| Company | BBs | CRBs | SPBs |
|---|---|---|---|
| Isuzu | 0.92 | (3) | (3) |
| Izumoto | 11.67 | (2) | (2) |
| Japanese Aero Engines | (3) | (3) | (3) |
| Koyo Seiko | 9.95 | 1.46 | (1) |
| Minebea | (3) | (3) | (3) |
| Nachi | 9.97 | 9.73 | (1) |
| Nakai | 12.73 | (1) | (1) |
| Nankai | 13.28 | (1) | (1) |
| NPBS | (3) | (1) | (1) |
| NSK | 6.28 | 49.85 | (1) |
| NTN | 2.45 | 1.92 | (3) |
| Osaka Pump | (3) | (1) | (1) |
| Showa | 18.94 | (2) | (2) |
| Takeshita | (3) | (1) | (1) |
| Tottori | 5.83 | (2) | (2) |
| Wada | 23.72 | (2) | (2) |
| Yamaha | 0.07 | (2) | (2) |
| **Singapore** | | | |
| NMB/Pelmec | (3) | (4) | (4) |
| **Sweden** | | | |
| SKF | 3.20 | 4.14 | (4) |
| **Thailand** | | | |
| NMB/Pelmec | (3) | (4) | (4) |
| **United Kingdom** | | | |
| Barden Corporation | (3) | (1) | (4) |
| Cooper Bearings | (2) | (3) | (4) |
| Dowty Rotol | 9.01 | (3) | (4) |
| FAG | (3) | (3) | (4) |
| FiatAvio | (1) | (3) | (4) |
| Pratt & Whitney | 5.98 | (3) | (4) |
| RHP Bearings | 14.54 | 30.34 | (4) |
| Rolls-Royce | 3.71 | (1) | (4) |
| SKF | 4.92 | (1) | (4) |
| SNFA | (1) | (2) | (4) |

1 No U.S. sales during the review period.
2 No review requested.
3 No change to original margin as a result of litigation.
4 No antidumping order covers this merchandise.

The above rates will become the new antidumping duty deposit rates for firms that have not had a deposit rate established for them in subsequent reviews.

Accordingly, the Department will determine and the Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by this review of the period November 11, 1988 through April 30, 1990. Individual differences between United States price and foreign market value may vary from the percentages listed above. Where the Department has not already issued appraisement instructions to the Customs Service, it will do so after publication of these amended final results of reviews

Dated: June 9, 1997.

**Robert S. LaRussa,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97–15870 Filed 6–16–97; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–506]**

## Porcelain-on-Steel Cooking Ware From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of final results of Antidumping Administrative Review.

**SUMMARY:** On February 3, 1997, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC) (62 FR 4979). This review covers shipments of the merchandise to the United States during the period December 1, 1994 through November 30, 1995. Based upon our findings at verification and our analysis of the comments received from interested parties, we have made certain changes to our preliminary results. These changes are addressed in the *Facts Available, Export Price and Normal Value* sections below.

**EFFECTIVE DATE:** June 17, 1997.

**FOR FURTHER INFORMATION CONTACT:** Judy Kornfeld or Kelly Parkhill, Office of CVD/AD Enforcement VI, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–2786.

## Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the regulations as amended by the Interim Regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

## SUPPLEMENTARY INFORMATION:

## Background

On December 2, 1986, the Department published in the **Federal Register** (51 FR 43414) the antidumping duty order on POS cooking ware from the PRC. On December 4, 1995, the Department published a notice of ''Opportunity to Request Administrative Review'' (60 FR 62070) of this antidumping duty order. We received a timely request for review, and on February 1, 1995, we initiated the review, covering the period December 1, 1994, through November 30, 1995 (61 FR 3670). This review covers one manufacturer/exporter of POS cooking ware from the PRC, Clover Enamelware Enterprise, Ltd. (Clover) and its third-country reseller in Hong Kong, Lucky Enamelware Factory Ltd. (Lucky). Clover and Lucky (hereafter Clover/Lucky) are affiliated parties within the meaning of section 771(33) of the Act. (*See* Memorandum from Case Analyst to File, dated January 17, 1997, ''POS Cooking Ware from the PRC—Status as Affiliated Parties,'' which is a public document on file in the Central Records Unit (Room B–099 of the Main Commerce Building).)

On February 3, 1997, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on POS cooking ware from the PRC (62 FR 4979). There was no request for a hearing. On March 4, 1997, a case brief was timely submitted by Clover/Lucky (respondent).

We verified the questionnaire response of Clover/Lucky during March 1997. The results of this verification are outlined in the public version of the verification report dated May 8, 1997 (Verification Report), which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building). We invited interested parties to comment on our verification report. On May 11, 1997, Clover/Lucky submitted comments and on May 14, 1997, General Housewares Corp. (petitioner) submitted comments. On May 19, 1997, respondent submitted rebuttal comments. The Department has now completed this review in accordance with section 751(a) of the Act.

## Scope of the Review

Imports covered by this review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the HTS item 7323.94.00. HTS items numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

## Separate Rates

In our preliminary results, we determined that Clover/Lucky was entitled to a separate rate under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588; May 6, 1991), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585; May 2, 1994). During the course of verification, we confirmed that export prices for Clover are not set by, nor subject to approval of, any government authority. This point was supported by the company's sales documentation and customer correspondence. We also confirmed, based on examination of documents related to sales negotiations, written agreements and other correspondence, that respondents have the authority to negotiate and sign contracts and other agreements independent of government intervention (see Verification Report, pp. 4–5).

Based on our examination of company records during verification, we have determined that Clover had autonomy from the central government in making decisions regarding selection of management. We also found no involvement by any government entity in the selection of management or hiring. The record therefore demonstrates an absence of *de facto* government control over Clover.

The record similarly demonstrates an absence of *de jure* government control over Clover, for reasons stated in the preliminary results of this review. Accordingly, we determine that Clover/Lucky should receive a separate rate. (For a further discussion, *see* Memorandum from Kelly Parkhill to Barbara E. Tillman, dated January 17, 1997, ''Assignment of Separate Rate for Clover/Lucky in the 1993–1994 and 1994–1995 Administrative Reviews of POS Cooking Ware from the Peoples Republic of China,'' which is a public document on file in the Central Records Unit (Room B–099 of the Main Commerce Building).)

## Facts Available

Section 776(a)(2) of the Act states that, if an interested party withholds information that has been requested or provides such information but the information cannot be verified as provided in section 782(i), the Department shall also use the facts otherwise available in reaching the applicable determination. Section 776(b) of the Act authorizes the Department to use, as facts otherwise available, information derived from the petition, the final determination, a previous review, or other information placed on the record. We determine, in accordance with section 776(a)(2) of the Act, that the use of partial facts available as the basis for calculating certain constructed values is appropriate in this case, as discussed below. (*See* Memorandum to Jeffrey Bialos from Barbara E. Tillman ''Use of Facts Available'' dated May 30, 1997 (Facts Available Memorandum), which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building).)

At verification, we were unable to tie reported labor hours to supporting attendance and payroll documents. In addition, we discovered that the labor hours reported on certain supporting documents were altered for purposes of this antidumping proceeding; company officials admitted to altering certain source documents in order to reconcile them with the figures reported in the questionnaires responses. Because Clover/Lucky did not act to the best of its ability in responding to our request for this information pursuant to section 782(e)(4) of the Act, we have drawn an adverse inference under the authority provided by section 776(b) of the Act. As facts available, we are using the highest labor cost for an individual piece of cooking ware from the information submitted by Clover/Lucky. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Welded Carbon Steel Pipe from Turkey* (61 FR 69067, 69073; December 31, 1996).

Also at verification, we discovered certain information which had not been previously reported in Clover/Lucky's

questionnaire responses. The company did not report three steel invoices, certain minor chemicals used in the production of POS cooking ware, well water consumed for industrial use and two insignificant brokerage and handling fees. We verified and collected this new information, which has been placed on the record as verification exhibits. Nevertheless, because Clover/Lucky failed to provide this information by the deadline for submission of information, in accordance with section 776(a) of the Act, the Department must use facts available. However, because Clover/Lucky was fully cooperative in complying with our request for this information at verification, the Department has determined that, in selecting among the facts available to apply to these unreported expenses, no adverse inference is warranted. Consequently, as facts available, we have used this new information now on the record in determining these final results. *See Notice of Final Determination of Sales at Less Than Fair Value; Brake Drums and Brake Rotors from the People's Republic of China;* 62 FR at 99160, 99167 (February 28, 1997). (*See also* Facts Available Memorandum for a further discussion.)

**Export Price**

As described in the preliminary results, the Department used export price (EP) for sales made by Clover/Lucky, in accordance with section 772(a) of the Act. Pursuant to findings at verification, as discussed in the *Facts Available* section above and Facts Available Memorandum, we made minor adjustments to movement expenses to include import and export declaration fees found at verification, which were not reported in Clover/Lucky's questionnaire responses. (See Memorandum from Case Analyst to the File, ''Analysis for the Final Results of the 1994–1995 Administrative Review of POS Cooking Ware from the PRC—Clover/Lucky'' dated May 30, 1997 (*Calculation Memorandum*), on file in the Central Records Unit (Room B–099 of the Main Commerce Building).)

**Normal Value**

As stated in the preliminary results, in accordance with section 773(c)(3) of the Act, we calculated normal value (NV) by valuing factors of production, except with respect to the factors of steel, percolators and packing materials purchased by Lucky. For these factors, which were paid for in market economy currencies, we used the actual prices paid for the factors to calculate the factor-based NV in accordance with our practice. *See e.g., Lasko Metal Products* v. *United States,* 437 F. 3d 1442, 1443 (Fed. Cir. 1994). We calculated NV for these final results as discussed in the preliminary results, making adjustments for specific verification findings and certain revisions to surrogate values, discussed below (for a fuller discussion see *Calculation Memorandum*).

- At verification, we discovered three steel invoices from the period of review (POR) that were not reported in Clover/Lucky's questionnaire responses. (*See Facts Available* section above.) As a result, we are adjusting the average price paid for steel inputs to include these three purchases.
- At verification, we discovered five chemicals used in the production of POS cooking ware during the POR which were not reported in Clover/Lucky's questionnaire responses. (*See Facts Available* section above.) We valued these chemical factors of production, which included bentonite, antimony trioxide, potassium chloride, titanium dioxide and sodium nitrite, by using the consumption amounts collected at verification and surrogate per kilogram values obtained from the *Foreign Trade Statistical Bulletin-Imports,* November 1995, from Indonesia (Indonesian Import Statistics), which is public information.
- At verification, we discovered that certain packing materials purchased by Clover were paid for in renminbi, instead of Hong Kong dollars, as reported in Clover/Lucky's questionnaire response. However, because there is no other information on the record that can be used to construct a value for these packing materials and because these materials were invoiced in Hong Kong dollars, as facts available, we have continued to use the actual prices charged in Hong Kong dollars to Clover to value these materials.
- In our preliminary results, we used a surrogate overhead rate which included energy and indirect labor. Thus, we did not include Clover/Lucky's reported energy factors. However, at verification we discovered that water, one of the reported energy/utility factors, is not only an indirect material input falling under factory overhead, but also a direct material input in the production of cooking ware. In addition, we discovered that well water is consumed for industrial use, but, as the company does not pay for the well water, it was not previously reported. (*See Facts Available* section above.) As described above, we collected information at verification regarding the total amount of water consumed for industrial use and calculated a cost for water consumed in the production of POS cooking ware by using Indonesian water rates reported in the *ADB, Water Utilities Data Book for the Asian Pacific Region* for 1993, which is public information. We adjusted these water rates to reflect yearly inflation using wholesale price indices, excluding petroleum, obtained from the *International Financial Statistics* published by the International Monetary Fund.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results as well as the verification report. We received a case brief from respondent and comments on the verification report from respondent and petitioner.

*Comment 1:* In the preliminary results, the Department found that Clover/Lucky did not report some or all factors of production data for three models sold in the United States during the POR. Respondent claims that two model numbers were inadvertently omitted from one exhibit in the questionnaire response and the other model number involved a typographical error. The company corrected these discrepancies and submitted the revised information. Along with these corrections, respondent also submitted changes to the local color oxide consumption and scrap steel percentage reported in its response.

Department's Position: Because the information and minor clarifications were submitted to the Department prior to verification and because we were able to establish the accuracy of the information at verification, we accepted them and have adjusted our final results accordingly.

*Comment 2:* Respondent claims that the import and export declaration fees paid in Hong Kong dollars during the POR were insignificant when compared to the total sales to the United States during the POR. Therefore, the company claims that it omitted these amounts and treated them as indirect selling expenses.

Department's Position: Although we agree with respondent that these fees are small relative to total sales to the United States during the POR, we disagree that these fees should be classified as indirect selling expenses. As discussed in the verification report, these fees are charged for the preparation of import and export declarations for each shipment the company arranges. These fees are directly tied to each sale and should have been reported separately or included in brokerage and handling expenses. We have therefore treated them as direct selling expenses, specifically brokerage and handling

expenses, for purposes of these final results.

*Comment 3:* With respect to the Department's discovery at verification of three missing steel invoices, respondent claims that these unreported invoices resulted in minimal changes to the average steel prices paid for each thickness of steel. Respondent further claims they did not have any significant effect on the computation of the factors for steel usage.

Department's Position: The effect on the average steel price is only one consideration in evaluating the significance of the three missing steel purchases. The significance is also determined by the proportion of the unreported purchases to total purchases during the POR. Respondent failed to report approximately 18 percent of the POR purchases of steel. However, because we collected the invoices as part of our completeness check at verification, and they are now on the record, as facts available we are including these three invoices in calculating the average price paid for steel during the POR. *See Facts Available* section above and Facts Available Memorandum.

*Comment 4:* With respect to its reporting of theoretical weights for each product, respondent states that the reported theoretical weights were generally greater than the actual weights for selected items at verification, and therefore the steel usage overstatement, which had the effect of increasing the normal value, was not an error in favor of Clover. As to the frying pan, the actual weight again was shown to be less than either the true theoretical weight or the incorrectly calculated theoretical weight reported in the submission.

Department's Position: We have accepted respondent's methodology for calculating theoretical weights as reported in its response because we find it to be reasonable and not distortive for purposes of performing the antidumping analysis. *See, e.g., Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review* (62 FR 17148, 17163; April 9, 1997). In our Verification Report, we noted that the reported length of the handle portion of the frying pan was incorrect, and, therefore, the theoretical weight for the frying pan was miscalculated. We adjusted the theoretical weight for the frying pan in calculating our final results.

*Comment 5:* With respect to the five missing chemicals discovered at verification by Department officials, respondent claims that these chemicals were not omitted from the response altogether, but were included in calculating the ''chemical 2'' factor input reported in its response. Further, respondent understood that it was required to provide actual quantities purchased during the POR that were delivered to Clover.

Department's Position: Respondent included the quantity of the five chemicals in an aggregate consumption figure in its response. However, it did not identify these chemicals in the breakdown of that aggregate figure. An aggregate figure alone is insufficient for reporting purposes if the chemicals which make up this quantity are not properly identified.

In order for the Department to properly calculate a factor value for each input, it must have the exact breakdown of each chemical used. The Department uses these reported inputs, along with appropriate prices from a chosen surrogate country, to arrive at the normal value of the subject merchandise in non-market economy cases. For that reason, the Factors of Production questionnaire asks for each factor of production used to produce one unit of the subject merchandise. As mentioned earlier, we verified and collected the new information and used surrogate per kilogram values obtained from the Indonesian Import Statistics, which is public information.

*Comment 6:* With respect to the labor factor of production, and specifically usage of the piece rate table, respondent states that this table is based upon years of experience from performing the same process over a period of 30 years on the same equipment as well as historical data derived from the original Hong Kong factory. Moreover, respondent claims the piece rate table is revised when needed based on the changes in the production process and the changes in the efficiency pattern of the workers. According to respondent, the table, which it regards as its list of standard labor hours, includes the people required to produce each piece or set, the time it takes to dip, clean and hang each piece at each phase of the production process, the technical specification for each machine, and the conveyer speed. Respondent claims that no separate documentation exists or was prepared, such as time and motion studies, to support the figures in the piece-rate table because the piece rate table was regarded as accurate and salaries were based upon this table.

Further, the workers are paid following the piece rate table based upon the discretion of the supervisor who calculates the work/hour credit for the quantities produced. The discretion is based upon the knowledge and experience of the supervisor of the manufacturing process.

Department's Position: Our findings at verification corroborate respondent's description of how the standard hours in the piece rate table were derived.

> Company officials explained that the piece rate table is based on estimates, many of which date back to when Lucky began producing enamelware in Hong Kong 30 years ago. The table is updated periodically to add standard times for new products. No time-in-motion studies or timing of production process was [sic] done in coming up with either the original Hong Kong standards or the standards for new enamelware products. All standards were created based on experience of those involved in creating the tables as to how long the process should take to produce a given item. Since these hours were based solely on the individuals' estimates, there was no documentation available to support any of these figures.

*See* Verification Report, p. 21.

However, in speaking with company officials and in our examination of the piece rate tables at verification, there was no indication that the piece rate tables were revised on any basis other than the periodic update described above; no mention was made of making changes to the tables to reflect changes in the production process or worker efficiency. Also, other than a brief description of the process, or the machine used in a process, we saw nothing in the piece rate tables that indicated technical specifications for machinery or conveyer speeds.

The accuracy of information submitted to the Department for use in its determinations must be verifiable. The figures from the piece rate table submitted by respondent in lieu of actual labor hours (as requested by the Department in its original and supplemental questionnaires) are not. No supporting documentation for these rates exists. Statements by company officials that the rates are accurate and reflect actual labor hours are not sufficient for the Department to consider the reported figures to have been verified, particularly in light of the fact that many of the standard times are 30 years old and are based on the experience and production of workers at the original plant located outside the PRC. As such, we continue to find that the reported ''labor'' factor of production was not supported by source documents at verification. Therefore, we have drawn an adverse inference under the authority provided by section 776(b) of the Act. For a further discussion of our decision to use adverse facts available for this factor, see the *Facts*

*Available* section of this notice and the Facts Available memorandum.

*Comment 7:* With respect to the labor factor of production, respondent also claims that the majority of Clover's production workers were paid on a piece rate basis during the POR. Respondent additionally states that the ''floating workers'' labor hours, which are only in the Enameling Department, are tied to the labor hours of the ''fixed post worker'' which are calculated from the piece rate table. Probationary workers are not paid based on the piece rate table inasmuch as they have not developed the skills to handle the work. Therefore, respondent claims, the piece rate table accurately reflects the actual labor hours used to produce the subject merchandise.

Department's Position: We disagree with respondent. In trying to ascertain whether the reported hours from the piece rate table accurately reflected the actual hours worked by Clover production workers, the Department verifiers found that a large number of workers were not paid based on the piece rate table. This includes the metal shearer, any worker assigned to assist him, probationary employees, workers in the Milling Department and ''floating workers,'' the latter constituting approximately half of the workers in the Enameling Department. In addition, even those workers whose pay is based on the piece rate table, may have significant portions of their pay calculated on a non-piece rate basis. For example, adjustments are made to working hours for certain duties, equipment set-up, equipment down time and assignment to unfamiliar machines.

Further, the Department was unable to reconcile the reported per unit labor hours from the piece rate tables with the company's payroll and attendance records. At verification, the Department selected three cooking ware items for verification. Numerous errors and discrepancies were found in our examination of these items. In one instance, we discovered that the supervisor had made up the hours on certain supporting documents. In another, we found that workers were paid for days on which they were absent, and not paid for days on which they worked. For two of the three cooking ware items, company officials could not account for the discrepancies between the reported information on labor and the source documents. As a result, none of the reported labor hours for these items could be verified.

Together or separately, the significant number of workers paid on a non-piece rate basis, the numerous adjustments to working hours, the errors and discrepancies found at verification, and the inability to reconcile the piece rate table with the company's payroll and attendance records demonstrates that the per unit labor hours submitted by respondent in the questionnaire response based on the piece rate table cannot be relied upon for purposes of these final results. We have therefore drawn an adverse inference under the authority provided by section 776(b) of the Act. For a further discussion of our decision to use adverse facts available for the labor factor of production, see the *Facts Available* section of this notice and the Facts Available Memorandum.

*Comment 8:* With respect to supporting documents relating to the labor factor of production, respondent claims that because the volume of items going through the Metal Cleaning Department is so large, and varies throughout the day, the supervisor listed some of the figures for the computed labor hours based on his estimation. Respondent claims that computing labor hours in this department is complicated and mistakes are easily made. The fictitious hours initially recorded by the supervisor on the supporting documentation was not done for purposes of responding to the Department. As to the fictitious entries in the revised document, respondent claims that the supervisor understood he was to support the payment of days worked against the days actually paid, and therefore prepared the records on this basis, not as a method to create fictitious documents to provide to the Department. In any case, respondent believes that the incorrect documents provided in two transactions does not invalidate the total payment procedures.

Department's Position: The Department found numerous instances of errors and discrepancies in its verification of respondent's reported labor hours. These errors and discrepancies were not limited to two instances; errors, discrepancies and/or deviations from the reported labor hours and piece rate based pay were found in every department and every cooking ware item the Department examined. In addition, many of the errors or discrepancies affected more than one employee. In some cases, respondent was able to account for or provide an explanation for the error, discrepancy or deviation; however, in several instances, the information submitted in the response could not be reconciled with the company's attendance and payroll records (see Verification Report, pp. 20–24; and Facts Available Memorandum). Further, at verification, a company official admitted to altering two supporting payroll documents in an effort to support the figures reported in the response while another official stated that he made up the labor hours recorded on certain attendance/payroll documents (see Verification Report, p. 22, 23).

For these reasons, and for the reasons discussed in the *Department's Position* on *Comments 6 and 7,* we find that the information submitted by respondent with respect to the labor factor of production cannot be relied upon. Therefore, with respect to this factor, the Department must rely upon facts otherwise available. Further, because respondent did not act to the best of its ability in responding to our request for such information pursuant to section 782(e)(4) of the Act, as demonstrated by its alteration of source documents and inability to reconcile the submitted labor hours in response with the company's actual labor hours as recorded in its attendance and payroll records, we have drawn an adverse inference under the authority provided by section 776(b) of the Act. For a further discussion of our decision to use adverse facts available for this factor, see the *Facts Available* section of this notice and the Facts Available Memorandum.

*Comment 9:* Respondent states that it now has an explanation for a discrepancy that could not be resolved at verification. While reviewing time cards and the Monthly Attendance Summary, the Department found a worker who worked 13 days during the month of May but was paid for 18 days. Company officials now believe that the figure ''13 days'' was actually overlooked when the payment records were created, and that the worker was mistakenly paid for 18 days.

Department's Position: Respondent's comment addresses yet another discrepancy discovered while the Department attempted to verify reported labor hours. At verification, company officials could not explain this discrepancy. It is not clear what respondent now means by ''overlooked;'' however, at this point, the explanation does not override our findings at verification or our results in this review. The purpose of verification is to verify the accuracy of the response through examination of source documents, not to recreate supporting source documentation that respondent has failed to maintain. *See Belmont Industries* v. *United States,* 733 F. Supp. 1507, 1508 (CIT 1990). As stated above, with respect to labor hours, the Department is relying upon facts otherwise available and we have drawn an adverse inference under the authority

provided by section 776(b) of the Act. For a further discussion of our decision to use adverse facts available for this factor, see the *Facts Available* section of this notice and the Facts Available Memorandum.

*Comment 10:* Respondent claims that its purchases of packaging materials from a PRC supplier during the POR was based upon quotations and acceptances in Hong Kong dollars. Therefore, it reported these purchases in Hong Kong dollars. The payment in renminbi at the market rate of exchange was a manner of facilitating this payment.

Department's Position: At verification, Department officials discovered that certain packing materials, reported in Hong Kong dollars, were actually purchased from a PRC supplier in renminbi. However, because the supplier originally charged Clover for these goods in Hong Kong dollars, we are using the reported Hong Kong dollar prices in our calculations, as was done in our preliminary results. *See Normal Value* section above.

*Comment 11:* Respondent states that the Department's well water consumption calculation is incorrect because it is based on a 365-day period. The company claims that the figure should be based on the number of working days during the POR, which was 282 days based on Clover's payroll records.

Department's Position: We disagree with respondent. At verification, the Department asked company officials to shut off the well water to the plant and record the city water consumed over a several day period. This period ran from Saturday through Monday. As the sample period included both working and non-working days, it is proper to estimate the annual water consumption on a 365-day basis rather than the number of work days during the POR. In addition, the 282 day figure referred to by respondent in its comments was never reported in its submission and, thus, not verified by the Department.

*Comment 12:* Respondent suggests a number of changes to the language in the verification report which it claims are needed to address alleged inaccuracies or omissions.

Department's Position: We have addressed respondent's suggested changes in a memorandum to the file. *See* Memorandum to Barbara E. Tillman from the Team ''Response to Respondent's Suggested Changes to Language in the Verification Report'' dated May 30, 1997, which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

*Comment 13:* Petitioner asserts that the Department should not accept and use any of the data reported in Clover/Lucky's response. Instead, the Department should reject Clover/Lucky's response in its entirety and resort to total facts otherwise available to calculate Clover/Lucky's dumping margin. According to petitioner, this margin should be based on the highest rate ever calculated for any respondent in the history of this proceeding, which is 66.65 percent.

Petitioner claims that it is the Department's practice to reject a response in its entirety and resort to total facts available when it discovers that information contained in the response was fabricated by the respondent for purposes of the investigation or review. In the *Final Determination of Sales at Less than Fair Value; Sulfanilic Acid From the Republic of Hungary* (58 FR 8256, 8257; February 12, 1993) *(Sulfanilic Acid from Hungary),* the Department discovered at verification that a relevant portion of the respondent's questionnaire response may have been fabricated, and the Department rejected the respondent's entire response and used best information available (BIA). Petitioner claims that this policy applies with even greater force when, as in this review, the Department discovers direct evidence and/or the respondent admits that it knowingly fabricated information submitted to the Department.

Respondent claims that petitioner's statement that information submitted in the response was knowingly false and fabricated by Clover/Lucky is a mischaracterization of the verification report. At no time did the company officials who prepared the final questionnaire responses intend to mislead the Department or fabricate information for the purposes of the questionnaire response. Source documents altered by a Clover employee were not discovered by company officials until the verification visit. Thus, the alteration made by the employee was not known by the company officials at the time the questionnaire responses were drafted. Petitioner also failed to mention that after the altered source documents were returned to their original state, and a transcribing error was accounted for, the source documents, worksheet and information reported in the response tied to one another.

In regard to petitioner's assertion that the supervisor of the Metal Fabrication department ''made up'' data on which Clover/Lucky based its calculation of hours worked submitted in its responses, respondent claims that these were only minor discrepancies and that, further, the lasagna pan was discussed in the Department's verification report without any reference to ''made up'' data. Moreover, the allegedly ''made up'' information was initially compiled by the supervisor for an internal report, not for the questionnaire response. Again, the company officials who prepared the responses were unaware of the fact that the supervisor in this department may have made up the labor hour figures.

Department's Position: We disagree with petitioner that the use of total facts available is appropriate in this review. The decision to totally reject the response and use best information available in the case cited by petitioner, *Sulfanilic Acid from Hungary,* was based on the antidumping law as it existed prior to the Uruguay Round Agreements Act (URAA). In deciding whether to reject Clover/Lucky's response and use total facts otherwise available in this review, the Department must examine the facts of the case in light of the new statutory guidelines that exist under the Act, as amended by the URAA.

Section 782(e) of the Act states that:

> In reaching a determination under section * * * 751 * * * the administering authority * * * shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority * * *, if—
>
> (1) The information is submitted by the deadline established for its submission,
>
> (2) The information can be verified,
>
> (3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,
>
> (4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority * * * with respect to the information, and
>
> (5) The information can be used without undue difficulties.

Clover/Lucky's sales response and its response for the factors of production, other than labor, meet each of the above criteria. For those miscellaneous items where the information did not meet the second criterion, *i.e.,* it could not be verified, the Department obtained the necessary accurate information during the course of verification. This information is being used as facts otherwise available in the Department's calculations. (*See Facts Available* section and Facts Available Memorandum.) Although the Department encountered some difficulties in its verification of Clover/Lucky's response, many of the errors in

the response and discrepancies between it and the company's books and records were resolved at verification. The information now on the record pertaining to the non-labor portions of Clover/Lucky's response, including exhibits taken at verification, has been verified, is sufficiently complete to be reliable, and can be used without undue difficulties.

Further, the Statement of Administrative Action (SAA) provides guidance concerning the use of facts available to the Department in evaluating whether submitted information should be considered or rejected under the new Act. It states:

> Commerce * * * may take into account the circumstances of the party, including (but not limited to) the party's size, its accounting systems, and computer capabilities, as well as the prior success of the same firm, or other similar firms, in providing requested information in antidumping and countervailing duty proceedings. SAA, H. R. Doc. 316, 103d Cong., 2d Sess. 865 (1994).

In NME cases, it is quite common for the Department to encounter difficulties in obtaining complete and accurate information regarding factors of production. *See, e.g., Notice of Final Determination of Sales at less Than Fair Value; Certain Cased Pencils from the People's Republic of China* (59 FR 55625, 55630; Nov. 8, 1994). The information provided by Clover/Lucky in the non-labor portions of the response was similar to and in many ways more accurate than information the Department typically receives in responses provided by similarly situated companies in the PRC or other NME countries. Therefore, the Department considers that, with respect to the non-labor portion of Clover/Lucky's response, the company has acted to the best of its ability in providing the information and meeting the requirements established by the administering authority.

As the Department has noted above, the same determination cannot be made with respect to the company's submitted labor hours. In trying to reconcile the company's reported labor hours to source documents, the Department found a considerable number of errors and discrepancies as well as numerous deviations from the piece rate table standards that respondent used as the basis for its reported hours and which it claimed reflected the actual working hours of its employees. In addition, the Department discovered that, in one production department, a supervisor recorded fictitious information on supporting payroll/attendance documents while, in another department, payroll and attendance records indicated that employees were either paid for days they did not work or not paid for days they did (see Verification Report, pp. 23–24).

Many of the discovered errors or discrepancies affected more than one employee, indeed more than one category of employees. Although in a few instances, respondent was able to account for or provide an explanation for the error, discrepancy or deviation, in most instances, the information submitted in the response could not be reconciled with the company's attendance and payroll records (see Verification Report, pp. 20–24; and Facts Available Memorandum).

Clover/Lucky's response with respect to labor does not meet the criteria listed under section 782(e) of the Act. The information could not be verified, nor can it serve as a reliable basis for reaching the applicable determination. Further, due to the significant number of errors and discrepancies, the information cannot be used by the Department without undue difficulties.

More importantly, however, is the fact that, at verification, a company official admitted to altering two supporting payroll documents in an effort to support the figures reported in the response (see Verification Report, p. 22). Regardless of the inability of the Department to reconcile significant portions of the labor response with the company's books and records, the alteration of supporting source documents, on its own, is sufficient grounds for rejecting the submitted labor hours and using facts otherwise available as it calls into question the reliability of all submitted information with respect to the labor factor of production.

For all of the above reasons, we find that the information submitted by respondent with respect to the labor factor of production cannot be relied upon. Therefore, with respect to this factor, the Department has relied upon facts otherwise available. Further, because respondent did not act to the best of its ability in responding to our request for such information pursuant to section 782(e)(4) of the Act, as demonstrated by its alteration of source documents and the numerous errors and discrepancies discovered during the course of the verification, we have drawn an adverse inference under the authority provided by section 776(b) of the Act. For a further discussion of our decision to use adverse facts available for this factor, see the *Facts Available* section of this notice and the Facts Available Memorandum.

The Department has considered petitioner's argument that the alteration of source documents and recording of fictitious information on certain supporting payroll documents calls into question the reliability of the entire response, not just that portion pertaining to labor. During our verification of the other portions of Clover/Lucky's response, we did not find any indication that other source documents had been altered or contained fictitious information. In many cases, our verification of these other items was complete, in that the reported figures for the entire year were checked and cross-checked to all relevant source documents and records.

In addition, there was no indication that the company officials preparing the response knew of the altered source documents or payroll documents containing fictitious information prior to verification. Further, these company officials were forthcoming about the documents in question. When questions first arose about these source documents, they spoke with the employees that had originally compiled the information and immediately reported to the Department verifiers that, in the first instance, the source documents had been altered, and in the second instance, the information recorded on certain supporting payroll documents had been made up. Finally, we found no evidence that the company officials responsible for altering certain source documents and reporting fictitious information on certain supporting payroll records participated in compiling the information for the response outside of their respective departments.

Based on the above, the Department does not consider the non-labor information submitted by Clover/Lucky as it now appears on the record to be unreliable. Therefore, as discussed above, and in accordance with the mandate of section 782(e) of the Act, the Department cannot reject the response in its entirety and use total facts otherwise available in determining Clover/Lucky's antidumping margin.

The Department would like to clarify its position with respect to two statements in respondent's rebuttal comments on this issue. First, the verification report in no way suggests that the actions taken by the Clover employee who altered the documents were ''clarified to the satisfaction of the ITA.'' The Department does not condone the alteration of source documents for purposes of the proceeding; it is not possible for respondent to clarify this to our satisfaction. Respondent quotes the verification report out of context; the statement cited by respondent is merely

repeating the company's explanation of its resolution of the error, including the alteration of source documents. As discussed above, the Department considers the alteration of source documents by this employee to be sufficient grounds not only for finding the affected labor hours to have failed verification, but also for finding the entire portion of the response with respect to labor to be not verifiable.

Second, the production departments examined with respect to the lasagna pan and round pie plate were not the same, as claimed by respondent in its rebuttal brief. The two departments were, respectively, the Metal Fabrication Department and the Metal Cleaning Department (the latter department being the department in which the supervisor made up the information on certain supporting payroll documents) (see Verification Report, p. 22). Since the production departments examined during the course of the verification were not the same as claimed by respondent in its rebuttal comments, the conclusions drawn by respondent are fundamentally incorrect and, therefore, cannot be addressed further by the Department.

*Comment 14:* Petitioner states that if the submission of false information alone does not render Clover/Lucky's response unusable, the numerous additional discrepancies found by the Department's verifiers should still require use of total facts available. In the eighth administrative review, the Department preliminarily rejected Clover/Lucky's response in its entirety and used total BIA based on Clover/Lucky's failure of verification for information submitted to the Department. Petitioner believes that the verification report in this review addresses more numerous and extensive discrepancies than those found in the eighth administrative review. Petitioner cites *Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part* (62 FR 1954, 1969; January 14, 1997) as support for using total, rather than partial facts available.

Moreover, even if the Department determined that all of Clover/Lucky's data except those relating to the labor factor of production could be used, use of total facts available would still be necessary because there is no reliable facts available information that can be used as a surrogate for the flawed labor data. Petitioner cites *Certain Cut-To-Length Carbon Steel Plate From Sweden; Final Results of Antidumping Duty Administrative Review* (62 FR 18,396, 18,401; April 15, 1997) as support for this argument.

Respondent asserts in its rebuttal comments that there is clearly no justification for rejection of its responses in their entirety. In *Final Determination of Sales at Less Than Fair Value; Paint Filters and Strainers From Brazil* (52 FR 19181, 19183; May 21, 1987), the Department stated that finding omissions or errors in responses is common during verification. A review of the petitioner's allegations, compared with the overall accuracy of information submitted by Clover/Lucky demonstrates that the errors and omissions found at verification are not sufficient in themselves to invalidate or discredit Clover/Lucky's response for the POR. Respondent also asserts that the responses for each administrative review should be judged on their own merits.

Respondent finally claims that the other discrepancies were explained in its previously submitted comments, discussed above, and should be regarded as verifiable after review of these explanations, as the information submitted was not materially deficient. In addition, the balance of the information reported in the responses was determined to be correct.

Department's Position: We disagree with petitioner that the use of total facts otherwise available is warranted in this review. As explained above, the Department must evaluate whether to apply total facts otherwise available in this review under section 782 (e) of the Act.

Clover/Lucky's sales response and its response for the factors of production, except with respect to labor, meet each of the criteria in section 782(e). That aside, we also disagree that the errors found at this verification, with respect to the non-labor portions of the response, were more numerous or more serious than those found in the previous administrative review where the Department decided that the use of total best information available was appropriate. *See Porcelain-on-Steel Cooking Ware from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review* (62 FR 4250; January 29, 1997).

The record in the two proceedings clearly shows that the Department encountered far greater problems in verifying the non-labor portion of the questionnaire responses in the earlier review. For example, in the prior review, with respect to steel purchases from market economy suppliers and steel consumption, the Department found numerous errors in the reporting of steel purchases, was unable to tie steel requisitions to inventory withdrawals, and could not corroborate the submitted theoretical per-unit steel consumption figures with actual readings or tie them to measurements in the technical drawings. *See* Memorandum from Case Analyst to the File, dated May 28, 1997, ''Submission of the Verification Report (Public Version) from the 1993-1994 Antidumping Administrative Review Proceeding of POS Cooking Ware from the PRC to the Record for the 1994–1995 Antidumping Administrative Review Proceeding of This Case'' (1993–1994 Verification Report), which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building), pp. 2–8. Therefore, the Department determined that the information regarding the price and quantity of steel, the major material input into POS cooking ware was not sufficiently complete or reliable to use in its calculations.

In the instant review, the Department was able to verify all aspects of steel consumption, including the scrap rate, inventory withdrawals, and the reported per unit steel consumption figures (see Verification Report, pp. 15–17). Although the Department discovered three unreported steel purchases, during the course of verification, it obtained the missing invoices, determined that there were no other unreported steel purchases, and confirmed the accuracy of the remaining reported purchases (see Verification Report, p. 16). The missing invoices are on the record and the Department has used the price information contained in these invoices as facts otherwise available for the unreported purchases *(see Facts Available* section and Facts Available Memorandum). Therefore, unlike the prior review, the information available to the Department regarding the price and quantity of steel is sufficiently complete and reliable to use in its margin calculations.

In the prior review, the Department was unable to verify the consumption of enamel frit, another significant material input in the POS cooking ware production process (see 1993–1994 Verification Report, p. 8). In this review, following a correction to remove certain quantities of clay and quartz from the reported enamel frit figure, the Department was able to tie the reported amount of enamel frit consumed to the company's books and records (see Verification Report, pp. 17–18).

Also, in the prior review, respondent failed to report the quantity of various energy inputs (fuel, water and electricity) consumed by Clover/Lucky and there was no verifiable information

on the record regarding the consumption of these energy factors (see 1993–1994 Verification Report, pp. 1, 13–14). In this review, respondent supplied these consumption figures. The Department found no discrepancies in its verification of fuel consumption in this review (see Verification Report, p. 26). The Department was also able to verify electricity and city water consumption once the company had revised their figures to reflect the actual rather provisional invoices (see Verification Report, pp. 24–25). Further, the Department was able to obtain an accurate estimation of industrial well water consumption, which it had not been able to do in the previous review (see Verification Report, p. 25).

Respondent's submitted figures for depreciation could not be verified in the previous review. The Department selected the smallest production department for verification because of the unwieldiness of the company's records, yet the company was still unable to support the depreciation expenses for a significant portion of the selected department. The company was also unable to explain or demonstrate that it kept track and could distinguish between molds and dies owned by Clover, the PRC factory, and those on loan from Lucky, the parent company located in Hong Kong (see 1993–1994 Verification Report, pp. 11–13). In this review, the Department was able to verify depreciation expenses (see Verification Report, p. 26). Further, the company demonstrated that it was able to distinguish between the molds and dies owned by Clover and those on loan from Lucky, and the Department confirmed that Clover's reported depreciation expenses did not include depreciation expenses associated with the Lucky's molds and dies.

With respect to chemical inputs, the Department did discover that respondent failed to identify five minor chemicals used in the production process of POS cookware in this review (see Verification Report, p. 18). These chemicals were part of an aggregate mixture of chemicals described in the response as ''Chemical 2;'' the aggregate figure included the quantities of these five chemicals but, because they were not identified, these quantities were incorrectly allocated to other chemicals in the mix. During the course of the verification, we obtained an accurate breakdown of Chemical 2 and, as explained above, have used this information as facts otherwise available in our calculations *(see Facts Available* section and Facts Available Memorandum).

Unlike the prior review, there is sufficient information on the record of this proceeding, with respect to the non-labor portions of the response, to serve as a reliable basis for our calculations. Further, as explained above, the Department is rejecting the information submitted by respondent with respect to labor and using adverse facts otherwise available in its calculations *(see Department's Position* on *Comment 8*, as well as the *Facts Available* section above and the Facts Available Memorandum). We consider the information selected, the highest labor cost for an individual piece of cooking ware from the information submitted by Clover/Lucky, to be sufficiently adverse for use in our calculations.

**Final Results of Review**

As a result of the comments received and our findings at verification, we have changed the results from those presented in our preliminary results of review. Therefore, we determine that the following margins exist as a result of our review:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Clover Enamelware Enterprise/ Lucky Enamelware Factory ... | 57.56 |
| PRC-Wide Rate ..... | 66.65 |

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of POS cooking ware from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For Clover/Lucky, which has a separate rate, the cash deposit rate will be the company-specific rate stated above; (2) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate stated above; (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates shall remain in effect until publication of the final results of the next administrative review.

**Notification to Interested Parties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i), and 19 CFR 353.22.

Dated: June 3, 1997.

**Robert S. LaRussa,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97–15871 Filed 6–16–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of Arkansas for Medical Sciences; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 96–109R. *Applicant:* University of Arkansas for Medical Sciences, Little Rock, AR 72205. *Instrument:* Rapid Kinetics Accessory, Model SFA–20. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* See notice at 61 FR 55973, October 30, 1996.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent