, we accept Lian Li's explanation as to why the 2007 Sentian financial statement was produced. Specifically, as the owners and top managers of Sentian and MPF stated during the Department's verification, for purposes of transferring materials and finished products of non-subject merchandise between Sentian and MPF, they continued to keep the name of Sentian after the Sentian factory was closed down. *See* Lian Li's Rebuttal Brief at page 15. Therefore, we do not find that this is a factual basis for concluding that there is unreported FOP data, as argued by the petitioner.

During the verification of Lian Li, the Department verified that the vast majority of Lian Li's shipments were in 2006, and the few shipments made in 2007 were produced in 2006. We note that prior to Lian Li's verification, the Department was able to reconcile Lian Li's suppliers' FOP to its individual financial statements. At the verification of Sentian and MPF, we confirmed that all of their production and sale of subject merchandise was to Lian Li for export to the U.S.

²⁵ *See* the Department's November 7, 2007, Respondent Selection Memorandum and Comment 7, below.

market.²⁶ This confirms the statement that all of Sentian's and MPF's FOP data was from 2006.²⁷ Our analysis and verification was focused on the FOP database for Lian Li's suppliers in 2006.²⁸ During the verification of Lian Li, the Department reconciled Lian Li's, Sentian's, and MPF's sales and costs to its individual financial statements.

Moreover, the Department at verification again tied Sentian's and MPF's FOPs to the companies' accounting records and to its financial statements.²⁹ The Department found the records with regard to raw materials to be accurate and complete. In considering whether it is appropriate to continue to apply either facts available or AFA to the FOP data reported for Lian Li's suppliers Sentian and MPF, we considered several factors. Pursuant to Section 776(a) of the Tariff Act of 1930, as amended ("the Act"), we considered whether necessary information is not available on the record, or Lian Li and its suppliers withheld requested information, failed to provide such information by the deadlines for submission, subject to subsections (c)(1) and (e) of Section 782, significantly impeded a proceeding under this subtitle, or provided information which could not be verified. *See* section 776(a)(1) and (2) of the Act. First, we note that, with exception of the issue discussed at Comment 2 below, the necessary information for calculating a margin is available on the record, though initially because there was a lack of clarity in some of the information and because of some misleading comments in the questionnaire responses we were required to use facts available with an adverse inference in the *Preliminary Results*.

²⁶ *See* Sentian's February 26, 2009, Verification Report at 7, and MPF's February 26, 2009, Verification Report at 5-6.

²⁷ *See* Sentian and MPF's February 26, 2009, Verification Reports at 5-10 and 6-12, respectively.

²⁸ *See Id.* at 11-13 and 12-13, respectively.

²⁹ *See* MPF's February 26, 2009, Verification Reports at 8.

However, after the publication of the *Preliminary Results*, Lian Li and its suppliers clarified the record and provided reconciliations showing that the reported FOP tied to their financial statements. We do not find that Lian Li and its suppliers withheld information that had been requested. We do not find that Lian Li significantly impeded the proceeding under Section 776(a)(2)(C) of the Act because they responded to the Department's requests for information. We also find that Lian Li did provide the all the necessary information (with the noted exception at Comment 2), and all the information could be verified. Regarding section 776(a)(2)(B) of the Act-whether Lian Li or its suppliers failed to provide information by the deadlines provided-we find that there was a lack of clarity in some of their initial responses; the Department issued several supplemental questionnaires to Lian Li and thus provided it with an opportunity to remedy these deficiencies which it did in its supplemental responses. Therefore, we find that the application of facts available is not warranted in this case.

Regarding the petitioner's argument that facts available with an adverse inference should be applied, we disagree. Section 776(b) of the Act directs the Department to apply AFA if we find that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." In this case, we find that Lian Li and its suppliers acted to the best of their ability except as discussed in Comment 2. We note that the parties responded to the original questionnaire, six supplemental questionnaires, and submitted required reconciliations, which are extensive and detailed. While the companies' accounting practices are not ideal, this failure alone does not evince a lack of cooperation on their part, and does not warrant the application of AFA. Therefore, we find that the information provided by the companies, with the exclusion of labor and electricity, discussed in Comment 2 below, is sufficient to calculate an accurate margin for Lian Li.

In addition to the factual issues discussed above, the parties have argued what role the Office of Policy should play in this proceeding. This argument is not relevant to the issue of whether the Department should apply AFA in this case. The Assistant Secretary for Import Administration is charged with the responsibility for making decisions in antidumping and countervailing duty cases. This case has received a full and extensive review, as in all cases. In the final analysis, the Department's findings are based on the facts on the record and are consistent with the statute, regulations, relevant precedent, and Department practice.

Comment 2: Partial AFA for Sentian and MPF

The petitioner urges the Department to continue to apply total AFA in calculating normal value for Lian Li in the final results. If the Department determines that total AFA is not warranted, the petitioner urges the Department to apply partial AFA, in particular, to Sentian and MPF's missing movement costs related to inter-company transfer labor and electricity usage rate, missing movement costs related to inter-company transfer, and Sentian's unreported costs.

The petitioner claims that Lian Li and its suppliers did not submit information on any movement costs related to the suppliers' inter-company transfer scheme. The petitioner states that Lian Li's suppliers' kept MPF's total sales revenue below a certain cap to take advantage of its favorable tax rate. The petitioner asserts that Lian Li never quantified the number or size of the transfers; however, it claims that Sentian and MPF must have incurred significant freight costs in constantly moving materials and sales back and forth between them. The petitioner argues that the Department must assume that every input and every finished good was transferred from one factory to the other as a direct materials movement cost.

Moreover, the petitioner claims that during the verification of Lian Li, the verifiers determined that the transfer scheme distorted Lian Li's suppliers' reporting of labor and

electricity usage. The petitioner asserts that Lian Li could have easily adjusted the labor electricity factors and it chose not to. Thus, for the final results, the petitioner asserts that the Department should apply partial AFA in calculating Lian Li's normal value by using the highest labor and electricity costs on the record for Sentian and MPF.³⁰

Lastly, the petitioner argues that Lian Li misled the Department with regard to Sentian's operations. The petitioner claims that during the verification, Sentian claimed that its factory closed in December 2006 and moved all of its production equipment to MPF.³¹ However, the petitioner affirms that Sentian did not close down in December 2006 because Sentian filed tax returns and created end-of-year financial statement for 2007.³² Moreover, the petitioner argues that the Department has no independent confirmation as to whether the wholesale exclusion of 2007 is appropriate and the petitioner further asserts that the Department does not know whether a significant level of costs of subject merchandise has gone unreported as a result of Lian Li's failure to cooperate to their best ability. Thus, for the final results, the petitioner recommends that the Department apply AFA for Sentian's missing costs.

Lian Li argues that the petitioner's request of the Department to apply partial AFA in the final results should be rejected. Lian Li affirms that the Department did not find any conflicting evidence with Lian Li's consistent claim that Sentian was closed down in 2006 and all equipment was moved to MPF's location.³³ Lian Li argues that although Sentian's production equipment was transferred physically to MPF, Sentian did not record the transfer on its books. Moreover, Lian Li claims that Sentian's company registration was never cancelled in order to

³⁰ See Petitioner's March 6, 2009, Case Brief at 27 (Petitioner's Case Brief).

³¹ See Sentian's February 26, 2009, Verification Report at 3.

³² See Id. at 8-10 and MPF's February 26, 2009, Verification Report at 9-11.

³³ See Sentian's February 26, 2009, Verification Report at 3.

make it seem to be an active corporate entity. Lian Li asserts the owners wanted to continue the operations of the two companies as if Sentian were still in business, including inter-company transfer of materials and finished products. As a result, Sentian had to exist as a corporate entity and this explains why Sentian had 2007 financial reports and tax returns. For labor and electricity usage, Lian Li states that it did not transfer any of the labor and electricity costs because the costs were calculated by dividing the actual (absent any transfers) labor and electricity usage by post-transferred production quantities.³⁴ Lian Li states that the allocation methodology is skewed but argues that it can be easily corrected. Lian Li suggests that the Department calculate the FOPs for both Sentian and MPF on a combined basis. Moreover, Lian Li asserts that the Department should not use a methodology of facts available, or even AFA that will result in a higher expense amount than the total amount verified by the Department.³⁵

Lian Li did not comment specifically on the movement costs related to the suppliers' inter-company transfer scheme.

The Department's Position:

The Department agrees with petitioner in part. At verification, we found that MPF and Sentian derived their reported consumption quantities for labor and electricity by dividing the monthly company-specific labor and electricity usage by the post-transferred monthly sales quantities, rather than the monthly production quantities. Thus, labor and electricity usages were not matched to production. As such, the reported labor and electricity FOPs do not accurately reflect the labor and electricity that were consumed in the production of the goods that were sold. Instead, the labor and electricity consumed in production in a month was allocated over the

³⁴ See Sentian and MFP's February 26, 2009, Verification Reports at 8-10 and 9-11, respectively.

³⁵ See *Polyethylene Retail Carrier Bag Committee, et. al. v. United States*, 30 CIT 782 (CIT 2006) aff'd by *Fed. Appx. 965 (Fed. Cir. 2007)*.

products sold in a month. For example, a product produced in May and sold in July, would not be accorded a piece of the electricity and labor usage in May, but instead would be allocated a piece of July labor and electricity consumption. Consequently, any variation in production quantities and product mix between the months would potentially skew the factors reported to the Department. This mismatch of allocating each month's labor and electricity usage in production to the month's sales quantities resulted in misreporting of consumption for labor and electricity.

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" (FA) if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

It is the Department's practice to rely on accurate information submitted by respondents to calculate dumping margins in an antidumping duty proceeding. *See PRC Wooden Bedroom Furniture*.³⁶ When the Department finds that a respondent's reported information is not reliable, the Department will resort to FA. *Id.* Specifically, in the Department's recent decision in *PRC Wooden Bedroom Furniture*, the Department concluded that a respondent's submitted data are

³⁶ *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review*, 73 FR 8273 (February 13, 2008) ("*PRC Wooden Bedroom Furniture*") and unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (Wednesday, August 20, 2008) and accompany Issues and Decision Memorandum at Comment 1.

not reliable when the data cannot be tied to reliable financial statements or a reliable financial recording system. In this case, Sentian and MPF's financial recording system cannot be relied upon with regard to labor and electricity as reflective of the usage incurred during the production of the goods sold.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002). Adverse inferences may be employed "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103-316, Vol. 1, at 870 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040, 4198-99. Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon*).

In this case, Sentian and MPF were aware of their skewed usage rates reported for labor and electricity in their April 11, 2008, response.³⁷ After they received a partial AFA rate at the

³⁷ *See* Lian Li's April 11, 2008 supplemental questionnaire response at page 12 where it stated that as a result of the accountant arbitrarily distributed the sales and manufacturing costs to the two companies' accounting book, they are discrepancies with respect to labor and electricity.

Preliminary Results because of their inaccurate reported FOP, the Department issued two more supplemental questionnaires. Although they clarified some of the reporting issues, they never attempted to correct their skewed usage rate for labor and electricity. At verification, the Department found that Sentian and MPF kept warehouse records which could be used to match the actual labor and electricity consumed during the production of the goods sold for each company.³⁸ Had Sentian and MPF utilized these warehouse records, they could have accurately calculated the labor and electricity consumption for the reported products and provided the rates in their October 16 and November 25, 2008, responses. Therefore, the Department finds that Sentian and MPF did not act to the best of its ability in this review with respect to the labor and electricity consumption. Therefore, the Department finds it warranted to apply an AFA rate with respect to the labor and electricity consumption for these final results. *See Nippon*, 337 F.3d at 1382-83.

As noted above, Sentian and MPF had received a partial AFA rate in the *Preliminary Results* and in the *PRC Lined Paper Investigation Final*. They should have known that they were responsible for demonstrating the reliability of their own data. In addition, the Department requested this information on numerous occasions and Sentian and MPF were aware of the problems with the reported data but did not attempt to remedy this. Because the Department finds that both Sentian and MPF were unable to substantiate its reported consumption for labor and electricity, the Department concluded that Sentian and MPF did not cooperate to the best of their ability with respect to their reported labor and electricity consumption. *See Nippon* and *PRC Lined Paper Investigation Final*.

³⁸ *See* Sentian's and MPF's February 26, 2009, Verification Reports at 5-6 and 8, respectively.

However, in regard to the missing movement freight costs between the inter-company transfers, and alleged unreported production in 2007, we agree with Lian Li. The Department confirmed during the verification that the finished goods were directly delivered to the customer.³⁹ Petitioner's arguments are based on its understanding that the finished products that were the subject of inter-company transfers were shipped between factories; this is incorrect.⁴⁰ Thus, there are no movement costs between Sentian and MPF. Moreover, the Department agrees with Lian Li that Sentian closed its factory at the end of 2006 and it did not have any production of subject merchandise in 2007. *See* Comment 1. For the final results, the Department finds that the application of partial AFA is not warranted.

Comment 3: Whether to Revise Certain Surrogate Values to Incorporate More Accurate Values and Whether to Apply Adverse Inferences with Respect to Other Values for the Final Results

The petitioner asserts that during the *Preliminary Results*, the Department used several surrogate values that did not properly reflect the inputs used by Lian Li and its two suppliers. The petitioner comments that many of the surrogate values reflect primary level inputs that would be required to undergo further manufacturing or processing into a form that Lian Li used during the POR, or reflect products that are not actually used in the production of merchandise destined for consumption in the United States. The petitioner suggests several revisions to Lian Li's surrogate values for text/insert paper, printed covers, other material inputs, and labor.

Text/Insert Paper

For text/insert paper, the petitioner urges the Department to identify the product in its proper form – mixed straw and pulp paper or pure wood content. During the *Preliminary*

³⁹ *See* Id. at 3.

⁴⁰ *See* Petitioner's Case Brief at 25.

Results, the Department identified the input itself as being creamwove paper and valued text/insert paper utilizing Indian pricing for creamwove paper. The petitioner claims that use of creamwove paper undervalues the costs of the input paper.⁴¹ The petitioner also pointed out that although the Department stated that it valued creamwove paper using prices sourced from the Monthly Statistics of the Foreign Trade of India (MSFTI), the Department's surrogate values memorandum notes that there is no Indian HTS code for such paper. *Id* at 33. The petitioner argues that creamwove is not used in China; it is a sub-grade product that is not acceptable in the United States; and it does not correspond to the expectations of Lian Li's customer as noted in its purchase orders for subject merchandise. The petitioner urges the Department to use Indian domestic pricing for virgin (not-recycled) uncoated free sheet paper as collected and disseminated by RISI, Inc., a global information services and collection paper that maintains worldwide pricing on paper, pulp, and wood products.⁴² The petitioner argues that the brightness of creamwove paper is less than the brightness of mix straw and pulp paper. Also, the petitioner claims that creamwove paper is absent of wood content, which Lian Li's customers required, as is apparent from its purchase orders. If a customer did not require some wood content, the petitioner argues, this was specifically indicated on the purchase order.

The petitioner contends that Lian Li uses paper that has already been unrolled and cut (possibly ruled), in "ream" form. The petitioner claims that in this proceeding,⁴³ Lian Li reported its mix-pulp text paper as being purchased in roll forms. However, the petitioner contends that in its latest response, Lian Li's value-added tax (VAT) invoices show that both

⁴¹ See Lian Li's January 9, 2008, Section D Response at Appendix A-4 (Section D Response).

⁴² See Petitioner's Case Brief at 36.

⁴³ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 Fr 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum (*PRC Lined Paper Investigation*).

MPF and Sentian purchased paper in sheet or in ream, which the petitioner claims, are more expensive than paper in rolls due to additional steps of cutting, packaging, etc.⁴⁴ The petitioner states that paper consumption is the single largest cost item in the production of subject merchandise but Lian Li mischaracterizes the nature of its paper inputs, *i.e.*, its usage of paper in both roll and sheets (or ream) forms rather than only in roll form. The petitioner argues that Lian Li and its suppliers knew their products were manufactured utilizing the methods but they did not disclose to the Department until well after the Department issued its *Preliminary Results* about its usage of paper in ream form. *Id.* at 39.

Further, the petitioner claims that Lian Li did not make any revisions to its factor purchase database, nor did it make corrections to its consumption rate tables or provide any guidance as to the classification of these products, which are quite distinct from paper in bulk rolls. In addition, the petitioner also questions Lian Li's other paper purchases because the petitioner claims that there is no information to indicate exactly how much of Lian Li's paper was in rolls or in ream form. Accordingly, the petitioner asserts that Department should determine that Lian Li withheld information concerning the nature of material input, and should base Lian Li's consumption of paper on facts otherwise available in accordance with section 776(a) of the Act.⁴⁵ For the final results, the petitioner urges the Department to average *Indian Printer & Publisher* price for ream paper with the average Indian price for uncoated free sheet as reported by RISI, Inc., for 2006 and 2007.

⁴⁴ See Petitioner's Case Brief at 37.

⁴⁵ Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: A) withholds information that has been requested by the Department; B) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; C) significantly impedes a proceeding; or D) provides such information, but the information cannot be verified.

Moreover, the petitioner asserts that pursuant to section 776(b) of the Act, in light of Lian Li's failure to cooperate, the Department may use an adverse inference in selecting the FA rates with respect to the paper consumption.⁴⁶ Citing *PRC Honey 2006*,⁴⁷ the petitioner argues that due to the uncertainty as to the composition of Lian Li's paper purchases, the Department should value all paper inputs by using the prices for ream paper as provided for in *Indian Printer & Publisher*.

Lian Li refutes the petitioner's argument that the Department should use the Indian domestic price for virgin (not-recycled) uncoated free sheet paper as collected and distributed by RISI, Inc. Lian Li states that the Department specifically rejected the petitioner's argument during the investigation and used the Indian domestic prices for creamwove paper as the surrogate value.

Likewise, Lian Li claims that its mix-pulp text paper purchased in reams is not a purchase of custom cut, printed and packaged paper that exists at a completely different pricing point, but actually is very large paper sheet. Lian Li asserts that paper in ream is not cut-to-customs length or even lined as petitioner asserts, but that the paper in ream, as rolled paper, is very large pieces of paper that need to be cut to smaller pieces before going through line printing, and then cut to length to make subject merchandise. Lian Li explains that the Department's officials saw this paper during MPF's tour plant and that there is no significant cost difference between the paper in roll as compared to paper in ream because the printing is completed on the same machines.

⁴⁶ Section 776(b) of the Act provides that, if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use an inference that is adverse to the interests of that party in selecting from facts available.

⁴⁷ See *Honey from the People's Republic of China: Intent to Rescind and Preliminary Results of Antidumping Duty New Shipper Reviews*, 71 FR 32923 (June 7, 2006) (*PRC Honey 2006*), where the Department found that the respondent misidentified or failed to report two packing factors, and therefore, applied partial AFA with respect to these inputs by assigning to those missing factors a doubled consumption rate for two similar packing factors.

Printed Covers and Backs

For printed covers, the petitioner claims that Lian Li did not provide any factor of production data for its covers and backing, and has not provided any factor data from its subcontracted tolling operations. The petitioner states that Lian Li, in its fourth supplemental response, stated that, “the three entities that produce finished notebooks provided printed design and materials for covers and backs to other companies to perform the outside printing process.”⁴⁸ The petitioner asserts that the omissions of these factors represent a substantial undervaluation of normal value for these inputs, and that the Department has required, in other instances, that separate factors of production be provided for each material input.⁴⁹ In this case, the petitioner asserts that the necessary material inputs for producing covers and backings include such items as: multiple ink types, glitter coatings, glossing materials. For the final results, petitioner urges the Department to revalue Lian Li’s printed covers and backing using Indian imports of Other Printed Materials – Others – classified under Indian Harmonized Tariff Schedule (Indian HTS) 4911.9990.

Lian Li counters that as the petitioner acknowledges in its brief, Lian Li did report the outside processing expense for its printed covers, but the Department found in *PRC Lined Paper Investigation Final* that the surrogate value is for coated, painted and printed products and thus the surrogate value costs include the processing. Lian Li argues that using a surrogate value that takes processing into account and then adding the FOP for such processing will result in double counting. Thus, Lian Li argues that to avoid double counting, the Department should reject petitioner’s same argument and continue to accept that Lian Li adequately reported the values for

⁴⁸ See Lian Li’s Fourth Supplemental Response at 12.

⁴⁹ See Petitioner’s Case Brief at 43.

printed covers and backs,⁵⁰ because there has been no change to necessitate a different decision for these final results.

Other Inputs – Metal Wire, Rubber Band, and Labor

a. Metal Wire

The petitioner urges the Department to reconsider its choice of surrogate value used in the *Preliminary Results* for metal wire. Specifically, the petitioner states that instead of valuing Lian Li's binding wire based on Indian imports of steel wire that is simply plated or coated with zinc which is classified under Indian HTS number 7217.20.00, the Department should consider using Indian HTS 7217.9099 – Wire of Iron or Non-Alloy Steel: Other. The petitioner supports its argument based on two purchase orders issued by Lian Li's U.S. customers. The petitioner claims that "it is clear that Lian Li's U.S. customers have instructed Lian Li to produce notebooks utilizing wire that is not bare metal wire," which is "contrary to what Lian Li has implied in its questionnaire responses and in its surrogate values submission."⁵¹ The petitioner argues that painted or coated metal wire incurs additional costs above that of plain unpainted or uncoated wire, and therefore, should not be valued using bare metal wire under Indian HTS 7217.20.00.⁵²

Lian Li argues that the Department rejected petitioner's same argument during the initial investigation. *See PRC Lined paper Investigation Final* at Comment 6. Lian Li asserts that there has been no change since the investigation, and therefore, the Department should use the same value for metal wire for these final results.

⁵⁰ *See PRC Lined Paper Investigation Final* at Comment 1, and Lian Li's rebuttal brief dated March 16, 2009, at pages 22-23.

⁵¹ *See* Petitioner's Case Brief at 46.

⁵² *See* Lian Li's September 9, 2009, Factors-of-Production Valuation Memorandum for the Preliminary Results at 3 ("Surrogate Value Memo").

b. Rubber Bands

The petitioner contends that the Department valued elastic bands utilizing Indian imports of plain, uncovered and unwrapped bands classified under Indian HTS 4007.00. However, the petitioner claims that according to Lian Li, it uses an elastic band to secure the notebook cover to the rest of the notebook. The petitioner argues that the elastic band is not and cannot be a plain rubber band because a plain rubber band is designed for one or two uses and then disposed of soon after use. Also it would immediately rub, snag, and break due to friction occurring when the band rubs against the edge of the notebook. The petitioner claims that the plain rubber band cannot be used in conjunction with Lian Li's products; rather, a threaded fabric band must be used. To value these elastic bands properly, the petitioner recommends that the Department use the Indian imports of "Rubber Thread and Cord, Textile Covered," under Indian HTS 5604.1000 for the final results.

Lian Li argues that the Department rejected the petitioner's similar argument during the initial investigation. See *PRC Lined Paper Investigation Final* and the accompanying Issues and Decision Memorandum at Comment 7. Lian Li asserts that there has been no change since the investigation, and therefore, the Department should use the same value for rubber bands for these final results.

c. Labor

The petitioner urges the Department to use the latest revised PRC-wide labor rate cost of \$1.04 per hour for the final results, rather than \$0.97 per hour which was in effect as of January 2008.

Lian Li did not address the labor usage rate.

The Department's Position:

In choosing an appropriate surrogate value, it is the Department's practice to consider the evidence in light of the particular facts of each industry, on a case-by-case basis. *See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1. In accordance with section 773(c)(1) of the Act, (“... the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country...”), we have continued to value the factors set forth below using the surrogate values based on the best available information for each.

Text/Insert Paper

We disagree with the petitioner that the Department should use the Indian domestic price for virgin (not-recycled) uncoated free sheet paper as collected and distributed by RISI, Inc. As the petitioner points out, the Department rejected the petitioner’s argument during the investigation and used the Indian domestic pricing for creamwove paper as the surrogate value. We find that creamwove is not only similar enough to text paper for the purposes of valuing text paper, it represents the option most specific to the respondent’s paper input. Therefore, we find that creamwove prices are the best available surrogate for text paper on the record because they best fulfill the criteria of quality, specificity, and contemporaneity while also meeting the goal of being publicly available, industry-wide prices. For the same reasons, the Department continues to identify the input itself as being creamwove paper and values text/insert paper utilizing Indian pricing for creamwove paper.

We agree with the petitioner’s argument that paper consumption is the single largest cost item in production of subject merchandise. However, we disagree with the petitioner’s

arguments that Lian Li mischaracterizes the nature of its paper inputs, *i.e.*, its usage of paper in both roll and sheets (or ream) forms rather than only in roll form. We also disagree with the petitioner's arguments that Lian Li and its suppliers withheld information concerning the nature of material input and did not disclose to the Department until well after the Department issued its *Preliminary Results* about its usage of paper in ream form. In its fourth supplemental submission dated April 11, 2008, which was nearly six months before the issuance of the *Preliminary Results*, Lian Li showed that all three producers, Lian Li, Sentian, and MPF, utilized both paper in rolls and paper in reams. *See* Lian Li's April 11, 2008, submission at Appendices S4-1-b, S4-2-a, and S4-3-a. Accordingly, the Department finds that this information is available on the record and can be used to calculate an accurate margin. Furthermore, we do not find that Lian Li and its suppliers withheld information concerning the nature of the material input; therefore, it is not necessary to apply facts otherwise available.

We also disagree with the petitioner that the paper in reams used by Lian Li and its suppliers is more expensive than that of the paper in rolls. During the plant tour at MPF's factory, the Department's verification team noted that mix-pulp text paper used by MPF purchased in reams is not custom-cut, or printed, but is actually very large paper sheet. There is no reason to suggest that there is a significant cost difference between the papers in roll and ream because the printing for papers in roll and ream are completed on the same machines in MPF's factory.

As stated in the Department's verification reports with respect to Sentian and MPF,⁵³ based on Lian Li's submissions on October 16 and November 25, 2008, the Department finds

⁵³ *See* Memorandum to the File, regarding Verification of the Factors of Production Responses of Shanghai MiaoPanFang Paper Products Co., Ltd., (MPF") in the First Administrative Review of Certain Lined Paper Products from the People's Republic of China, dated February 26, 2008. (MPF Verification Report). *See also* Memorandum to the File, regarding Verification of the Factors of Production Responses of Shanghai Sentian Paper Products Co.,

that the methodology adopted by Sentian and MPF adequately accounted for the consumption of the material inputs. Therefore, for purposes of these final results, with the exception of labor and electricity consumption, the Department has relied on Sentian and MPF's reported FOP databases submitted on October 16, 2008, to calculate the dumping margin. *See* Comment 2 above; *see also* the *Application of Partial Adverse Facts Available* section in the *Federal Register* notice of these final results.

Printed Covers and Backs

The Department agrees with Lian Li that for printed covers and backs, no change is warranted for these final results because the evidence on the record is the same evidence on the record of the *PRC Lined Paper Investigation Final*. As stated in *PRC Lined Paper Investigation Final*, the Department found in the initial investigation that the surrogate value for this particular input is for coated, painted and printed products and thus the surrogate value cost has already included the cost of processing. Therefore, adding processing cost to the reported FOP will result in the inclusion of processing costs twice in the FOP calculations. To avoid this effect, for these final results the Department continues to accept Lian Li's reported FOP for printed covers and backs,⁵⁴ and continues to use the best available surrogate value from the *Preliminary Results*.

Other Inputs – Metal Wire, Rubber Band, and Labor

a. Metal Wire

The Department disagrees with the petitioner's conclusion that "it is clear that Lian Li's U.S. customers have instructed Lian Li to produce notebooks utilizing wire that is not bare metal wire," simply based on two purchase orders issued by Lian Li's U.S. customers. We

Ltd., (Sentian) in the First Administrative Review of Certain Lined Paper Products from the People's Republic of China, dated February 26, 2008. (Sentian Verification Report).

⁵⁴ *See* PRC CLPP Investigation at Comment 1, and Lian Li's rebuttal brief dated March 16, 2009, at pages 22-23.

noted that in Appendix S3-10-1 of Lian Li's submission dated February 27, 2008, that Lian Li provided numerous purchase orders issued by its U.S. customers. Of the many purchase orders, the decision found on two purchase orders not to utilize bare metal wire simply cannot serve as a basis for a general conclusion that the remaining vast majority of U.S. customers will also not utilize bare metal wire. Therefore, for these final results, the Department agrees with Lian Li that it warrants no changes with respect to metal wire because the evidence on the record is the same as the evidence on the record of the *PRC Lined Paper Investigation Final*. Absent evidence to the contrary, for these final results the Department continues to use the best available surrogate value from the *Preliminary Results*.

b. Rubber Band

The Department disagrees with the petitioner's claim that "a plain rubber band cannot be used in conjunction with Lian Li's products; rather, a threaded fabric band must be used," because "according to Lian Li, certain of the company's subject notebooks include an elastic band that is used to secure the notebook cover to the rest of the notebook."⁵⁵ In making its claim, petitioner did not identify or cite to any of the Lian Li's questionnaire responses, nor did petitioner quantify the extent or the types of notebooks with which an elastic band is attached. The Department also disagrees with the assumption that a plain rubber band is designed for one or two uses and would immediately rub, snag, and break due to friction occurring when the band rubs against the edge of the notebook.

Based upon our examination, we find there is no evidence on the record to suggest that Lian Li uses a threaded fabric band to secure certain types of its notebooks, nor do we find evidence to support the claim that a plain rubber can only be used once or twice before it

⁵⁵ See Petitioner's Case Brief at 47-48.

breaks. Because the evidence on the record with respect to this item is the same as the evidence on the record of the *PRC Lined Paper Investigation*, we continue to find that the best available surrogate value for this input is the same from the *Preliminary Results*.

c. Labor

We agree with the petitioner that for the *Preliminary Results*, the Department applied the old PRC-wide labor rate for Lian Li. The Department has applied the most up-to-date PRC-wide labor rate in these final results. See “*Expected Wages of Selected NME Countries*” revised in May 2008, available at <http://ia.ita.doc.gov/wages/index.html>.

Comment 4: Surrogate Financial Ratios

The petitioner alleges that Sundaram Multi Pap Ltd.’s (Sundaram) financial statements cannot be used as a source of financial ratios to be applied for purposes of determining NV. The petitioner argues that the financial document provided by Lian Li and described as Sundaram’s financial statements are clearly not a complete report prepared by one source; rather this document is a “cut and paste” combination of company data obtained by several sources. Citing to Lian Li’s April 1, 2008, Surrogate Value Submission, petitioner argues that Sundaram’s overall financial statements is distortive.

The petitioner claims that Sundaram’s financial statements are clearly unreliable because of the number of different fonts, the numerous and readily apparent cut and paste lines, the type of information and mostly importantly, the differing periods of that information.⁵⁶ The petitioner asserts that Sundaram’s financial statements are not linked and are extremely incomplete.

⁵⁶ See Petitioner’s Case Brief at 50.

Moreover, the petitioner argues that Sundaram's financial statement does not provide a breakdown of its operating expenses, overhead expense, general and administrative expenses, and other expenses.⁵⁷ The petitioner further contends that Sundaram's financial statement is unclear as to what items are representative of the company's operating accounts and sub-accounts.

The petitioner states that it is the Department's practice to reject a set of financial statements that are missing critical information.⁵⁸ The petitioner argues that the Department should value financial ratios using the financial statements of Navneet Publications Limited (Navneet).⁵⁹ For the final results, the petitioner urges the Department to use the financial ratios of Navneet because it is a similar producer of subject merchandise and its revenue is derived from the sale of subject merchandise.

The petitioner asserts that for the purposes of valuing overhead expenses, selling, general and administrative ("SG&A") expenses, financial expenses, and profit, the Department should use Navneet's April 2006- March 2007, financial statement, which encompasses a similar time period to the POR. The petitioner states that Navneet stands as a ready source of surrogate values for Lian Li, and should be found to be a viable source of financial ratios. In addition, the petitioner points out that simply because the Department renders an adverse determination in an antidumping duty proceeding does not mean that the company's publicly available financial statements are inherently flawed or misreported.

⁵⁷ See Lian Li's Surrogate Value Submission at 4.

⁵⁸ The petitioner cites to *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009), and accompanying Issues and Decision Memorandum at 2; see also *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 57,329 (October 2, 2008), and accompanying Issues and Decision Memorandum at 2.

⁵⁹ See www.navneet.com.

Lian Li asserts that the Department rejected similar arguments made by the petitioner in the initial investigation.⁶⁰ Lian Li states that the Department specifically rejected the financial ratios from Navneet in the original investigation and used the financial ratios from Sundaram because Navneet failed to report its cost-of-production accurately during the investigation.⁶¹ For the final results, Lian Li urges the Department to continue to use the financial ratios from Sundaram.

The Department's Position:

In selecting surrogate values for factors of production, section 773(c)(1) of the Act instructs the Department to use the “best available information” from the appropriate market economy country. In choosing surrogate financial ratios, it is the Department’s practice to use data from market-economy surrogate companies based on the “specificity, contemporaneity, and quality of the data.”⁶² During this review, the Department used the most contemporaneous and best available data from its surrogate company. We disagree with the petitioner and we find that the record does not support the conclusion that Sundaram’s financial statements has been manipulated and therefore is not usable.

During the initial antidumping investigation of certain lined paper products from India, the Department concluded that Navneet’s information was not usable for the final determination and the Department determined that the use of AFA was appropriate for Navneet.⁶³ Moreover, the Department stated it was unable to adequately determine whether the cost information

⁶⁰ See *PRC Investigation Final* at Comment 1.

⁶¹ See *Id.*

⁶² See *Id.*

⁶³ See *Id.*

contained in Navneet's responses reasonably and accurately reflect the costs incurred by Navneet to produce subject merchandise.⁶⁴

Although the petitioner asserts that Navneet's most recent financial statements are complete, audited, and publicly available, we note that Navneet's financial statements were publicly available during the investigation and the Department found that Navneet's financial statements were inaccurate. Navneet has not been individually reviewed since the initial investigation and there is no new factual evidence on this current record that is contrary from the investigation. Navneet has not been individually reviewed by the Department since the investigation; therefore, we have no independent way to assure that Navneet's financial statements are now accurate.

The Department continues to find that Sundaram's information represents the best available information on the record. We continue to find that Sundaram's financial statement is complete, publicly available and contemporaneous with the POR. We find no evidence that Sundaram is not a producer of subject merchandise. *See Preliminary Results*. Therefore, the Department has determined to use the financial ratios from Sundaram for these final results.

Comment 5: Inland Freight and Sigma Cap

The petitioner urges the Department to apply the correct inland freight and *Sigma*⁶⁵ cap in the final results. The petitioner claims that the Department applied capped distances to all inputs acquired by Lian Li and its suppliers during the *Preliminary Results*. The petitioner asserts that it is not the Department's established practice to apply a *Sigma* cap to inputs valued from the domestic sources, such as RISI or India Printer & Publisher. During the *Preliminary Results*, the

⁶⁴ *See Id.*

⁶⁵ *See Sigma Corp v. United States*, 117 F. 3d 1401 (Fed Cir. 1997) (Sigma).

petitioner asserts that the Department incorrectly capped the distance for creamwove paper and black paperboard, which are domestic sources. Moreover, the petitioner claims that the Department must ensure that it uses the correct freight distances in its calculation of freight expenses for the final results.

In addition, the petitioner claims that Lian Li only provided the capped distance in its latest Section D database.⁶⁶ For the final results, the petitioner urges the Department to discard Lian Li's latest *Sigma* distance calculations and to use freight distances as reported by the company in their uncapped states.⁶⁷

Lian Li did not comment on this issue.

The Department's Position:

During the verification of Lian Li and its suppliers, the Department verified how Lian Li and its suppliers applied and calculated its *Sigma* cap distance to its inputs. We verified the companies' distance calculations and we noted no discrepancies at verification.⁶⁸ During the *Preliminary Results*, we applied the capped distances for all inputs including creamwove paper and black paperboard. It is the Department's practice to add 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. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") and the Department's practice.⁶⁹

⁶⁶ See Lian Li's Fourth Supplemental Response at Appendix S4-22.

⁶⁷ See Lian Li's January 23, 2008, Section D Questionnaire Response at 2-3.

⁶⁸ See Sentian's and Lian Li's February 26, 2009, Verification Report at 11 and 9, respectively.

⁶⁹ See *Sigma*; see also *Electrolytic Manganese Dioxide from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination*, 73 FR 15988 (March 26,

However, for creamwove paper and black paperboard, the Department used domestic sources for these inputs during the *Preliminary Results*. In accordance with *Sigma*, it is the Department's practice to cap the distance when using Indian import surrogate values; however, when using domestic sources, the actual freight distance should be applied.⁷⁰ For the final results, we agree with the petitioner and we will use the actual distance provided by Lian Li's suppliers for creamwove paper and black paperboard.

Comment 6: The Inclusion of Graph Paper in the Review

The petitioner states that the Department should include Lian Li's sales of graph paper in the instant review. The petitioner states that Lian Li provided a list of its non-subject merchandise, which Lian Li's did not report in its sales and FOP responses, which included its graph paper, product numbers 22026, 22028, and 42026.⁷¹ The petitioner contends that Lian Li's specific paper in question is graph paper and should be included within the scope of the order. The petitioner argues that Lian Li provided photos of products 22026 and 22028, as well as invoices, in order to show that the products are non-subject merchandise because the products were sold without covers. However, the petitioner argues that these photographs do not prove that these products are non-subject merchandise simply because they do not have covers.

Petitioner also asserts that Lian Li's invoices do not demonstrate that the merchandise is out of the scope. Petitioner argues that it is the Department's practice to require the respondent to report sales of the merchandise which they claim are non-subject, and then submit argument as

2008) (unchanged in *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination at Less Than Fair Value*, 73 FR 48195 (August 8, 2008).

⁷⁰ See *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 43082 (July 21, 2003), and accompanying Issues and Decision Memorandum at Comment 6.

⁷¹ See The Fourth Supplemental Response.

to why such sales should be excluded.⁷² In addition, petitioner points out, Lian Li never provided a photograph for product number 42026. Finally, petitioner claims that Lian Li did not act to the best of its ability to comply with information requested, and that the Department should therefore apply the country-wide margin of 258.21 percent to Lian Li's graph paper sales as adverse facts available.

Lian Li refutes that the graph paper should be added in this review and insists that the graph paper is among the products outside the scope of the order. Lian Li claims that it has provided substantial evidence⁷³ on the record that its graph paper exported to the United States during the POR was non-subject merchandise. Lian Li states that it submitted the master lists of its merchandise during the review and the Department at verification separated subject from non-subject merchandise. Lian Li argues that the Department found no discrepancies with the master list and those products reported to the Department.⁷⁴

The Department's Position:

The Department agrees with Lian Li. We concluded that Lian Li provided sufficient proof on the record⁷⁵ to demonstrate that its sales of graph paper are not within the scope of the order. To fulfill the Department's "completeness test," the Department verified Lian Li's third country and non-subject merchandise sales during verification. The Department confirmed that Lian Li's sales of graph paper were non-subject merchandise by checking the commercial

⁷² See *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews, Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Par*, 69 FR 11371, 11379-80 (March 10, 2004) and unchanged in the final results.

⁷³ See The Fifth Supplemental Response at Exhibits S6-4 and S6-5.

⁷⁴ See Lian Li's February 26, 2009, Verification Report at 8.

⁷⁵ See The Fifth Supplemental Response at Exhibits S6-4 and S6-5.

invoices, shipping documents, and bill of lading for its sales of graph paper.⁷⁶ These documents identified the dimensions of the merchandise and we were able to confirm that that it was non-subject merchandise, and outside the scope. For the final results, the Department determines that Lian Li's graph paper is not within the scope of the order and will not include graph paper in the margin calculation for Lian Li.

Comment 7: Selection of Single Mandatory Respondent

Watanabe argues that although the statute provides discretion to limit the number of entities reviewed each segment, the Department's decision to review a single respondent deprived it from obtaining a rate based on its own data. Furthermore, Watanabe contends that the Department is depriving it of the opportunity to eventually have its antidumping duty order revoked, citing 19 CFR 351.222(e)(1). Watanabe reasons that the Department's decision to choose one large company is an arbitrary and capricious application of the antidumping law and is in contravention of the right to due process and equal protection.

The petitioner argues that it, along with several other interested parties, requested an administrative review with respect to Lian Li and Watanabe. The petitioner contends that the Department exercised its discretion and limited the review to Lian Li, which represented a significant majority of sales to the United States. However, the petitioner explains that the Department extended the opportunity for non-mandatory respondents to seek voluntary status as long as those entities filed questionnaire responses. *See* Memorandum from Marin Weaver to Wendy J. Frankel re: Selection of Respondents (November 7, 2007) ("Respondent Selection Memo"). The petitioner argues that Watanabe did not file any submission on the record until it filed its March 13, 2009, case brief.

⁷⁶ *See* Lian Li's February 26, 2009, Verification Report at 8.

The petitioner argues that Watanabe is silent as to how exactly the Department incorrectly interpreted the statute, but rather Watanabe opines that the Department's decision violates their rights to obtain revocation through demonstration of zero or *de minimis* levels of dumping. The petitioner contends that it is well established that the Department may limit the number of entities. *See* section 777A(c)(2) of the Act. In addition, the petitioner cites to section 777A(c)(2)(B) of the Act, which permits the Department to limit its review to "exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined." *See* section 777A(c)(2)(B) of the Act. The petitioner cites to *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From the Philippines*, 65 FR 47393, 47394 (August 2, 2000) (*Pipe Fittings From the Philippines*) for the proposition that the Department limits its assessment once certain volumes are met, and once it finds that it is impracticable to review multiple entities. In this review, Lian Li is the largest exporter and represents a significant majority of sales to the United States. *See* Respondent Selection Memo at 3. The petitioner states that Watanabe does not explain how it is arbitrary and capricious to select the largest exporter, or a departure from the Department's practice.

As to Watanabe's equal protection argument regarding revocation of the order, the petitioner contends that although Watanabe correctly identified one element of revocation, that as sales which are not less than normal value for a period of at least three consecutive years may have the order revoked as to itself, Watanabe ignores other elements, such as the requirement that merchandise be sold in "commercial quantities." *See* 19 CFR 351.222(b)(2)(i)(A) and 19 CFR 351.222(e)(1)(ii). The petitioner claims that it is highly questionable that Watanabe exported subject merchandise in commercial quantities subsequent to the original investigation.

Furthermore, the petitioner states that Watanabe recently claimed to the Department that it had no shipments of subject merchandise during the 2007-2008 period of review. Therefore, the petitioner asserts that Watanabe has not suffered a violation of its rights given its low level of imports.

The Department's Position:

In this review, the Department properly limited the number of respondents selected for individual examination. Section 777A(c)(2) of the Act allows the Department to limit its examination of exporters and producers when calculating dumping margins when it is not practicable to make individual weighted-average dumping margin determinations for each exporter or producer. Furthermore, the Statement of Administrative Action indicates that Congress was aware that there would be situations in which it would not be possible to review every respondent, and that Commerce would have to select certain companies for individual examination. *See SAA* at 872.

In this case, the Department determined it was impracticable to include additional respondents. The Department faces real resource constraints and has attempted to allocate resources and most effectively administer the antidumping law by limiting the number of mandatory respondents. The office conducting this review, as well Import Administration as a whole, has a significant workload which have stretched the Department's resources. The Department has been required to limit the number of companies it examines individually in a number of cases due to resource constraints. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792 (August 30, 2002); *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Aligned Antidumping Duty*

Administrative Review and New Shipper Review, 73 FR 42321 (July 21, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

Furthermore, the office conducting the review is also conducting numerous other proceedings which restrict the number of analysts that can be assigned to this case.⁷⁷ Due to the strained resources of Import Administration as a whole, this office could not anticipate receiving additional resources to devote to this antidumping proceeding. *Id.* The Department carefully considered its decision to limit the number of mandatory respondents in light of the available resources. The Department's decision not to select Watanabe was not done arbitrarily and capriciously, as Watanabe argues. Pursuant to section 777A(c)(2) of the Act, the Department reasonably selected one respondent, Lian Li, in this review. The Department's discretion to limit the number of respondents has been upheld by the Court of International Trade in *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1350-52 (CIT 2008) (stating that, "the authority to limit the number of respondents for examination rests 'exclusively' with Commerce.")

In addition, section 777A(c)(2)(B) of the Act states that, if it is not practicable to make individual weighted average dumping margin calculations, the Department may determine a margin for a limited group of respondents by "limiting its examination to—(B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined." This allows the Department to cover a larger portion of actual exports during the POR. Therefore, the Department determined that it would use the

⁷⁷ See Memorandum to Wendy J. Frankel, Director, AD/CVD Operations, Office 8, from Marin Weaver, International Trade Compliance Analyst, AD/CVD Operations, Office 8, titled, "Selection of Respondents for the Antidumping Review of Certain Lined Paper Products from the People's Republic of China" (November 7, 2007) ("Respondent Selection Memo").

respondent selection methodology allowing it to cover the largest volume of exports that it had the resources to examine. Accordingly, due to the Department's limited resources, the Department decided to limit individual examination to one respondent, Lian Li.

We disagree with Watanabe that it is a violation of due process not to select Watanabe as a mandatory respondent because it was not given the opportunity to eventually have the antidumping duty order revoked with respect to itself. At this stage in the proceeding, Watanabe is not eligible for revocation of the order. Furthermore, the Department has the discretion, pursuant to section 777A(c)(2), to limit the number of entities that it reviews if it is not practicable to examine each individual exporter or producer. In this case, the Department found that it was not practicable to do so. Therefore, we continue to limit our selection of a mandatory respondent to Lian Li.

Comment 8: Application of Partial AFA Margin

Watanabe argues that the use of a separate rate based on partial adverse facts available in this instance is like assigning a rate to an innocent third party based on adverse facts available, which is contrary to the Department's practice. Watanabe claims that the rate is so high that it eliminates Watanabe's ability to ship to the United States market. Watanabe states that the application of an adverse facts available rate is inappropriate because Watanabe has not failed to cooperate with the Department's request for information. Watanabe contends that the Department must find that a party failed to cooperate to the best of its ability before it can take an adverse inference, citing to the *SAA* at 870.

Watanabe claims that the Department's decision to use Lian Li's single largest usage rate for each factor overstates the actual usage. Watanabe contends that it fully cooperated and the Department should base its rate on Lian Li's actual consumption rates only.

The petitioner argues that Watanabe mischaracterizes its rate because it was based on the partial application of AFA as opposed to the total application. The petitioner states that the Act and the SAA state that the Department may disregard only certain classes of margins when determining an all-others rate (including non-mandatory respondent NME rates), citing section 735(c)(5)(A) and *SAA* at 873. Furthermore, the petitioner argues that the Court of International Trade has previously upheld the Department's practice of excluding zero and *de minimis* margins for non-mandatory respondent margin calculations. See *Longkou Haimeng Machinery Co., Ltd. v. United States*, 581 F. Supp. 2d 1344, 1360 (CIT 2008). Therefore, the petitioner argues that the same rationale would apply with respect to a situation in which the margin was totally based on AFA. The petitioner states that this has been the Department's practice in other cases, and cites to *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508, 9508-09 (March 2, 2007) (*Activated Carbon from the PRC*), where the Department based the final deposit rates for non-mandatory respondents on the mandatory respondents' rates which were based on partial AFA.

The petitioner states that the Department has made no adverse findings with respect to Watanabe. The petitioner contends that the margin that was applied was a calculated rate and was based only on partially adverse information with respect to Lian Li. However, the petitioner points out that Watanabe did not file any submissions with the Department prior to its case brief. Therefore, the petitioner argues that Watanabe cannot plausibly argue that the Department has abused its authority in assigning Watanabe the partial AFA rate calculated for the sole mandatory respondent. Finally, the petitioner states that the Department should reject Watanabe's request that the Department base the non-mandatory respondent rate on Lian Li's actual consumption rates and not a consumption rate based on adverse inferences.

The Department's Position:

We disagree with Watanabe with regard to its claim that the Department should not include any partial adverse facts available in the separate rates calculation. Consistent with the Department's practice, as the separate rate, we have established a weight-averaged margin for the Separate Rates Companies based on the rates we calculated for the mandatory respondents, the company for which the Department calculated an antidumping duty margin for these final results, excluding any rates that are zero, *de minimis*, or based entirely on AFA. *See* section 735(c)(5)(A) of the Act. *See Activated Carbon from the PRC*. As in *Activated Carbon from the PRC*, in this case, we applied a rate to Watanabe which is only partially based on AFA.

In addition, the Department noted in its Respondent Selection Memo that it would calculate a margin for voluntary respondents if the mandatory respondent fails to cooperate and the Department does not select another mandatory respondent.⁷⁸ However, Lian Li did not fail to cooperate entirely with the Department. Although Lian Li was unable to support its costs of labor and electricity for its suppliers, the Department was able to calculate a rate, even though the calculation included partial adverse facts available. *See* Comment 2. Therefore, Watanabe's argument that it cooperated is not relevant, since Lian Li cooperated and was the Department's sole participating respondent. Moreover, as the petitioner noted, the Department has made no adverse findings with respect to Watanabe. Rather, the Department applied a margin that was calculated based only on partially adverse information with respect to Lian Li. The Department also noted that Watanabe has not submitted any responses or any comments throughout the proceeding until it submitted its case brief. Watanabe chose not to submit a voluntary response which suggests a lack of interest in participating in this proceeding, had Lian Li become uncooperative. Thus, Watanabe's claim that the Department has abused its authority in

⁷⁸ *See* the Department's November 7, 2007, Respondent Selection Memorandum.

assigning Watanabe the partial AFA rate calculated for the sole mandatory respondent is not convincing. Accordingly, for these final results, we continue to apply the rate calculated for Lian Li to Watanabe.

Comment 9: Whether Or Not Watanabe Was Deprived of Its Full Opportunity to Participate in the Review

Watanabe argues that it was not properly notified of due date for the briefs and rebuttal briefs, because it was not notified of the issuance of Lian Li's verification report. Although the Department provided Watanabe an extension to submit a brief, Watanabe argues that the time provided was inadequate. Watanabe also claims that it was deprived of relevant information, because it did not receive a copy of Lian Li's verification report.

The petitioner notes that Watanabe did not participate in the review in any substantive way. The petitioners note that Watanabe did not file voluntary questionnaire responses, comments on the selection of the respondents, pre-preliminary comments, pre-verification comments, and did not file a rebuttal to any of the case briefs. Moreover, Watanabe did not request to appear at the Department's administrative hearing. Finally, the Department granted Watanabe an extension of time to file its case brief but Watanabe did not identify any substantive issues it would have addressed had it been apprised of the correct briefing schedule. Therefore, the petitioner contends that Watanabe's claims are unpersuasive.

The Department's Position:

We disagree, in part, with Watanabe's claim that the Department deprived Watanabe of its full opportunity to participate in this review. Because Watanabe was not actively participating in this review up to this point in time, we inadvertently failed to provide it with a copy of the verification reports, and an opportunity to comment on the verification report.

Regarding the briefing schedule, we inadvertently failed to contact Watanabe and notify them of the briefing schedule, as we had done with petitioners and Lian Li. After being contacted by Watanabe, we modified the briefing schedule to allow Watanabe time to comment. Watanabe was given five business days to comment on the *Preliminary Results*. See Memorandum from James Terpstra to the File re: Revised briefing Schedule to Accommodate Watanabe Comments in the Antidumping Review of Certain Lined Paper Products from the People's Republic of China (March 11, 2009). This is exactly the same period of time which the Department gave all other interested parties in the Department's briefing schedule. See *id.* In addition, Watanabe was given an extra day to submit its case brief upon a request from its counsel. Watanabe made no further requests for additional time.

Recommendation:

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

Ronald K Lorentzen
Acting Assistant Secretary
for Import Administration

Date