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Administrative Review
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September 2, 2003

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Import Administration, Group II

SUBJECT: Issues and Decision Memorandum for the Eleventh Administrative Review of the Antidumping Duty Order on Heavy Forged Hand Tools (Bars and Wedges) from the People's Republic of China - February 1, 2001 through January 31, 2002

Summary

We have analyzed the comments and rebuttal comments of interested parties in the eleventh administrative review of the antidumping duty order covering bars and wedges from the People's Republic of China (PRC). As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum.

Background

On February 1, 2002, the Department published a notice of opportunity to request administrative reviews of the antidumping orders on heavy forged hand tools (HFHTs) from the PRC covering the period February 1, 2001 through January 31, 2002 (67 FR 4945). On February 28, 2002, Tianjin Machinery Import & Export Corporation (TMC), Shandong Machinery Import & Export Corporation (SMC), Liaoning Machinery Import & Export Corporation (LMC), and Shandong Huarong Machinery Company (Huarong) requested administrative reviews of the above-referenced orders. Specifically, TMC requested reviews of the hammers/sledges, bars/wedges, picks/mattocks and axes/adzes orders, SMC requested reviews of the hammers/sledges, bars/wedges, and picks/mattocks orders, LMC requested a review of the bars/wedges order, and Huarong requested a review of the bars/wedges order. Based on these requests, the Department initiated administrative reviews of TMC, SMC, LMC, and Huarong under the requested orders on

March 20, 2002. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part, 67 FR 14696 (March 27, 2002).

On May 3, 2002, LMC withdrew its request for review of the bars/wedges order. On May 10, 2002, TMC withdrew its requests for review of the hammers/sledges and picks/mattocks orders. On June 7, 2002, SMC withdrew its request for review under the picks/mattocks order. Additionally, on September 26, 2002, TMC withdrew its requests for review of the axes/adzes order and bars/wedges order, and SMC withdrew its requests for review of the bars/wedges and hammers/sledges orders. The Department rescinded these reviews on January 3, 2003. See Notice of Rescission of Antidumping Duty Administrative Review: Heavy Forged Hand Tools from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review, 68 FR 352 (January 3, 2003). The remaining review covers bars/wedges sold by Huarong. The Department published the preliminary results of this administrative review on March 6, 2003. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 10690 (March 6, 2003).

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is February 1, 2001 through January 31, 2002. The petitioner in this case is Ames True Temper (Ames).

Scope of Review

The products covered by the HFHT orders comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks and mattocks (picks/mattocks); and (4) axes, adzes and similar hewing tools (axes/adzes).

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or mat not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel woodsplitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. The HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

List of Issues On Which We Received Comments

Part I- Surrogate Country Issues

Comment 1: India as a surrogate country

Comment 2: Exclusion of Indian import prices that may be subsidized

Part II - General Surrogate Value Issues

Comment 3: The surrogate value calculation for steel

Comment 4: The surrogate value for steel billet

Comment 5: The surrogate value for brokerage and handling

Comment 6: The surrogate value for steel scrap sold by Huarong

Comment 7: The surrogate value for steel pallets

Part III- Other Comments

Comment 8: Huarong's control numbers

Comment 9: Merging Huarong's direct and indirect sales into a single database

Comment 10: Huarong's date of sale methodology and the use of entry date as the date of sale.

Comment 11: Costs for agency sales and net U.S. Price

Comment 12: Movement expenses

Comment 13: Clerical error in describing the methodology for comparing U.S. sales to normal value

Comment 14: Offset adjustment for Huarong's steel scrap

Comment 15: The application of the Sigma rule to Huarong's inland freight for the steel factor

Comment 16: Separate port charges not substantiated in the record

<u>Changes since the Preliminary Results of Review</u>

Since the preliminary results, we have made the following changes in our calculations:

1. We have corrected a typographical error in the calculation of the surrogate value for steel billet;
2. We have clarified that the Department used an average-to-transaction methodology for calculating the weighted-average dumping margin;
3. We have correctly re-labeled the CONNUMs of Huarong's indirect sales, thereby allowing the direct and indirect sales databases to be correctly merged;
4. We have assigned a separate observation number to all of Huarong's indirect sales so that observation numbers are not duplicated in the merged database; and
5. We have removed the deduction for additional port charges from our calculation of the net U.S. price.

<u>See</u> Memorandum from Tom Martin, Import Compliance Specialist, through Ronald Trentham, Acting Program Manager, to the File, "Calculation Memorandum for the Final Results," dated September 2, 2003 (Calculation Memorandum).

<u>Discussion of Issues</u>

<u>Part I- Surrogate Country Issues</u>

Comment 1: India as a surrogate country

Huarong argues that the Department should not use India as the surrogate country because of the prevalence of generally-available subsidies (including export subsidies) within India that, according to Huarong, distort import prices. Huarong states that the Department has already determined that Indian export data cannot be used in the calculation of surrogate values because of Indian subsidies. To support its claim that there are generally-available subsidies in India, Huarong notes that the Department has recently initiated two countervailing duty (CVD) cases involving products from India, one of which involves a steel product. Huarong argues that the existence of subsidies for the Indian steel industry, combined with the Department's policy of disregarding Indian export prices for surrogate values, in effect negates the validity of Indian steel import prices as representative of "in India" steel prices. Huarong contends that the Department has used domestic Indian prices when it has found that such prices are not distorted by high tariffs. Huarong extends this argument by claiming that if domestic Indian prices are distorted by subsidies, then Indian import prices must be affected by those same subsidies.

Huarong further argues that the Department should consider some third country benchmark to determine if Indian import prices are distorted due to the generally-available subsidies, and notes that it has provided Indonesian import statistics for steel billets, steel scrap, and packing cartons. Huarong notes that the Department has used Indonesian surrogate values in this proceeding in prior reviews. Huarong asserts that since the Department has more discretion in determining packing values than factor values, the Department can use Indian import prices to value packing factors, but should use Indonesia as the surrogate country for steel and other input factors.

In rebuttal, the petitioner states that Huarong's Indian subsidy argument is wholly without merit, and that Huarong has provided no information that would lead the Department to conclude that the entire Indian steel industry is beset by general subsidies. The petitioner notes that Huarong's claim is based on the recent initiation of two CVD proceedings involving Indian products, one of which has nothing to do with steel, and the other being a downstream product unconnected with subject merchandise or steel production. The petitioner argues that these recently initiated CVD proceedings are irrelevant since the subsidy allegations and the CVD margins in these proceedings have not yet been proven, investigated, or corroborated by the Department. Furthermore, the petitioner contends that Huarong's allegation that the existence of "generally-available" subsidies disqualifies the ability of the Department to rely upon import statistics from the same country is unproven, and that Huarong provides no rational explanation or relevant case law to support this conclusion. Moreover, the petitioner notes that the same argument was raised and rejected in Nation Ford Chemical Company v. United States, 166 F.3d 1373, 1378 (Fed. Cir. 1999).

The petitioner contends that if Huarong actually believed Indian import data are aberrational or distorted, it would have argued this prior to the preliminary results. Furthermore, the petitioner notes that Huarong has consistently advocated the use of Indian-based data for surrogate values, including for steel. Regarding Huarong's argument that Indonesian import statistics are a better basis from which to calculate surrogate values, the petitioner contends that the Indonesian import data provided by Huarong cover a period prior to the POR, do not identify the countries from which the imports originated, and, therefore, may include imports from excluded countries, such as non-market economy countries, and aberrational import values. As the Department must remove import data from excluded countries and eliminate aberrational data from the statistics, Indonesian data are not useable. By comparison, the petitioner claims that Indian import data are superior to the Indonesian data, as the Indian data are specific and detailed. Lastly, the petitioner notes that even if the Department were to accept Huarong's premise that Indian import statistics are distorted by subsidies, the Department must reject Indonesia as a surrogate country for the same reason. The petitioner notes that the Department has found export subsidies to exist in the Indonesian steel industry in at least two different investigations. According to the petitioner, Indonesia also maintains multiple subsidy programs, and under Huarong's logic, imports into Indonesia must also be tainted.

Department's Position:

We agree with the petitioner. As an initial matter, Huarong has provided no information indicating that the Indian steel industry benefits from subsidies. Huarong cites two recently initiated CVD proceedings involving Indian products, one of which involves a downstream steel product unconnected with subject merchandise. As we have previously stated, it is not appropriate to rely on an ongoing and incomplete CVD investigation for this purpose. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs From the People's Republic of China, 67 FR 20090 (April 24, 2002) (Folding Tables and Chairs from the PRC), and accompanying Issues and Decision Memorandum at Comment 1. Moreover, even if Huarong had provided compelling evidence of subsidization to the Indian steel industry, Huarong has provided no evidence that import prices have been subsidized, such that the Department cannot rely upon Indian import statistics. Lastly, the petitioner is correct that the same argument was raised and rejected in Nation Ford Chemical Company v. United States, 166 F.3d 1373, 1378 (Fed. Cir. 1999), where the Court held that despite the possible existence of domestic subsidies, the Indian import statistics represented the best available information. Due to these reasons, we continue to select India as the surrogate country, and have used Indian import data to calculate surrogate values.

Regarding Huarong's argument that the Department should select Indonesia as the surrogate country, and use Indonesian import statistics to calculate surrogate values, we find that Huarong has not provided any reason why the Department should rely on Indonesian import data instead of Indian import data. We agree with the petitioner's argument that comparing Indonesian import data to Indian import data only shows the relative import prices into each country, and does not provide any useful benchmark in judging the appropriateness of another country's import prices. Lastly, even if the Department were to agree with Huarong that Indian import statistics are somehow tainted by generally-available subsidies in the Indian market, we agree with the petitioner that the Indonesian import data provided by Huarong are inferior to the Indian data because the Indonesian data do not identify the countries from which the imports originated, while Indian import data are specific and detailed. Since we base our decision to use India as the surrogate country on the foregoing grounds, the Department will not address the petitioner's final point that imports into Indonesia must also be tainted.

Comment 2: Exclusion of Indian import prices that may be subsidized

Huarong argues that if the Department continues to use India as the surrogate country, thereby calculating the surrogate values based on Indian import statistics, the Department should exclude imports from all countries that have "any" subsidy. Huarong states that the Department's "subsidy suspicion policy," based on the legislative history to the 1988 amendments of the antidumping statute, requires the Department to reject subsidized surrogate values and prices from subsidized market-economy suppliers. Citing Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part, 67 FR 68990 (November 14, 2002) (TRBs XIV), Huarong argues that the Department has rejected arguments that its subsidy suspicion policy applies only where there are CVD orders on the supplier or product at issue, or where there is a finding of injury. Huarong argues that, in TRBs XIV, the Department stated that where the facts of U.S. government or third-country findings are sufficient to allow the Department to infer that there are generally-available subsidies, the Department would reject such prices. Thus, Huarong concludes that the Department must consider the suspicion of "any" subsidy to be sufficient reason to reject surrogate values. Huarong argues that, according to the Department's subsidy suspicion policy, the Department must exclude nearly every country from the Indian import statistics because nearly every country listed has generally-available subsidies. To demonstrate this argument, Huarong provides a chart listing every country that exports material inputs in Huarong's subject merchandise and has one or more of the following items: (1) an existing CVD order, (2) an existing countervailable generally-available subsidy program (as identified by the Department's Subsidy Enforcement Office), and (3) an export subsidy allegation made against it by the United States Trade Representative (USTR).

Huarong also notes that the United States acknowledged in its defense of the Continued Dumping and Subsidy Offset Act (the Byrd Amendment) before the World Trade Organization (WTO), that most countries have generally-available subsidies. Since the WTO has determined that the U.S. Foreign Sales Corporation (FSC) tax scheme is a WTO-illegal subsidy, and the United States has agreed to implement the WTO's ruling, the United States must be deemed to have export subsidies. Therefore, Huarong argues that imports into India from the United States must be deemed to be subsidized and be excluded from surrogate value calculations.

In rebuttal, the petitioner disagrees with Huarong's argument that a mere suspicion is sufficient to determine the existence of a subsidy program, which in turn would provide grounds for the Department to reject import statistics or market prices. Rather, the petitioner contends that the Department's practice is to rely on agency determinations to resolve the issue of whether or not a subsidy program does in fact exist. The petitioner states that it has not found a single determination where the Department has excluded import values or market prices from a country that was not subject to a specific CVD order issued by the United States or a third country. With respect to the exclusion of data from South Korea, Indonesia and Thailand, the petitioner asserts that the Department used the reports issued by the USTR and WTO only for the purpose of corroboration. According to the petitioner, the Department will not rely on WTO or USTR National Trade Estimate Reports On Foreign Trade Barriers (NTE Reports) as the sole source of information. The petitioner argues that the Department has stated in two proceedings that it will not consider the effect of purported subsidies on market prices or import prices where Department investigations into those subsidies have not reached a final determination. Thus, the petitioner claims that it is clear that the mere suspicion of a subsidy is not enough to exclude surrogate value data.

The petitioner also states that Huarong's argument that nearly every country would have to be excluded from Indian import data because nearly every country has generally-available subsidy programs is unsupported by logical argument or citable precedent. With regard to statements made by the U.S. Government in the context of the WTO proceeding on the Byrd Amendment, the petitioner claims that Huarong mischaracterized the WTO Appellate Panel ruling. The petitioner first states that the programs that

Huarong cites are nothing like the Byrd Amendment, and that furthermore, even though the United States cited programs in its WTO brief, the programs have not been ruled illegal by the WTO. The petitioner then argues that the WTO did not rule the Byrd Amendment a subsidy but rather a non-permissible specific action against dumping or a subsidy, and so the WTO's ruling has no bearing on any alleged subsidy program. Furthermore, according to the petitioner, Huarong's argument that Indian imports from the United States should be excluded because of the WTO ruling that the FSC tax exemption scheme constitutes a prohibited export subsidy is without precedent or merit. The petitioner states that there is no support for the assertion that U.S. exports to India are not market priced, and that Huarong has not made a connection between the FSC and Indian imports from the United States. The petitioner contends that Huarong has provided no record evidence that the U.S. producers of exports to India have foreign sales corporations. Thus, there is no evidence to support Huarong's claim that such U.S. companies are subsidized under the FSC program.

The petitioner finally notes that, even if Indian import data were corrupted by countervailable export subsidies in the United States and third countries, such subsidies would only serve to lower the Indian import prices below actual market prices. For this reason, the petitioner notes that calculating surrogate values from artificially low Indian import values would result in artificially low surrogate values. Therefore, the petitioner states that the Department's use of the India import data is a conservative measure, yielding a lower cost of production (COP) and correspondingly lower antidumping margins than actually exist.

Department's Position:

The legislative history and recent Department determinations support the principle that we should disregard prices that we have "reason to believe or suspect may be distorted by subsidies." See H.R. Rep. 100-576 at 590 (1988). See, also, Folding Tables and Chairs from the PRC at Comments 1 and 2; Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Administrative Review, 61 FR 66255 (December 17, 1996) at Comment 1. We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100-576 at 590 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination.

The Department has previously determined, based on record evidence, not to use export prices from Indonesia, Thailand or South Korea, either as market economy purchases or import statistics into India, the surrogate country for that case, because the evidence demonstrated that each of those countries maintains broadly available non-industry specific export subsidies. See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China, 67 FR 6482 (February 12, 2002) (Auto Replacement Glass) and accompanying Issues and Decision Memorandum at Comment 1. Furthermore, the Department also found that India maintains broadly available non-industry specific export subsidies. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China, 68 FR 10685 (March 6, 2003) (Ball Bearings from China) and accompanying Issues and Decision Memorandum at Comment 8. For this reason, the Department will not use export prices from India, either as market economy purchases or import statistics into a surrogate country, when calculating surrogate values for use in the non-market economy (NME) methodology. As Huarong has noted, the Department properly excluded exports into India from Korea, Thailand, and Indonesia in the preliminary results.

Contrary to Huarong's assertions, however, the Department does not have a policy of excluding all surrogate country import prices for factors of production that are exported by countries that may have generally-available subsidies, whether for domestic production or export sales. As the petitioner correctly points out, there are only a few countries that do not have such subsidies. Moreover, the legislative history instructs the Department only to reject prices of those factor values that it has a reason to believe or suspect are distorted by subsidies. Evidence of generally-available subsidies throughout an entire economy does not provide a sufficient basis to reach that conclusion. Rather, before the Department can disregard such prices, it must first make a determination that it has reason to believe or suspect that the import prices may be distorted by subsidies, and the record must support this determination. In this case, regarding the Department's treatment of factor value data from those countries, the petitioner correctly notes that the Department has in the past relied on agency and third-country countervailing duty determinations to establish whether it has a reason to believe or suspect that values from a country may be distorted by subsidies. Huarong has not established that the Department should exclude all surrogate country import prices because these prices are distorted by subsidies. See Auto Replacement Glass at Comment 1 and Ball Bearings from China at Comment 8 (where parties provided sufficient information for the Department to have reason to believe or suspect that prices were distorted by subsidies). While the Department has considered other evidence to support its decision to disregard factor values that may be distorted by subsidies, including the USTR NTE Reports or reports generated by the Department's Subsidies Enforcement Office, these reports alone provide an insufficient basis to reach such a conclusion. Lastly, regarding Huarong's arguments about the FSC tax exemption program, we have determined that, consistent with section 777A(a)(2) of the Act, it is not necessary to address the substance of Huarong's claim. Excluding U.S. export prices from Indian import statistics would result in an insignificant adjustment as defined in section 351.413 of the Department's regulations. See Calculation Memorandum at 3.

Part II - General Surrogate Value Issues

Comment 3: The surrogate value calculation for steel

The petitioner states that the Department made a mathematical error in calculating the average unit value for steel billet. According to the petitioner, the Department incorrectly subtracted 4,200 kilograms instead of 42,000 kilograms when it removed from the surrogate value calculation imports into India of steel billet from South Korea. The correction would change the surrogate value of steel billet from 11.06 rupees (Rs.)/kg. to

11.19 Rs./kg.

In rebuttal, Huarong states that it agrees that there was a minor error, but states that it is irrelevant because the Department should not use Indian import data because Indian import prices are distorted due to the presence of subsidies in the Indian steel industry. Furthermore, Huarong contends that the Department should base its surrogate value only on imports under HTS category 7207.20.09, which covers imports of ordinary steel billet, and not on HTS category 7207.20.01, which covers imports of forging quality steel billet.

Department's Position:

The Department agrees with the petitioner and has made the correction. For the Department's position on Huarong's comments regarding the appropriate HTS subheading to use, see the Department's position at Comment 4.

Comment 4: The surrogate value for steel billet

Huarong states that the Department incorrectly used Indian import categories 7207.20.01, "forging quality" steel billet and 7207.20.09, "steel billet . . .Others," to value its steel input. Huarong argues that the record evidence shows that Huarong used ordinary steel billet to produce the subject merchandise, rather than "forging quality" billet. Huarong argues that the Department must not include the HTS category for "forging quality" billet in its calculation of the surrogate value for steel billet.

Huarong cites prior reviews where the Department concluded "billet" was the correct HTS subheading, rather than "special bar quality steel," as claimed by the petitioner. Huarong also notes that during the verification for the 2000-2001 review, the Department verifiers had a telephone conversation with one of Huarong's steel suppliers regarding whether the steel should be considered a bar or a billet, and the steel supplier stated that the steel supplied to Huarong is billet because it is semi-finished steel that can be used for other purposes (e.g., used by a rolling mill to reshape into a round, square, or flat shape), and has a rough surface and uneven grain. According to Huarong, these "other purposes" mean non-forging purposes, and therefore the steel is not "forging quality." According to Huarong, this same supplier provided steel billet to Huarong during the instant POR.

Without conceding that steel billet is the appropriate basis for the steel surrogate value rather than steel bar, the petitioner argues that Huarong failed to provide any material evidence of the specific HTS category of its merchandise, as the commercial invoice that Huarong submitted to the record contains no such information. The petitioner argues that the Department may make the reasonable assumption that a producer of subject merchandise would use forging quality billet to make products that are ultimately forged. In response to Huarong's argument that the surrogate value for ordinary billet should be applied because of the lack of evidence that Huarong used any other type of billet, the petitioner states that the Department is under no obligation to confirm a fact that Huarong failed to document in the record, and that Huarong should not benefit from this absence of record evidence. The petitioner states that verification reports from prior reviews, cited by Huarong, discussed the use of billet value rather than bar value, and did not address the issue of forging quality billet value versus ordinary billet value.

The petitioner states that if the Department continues to use both forging quality billet and ordinary billet HTS categories for calculating the steel surrogate value, the Department must explain why France and South Korea were excluded from the preliminary calculation of this surrogate value.

Department's Position:

We agree with the petitioner. Although Huarong cites the verification report from the tenth administrative review to support its position that the Department found that Huarong's steel billet was not "forging quality" billet, we stated in the decision memorandum for that review that there was "nothing on the record . . . to suggest that only one quality of billet was used in the production of HFHTs . . . For these reasons, for the final results, the Department will continue to use Indian import data from both HTS 7207.20.01 ("forging quality" billet) and 7207.20.09 ("Other" billet) to value the billets used to produce the HFHTs in question." See Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 67 FR 57789 (September 12, 2002) and the accompanying Decision Memorandum at Comment 6. In short, Huarong draws a conclusion from the cited verification report that is not the conclusion drawn by the Department. Furthermore, Huarong has not placed any information on the record in the instant review that specifies which type of billet it uses in the production of subject merchandise. As Huarong is in control of the documentary evidence on the record, the burden is on Huarong to demonstrate that it uses no forging quality billet. The Department cannot speculate or make assumptions when making such determinations, but must base its decisions upon substantial evidence on the record. See China National Arts and Crafts Import and Export Corp. v. United States, 771 F. Supp. 407, 411 (CIT 1991). Therefore, we will apply all Indian import data under the steel billet HTS subheading, regardless of the type of billet, since there is no information on the record that would indicate to the Department that any of the data should be excluded from the surrogate value calculation.

In regard to the Department's exclusion of imports of steel billet into India from South Korea, the Department excluded South Korea, Thailand and Indonesia because these countries maintain broadly available, non-industry specific export subsidies that may benefit all exporters to all export markets. See Memorandum from Tom Martin, Import Compliance Specialist, through Ronald Trentham, Acting Program Manager, to the File, "Surrogate Values Used for the Preliminary Results of the Eleventh Administrative Reviews of Certain Heavy Forged Hand Tools (Bars/Wedges) From the People's Republic of China - February 1, 2001 through January 31, 2002," dated February 28, 2003, at 2 (Preliminary Factor Value Memorandum). In regard to the Department's exclusion of imports of steel billet into India from France, the Department excluded these data as aberrationally high in relation to other Indian import data for the same factor of production (FOP). We have continued to exclude imports from South Korea and France into India for the final results of review. See Memorandum from Tom Martin, Import Compliance Specialist, through Ronald Trentham, Acting Program Manager, to the File, "Surrogate Values Used for the Final Results of the Eleventh Administrative Reviews of Certain Heavy Forged Hand Tools (Bars/Wedges) From the People's Republic of China - February 1, 2001 through January 31, 2002," dated September 2, 2003, at 2 (Final Factor Value Memorandum).

Comment 5: The surrogate value for brokerage and handling

Huarong notes that, for the preliminary results, the Department used a surrogate value for brokerage and handling derived from a 1997 source document originally submitted to the Department in Stainless Steel Wire Rod From India; Final Results of Administrative Review, 63 FR 48184 (September 9, 1998) (Stainless Steel Wire Rod from India). Huarong states that it provided more contemporaneous surrogate value data in its submission dated March 26, 2003, taken from Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China, 68 FR 10685 (March 6, 2003) (Certain Ball Bearings from PRC), which cited Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 50406 (October 3, 2001) (Hot-Rolled Steel Flat Products From India). Huarong argues that the surrogate value from Certain Ball Bearings from PRC should be applied in the instant case because it is more contemporaneous than the surrogate used in the preliminary results and covers an entire year, rather than a single shipment.

The petitioner claims that Huarong's argument that the Department should change the surrogate value for brokerage and handling from the value originally submitted in Stainless Steel Wire Rod from India to the value used in Certain Ball Bearings from PRC, is unpersuasive since the Department considered the surrogate value in Stainless Steel Wire Rod from India to be more appropriate in two recent cases where the Department faced the choice of selecting from these two surrogate values. The petitioner states that the Department has consistently used the value from Stainless Steel Wire Rod from India in these two other cases, and in the past four reviews of the hand tools orders. If the Department does choose to use the value selected in Certain Ball Bearings from PRC for the brokerage and handling surrogate value, the Department should ensure that this surrogate accounts for all transportation services, or else add such services as containerization and port storage in separate fields. The petitioner also argues that brokerage and handling charges should be applied to all sales, regardless of whether Huarong claims to have incurred these charges, since the commercial terms of all of Huarong's reported sales indicate that Huarong incurs brokerage and handling expenses. The petitioner notes that the Department has stated in other proceedings that brokerage and handling expenses are among the expenses incurred to bring merchandise to the customer's place of delivery for both FOB and CIF sales.

Department's Position:

We disagree with Huarong that the brokerage and handling surrogate value from Hot-

Rolled Steel Flat Products from India should be applied rather than the surrogate value from Stainless Steel Wire Rod from India. The Department has stated in past cases that it "prefers to select values that are 1) for products as similar as possible to the input being valued, 2) contemporaneous with, or closest in time to the POR, and 3) representative of a range of prices in effect during the POR." See Final Results of the Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China, 66 FR 46775 (Sept. 7, 2001), and accompanying Issues and Decision Memorandum, at Comment 16. For the purposes of the surrogate value for brokerage and handling, product similarity is of key importance because dissimilar products may have dissimilar logistical requirements. Although the surrogate from Hot-Rolled Steel Flat Products from India is closer in time to the instant POR, and is representative of a range of prices covering a longer period of time, we find that stainless steel wire rod is a product more similar to bars and wedges due to the fact that both products are small in diameter. Hot-rolled steel flat products, on the other hand, have little in common with bars and wedges, other than that they are both made of steel.

We note that Essar, the respondent in Hot-Rolled Steel Flat Products from India, produces and ships hot-rolled steel flat products in coils. See Memorandum from Timothy Finn, Import Compliance Specialist, and John Conniff, Import Compliance Specialist, to The File, "Verification of the Sales and Cost Responses of Essar Steel Ltd. in the Antidumping Duty Investigation of Certain Hot-Rolled Carbon Steel Flat Products from India," dated July 20, 2001, at 14. While stainless steel wire rod is also coiled, the wire rod coils are smaller than the large coils used in hot-rolled flat products and are packed in a manner more similar to bars and wedges. Specifically, the subject merchandise in Hot-Rolled Steel Flat Products from India was not containerized cargo. Id. The subject merchandise in Stainless Steel Wire Rod from India was containerized cargo. See Viraj's March 16, 1998, Section A submission at 80. Huarong's bars and wedges are shipped in containers, see Huarong's March 29, 2002, Section C & D response at Exhibit 10. For these reasons, we find that the brokerage and handling surrogate value from Stainless Steel Wire Rod from India is the best available information. Therefore, we have made no change for the final results.

Comment 6: The surrogate value for steel scrap sold by Huarong

Huarong states that if the Department uses Indian import statistics to value Huarong's scrap offset, the Department should use HTS category 7204.49.09. Huarong states that while the record contains Indian steel scrap surrogate values for HTS categories 7204.49.01 and 7204.49.09, category 7204.49.01 covers "Defective Sheet of Iron and Steel," and the scrap Huarong sold was not sheet. Huarong states that category 7204.49.09 covers "Other" waste and scrap, which more closely approximates the type of scrap material it sold.

The petitioner did not comment on this issue.

Department's Position:

We agree with Huarong that the HTS subheading 7204.49.09 is more appropriate for the type of scrap generated from Huarong's production process. We note that we did apply only quantity and value data for HTS subheading 7204.49.09 for calculating the steel scrap surrogate in the preliminary results. Therefore, there will be no change for the final results.

Comment 7: The surrogate value for steel pallets

The petitioner states that the Department incorrectly applied, without explanation, the value of Indian imports of steel scrap from HTS 7204.49.09 as the surrogate value for Huarong's steel pallets. Although Huarong claimed in its October 23, 2002, response that the steel it uses for pallets is scrap, the petitioner contends that the purchase invoice it provided to support this claim makes no mention of the grade of steel, but indicates that the steel is "flat steel" and provides specific size specifications. Furthermore, the petitioner claims that the price paid for the steel, when converted to U.S. dollars from Chinese currency, corresponds more closely to the market price for a finished steel product rather than for steel scrap. The petitioner asserts that the Department should value the steel using Indian import data for steel sheet and strip from HTS 7211.14.00 and 7211.19.00, which the petitioner provided to the Department in its March 26, 2003, submission.

In rebuttal, Huarong states that the basis for the petitioner's claim is unclear since the petitioner stated without supporting documentation in its March 26, 2003, submission that HTS categories 7211.14.00 and 7211.19.00 are flat sheet which can be easily cut to size and bonded together to make packing material. Huarong states that the steel used for pallets is not purchased from steel companies, but from steel users, specifically auto parts factories. Huarong states that it is curious that the petitioner has never attempted to argue in prior reviews that the transfer prices between Chinese companies shown on purchase invoices, in Chinese currency, should be used to evaluate potential surrogate values. According to Huarong, the record does not support the petitioner's argument that the purchase invoice value of the pallet steel indicates that the steel is undervalued since the Indian surrogate value for the petitioner's cited HTS categories is much higher. Huarong also states that while a surrogate value based upon scrap of flat steel would suffice, the Department should use Indonesian, rather than Indian, data for the pallet steel surrogate value.

Department's Position:

We agree with Huarong. According to the invoice submitted by Huarong in Exhibit 6 of its October 23, 2002, submission, Huarong purchased the steel that it used to make pallets from an auto part manufacturing company which manufactures steel flat springs, thus indicating that the steel used to make the pallets was a by-product of steel flat spring manufacture. The Harmonized Commodity Description and Coding System Explanatory Notes, Third Edition (2002) published by the World Customs Organization, although not dispositive or legally binding, is generally indicative of the proper interpretation of harmonized tariff headings. Explanatory Note 72.04(A)(1) states that the 7204 heading covers "waste and scrap of iron or steel . . .of a miscellaneous nature that generally takes the form of . . . waste and scrap from the manufacture or mechanical working of iron or steel." Therefore we will continue to value the steel Huarong uses to create its pallets using a classification for steel scrap under the 7204 heading, and specifically at the subheading 7204.49.09.

Part III- Other Comments

Comment 8: Huarong's control numbers

The petitioner contends that Huarong has defined its control numbers (CONNUMs) using physical criteria not in compliance with the Department's questionnaire. According to the petitioner, Huarong has gone beyond physical characteristics and instead is using internal and external product codes as the basis of its reported CONNUMs, which is contrary to the Department's methodology and instructions. The petitioner contends that Huarong's disregard for the instructions contained in the Department's questionnaire requires the use of facts available.

The petitioner states that Huarong admitted in its February 4, 2003, supplemental response that certain allegedly unique CONNUMs were actually the same merchandise. The petitioner argues that although the Department attempted to address this problem in the preliminary results by re-labeling the sales and re-averaging the FOPs for products with identical factory codes under a single CONNUM, this does not address the fact that even these groupings do not conform to the physical criteria that Huarong should be using to distinguish different merchandise. According to the petitioner, the Department's initial questionnaire directed Huarong to assign a control number to each unique product and then referred Huarong to Appendix III for the physical criteria to be used in determining what constitutes a unique product. The petitioner states that Appendix III defines only four unique products (hammers/sledges, bars/wedges, pick/mattocks and axes/adzes) that correspond to the four classes of subject merchandise. The petitioner argues that, as the record stands, the Department intended there to be only one CONNUM for bars/wedges.

The petitioner continues by stating that, if the Department intended Huarong to distinguish products by length, diameter, tip-shape, etc., it would have included a field in its questionnaire for each of these physical characteristics. The petitioner contends that the Department made no such request. According to the petitioner, Huarong based its CONNUMs entirely on its customers' product codes and the descriptions contained in Huarong's invoices, rather than following the Department's standard practice of using a code based upon physical characteristics. The petitioner states that physical characteristics are the Department's primary basis for determining comparability of products under the definition of "foreign like product," citing Koyo Seiko Co., Ltd. v. U.S., 66 F.3d 1204, 1210 (September 20, 1995).

The petitioner asserts that because there is only a single CONNUM per class or kind, based upon the Department's questionnaire, Huarong's response is deficient. Huarong has failed to report its factors of production based on a single CONNUM, and has also failed to provide the production quantities of each "product" such that the Department can weight-average Huarong's suggested CONNUM scheme. Because Huarong is in possession and control of its own sales and production records, the petitioner argues that Huarong has failed to cooperate to the best of its ability. Therefore, the petitioner concludes that Huarong's final results must be based on adverse facts available (AFA).

In its rebuttal brief, Huarong first observes that it addressed this issue in its February 24, 2003, submission, and referenced those arguments in its rebuttal brief by attaching this submission in its appendix. In this prior submission, Huarong stated that (1) the Department has not required Huarong or other respondents in this proceeding to report their sales in any other way; (2) the Department's questionnaire indicates, according to Huarong, that a separate control number should be assigned to every product with the unique product code assigned in the normal course of business; (3) Huarong reports its costs in the same manner as do the other respondents in cases cited by the petitioner; (4) its reporting methodology ensures that the Department calculates a margin as accurately as possible; (5) different CONNUMs and product codes are assigned to products based upon customer requirements that products protected by trademarks be differentiated from those that are not; (6) having CONNUMs that match product codes helps the Department trace commercial invoice sales through Huarong's accounting system during verification; (7) the consumption rates for the FOPs are the same for the products reported under multiple CONNUMs, so that combining the multiple CONNUMs into a single CONNUM results in no change to the calculation of that product's normal value; and (8) Huarong's CONNUM methodology allows the Department to track specific sales to each importer for assigning importer-specific assessment rates.

Huarong continues its rebuttal arguments by stating that it followed what it understood to be the Department's instructions, submitting its U.S. sales list in the same format it had submitted in all of its prior U.S. sales lists. Huarong notes that the petitioner never commented on those prior submissions. Huarong also states that the Department cannot resort to facts available, because by reporting more CONNUMs rather than fewer, Huarong could only have over-reported rather than under-reported its sales. Furthermore, Huarong argues that if there was a deficiency in its reporting, the Department is obligated to give Huarong an opportunity to remedy that deficiency. Huarong observes that the Department has not advised Huarong that its responses were deficient. According to Huarong, the Department cannot resort to adverse facts available because Huarong's reported CONNUMs do not impede the Department's analysis and the petitioner has not demonstrated that they do. In fact, Huarong argues that its CONNUMs provide more detail, thereby allowing the Department to more easily match reported sales to invoices during verification and facilitating the assignment of importer-specific margins. In its brief, Huarong also states that the Department erred in revising its control numbers. Huarong states that it has followed the same control number methodology since it started participating in these reviews.

The petitioner states that Huarong's argument that it has reported different CONNUMs for identical merchandise since it started to participate in the hand tools reviews is not relevant to the instant review. According to the petitioner, the Department is not bound by past mistakes and the repetition of a respondent's errors from past reviews does not constitute acceptance. The petitioner argues that the definition of "foreign like product" requires that identical merchandise be assigned the same CONNUM, and identical merchandise is defined by physical criteria set forth in the Department questionnaire. In this instance, the petitioner states that since the Department's questionnaire does not specify any physical criteria beyond the four classes or kinds of heavy forged hand tools, Huarong failed to follow the Department's instructions to report a single CONNUM for all bars and wedges. The petitioner also claims that Huarong failed to provide a means to re-average its multiple CONNUM cost and sales data into a single CONNUM. The petitioner cites Folding Tables and Chairs from the PRC at Comment 18, stating that the Department considers that the physical criteria set forth in the Department's questionnaire are controlling, and the Department does not reassign CONNUMs based upon criteria that are not in the questionnaire. The petitioner reiterates its position that Huarong's CONNUM system must be rejected and that the Department should apply total facts available.

Department's Position:

We agree with Huarong. Although the petitioner is correct in that Huarong's methodology results in multiple CONNUMs being assigned to the same merchandise, the Department never requested that Huarong revise its CONNUM methodology. Instead, the Department decided in the preliminary determination to use the information on the record and re-label Huarong's CONNUMs so that each product has a unique CONNUM. Moreover, the statute requires that the Department provide parties with an opportunity to cure their defects before resorting to facts available, to the extent practicable. See Section 782(d) of the Act. Huarong is correct in stating that it has applied the very same control number methodology in prior reviews, and that it is a methodology based upon internal company product groupings, or product codes. The Department intends to change this divergence from its general practice by clarifying its requests with respect to control number methodology in reviews subsequent to the instant review.

Although the petitioner is correct that the Department's March 29, 2002 general questionnaire does not define "unique products" as Huarong has reported them, the Department's January 22, 2003, supplemental questionnaire requested information allowing the Department to regroup the CONNUMs in order to calculate an accurate dumping margin. Thus, this supplemental questionnaire overrides any direction, or lack of direction, provided in the original questionnaire. As Huarong provided the necessary information in the supplemental response, the Department was able to re-label Huarong's CONNUMs. Moreover, since Huarong correctly reported the same FOP data for the products it originally reported under multiple CONNUMs, Huarong's original reporting methodology has not impeded the Department's ability to calculate Huarong's margin.

There is no reason for the Department to disregard Huarong's FOP data for models that Huarong has stated are identical, and which can be used to calculate specific normal values for these groupings of identical merchandise. The Department does not consider the use of facts available, or the grouping of all of the data into one CONNUM, to be necessary in this instance.

Comment 9: Merging Huarong's direct and indirect sales into a single database

The petitioner claims that the Department failed to correctly rename the CONNUMs in Huarong's indirect sales database. As a consequence of the wrongly labeled CONNUMs, the petitioner asserts that Huarong's indirect sales were merged with the wrong sales in the direct sales database and, in some instances, certain indirect sales were assigned the wrong FOP. The petitioner argues that the Department should renumber the CONNUMs in the indirect sales listing database so that the sales are correctly merged and the FOP data is correctly assigned to each CONNUM. The petitioner also notes that when the Department merged the two sales databases, the Department failed to renumber the observation numbers of the indirect sales. This resulted in the indirect sales retaining observation numbers that are already used in the direct sales database. The petitioner claims that it is impossible to fully analyze Huarong's direct and indirect sales unless the observation numbers are adjusted because the SAS program for certain calculations uses these numbers.

Huarong also argues that the Department incorrectly merged its indirect sales database into its direct sales database due to incorrectly re-labeling the CONNUMs of the indirect sales. Huarong notes that this error resulted in normal values being wrongly assigned to certain indirect sales. According to Huarong, the changes required to correct the merging error are ministerial in nature and, if done correctly, should result in no change in the margin.

In rebuttal, the petitioner states that Huarong has not provided enough detail for the petitioner to agree or disagree with Huarong's arguments on this topic. The petitioner notes that Huarong did not specifically state in its case brief which CONNUMs and normal values were incorrectly assigned by the Department. Moreover, the petitioner notes that Huarong did not provide any detail regarding these errors nor did it specify a remedy. For these reasons, the petitioner concludes that the Department should reject Huarong's ministerial error argument as incomplete.

Huarong rebuts the petitioner's arguments by noting that it explained the error in its case brief so that the Department may make the corrections itself. Huarong notes that the Department can rename and regroup the reported CONNUMs to achieve the desired result of having one CONNUM for each separate product. Thus, Huarong concludes that the Department cannot find that Huarong has not acted to the best of its ability or impeded the review. Consequently, Huarong states that the Department cannot use facts available or derive an adverse inference in calculating its margin.

Department's Position:

We agree with both parties that the Department incorrectly re-labeled the CONNUMs in Huarong's indirect sales database. We have corrected this error for the final results. As the indirect sales have now been assigned the correct CONNUMs, the additional errors that resulted from this labeling error (such as assigning the wrong FOP data to certain indirect sales) have likewise been corrected. In making this correction, we found that one CONNUM pertaining to one indirect sales observation had no submitted FOPs, since Huarong did not make a direct sale of the same CONNUM. We obtained the FOP data for this tool from data submitted by another respondent that sold tools produced by Huarong. Lastly, we agree with the petitioner that the Department failed to assign the indirect sales unique observation numbers, thereby duplicating certain observation numbers in the merged database. We have also corrected this error for the final results.

Comment 10: Huarong's date of sale methodology and the use of entry date as the date of sale.

The petitioner states that, pursuant to section 351.213(e)(1) of the Department's regulations, administrative reviews cover, as appropriate, entries, exports, or sales of the subject merchandise during a twelve-month period. According to the petitioner, Huarong must choose only one basis for sales reporting, and that to use more than one basis for sales reporting is cause for the Department to apply total AFA. According to the petitioner, Huarong uses the invoice date as the date of sale, but reported its universe of sales based on invoice date only if the entry date occurred during the POR. The petitioner argues that the appropriate sales universe consists of sales with either invoice dates during the POR or entry dates during the POR, not a conditional requirement that both dates be during the POR as Huarong has reported. The petitioner characterizes this date of sale methodology as "hinged." Since Huarong has self-selected its universe of sales, the Department should apply AFA for the final results.

The petitioner also argues that the reported date of entry is based on hearsay evidence, since Huarong is not the importer of record for its U.S. sales, nor is it the source for entry date information, and therefore the entry date is an inappropriate source for determining the universe of sales. The petitioner states that (1) Huarong relies on third parties to provide the alleged entry dates, and that the Department should disregard this information because such third parties are not subject to verification; (2) third parties eventually pay all duties and therefore have self-serving interests in not correctly reporting the entry date; and (3) the third party information was not filed with the appropriate certifications set forth at sections 351.303(g)(1) and (2) of the Department's regulations. Furthermore, the petitioner states that evidence on the record shows that either Huarong, or the third party, or both acting in concert, are selectively reporting information to its/their own benefit, since some third parties and Huarong were able to cooperate with respect to date of sale information, but one third party failed to cooperate. The petitioner contends that if the Department continues to accept Huarong's date of sale methodology, it should seek confirmation from the Bureau of Customs and Border Protection (BCBP) of the entry dates for all sales near the beginning and end of the POR, and place this information on the record as it did in the previous administrative review, or alternatively, the Department should ask Huarong to revise its sales database to reflect either exports or sales made during the POR rather than entries.

In rebuttal, Huarong notes that the Department imposes the date of sale methodology based upon entry date. Huarong argues that the petitioner misreads Huarong's responses when it states that Huarong only reported sales both invoiced and entered during the POR. Huarong states that the entry date is the basis for reporting sales, and that although Huarong's reported date of sale for each sale is the invoice date, all sales entered during the POR are reported. Huarong states that it relies on entry information provided by importers to provide these data.

Department's Position:

We agree with Huarong, and have therefore made no changes with respect to the date of sale methodology for the final results. The petitioner has mischaracterized Huarong's reporting methodology as "hinged." The petitioner suggests that Huarong is free to report sales according to either their entry date or their invoice date, and thus is free to create its own universe of sales. This is not the case. Huarong clarified in its January 22, 2003, supplemental response that it used entry date as the basis for reporting its sales. In this submission, Huarong stated that it "reviewed all its invoices during the pertinent time period and asked their importers to confirm the entry dates." Since Huarong has used the same methodology for past reviews, and this methodology is based upon entry date, the Department is satisfied that this methodology, if consistently applied from review to review, will capture all sales entered into the United States.

Comment 11: Costs for agency sales and net U.S. Price

The petitioner states that the Department failed to account for certain costs associated with agency sales in calculating net U.S. price. The petitioner states that the agency agreement specifies that the agent provide certain services, some of which are properly considered brokerage and handling. Since Huarong pays the agent in a market economy currency, the petitioner argues that the Department should directly deduct costs associated with agency sales from U.S. price. Lastly, since the costs associated with agency sales are payment for various services, the petitioner recommends that the Department continue to use the surrogate value for brokerage and handling and deduct this expense from U.S. price.

In rebuttal, Huarong states that the petitioner provides no administrative or court cases to support its claims. Huarong contends that the services provided by the agent do not include brokerage and handling, as others provide these services. Furthermore, Huarong claims that the Department should not deduct the cost associated with agency sales because these are internal Chinese activities, just as the Department does not deduct separate expenses when sales are made through trading companies.

Department's Position:

We agree with Huarong. The Department does not make circumstance-of-sale-adjustments in NME cases for differences in commissions. See Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 48026 (September 17, 2001) at Comment 6; Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706 (May 3, 2000) at Comment 13. Therefore, for the final results, the Department will not make the adjustment advocated by the petitioner.

Comment 12: Movement expenses

The petitioner states that the Department should ensure that inland freight, ocean freight, or foreign brokerage and handling surrogate values are calculated to account for wharfage, stevedorage, drayage, berthage, terminal handling, lashing, containerization, demurrage, cartage, and storage in the PRC. First, in regard to containerization, the petitioner argues that, although the Department has correctly based its port charge surrogate value on full twenty foot containers, and has also correctly included the labor cost of packing the merchandise on pallets, the Department has not included the labor costs required for fabricating the pallets, nor has the Department included containerization or containerization labor factors. Second, the petitioner argues that the Department should calculate port charges and brokerage and handling charges for all FOB, CFR and CIF sales, since these delivery terms specify that Huarong is responsible for all brokerage, wharfage, stevedorage, and lashing and containerization of pallets, and that this must be accounted for in the final results. Third, the petitioner states that the surrogate value for the port charge of Rs. 2,600 applied by the Department in the preliminary results covers charges for the handling and movement of containers from the container yard to the ship, but fails to account for the movement of the merchandise from the truck to the container yard. The petitioner states that this Rs. 400 per container charge is listed in the same schedule, three lines below the Rs. 2,600 charge. The petitioner states that the Department should include this movement expense for the final results.

In rebuttal, Huarong argues that the petitioner's request for the Department to ensure that all movement charges are properly included and accounted for in the margin calculations is not a timely filed request. Huarong states that the petitioner's allegations are based upon assumptions not on the record and have no factual support. Huarong states that it reported all charges, and if there are any remaining questions, the Department must grant Huarong time to respond to any perceived deficiencies. Huarong states that, in any event, such incidental movement charges would be so small that the Department should disregard them as a matter of policy, pursuant to section 777A(a)(2) of the Act.

Department's Position:

We disagree with the petitioner that certain freight handling expenses are not included in the brokerage and handling surrogate value that we applied in the preliminary results. The petitioner is correct that some, but not all, of the miscellaneous handling expenses it identified are necessary expenses incurred when exporting a product, and it is reasonable to assume that the exporter ultimately pays for these costs (for FOB and CIF shipments). The freight forwarder (the party that pays such charges directly in its role of coordinating freight traffic) may bill the exporter for these expenses as a separate line item or consolidate it with other expenses into a single invoice line item. The key question, however, is whether these expenses are included in the brokerage and handling surrogate value or in the ocean freight surrogate value. In the instant case, as acknowledged by the petitioner, the surrogate value for ocean freight includes only the cost of ocean freight, and no other miscellaneous expenses. See Factor Memo at 7 and Attachment R. In regard to the brokerage and handling surrogate value, we note that the original source document for this surrogate value provides no information regarding the specific expenses aggregated into the identified rupee cost. See Factor Memo at 7 and Attachment T. Since the source document for this surrogate value does not identify the specific expenses it covers, we reviewed the public record of Stainless Steel Wire Rod from India in an attempt to identify the specific expenses the brokerage and handling surrogate covers. We found nothing to indicate whether the miscellaneous handling expenses cited by the petitioner are or are not covered by this surrogate value. In the absence of clear evidence, the Department must rely upon its judgment regarding how such expenses are normally paid.

Although there are exceptions to this practice, it is the Department's experience that the freight forwarder typically pays all of the miscellaneous expenses necessary to export a product, and then bills its customer (typically, the exporter) for these costs. Absent evidence to the contrary, it is reasonable to assume that the brokerage and handling surrogate value captures these costs. Therefore, as it is likely that the brokerage and handling surrogate value used in the preliminary results includes these miscellaneous handling expenses, we have not included the additional handling expenses identified by the petitioner in our calculation of net U.S. price. To avoid possible double counting, we have only deducted foreign brokerage and handling.

Regarding containerization, in our review of the public information in Stainless Steel Wire Rod from India, we found evidence indicating that the brokerage and handling surrogate value from Stainless Steel Wire Rod from India contains expenses related to the containerization of cargo. For this reason, we did not include containerization in the net U.S. price calculation. See Viraj's March 16, 1998, Section A submission at 80.

Furthermore, we note that two of the miscellaneous handling expenses noted by the petitioner are not necessarily incurred when exporting a product. Specifically, demurrage and storage charges are not necessarily incurred if freight is properly expedited. There is no record evidence to indicate that Huarong incurred demurrage and storage costs for any sale of subject merchandise during the POR.

The Department also notes that Huarong's response at Field Number 17.0 (Brokerage and Handling) and its response at Field Number 9.0 (Terms of Delivery) in some instances are inconsistent. In the Department's initial questionnaire, we requested that Huarong “(d)escribe the terms of delivery offered and indicate the code used for each. The codes for delivery terms listed above are examples only. You need not use them.” Huarong reported that it paid no brokerage and handling for only some of its sales, however, it listed as terms of delivery, “CIF,” “FOB” and “CNF.” Although the international commercial terms CIF and FOB properly include brokerage and handling for the account of the seller in a business transaction, and thus Huarong’s response would appear contradictory, these terms are not defined on the record. Terms such as these often take on idiosyncratic meanings in the general course of business, and any meaning applied to these terms from an official source may not have any bearing on actual transactions. The Department did not require that Huarong report a commercial term in conformity to its official meaning, or it would have stated so in its request. The reported term “CNF” is not an official term at all, and the Department need not speculate as to its meaning. Were it not for specific indications of the division of costs between the buyer and seller in the transactions at hand, the Department could interpret such terms, within its discretion. In the preliminary results, where there was such inconsistency between the commonly understood meaning of a term of sale, and a response to a specifically defined field, the Department applied Huarong’s response to the specifically defined field in its U.S. price calculations. We continue to do so for the final results.

Comment 13: Clerical error in describing the methodology for comparing U.S. sales to normal value

The petitioner states that in the preliminary results there is an inconsistency between the SAS margin calculation and the margin calculation memorandum with respect to the Department’s stated methodology for comparing U.S. sales to normal value. The petitioner notes that while the preliminary SAS margin calculation program conducted an average-to-transaction comparison under section 351.414(b)(3) of the Department’s regulations, the margin calculation memorandum indicates that the Department intended to make an average-to-average comparison under section 351.414(b)(l). According to the petitioner, the portion of the SAS margin program that performs the average-to-average comparison that the Department apparently intended to use was not activated.

Furthermore, the petitioner argues that it would be an error for the Department to base the margin calculation on an average-to-average comparison under section 351.414(b)(1), as was its stated intention in its margin calculation memorandum, since section 351.414(c)(2) directs the Department to use the average-to-transaction methodology under section 351.414(b)(3) in an administrative review. The petitioner claims that it is clear from reading the Statement of Administrative Action (see H.R. Doc. No. 103-316 (1994) (SAA)) that the Department, Congress, and the negotiators to the Uruguay Round Agreement considered that the average-to-average methodology applies only to investigations, not reviews.

In rebuttal, Huarong states that the petitioner’s discussion is too general, and merely characterizes potential problems without identifying any issue to which Huarong can respond, and therefore the petitioner’s comments should be rejected as vague and speculative.

Department's Position:

The Department incorrectly stated in the margin calculation memorandum for the preliminary results that it intended to apply an average-to-average comparison of U.S. sales to normal value. The Department's use of the average-to-transaction methodology in the preliminary SAS margin program is consistent with section 351.414(c)(2) and was the actual intended methodology. We have revised our calculation memorandum for the final results to reflect the fact that the Department's methodology in reviews utilizes average-to-transaction comparisons.

Comment 14: Offset adjustment for Huarong's steel scrap

The petitioner states that the Department properly did not accept Huarong's steel scrap offset in the preliminary results. The petitioner states that the list of steel scrap sales in Huarong's February 13, 2003, submission is untimely new factual information in its entirety. According to the petitioner, this submission demonstrates a failure by Huarong to respond to the Department's request and a failure to cooperate to the best of its ability. The petitioner states that the Department should reject Huarong's belated attempt to add to the record, return the February 13, 2003, submission as untimely, and continue to disregard Huarong's scrap offset for the final results.

The petitioner continues by stating that Huarong has departed from its own accounting books and records to report its factors of production, instead using a "caps" methodology for steel usage that is based on budgeted rather than actual usage rates. Furthermore, the petitioner notes that the "caps" methodology fails to account for variances, as the Department requires when a respondent uses estimates. According to the petitioner, the Department allows offsets only where respondent can quantify and justify the amounts. The petitioner contends that Huarong's "caps" methodology for scrap results in an offset that varies wildly from product to product. According to the petitioner, the Department has previously determined, and the courts have upheld, that a "caps" methodology that fails to account for variances between actual production and budgeted amounts constitutes a failed response. The petitioner notes that the Department requested Huarong to report a scrap offset based upon its actual sales of scrap and production of subject merchandise. The petitioner argues that Huarong's response to this question was uncooperative.

The petitioner also notes that although the Department preliminarily denied Huarong's claimed scrap offset, the Department incorrectly reduced the gross weight of the merchandise by the reported scrap weight. The petitioner cites to the spreadsheet entitled "Huarong Costs Consolidated.wk4." where column S calculates the weight per piece. The petitioner states that the formula in column S subtracts the reported scrap weight from the reported gross steel weight by subtracting the scrap weight recorded in column H. The petitioner argues that it is important to calculate the weight per piece correctly because it is used to calculate certain movement expenses. The petitioner argues that the

Department should recalculate the weight field and the UNITKG field for the final results by deleting the reference to column H from column S.

In its brief, Huarong argues that, in the preliminary determination, the Department incorrectly disallowed the scrap offset in calculating Huarong's normal values. Huarong states that the Department disallowed the scrap steel offset because (1) Huarong did not report the scrap offset using its actual sales of scrap, and (2) Huarong did not attempt to calculate a scrap offset by allocating scrap sales to subject merchandise or by using any other reasonable methodology. Huarong states that it did supply its "actual sales of scrap" during the POR and its actual production, by weight, for the POR. Huarong further notes that the Department verified Huarong's scrap sales for the 1999-2000 POR and 2000-2001 POR and made offset adjustments. Huarong continues, stating that in its June 24, 2002, submission, Huarong reported the amount of scrap per item and explained that "{t}he amount of scrap is calculated by taking the difference between sheared piece used for forging and the finished weight of the item," and also supplied sample receipts for its scrap sales. In its October 23, 2002, submission, Huarong states that it reported that it sold 100% of the scrap steel generated from the production of the subject merchandise, and that no scrap generated from the production of the subject merchandise was used internally (e.g., to make pallets) or to produce hand tools or other non-subject merchandise. In the same submission, Huarong states that it reported the amount of steel used in its wrecking bar workshop, crow bar workshop, and rolling workshop, and that it tied those steel production figures to the financial records of the company. In the Department's January 22, 2003, supplemental questionnaire, the Department requested that Huarong report a revised per-unit scrap offset which equals the total quantity of scrap generated from production of subject bars sold during the POR, divided by the total quantity of subject bars produced during the POR. In its February 4, 2003 response, Huarong provided sample scrap steel sales invoices and stated that it collects and sells all of the scrap it generates. More importantly, Huarong stated in the February 4, 2003 submission that it does not separate steel scrap according to subject and non-subject merchandise scrap, nor does it make scrap sales on a regular basis. For these reasons, Huarong asserts that its scrap sales do not correlate with specific products or periods of production. Huarong claimed that there is no way to correlate production of specific products and corresponding scrap sales, based upon the records that it maintains.

Huarong continues by noting that it submitted, in its February 13, 2003 response, a complete list of its scrap sales made during the POR and stated that the amount of time the Department provided for the previous response regarding scrap sales was insufficient. Huarong states that since the Department did not make any reference to Huarong's February 13, 2003, submission in the preliminary results, it assumes that the Department inadvertently overlooked the submission, or did not have time to include this submission in the preliminary results.

Huarong argues that the quantity of actual POR scrap sales contained in its February 13, 2003 response, and steel consumption data reported in its October 23, 2002 submission, can be used to judge the reasonableness of its reported "caps" for scrap. To demonstrate that the caps are reasonable, Huarong calculated the scrap yield percentage by dividing the total reported scrap weight (based on caps) from subject merchandise by the reported total finished weight of subject merchandise. Huarong compared this cap-based yield percentage to a yield percentage calculated based on its actual scrap sales and steel consumption data. Huarong divided the total weight of scrap sales during the POR by the total steel consumed in the production of subject and non-subject bar/wedge products. In comparing the two percentages, Huarong notes that the percentage based on reported scrap weight (i.e., caps) is slightly lower than the percentage based on sales of scrap. As these two percentages are reasonably close, Huarong concludes that the Department can use the information regarding Huarong's sales of scrap to judge the reasonableness of its reported scrap weight, which are based on "caps." Moreover, Huarong asserts that this is the same methodology used by the Department to verify the reasonableness of Huarong's reported steel input figures and consumption in the 2000-2001 POR. Using a similar test to the reasonableness test that the Department applied in the 2000-2001 review, Huarong's scrap sales are reasonable (and even below) the factory average using actual sales.

In rebuttal, the petitioner contends that Huarong's case brief contains new factual information since it raises arguments based upon its February 13, 2003 submission, which was filed nine days after the deadline. If the Department does accept the facts contained in this submission, the petitioner argues that the Department should still reject the submission, as well as the relevant portion of the case brief, and then request that Huarong place this information on the record. According to the petitioner, once Huarong places this information on the record, the Department must allow the petitioner ten days to rebut the information with additional information pursuant to section 351.301(c) of the Department regulations, and have an opportunity to file a separate case brief on the issue. The petitioner states that there is no provision in statute or regulation allowing the retroactive conferral of timeliness. In rebuttal of Huarong's argument that its scrap offset has been verified in prior reviews, the petitioner strongly objects to Huarong's use of verification reports from prior reviews in lieu of actual current answers, since each segment must reflect current data and descriptions, while past successful verifications do not remedy current failures.

In rebuttal to the petitioner's case brief, Huarong states first that its February 13, 2003, submission containing the scrap steel data was never rejected by the Department, and that the nine day deadline and four day extension set by the Department for a response to its January 22, 2003 supplemental questionnaire were insufficient due to the Chinese New Year holiday. Huarong states that the Department is required to allow sufficient time for its responses, in order to allow Huarong a meaningful opportunity to participate in the review process, and the time allowed was not sufficient. Huarong also adds that in the previous questionnaire, dated October 9, 2002, the Department asked a number of steel scrap related questions that Huarong gave timely responses to, and in that questionnaire the Department did not feel it necessary to ask Huarong for its complete scrap sales records.

Huarong continues by stating that the information in the February 13, 2003, submission is sufficient for the Department to make the scrap adjustment, and the failure of the Department to include the adjustment in the preliminary results must have been inadvertent, or else there may have been too little time to incorporate the information in the preliminary results. Huarong adds that the Department may now incorporate the submission in the final results. Huarong contends in rebuttal that the reason why some scrap caps vary product by product is due to different sizes and production processes, noting that some bars are made with billet that Huarong rolls, while others are made with unrolled billets. According to Huarong, the "caps" can be verified using a reasonableness test such as the Department used for Huarong's steel and paint in the 2000-2001 POR, since the record contains Huarong's total production of subject and non-subject bar/wedge merchandise and Huarong's total scrap sales.

Lastly, in rebuttal to the petitioner's argument that the Department should use the gross steel input weights for calculating movement expenses rather than the reported finished weight (which are net of scrap), Huarong states that the net weights of the subject merchandise can be determined independently through shipping documents on the record. As the finished weights are not in question, and these are the weights identified in the commercial transaction, the Department should use the finished weights in the freight expense calculations.

Department's Position:

This comment covers two issues: (1) whether Huarong's February 13, 2003, submission should be considered untimely and removed from the record of this review and (2) whether the Department should continue to deny Huarong's request for a scrap offset. Based upon the record evidence, the Department finds that Huarong's February 13, 2003, submission is untimely. However, for the reasons discussed below, we have decided to allow this submission to remain on the record of this review. In addition, the Department agrees with the petitioner that it is appropriate to deny Huarong's request for a scrap offset.

With regard to the first issue, we note that Huarong's original deadline for submitting the requested information was January 31, 2003. However, pursuant to Huarong's request, the Department granted an extension of four days to February 4, 2003. However, in its February 4, 2003, submission, Huarong did not comply with our request for providing a scrap offset based upon its actual sales of scrap during the POR. Instead, Huarong stated that it would submit information regarding its scrap sales after the stated deadline, when such information could be collected. At no time did Huarong request a second extension. Although the February 13, 2003, submission is untimely, the Department did not immediately reject this response because we did not have time to fully analyze the scrap information it contained as it was filed exactly two weeks before the preliminary determination. However, we have now fully examined the information regarding Huarong's scrap sales. As fully discussed below, Huarong's February 13, 2003, submission did not comply with the Department's request for calculating and submitting a scrap offset based upon actual sales, regardless of the fact that Huarong made the submission nine days beyond the Department's deadline. As we are rejecting Huarong's request for a scrap offset based upon the merits of the record evidence, the Department, through the use of its discretion, has decided to keep the February 13, 2003, response as part of the record of this administrative review.

Concerning the second issue, the Department's normal practice with respect to granting an offset for scrap is to provide the offset only with regard to the quantity of scrap actually sold during the POR, rather than the entire production amount. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China, 67 FR 71137 (November 29, 2002) and accompanying Decision Memorandum at Comment 11; Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001) and accompanying Decision Memorandum at Comment 3; Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China, 66 FR 33522 (June 22, 2001) and accompanying Decision Memorandum at Comment 5; and Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 65 FR 18968, 18971 (April 10, 2000) and Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 49537 (August 14, 2000) (where the Department's preliminary decision to base the by-product offset on the sales of the by-product was unchallenged).

The Department asked Huarong to revise its reported offset to conform to our policy. In the Department's January 22, 2003, supplemental questionnaire, the Department requested that Huarong "report a revised per-unit scrap offset which equals the total quantity of scrap from the production of subject bars sold during the POR, divided by the total quantity of subject bars produced during the POR." However, Huarong failed to report the offset in the manner requested. Instead, in its February 13, 2003, submission, Huarong stated that its "records do not isolate scrap sales according to whether the scrap relates to the production of subject or non-subject merchandise." Thus, due to accounting system limitations, Huarong was only able to provide a list of its sales of steel scrap and the quantity of scrap steel per sale. However, at no point did Huarong attempt to allocate its scrap steel sales to the total bars and wedges category of products, which its accounting records do track, let alone to the more specific category of subject merchandise bars and wedges.

In its February 13, 2003, submission and in its case brief, Huarong states that its scrap sales include scrap generated from both subject and non-subject merchandise. Huarong submitted to the record of the instant review the Department's verification report for Huarong from the tenth administrative review. See Huarong's October 23, 2002, submission at Exhibit 3. The tenth review's verification report states that Huarong produces other products besides subject bars/wedges, such as various automotive parts, non-subject bars/wedges, and certain picks and axes. Id. at pages 2, 5. Since Huarong does not record its scrap sales by product, the Department must reasonably assume that these scrap sales include scrap generated from the production of all forms of non-subject merchandise, including non-subject bars/wedges, automotive parts, and certain picks and axes. Since Huarong did not allocate the quantity of scrap sold during the POR between subject bar/wedge products and non-subject merchandise, the list of scrap sales is not useable in calculating a scrap offset for subject bars/wedges.

Where the information that is necessary to calculate an offset for subject merchandise is available on the record, the Department will calculate and grant the scrap offset, rather than simply disallowing it. See Folding Tables and Chairs from the PRC at Comment 16; Notice of Amended Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs From the People's Republic of China, 67 FR 34898 (May 16, 2002) and the accompanying Ministerial Error Memorandum at pages 3-4; and Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China, 68 FR 10685 (March 6, 2003) and the accompanying Decision Memorandum at Comment 42. Although Huarong has placed on the record its total consumption of steel used to produce bar/wedge products (both subject and non-subject bars/wedges), there is no information on the record regarding Huarong's consumption of steel used to produce non-bar/wedge products (such as automotive parts, axes or picks). Without knowing the amount of steel used to produce non-bar/wedge products, the Department is unable to calculate the percentage of total steel consumed company-wide used to produce non-bar/wedge products. Without this percentage, we are unable to allocate the quantity of scrap sold during the POR between bar/wedge and non-bar/wedge products.

We also note that, as a rule, the Department is free to discard one methodology in favor of another, if the purpose is to calculate more accurate dumping margins, but that there are two restrictions on its discretion to do so. First, the Department may not make minor but disruptive changes in methodology where a respondent demonstrates its specific reliance on the old methodology used in multiple preceding reviews, and second, it must provide a reasoned explanation for its change of method. Since the Department's definition of a scrap offset is the amount of the scrap actually sold or reused, to require a respondent to change its reported scrap offset methodology so that it is based directly on records of scrap actually sold or reused can only make the scrap offset more accurate, and the dumping margin more accurate as a result. See Fujian Machinery and Equipment Import & Export Corporation v. United States, 178 F. Supp. 2d 1305, 1327 (2001).

The petitioner's contention that the denial of Huarong's steel scrap offset in the Department's normal value calculations also requires the Department to adjust finished product weights in calculating movement expenses, is a novel argument. However, the Department cannot ignore evidence from bills of lading and packing lists that identifies the actual weight of the product being shipped and that serves as the basis of the cost being incurred. See Huarong's June 24, 2003, section C and D response at Exhibit 10. Although we are denying the scrap offset, we recognize that there is record evidence of how Huarong incurred its movement expenses. For this reason, we will continue to use the reported finished weight of the products (which is net of scrap) in our movement expense calculations.

Comment 15: The application of the Sigma rule to Huarong's inland freight for the steel factor

Huarong states that the Department used a methodology for determining the inland freight for the steel input factor that is contrary to Sigma Corporation v. United States, 117 F. 3d 1401 (Fed. Cir. 1997) (Sigma). Huarong notes that, in the preliminary results, the Department first used the distances between Huarong's factory and its various steel input suppliers to calculate a weighted average inland freight distance for the steel input. The Department then compared this weighted average inland freight distance between the input suppliers and the factory to the distance between the factory and the nearest port of export. Since this weighted average distance was greater than the distance between Huarong and the nearest port, the Department applied the distance between Huarong's factory and the port for the steel freight cost.

Huarong argues that the Department's methodology is contrary to Sigma because the Department's weighted average calculation of the distance between the multiple input suppliers and the factory included distances that are larger than the distance between the factory and the nearest port. Huarong argues that while the Department can weight average the freight distances when there are multiple input suppliers, the maximum distance that can be assigned to any particular supplier within this calculation is the distance from the factory to the nearest port. Accordingly, Huarong argues that the Department should revise its Sigma cap by capping the distance from any one supplier to Huarong's factory by the distance from the factory to the nearest port.

In rebuttal, the petitioner argues that there is no statutory or regulatory provision that stipulates how to calculate the Sigma distance cap. Since actual distances are considered proprietary, the petitioner has not been able to locate such calculations in other cases. Moreover, the petitioner states that the court in Sigma did not address the situation where there are multiple suppliers of each input, and the Department's weight-averaging process creates an imputed distance representing what the distance would have been had there been a single supplier for that input. The petitioner argues that the Department's methodology is in alignment with the single supplier situation present in Sigma.

Department's Position:

The Department agrees with the petitioner. The Court of Appeals for the Federal Circuit (CAFC) in Sigma stated: "{w}e recognize the difficulty, in a non-market economy case, of selecting a methodology that produces reasonably accurate estimates of the true value of the factors of production, as the statute directs . . . Accordingly, we do not dictate the particular methodology that Commerce must use to determine the freight component in this case, but leave that decision to the discretion of Commerce . . . Even acknowledging the difficulties of calculating the value of the factors of production by using economic data from a surrogate market economy country, however, we conclude that the methodology chosen by Commerce in this case has led to a substantial overvaluation of the total freight expense, and that the constructed foreign market value must therefore be recalculated." See Sigma 117 F. 3d at 1417.

Since the CAFC in Sigma plainly did not define a single methodology for administering the policy behind its ruling, and Huarong has not made an argument that the Department's methodology results in a substantial overvaluation of the total freight expense, but rather has only alleged that the methodology results in a greater valuation than their proposed alternative methodology, we consider the methodology applied by the Department in the preliminary results to be acceptable under the Sigma rule.

Comment 16: Separate port charges not substantiated in the record

Huarong states that the Department incorrectly subtracted "port charges" in calculating net U.S. price in the preliminary results even though there is no record evidence that Huarong paid any port charges on its shipments. According to Huarong, applying port charges is improper and constitutes double-counting since the specific terms of the surrogate value used to value the "port charges" provide that the "charges shall be payable by the Shipping Lines or Agents of vessels or cargo agents for Services Rendered to Containers Containerized Cargo passing through the Port." Huarong notes that the Department separately included brokerage and handling charges and ocean freight charges in its deductions from net U.S. prices. Since the payment for these charges is made not by the exporter, but by the "Shipping Lines" or "Agents of vessels" or "cargo agents," Huarong claims that the Department is double-counting by deducting both brokerage and handling charges and port charges. Huarong notes that, in response to the Department's question 18 in the Department's January 22, 2003, questionnaire, it stated that "the port charges in the PRC, and any export clearances and fees, were included in the ocean freight invoices from the freight forwarder." Huarong concludes by stating that the forwarder or shipping company, not the exporter, pays any port charges that may be levied on Huarong's shipments of subject merchandise.

In rebuttal, the petitioner argues that it is irrelevant whether or not Huarong or another party paid these port charges directly to the port authority or to the freight forwarder via its ocean freight invoice, because ocean freight is not a market economy input, and Huarong's ocean freight invoice is not being used to value port charges. According to the petitioner, the issue is whether or not port charges are included in the ocean freight surrogate value from the Federal Maritime Commission, or the brokerage and handling surrogate value used in the preliminary determination from Stainless Steel Wire Rod from India. The petitioner states that there is no record evidence that port charges are included in either of these two surrogate values. The petitioner adds that the Department's "Index of Factor Values for Use in Antidumping Investigations Involving Products from the PRC" also lists containerization charges, port handling charges, and port storage charges, which are separate from and in addition to, the brokerage and handling charges.

Department's Position:

The Department agrees with Huarong in part. The port charge at issue accounts for the costs of moving a loaded twenty-foot container from the container yard to the ship. See Preliminary Factor Value Memorandum at 7 and Attachment U. As mentioned in

Comment 12, the freight forwarder (the party that pays such charges directly in its role of coordinating freight traffic) may bill the exporter for this expense as a separate line item or consolidate it with other expenses into a single invoice line item. Although Huarong claims that it was not separately billed for this expense, the key question to answer is whether this expense is included in the brokerage and handling surrogate value or in the ocean freight surrogate value. In the instant case, as acknowledged by the petitioner, the surrogate value for ocean freight includes only the cost of ocean freight, and no other miscellaneous expenses. See Final Factor Value Memorandum at 7 and Attachment R. Therefore the question then becomes whether or not the surrogate value for brokerage and handling includes port charges. As noted in Comment 12, there is no evidence that the brokerage and handling surrogate does not include port charges. Therefore, we did not include a separate expense for port charges in the net U.S. price calculation for the final results.

New Information Allegation

The petitioner contends that Huarong has submitted untimely new factual information in its case brief. Specifically, the petitioner claims that Huarong's chart of countries with alleged subsidies, included as Exhibit 1 of Huarong's case brief, constitutes new factual information that should be stricken from the record. The petitioner states that Huarong provides no explanation for why it has not submitted this information earlier. The petitioner argues that Huarong's assertion that the Department may issue decisions based on "non-record evidence" is wholly invalid as it is the Department's clearly stated policy not to accept new factual information past the deadline set forth in its regulations. In the cases cited by Huarong (i.e., TRBs XI and its subsequent litigation), the petitioner claims that the Department was either applying its policy or proffering a rationale at the Court of International Trade. The petitioner argues that in the cited cases, neither the Department nor the other party deviated from stated Department rules concerning the submission of information onto the record.

Huarong claims that, although the sources it provides in Exhibit 1 of its case brief are not officially part of the record of this segment of the proceeding, the Department must consider the legal arguments arising from this information because it is information available to the Department at the time of its determination. According to Huarong, the Department has accepted arguments based on non-record evidence in past cases. Citing to Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1997-1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837 (November 15, 1999) (TRBs XI), and the subsequent appeal of this review to the Court of International Trade (see Luoyang Bearing Factory v. United States, 2002 C.I.T. 118, Slip Op. 2002-118 (October 1, 2002)), Huarong claims that the Department accepted arguments in TRBs XI based on non-record evidence and issued a re-determination on remand which raised an issue never raised before by the parties in that case. In raising this issue, Huarong asserts that the Department relied on evidence that was never placed on the record of that proceeding (i.e., TRBs XI) until the subsequent administrative review. Huarong further notes that the Department accepted the case brief filed by the petitioner in TRBs XI, even though it included arguments citing antidumping and CVD duty orders that were not placed on the record of that proceeding. Therefore, Huarong concludes that, in the instant case, the Department must accept its arguments, which are based on the information contained in Exhibit 1 of its case brief, although this information is based on non-record evidence.

Department's Position:

Under section 351.301(b)(2) of the Department's regulations, factual information for the final results of an administrative review must be submitted not later than 140 days after the last day of the anniversary month. The anniversary month for this proceeding is February. See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China, 56 FR 6622 (February 19, 1991). Section 351.309(c)(2) provides that the case brief must present all arguments that a party wants the Department to consider in its final determination or final results of review. In making their arguments, parties may "draw on information in the public realm to highlight any perceived inaccuracies in a report." See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27332 (May 19, 1997). Exhibit 1 of Huarong's case brief is a compilation of information in the public realm, in the format of a chart. Respondents state that they obtained their statistics from the International Trade Commission (ITC) website, the Department's Subsidies Enforcement Office, and the USTR's NTE Reports. These sources are in the public realm, and Huarong uses the sources to "highlight perceived inaccuracies." Id. The Department does not consider this to be new factual information under the Department's regulations. In making this determination, we also reject Huarong's argument citing to the Department's decisions in TRBs XI, as inapplicable.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final determination and the final weighted-average dumping margin in the Federal Register.

Agree ______________ Disagree_________________ Let's Discuss_____________

____
James J. Jochum
Assistant Secretary
for Import Administration

____
Date