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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 13th Administrative Review of Heavy Forged Hand Tools from the People's Republic of China

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the 13th administrative review of heavy forged hand tools ("HFHTs") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from the Notice of Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China 70 FR 11934 (March 10, 2005) ("Preliminary Results").

The specific calculation changes for Shandong Huarong Machinery Co., Ltd. ("Huarong") can be found in Analysis for the Final Determination of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Huarong ("Huarong Final Analysis Memo").

We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty investigation for which we received comments and rebuttal comments from interested parties:

GENERAL COMMENTS:

Comment 5: Denial of Due Process Rights
Comment 6: Changed Circumstance Reviews for the 10th and 11th AD Reviews of HFHTs
Comment 7: Combination Rates & Master List Assessment Instructions
Comment 8: Huarong
- A. Price Adjustment
- B. AFA for Movement Expense
- C. AFA for Labor
- D. AFA for Packing
- E. Scrap Offset
- F. Surrogate Value for Steel Billet
- G. Surrogate Value for Brokerage & Handling ("B&H")
- H. Inclusion of Packing Weight in Movement Expenses' Calculation
- I. Factors of Production for Pallets
- J. Application of Packing Materials and the Byproduct Offset in the Calculation of Normal Value

Comment 9: TMC
- A. AFA for Failure at Verification
- B. Separate Rate
- C. AFA for Suppliers
- D. Discounts
- E. Surrogate Value for Scrap Rail

Comment 10: Jinma

BACKGROUND:

The merchandise covered by the orders are HFHTs as described in the "Scope of the Order" section of the Federal Register notice. The period of review ("POR") is February 1, 2003, through January 30, 2004. In accordance with section 351.309(c)(ii) of the Department of Commerce's (the "Department") regulations, we invited parties to comment on our Preliminary Results.

After the Preliminary Results, the Department conducted sales and factors verifications for Huarong and TMC. See Memorandum to the File, through, Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from, Julia Hancock and Paul Walker, Case Analysts, AD/CVD Operations, Office 9, Subject: Heavy Forged Hand Tools from the People's Republic of China, Re: Verification of Sales and Factors of Production for Shandong Huarong Machinery Co., Ltd. (May 17, 2005) ("Huarong Verification Report"); See Memorandum to the File, through Alex Villanueva, Program Manager, from Paul Walker, Case Analyst, Subject: Verification of Sales for Tianjin Machinery Import & Export Corporation in the 13th Administrative Review of Heavy Forged Hand Tools from the People's Republic of China (May 23, 2005) ("TMC Verification Report").

On June 13, 2005, the Respondents[1] and the Petitioner[2] filed case briefs. On June 20, 2005, the Respondents and the Petitioner filed rebuttal briefs.

DISCUSSION OF THE ISSUES:

I. General Issues

Comment 1: Inclusion of Cast Picks within the Scope

The Respondents argue that the Preliminary Results incorrectly stated that cast picks are included within the scope of the antidumping duty order for picks/mattocks. The Respondents observe that both the CIT and the Department, in a remand of a previous administrative review, found that cast picks are outside the scope of the order for picks/mattocks. Accordingly, the Respondents conclude that since the Department has found that cast picks are outside the scope of the order on picks/mattocks, the Department must instruct Customs and Border Protection ("Customs or CBP") to liquidate all entries of cast picks exported by the Respondents without regard to antidumping duties.

The Petitioner did not respond to this comment in their brief.

Department's Position:

We disagree with the Respondents.

The Respondents correctly note that in the remand results in Tianjin Machinery Import & Export Corporation v. United States and Ames True Temper, CIT 03-732 dated July 20, 2004, regarding cast picks the Department argued that cast picks are excluded from the orders on HFHTs. However, as the Respondents are aware, the Department's position has not been accepted by the court. Therefore, because this litigation is still pending, the Department cannot issue Customs instructions to liquidate entries of cast picks exported by the Respondents. Upon a final and conclusive decision being issued from the Court regarding cast picks, the Department will issue revised instructions to CBP.

Comment 2: Adverse Facts Available ("AFA") for "Agent" Sales

The Respondents contend that the Department was incorrect in its Preliminary Results to apply AFA to Huarong for bars/wedges and to TMC for bars/wedges, hammers/sledges, and axes/adzes. According to the Respondents, the Department's Preliminary Results that Huarong

[1] Huarong, TMC, and Shandong Jinma Industrial Group Co., Ltd. ("Jinma") are collectively known as the "Respondents."

[2] Ames True Temper is known as the "Petitioner."

and TMC misrepresented the true nature of their "agent" sales during the POR and that these "agent" sales are not *bona fide* "agent" sales is inaccurate. See Memorandum from James Doyle, Director, Office 9, to Barbara E. Tillman, Acting Deputy Assistant Secretary, 13th Review of Heavy Forged Hand Tools from the People's Republic of China: Application of Adverse Facts Available to Shandong Huarong Machinery Co., Ltd. ("Huarong AFA Memo") dated February 28, 2005 at 6; Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, from James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, Subject: 13th Review of Heavy Forged Hand Tools from the People's Republic of China: Application of Adverse Facts Available to Tianjin Machinery Import & Export Corp. (February 28, 2005), at 4 ("TMC AFA Memo"); Preliminary Results at 11938-9.

The Respondents argue that the three reasons that the Department provided as justification for applying AFA to Huarong and TMC for their "agent" sales are without merit. First, the Respondents contend that neither Huarong nor TMC misrepresented the nature of their "agent" sales by portraying the party that acted as the "agent" as a *bona fide* "agent." The Respondents note that both Huarong and TMC reported that each had "agent" sales and provided copies of their "agent" agreements. See *e.g.*, Huarong's May 11, 2004 submission at Exhibit 3. Second, the Respondents argue that in no manner did either Huarong or TMC participate in an "agent" sales scheme that resulted in circumvention of the antidumping duty order. The Respondents maintain that both Huarong and TMC: (1) reported all of their direct sales and "agent" sales; (2) reported all information to the Department required to calculate an antidumping duty margin; and, (3) did not conduct commercial activities in any manner that enabled its importer to avoid paying the antidumping duties. Finally, the Respondents claim that neither Huarong nor TMC undermined the Department's ability to issue instructions to CBP to assess accurate antidumping duties by participating in an "agent" sales scheme. According to the Respondents, the Department's ability to issue instructions to CBP to assess accurate antidumping duties is in no way connected to whether Huarong or TMC cooperated in answering the Department's questionnaires. The Respondents note that both Huarong and TMC reported to the Department that each company had "agent" sales. The Respondents also note that neither Huarong nor TMC filed entries with CBP and, thus, did not violate any U.S. customs laws. Accordingly, the Respondents maintain that the Department's decision to impose AFA on Huarong and TMC at the Preliminary Results is an attempt by the Department to penalize Huarong, TMC, and their importers instead of the Department addressing the cash deposit problem.

The Respondents also maintain that the Department has failed to acknowledge that similar "agent" sales occurred in prior administrative reviews. The Respondents contend that both Huarong and TMC notified the Department from the onset of this proceeding that each company had direct sales and "agent" sales. Moreover, the Respondents argue that the Department in previous administrative reviews have accepted "agent" sales as *bona fide* sales of Huarong and TMC. Therefore, the Department must not apply AFA to Huarong and TMC for their "agent" sales in the final determination.

In their rebuttal brief, the Petitioner rebuts the Respondents' argument that the Department

cannot apply AFA to Huarong and TMC for their respective "agent" sales in the final results. According to the Petitioner, the Respondents' request that the Department must calculate a margin for these "agent" sales is without merit. The Petitioner notes that Huarong and TMC are receiving AFA because they participated in "agent" sales schemes with their respective importer resulting in customs fraud against the Department and CBP.

The Petitioner argues that Respondents are incorrect that Huarong and TMC fully disclosed their "agent" sales schemes and, in consequence, applying AFA to these "agent" sales is inappropriate. The Petitioner notes that both Huarong and TMC "fully disclosed" the nature of their "agent" schemes only after the Department issued repeated supplemental questionnaires to each company requesting clarification about the "true extent of these {agent schemes}." See Preliminary Results at 11939. However, the Petitioner points out that through the Department's supplemental questionnaires, TMC also admitted to the Department that it had acted as an "agent" for previously undisclosed producers. *Id.* Moreover, the Petitioner argues that contrary to the Respondents' argument, a fully disclosed "agent" sales scheme is not a "*bona fide* business arrangement." According to the Petitioner, a "*bona fide* business arrangement" that results in the evasion of the antidumping laws by the respective producer, exporter, and importer is illegal.

Accordingly, the Petitioner argues that because Huarong and TMC's respective "agent" schemes violate United States law and regulations, the Department is within its rights to apply AFA to these "agent" sales under 19 USC 1677e (a) and (b). The Petitioner contends that the Department has the authority to apply AFA because Huarong and TMC's "agent" schemes significantly impeded the proceeding by: (1) preventing the Department from properly assigning sales to the correct manufacturer or importer; and (2) preventing the Department and CBP from assessing the proper levels of duties and deposit rates against those manufacturers or importers. Moreover, the Petitioner notes that the Department has applied AFA in previous administrative cases when the respondent was engaged in fraudulent activity. See Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China, 68 FR 41304, 41307 (July 11, 2003) and accompanying Issues and Decision Memorandum at Comment 1 ("3rd Mushrooms Final"). The Petitioner argues, therefore, that the Department has the authority under the Act to administer antidumping law in a manner that will prevent further evasion of the antidumping order.

Department's Position:

The Department disagrees with the Respondents.

At the Preliminary Results, the Department fully explained its reasons for applying total AFA with regard to Huarong's and TMC's participation in their respective "agent" sales schemes. The Department stated that, pursuant to sections 776(a)(2)(C) and 776(b) of the Act, the Department has determined that it is appropriate to base the Respondents' dumping margin for their "agent" sales on AFA because Huarong and TMC have significantly impeded the instant proceeding.

Specifically, use of the "agent" sales schemes by these Respondents impeded our ability to complete this administrative review under section 751 of the Act, impose antidumping duties and issue instructions to CBP to assess the correct antidumping duties, as mandated by sections 731 and 736 of the Act. See Huarong AFA Memo; TMC AFA Memo; Preliminary Results at 11938-9.

The Respondents dispute the findings made by the Department in the Preliminary Results. First, the Respondents claim that contrary to the Department's finding, they did not misrepresent the true nature of their relationship with the "agent" or principal. The Department disagrees. After reviewing the record evidence, the Department found that both Huarong and TMC continually misrepresented the true nature of their relationship with their principal or "agent," as appropriate, during the POR. In their questionnaire responses, Huarong and TMC claimed that their relationships with their "agents" or principals were *bona fide* business arrangements. However, only through issuing multiple supplemental questionnaires to each Respondent did the Department learn that nearly all of the sales functions were conducted by the principal, and that the "agent's" participation was limited, for the most part, to supplying blank invoices to the principal with an intention to circumvent the order. Because it appears that the "business arrangement" was established to circumvent the antidumping duties, we find that arrangement is not a *bona fide* business arrangement.

Second, the Respondents assert that Department was incorrect in concluding that Huarong and TMC participated in "agent" sales schemes in an attempt to circumvent paying the correct cash deposit rate. However, the Department also learned through multiple supplemental questionnaires, that Huarong and TMC supplied to their respective importers certain documents that prevented CBP officials from recognizing that the principal, rather than the "agent," is the company actually selling the merchandise to the U.S. importer. Because these documents prevented CBP from knowing the true seller in these "agent" sales, the assessment rate calculated by the Department would be rendered meaningless because it would not be applied to all appropriate entries. Thus, the Department finds that the existence of these "agent" sales schemes, in which Huarong and TMC actively participated, undermines our ability to issue instructions to CBP to assess accurate antidumping duties, and impose antidumping duties, pursuant to the Department's statutory mandate under sections 731 and 736 of the Act.

Third, the Respondents contend that again the Department was incorrect in its finding that Huarong and TMC undermined the Department's ability to issue instructions to CBP to assess accurate antidumping duties. According to the Respondents, the Department's actions with regard to Huarong and TMC bear no relation to whether Huarong or TMC cooperated in answering the questions during this review since both Respondents reported their "agent" sales to the Department. The Department again disagrees. Initially, TMC did not report agent sales in the hammers/sledges and axes/adzes orders; however, TMC ultimately reported these "agent" sales after the issuance of several supplemental questionnaires. Additionally, without the issuance of several supplemental questionnaires, the Department would not have discovered that,

contrary to statements made by Huarong and TMC, these "agent" sales schemes are not *bona fide* business arrangements. See Shandong Huarong Gen. Group Corp. v. United States, Slip Op. 2004-117 (CIT, September 13, 2004) ("Shandong Huarong II") (because a respondent has ultimately responded to the Department's request for information does not mean that respondent has fully cooperated). Without the information regarding these "agent" sales gathered from these supplemental questionnaires, the cash deposit rate and antidumping duty assessed upon Huarong and TMC respectively, would have been without effect. The record evidence gathered by the Department demonstrates that the cash deposit and assessment rates calculated by the Department for these "agent" sales either would not have been the appropriate rate or would not have been assessed by CBP. Accordingly, the Department finds that Huarong and TMC's respective "agent" sales schemes would have, absent corrective action, undermined the Department's ability to issue instructions to CBP to assess accurate cash deposit and assessment rates.

Fourth, the Respondents argue that the Department's application of AFA for Huarong's and TMC's "agent" sales was inappropriate because in previous reviews the Department accepted similar "agent" sales as *bona fide* business arrangements. The Department disagrees. After examination of the previous reviews, the Department notes that the Department has previously disregarded similar "agent" sales as not being *bona fide* business arrangements. See Heavy Forged Hand Tools, With or Without Handles, Finished or Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part, 69 FR 55581 (September 15, 2004) ("12th Review Final") and accompanying Issues and Decision Memorandum at Comment 19; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Heavy Forged Hand Tools from the People's Republic of China, 67 FR 57789 (September 12, 2002) ("10th Review Final"), and accompanying Issues and Decision Memorandum at Comment 12; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Heavy Forged Hand Tools from the People's Republic of China, 66 FR 48026 (September 17, 2001) ("9th Review Final"), and accompanying Issues and Decision Memorandum at Comments 1 & 2.

Based on the above circumstances, the Department continues to find that facts available are appropriate, under section 776(a)(2)(C) of the Act, because Huarong and TMC significantly impeded this proceeding. Specifically, Huarong and TMC's participation in these "agent" sales schemes impeded our ability to impose antidumping duties and issue instructions to CBP to assess the correct antidumping duties, as mandated by section 731 and 736 of the Act. The Department also continues to find that in selecting from among the facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted because the Department has determined that both Huarong and TMC failed to cooperate by not acting to the best of their ability to comply with our requests for information. Specifically for Huarong, an adverse inference is warranted because Huarong: (1) continually misrepresented the true nature of its relationship with the "agent" during the POR by portraying the company as a *bona fide* "agent"

for the vast majority of Huarong's "agent" sales; (2) participated in an "agent" sales scheme in order to avoid payment of the appropriate cash deposit and assessment rate and circumvent the antidumping duty order; and (3) undermined our ability to issue instructions to CBP to assess accurate antidumping duties. See Huarong AFA Memo at 5-6. Additionally for TMC, an adverse inference is warranted because TMC: (1) continually misrepresented the true nature of its relationship with the principal during the POR by portraying itself as a *bona fide* "agent" for the vast majority of TMC's "agent" sales; (2) participated in an "agent" sales scheme in order to avoid payment of the appropriate cash deposit and assessment rate and circumvent the antidumping duty order; and (3) undermined our ability to issue instructions to CBP to assess accurate antidumping duties. See TMC AFA Memo at 4-5. Accordingly, the Department is continuing to assign total AFA for Huarong's and TMC's respective "agent" sales in the final determination.

Comment 3: AFA Rate for Bars/Wedges

The Respondents argue that the AFA rate applied for Huarong's and TMC's respective "agent" sales should not be applied in the final results. According to the Respondents, the Department's rationale for using the highest AFA rate, such as the 139.31 percent rate for bars/wedges calculated in the 8th review instead of one from a more recent review, because it serves as a more adequate sanction, should be rejected. The Respondents argue that Department must select an adverse antidumping duty rate that bears some commercial relationship to the actual sales data provided by Huarong and TMC. See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F. 3d 1330, 1340 (Fed. Cir. 2002). It was the intent of Congress, the Respondents contend, that in selecting an adverse rate, the Department should not select an unreasonably high rate that bears no relationship with the respondent's actual dumping margin. See F.lli De Cecco Di Filippo Fara S. Martino SpA v. United States, 216 F. 3d 1027, 1032 (Fed. Cir. 2000). Therefore, the Respondents conclude that the Department must calculate an antidumping duty margin for each of Huarong and TMC's respective "agent" sales for the final determination.

The Petitioner contends that contrary to the Respondents' argument, the Department did not apply AFA to all sales of subject merchandise made by the Respondents. In the Preliminary Results, the Department did calculate an antidumping duty margin for TMC's direct sales of picks/mattocks and Huarong's direct sales of axes/adzes. See Preliminary Results at 11943. Additionally, Petitioner argues that the Department fully explained in its Preliminary Results why it was applying AFA for Huarong's sales of bars/wedges and TMC's sales of bars/wedges, axes/adzes, and hammers/sledges. The Petitioner observes that the Department specifically stated that Huarong and TMC were receiving AFA for these orders because their respective participation in "agent" sales schemes "impeded the Department's ability to complete the administrative review." *Id.* at 11939. Therefore, the Department should continue to apply AFA to Huarong and TMC for these orders because the Respondents provided no reasonable arguments and evidence as support that the Department should not apply AFA in its final determination.

Department's Position:

The Department disagrees with the Respondents.

The Department disagrees with the Respondents that the Department erred in applying the AFA rate of 139.31 percent from the eighth review for Huarong and TMC's "agent" sales under the bars/wedges order. Under section 776(c) of the Act, the Department is granted wide discretion in its selection of secondary information, *i.e.*, the AFA rate, as long as the Department can determine, to the extent practicable, that the AFA rate has probative value. See Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Doc. No. 103-316 at 870. The Department's application of AFA can only be properly characterized as "punitive," when the Department rejects a lower margin in favor of a higher margin that is demonstrably less probative of current conditions. See Rhone Poulenc, Inc. v. United States, 899 F. 2d 1185, 1190 (Fed. Cir. 1990) ("Rhone Poulenc"). However, the court also found that the Department may appropriately infer that the highest prior margin is the most probative evidence of current conditions because, if it were not so, the respondent would have produced current evidence demonstrating that the margin would be less. *Id.*

Moreover, the Department notes that the SAA provides that the Department will, in corroborating the secondary information, satisfy itself that the secondary information to be used has probative value. In doing so, the Department examines the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total AFA a calculated margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. See Preliminary Results of Antidumping Duty Administrative Review: Grain-Oriented Electrical Steel from Italy, 61 FR 36551, 36552 (July 11, 1996) ("GOES from Italy").

The Department recognizes that, under certain circumstances, the Department may diverge from its standard practice of selecting as the AFA rate the highest rate in any segment of the proceeding. In Fresh Cut Flowers from Mexico, the Department did not use the highest margin in the proceeding as best information available because that margin was based on another company's aberrational business activity and was unusually high. See Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico, 61 FR 6812 (February 22, 1996) ("Fresh Cut Flowers from Mexico"). In other cases, the Department has not used the highest rate in any segment of the proceeding as the AFA rate because the highest rate was subsequently discredited. See D&L Supply Co. v. United States, 113 F. 3d 1220, 1221 (Fed. Cir. 1997) ("D&L") (the Department will not use a margin that has been judicially invalidated). However, the Department finds that the Respondents are incorrect that we should disregard the AFA rate of 139.31 percent because none of these circumstances are present with regard to this rate.

The Department finds that the rate selected as AFA, 139.31 percent, for Huarong and TMC's respective "agent" sales of bars/wedges is appropriate for this final results. Because the AFA rate is based on TMC's actual sales data, it directly bears a "rational relationship" to TMC. See Reiner Brach GmbH & Co. KG v. United States, 206 F. Supp. 2d 1323, 1339 (CIT 2002); China Steel Corp. v. United States, 306 F. Supp. 2d 1291, 1304 (CIT 2004). The Department also finds that this rate "bears a rational relationship" to Huarong's commercial activity because both Huarong and TMC export identical products covered by the bars/wedges order and compete for sales within the U.S. market. Moreover, this rate is appropriate because it has been upheld as reflective of TMC's recent commercial activity in exporting bars/wedges to the United States. This rate is also the PRC-wide rate of 139.31 percent for bars/wedges published in the most recently completed administrative review of this antidumping order. See 12th Review Final at 55583 and Comment 18. Moreover, this rate is the highest rate in the proceeding and was calculated using verified information provided by TMC during the 8th administrative review of the bars/wedges order. Accordingly, the Department continues to find that this rate, instead of other recently calculated rates, offers a more adequate incentive to induce Huarong and TMC to cooperate in this proceeding. Therefore, the Department continues to find that the AFA rate of 139.31 percent for bars/wedges is both reliable and relevant and, thus, is corroborated to the extent practicable pursuant to section 776(c) of the Act.

With regard to the AFA rate for axes/adzes, the Department notes that this rate is the highest rate determined in any previous segment of the order on axes/adzes and was corroborated in our Preliminary Results. See Preliminary Results at 11940-41.

With regard to the AFA rate for picks/mattocks, the Department notes that this rate is the highest rate determined in any previous segment of the order on picks/mattocks and was corroborated for these final results. See Comment 9.A.

Comment 4: Subsidy Suspicion Policy for Surrogate Value Sources in the Bars/Wedges Order[3]

Belgium, Canada, Germany and the United Kingdom

The Respondents argue that, under the Department's subsidy suspicion policy, subsidized steel prices must be disregarded in calculating surrogate values. The Respondents argue that in addition to excluding Indian imports from South Korea, Indonesia and Thailand, "there was sufficient evidence to continue to exclude Indian import statistics for the United Kingdom, Belgium, Canada and Germany from our calculations, in accordance with the Department's subsidy suspicion policy." See Respondents' case brief at 19 (citing Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part ("Lock Washers") 69 FR 12119 (March 15, 2004) and accompanying Issues and Decision

[3] We thus have considered the Respondent's argument to be directed solely to the surrogate values used in the calculation of the AFA rate for bars/wedges. See Respondents' Case Brief at 19-22.

Memorandum at Comment 2).

The Petitioner rebuts the Respondents' argument that the Department must disregard Indian import statistics of steel from Belgium, Canada, Germany, and the United Kingdom based upon the Department's subsidy suspicion policy. The Petitioner notes that the Department previously disregarded the same arguments that the Respondents raised in the 11th and 12th reviews. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 53347 (September 10, 2003) ("11th Review Final"), and accompanying Issues and Decision Memorandum at Comments 1 and 2; 12th Review Final at Comment 21. First, the Petitioner contends that the Department does not need to consider every subsidy program from every country based upon the Department's finding from the 11th review. In the 11th review, the Department noted that it is not the Department's policy to exclude all surrogate values for factors of production from countries that may have generally-available subsidies. See 11th Review at Comment 2. Second, the Petitioner asserts that the Respondents should have raised their objections to the Department valuing the price of imports from Belgium, Canada, Germany, and the United Kingdom during the 8th review and the subsequent appeals process. However, the Petitioner notes that the Respondents did not appeal the Department's decision and that the Department upheld its decision to not exclude these imports from the calculation of certain material inputs in the 12th review. See 12th Review Final at Comment 21.

In addition, the Respondents argue that the Department's subsidy suspicion policy requires the Department to reject subsidized surrogate values and market-economy supplier prices. The Respondents argue that the legislative history of the antidumping statute instructs the Department to avoid using prices of which it has reason to believe, or suspect, may be dumped or subsidized. See Omnibus Trade and Competitive Act of 1998, Conference Report to Accompany H.R. 3, H. Report No. 578, 100th Congress, 2nd Session at 590-91, 1988 U.S. Code and Adm. N. 1547, 1623 (1998) (the "Legislative History"). According to the Legislative History, the Department is not required to initiate a formal investigation to determine whether these prices are dumped or subsidized, but instead must base its decision on information generally available to it at the time. *Id.*

The Respondents assert the Department has rejected prices in previous cases where there were generally available subsidies. The Respondents argue that the Department has stated that, where the facts of a U.S. or third-country finding are sufficient to allow the Department to infer that there are generally available subsidies, the Department will consider that it has particular and objective evidence and therefore a reason to believe or suspect that prices of the input from that country are subsidized. See 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, ("TRBs from the PRC II") 67 FR 68990 (November 14, 2002) and accompanying Issues and Decision Memorandum at 25. According to the Respondents, the court has upheld this practice by the Department. See China National Machinery Import & Export v. United States, 264 F. Supp. 2d

1299 (CIT 2003) ("China National Machinery I"); China National Machinery Import & Export v. United States, 293 F. Supp. 2d 1334 (CIT 2003) ("China National Machinery II"). Based upon the court's upholding of the Department's practice and because the World Trade Organization ("WTO") has determined that the U.S. Foreign Sales Corporation/Extraterritorial Income Exclusion ("FSC/ETI") tax scheme is a WTO-illegal subsidy, the United States must also therefore be deemed to have export subsidies. Therefore, the Respondents argue, because the United States has agreed to implement the WTO's ruling, the Department must remain consistent with its subsidy suspicion policy by excluding Indian import statistics of steel from the United States for its final results.

In their rebuttal brief, the Petitioner contends that the Respondents' argument, that the Department must disregard Indian import statistics from the United States in its final determination on the basis that the United States' FSC/ETI tax scheme is an illegal subsidy, is without merit. According to the Petitioner, the Respondents provided no agency precedent as support for their argument. The Petitioner contends that there is no previous proceeding in which the Department has excluded imports of merchandise from the United States on the basis of an illegal subsidy. Additionally, the Petitioner asserts that the Respondents did not provide any evidentiary support that merchandise from the United States is not priced on the basis of market forces. Moreover, the Petitioner concludes that the Respondents provided no evidence demonstrating that the U.S. producers of subject merchandise derived a financial benefit from the FSC/ETI tax scheme and, thus, the Department should continue to use the Indian import statistics from the United States.

Department's Position:

Although the executive summary of the Respondents' case brief is written in general terms regarding all surrogate values, their argument relates to the calculation of the AFA rate for bars/wedges. At the Preliminary Results, we applied AFA to the bars/wedges order for Huarong and TMC due to their continued involvement in the "agent" sales scheme. As noted above in Comment 2, we continue to apply AFA to Huarong and TMC in the bars/wedges order. Therefore, any calculation issues with respect to the bars/wedges order is moot. To the extent Huarong and TMC suggest the Department re-open the 8th administrative review record, where the AFA rate was calculated, the time for contesting that determination has passed. We note that Huarong and TMC challenged that review, but did not allege the existence of export subsidies.

Comment 5: Denial of Due Process Rights

The Respondents contend that the Department was incorrect in its Preliminary Results to apply AFA to Huarong for bars/wedges and to TMC for bars/wedges, hammers/sledges, and axes/adzes. According to the Respondents, the Department's justification for applying AFA to Huarong and TMC is without merit. However, the Respondents contend that the Department, by applying AFA to Huarong and TMC, has denied both companies their right to due process in

antidumping proceedings. See Gulf States Tube Div. of Quantex Corp. v. United States, 981 F. Supp. 630, 652 (CIT 1997). The Respondents argue that the objective of the antidumping statute is not to penalize a respondent but to assess antidumping duties that will eliminate unfair trading practices. *Id.* at 645; see also NTN Bearing Corp. v. United States, 74 F. 3d 1204, 1208 (Fed. Cir. 1995) ("NTN"). Accordingly, the Respondents contend that the Department must not apply AFA to Huarong and TMC in the final determination with the rate of 139.31 percent.

In its rebuttal brief, the Petitioner rebuts the Respondents' argument that the Department denied Huarong and TMC their due process rights guaranteed in antidumping proceedings by applying AFA to all their sales, not just "agent" sales, within the bars/wedges, hammers/sledges, and axes/adzes orders. According to the Petitioner, the Respondents' argument is not supported by any statutory or regulatory provision. Therefore, the Petitioner argues, the Department should not revise its Preliminary Results because the Respondents failed to explain, with supporting legal and agency precedent, how the Department's decision to apply AFA to their sales denied them their due process rights.

The Petitioner argues that the Department's and Respondents' conduct during this proceeding demonstrates that neither Huarong nor TMC's due process rights were violated. The Petitioner notes that both Huarong and TMC fully participated during the proceeding by: (1) submitting questionnaire and supplemental questionnaire responses; (2) participating in verification; and (3) raising legal arguments in their briefs for consideration in the Department's final determination. However, the Petitioner maintains that if Huarong and TMC are arguing that they were not cognizant that their "agent" sale schemes would result in the application of AFA then the Respondents are unfamiliar with numerous Department and court decisions relating to "agent" sale schemes.

Department's Position:

With respect to the Respondents' claim that the Department's application of AFA denied Huarong and TMC's due process rights in this proceeding, the Department disagrees. The Department granted both Huarong and TMC the opportunity to fully participate during the proceeding by: (1) providing ample opportunity for the submission of factual information, as provided in the Department's regulations, including issuing questionnaires and supplemental questionnaires, to which they responded; (2) conducting verification, in which they fully participated; and (3) providing an opportunity for written argument and hearing upon request pursuant to which the parties could present arguments for consideration in the Department's final determination. Accordingly, the Department placed no restrictions on Huarong nor TMC that inhibited either Respondent from fully participating in this proceeding.

Huarong and TMC were not denied their due process rights based on the Department's application of AFA for Huarong and TMC respective "agent" sales. The Department's questionnaires inform all respondents of their obligation to accurately provide information requested within the time provided and warn them that failure to provide necessary information

and failure to cooperate by not acting to the best of their ability may result in application of AFA. As stated above, the Department has made clear that the Respondents' attempts to circumvent the orders by misrepresenting the true nature of their sales relationships and engaging in a scheme to avoid payment of the appropriate cash deposit and assessment rates in their initial responses to CBP undermine the Department's ability to issue instructions to CBP to assess accurate antidumping duties and constitutes a failure to cooperate to the best of their ability. See Department's Position in Comment 2. As provided in sections 776(a) and (b) of the Act, applying AFA to Huarong and TMC's respective "agent" sales was appropriate because Huarong and TMC significantly impeded the instant proceeding, and failed to cooperate to the best of their ability. *Id.* In addition, the Department notes that in the 12th administrative review, the Department applied AFA to the orders in which the Respondents engaged in an "agent" sale scheme. See Preliminary Results of Administrative Reviews, Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part: Heavy Forged Hand Tools , Finished or Unfinished, With or Without Handles, from the People's Republic of China, 69 FR 11375-76 (March 10, 2004) ("12th Review Prelim"); see also 12th Review Final at 55583; Shandong Huarong Gen. Group Corp. v. United States, Slip Op. 2003-135 (CIT, October 22, 2003)("Shandong Huarong I"). Because the Respondents are experienced exporters, it is reasonable for the Department to infer that the Respondents utilized the "agent" sale scheme to avoid of paying the correct cash deposit and assessment rates to CBP. Thus, as provided in sections 776(a) and (b) of the Act, applying AFA to Huarong's and TMC's respective "agent" sales was appropriate because Huarong and TMC significantly impeding the instant proceeding and failed to cooperate to the best of their ability. See the Department's Position at Comment 2. Therefore, the Department did not deny either Huarong's or TMC's due process rights and, thus, will continue to apply AFA in the final results to Huarong and TMC's respective "agent" sales pursuant to sections 776(a) and (b) of the Act.

Comment 6: Changed Circumstance Reviews for the 10th and 11th AD Reviews of HFHTs

The Petitioner observes that in the most recent review the Department found evasion of antidumping duties and applied AFA to the Respondents for the bars/wedges order for similar "agent" sales schemes. See 12th Review Final at Comment 19. Based upon the Department's most recent findings of evasion of antidumping duties through "agent" sales schemes in this review and the 12th Review Final, the Petitioner requests that the Department begin a changed circumstances review of the 10th and 11th administrative reviews. According to the Petitioner, the Department has the authority to re-open previous administrative cases, by initiating a changed circumstance review when the record demonstrates that the margins calculated in these cases were obtained through fraudulent activity. See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Initiation of Changed Circumstances Review, 70 FR 24514 (May 10, 2005) ("Large Printing Presses").

The Respondents did not comment on this issue in their briefs.

Department's Position:

The Department disagrees with the Petitioner.

The Department finds that it is not appropriate to consider a request to initiate a changed circumstances review made in case briefs in the context of an ongoing administrative review. Such a request is properly made outside the context of an ongoing proceeding by placing a request pursuant to 19 CFR 351.221(c)(3).

Additionally, the Department notes that it has the authority, pursuant to section 751(b)(1) of the Act, to self-initiate a changed circumstances review whenever the Department receives information concerning, or a request from an interested party which shows, changed circumstances sufficient to warrant a review of such determination. In Large Printing Presses, the Department initiated the changed circumstances review because there was evidence that a respondent provided false information regarding its sales to the Department. See Large Printing Presses at 24516. However, the Department finds that, in contrast to Large Printing Presses, the Petitioner has not provided the Department with compelling evidence to self-initiate a changed circumstances review for the 10th and 11th reviews.

Comment 7: Combination Rates & Master List Assessment Instructions

The Respondents argue that the Department should apply combination rates for Huarong's and TMC's respective "agent" sales in the final results. According to the Respondents, the Department did not establish that Huarong and TMC's respective "agent" agreements did not accurately reflect the "agent" sales of Huarong and TMC. The Respondents argue that each company's "agent" agreement outlined the terms of sale, including the parties involved, and did not claim that title to the goods passed to the "agent." See *e.g.*, Huarong's May 11, 2004 submission at Exhibit 3.

The Respondents also note that the Department, in previous administrative reviews, has determined that "agent" sales should be treated as sales of the principal (*i.e.*, the party that retained title to the merchandise until it was sold to the United States importer). However, the Respondents claim that it is evident that the Department is now trying make a distinction between an actual "agent" and a "semi-agent" based upon when the "agent" took title. The Respondents note, however, that an actual "agent" does not take title to the merchandise for which they are performing the services of an "agent." Moreover, the Respondents observe that the Department has not cited any regulation or other provision that defines the duties that an actual "agent" may or may not perform in the context of the antidumping statute. Accordingly, the Respondents contend that if the Department wants to require an actual "agent" to take title to the merchandise, the Department should advise parties what activities are and are not appropriate through the process of rule making.

The Respondents further argue that it is evident that the Department's primary concern is not about whether the "agent" or the principal takes title to the merchandise but to ensure that the appropriate cash deposit rates are imposed for these "agent" sales. Accordingly, the Respondents

maintain that the Department should ensure that appropriate cash deposit rates are imposed for these "agent" sales by setting exporter/producer specific cash deposit rates or "combination rates" under section 351.107 of the Department's regulations.

The Respondents note that the Department has the authority to assess an AFA rate during a proceeding when the principal of an "agent" sale does not cooperate with the Department. However, the Respondents maintain that both Huarong and TMC fully cooperated with the Department in regard to their "agent" sales because these sales and the factors of production were fully reported to the Department. The Respondents note that the Department has not identified a single misrepresentation of these "agent" sales by Huarong or TMC that would impact the calculation of an antidumping duty margin. Accordingly, the Respondents argue that the Department must treat each company's "agent" sales as Huarong's or TMC's sales and calculate an antidumping duty margin under section 351.107 of the Department's regulations. By calculating a "combination rate" for Huarong and TMC for their respective "agent" sales, the Respondents assert that the Department is able to address the Department's concerns by requiring the importer to identify the exporter/producer of these "agent" sales.

In their rebuttal brief, the Petitioner refutes the Respondents' argument that the Department should apply "combination rates" to Huarong's and TMC's respective "agent" sales instead of AFA in the final results. According to the Petitioner, the Respondents are incorrect that each company's "agent" sales are valid sales and, thus, the Department must utilize "combination rates" in calculating a margin for these companies' "agent" sales. The Petitioner notes that Respondents do not cite any precedent as support for their argument that "agent" sales should be treated as "sales of the principal."

The Petitioner also disagrees with the Respondents' suggestion that the Department's inability to calculate appropriate cash deposit rates for Huarong's and TMC's respective "agent" sales can be rectified by issuing combination cash deposit rates. The Petitioner notes that evidence on the record demonstrates Huarong and TMC's importer violated 18 U.S.C. section 542 by not correctly identifying the exporter on the CF-7501 and paying the appropriate antidumping duty. Additionally, the Petitioner observes that, in contrast to what the Respondents argued, the verification reports demonstrate that the Respondents actively participated in this scheme to avoid paying the appropriate antidumping duty at the importer's suggestion. See TMC Verification Report at 7. Accordingly, the Petitioner argues that not only the importer, but also both Huarong and TMC, violated 18 U.S.C. section 371.

The Petitioner further argues that the Respondents are incorrect in arguing that the problem with cash deposit instructions issued by the Department can be rectified by imposing combination cash deposit rates. According to the Petitioner, the problem is not the cash deposit rates but the assessment instructions issued by the Department to CBP. The Petitioner maintains that the Department's ability to impose "accurate" cash deposit rates is dependent on the proposition that the exporter/importer-specific assessment instructions that are issued to CBP are based on "accurate" information. However, the Petitioner argues that the "agent" sales scheme conducted

by Huarong or TMC and their importer, which resulted in CBP collecting the incorrect cash deposit rate for these sales, took advantage of this proposition. The Petitioner notes that Huarong's/TMC's importer informed CBP that another party was the exporter for these "agent" sales while Huarong or TMC informed the Department that their respective company was the exporter. Accordingly, the Petitioner concludes that the imposition of combination cash deposit rates will not rectify this problem. Therefore, the Department should instead, in the final determination, issue a "master list" of assessment instructions to CBP for Huarong's and TMC's respective "agent" sales.

Department's Position:

The Department disagrees with both the Respondents and the Petitioner.

With regard to the Respondents' argument that the Department should utilize combination rates, the Department finds that applying combination rates to Huarong's and TMC's respective "agent" sales is not in accordance with the Department's combination rates practice. The Department recently announced that, in non-market economy ("NME") investigations, the Department would begin assigning rates to specific exporter-producer combinations where an exporter receives a separate rate. See Separate Rates and Combination Rates in Antidumping Duty Investigations involving Non-Market Economy Countries, 70 FR 17233 (April 5, 2005). This proceeding is not an investigation and TMC is an exporter not a producer, while Huarong is a producer which acts as its own exporter. Accordingly, the Respondents do not warrant combination rates under the Department's combination rates practice.

Additionally, as noted in the Preliminary Results, and in accordance with the Department's prior practice under sections 776(a) and (b) of the Act, the basis for applying an AFA rate to Huarong and TMC's respective "agent" sales was due to the fact that both companies participated in "agent" sales schemes. See Preliminary Results at 11938-9; 12th Review Final at Comments 18-20. The Department determined that Huarong's and TMC's respective "agent" sales were not *bona fide* sales. The record evidence, including sales documentation and CF-7501s, demonstrated that the "agent" was not a *bona fide* "agent" because it was the principal and not the "agent" that negotiated and accepted all the material terms of the sale. See Huarong's August 2, 2004, submission at 21; Huarong's May 11, 2004, submission at A-14; Huarong's November 19, 2004, submission at Exhibit 2; TMC's January 13, 2005 submission at C2; TMC's August 2, 2004, submission at Exhibit 4. Under these "agent" sales schemes, the Department is unable to issue instructions to CBP for the accurate collection of cash deposits and assessment of duties because the exporter/producer named on CBP form CF-7501 would be incorrect. The Department and CBP utilize sales documentation, including commercial invoices, to apply the appropriate cash deposit and assessment rates. However, the sales documentation, including commercial invoices, from Huarong's and TMC's respective "agent" sales identified the "agent" as the producer or seller, which contradicts what the Respondents reported to the Department. See Preliminary Results at 11938. Given that both Huarong and TMC reported to the Department that the seller of the merchandise is the principal, but participated in "agent" sales

schemes that allows the importer to incorrectly identify the "agent" as the seller to CBP, the universe of sales for which the Department would calculate the antidumping duty rate and the universe of sales against which CBP would assess that rate are different. Accordingly, issuing exporter/producer specific cash deposit rates would not address circumvention, but at best, would amount to an application of only partial AFA. This would dilute the impact of the Department's decision to apply total AFA to Huarong for its "agent" sales under the bars/wedges order and TMC for its "agent" sales under the axes/adzes, bars/wedges, and hammers/sledges orders. See the Department's Position at Comment 2.

Finally, the Department disagrees with the Petitioner that the Department should issue "master list" assessment instructions for the final results. It is the Department's practice to calculate an assessment rate for each importer of subject merchandise covered by the review. See 19 CFR 351.212(b). For these reviews, we will use assessment rates consistent with our normal practice.

II. Company-Specific Issues

Comment 8: Huarong[4]

A. Price Adjustment

The Petitioner contends that Huarong's allocation of the price adjustment is flawed in several respects and should be rejected by the Department in its final determination. In its brief, the Petitioner notes that while Huarong announced a price increase, the Department found at verification that the price adjustment for each line item of one sale reported in the section C database exceeded the announced price increase. See Huarong Verification Report at 9. The Petitioner observes that company officials of Huarong explained to the Department at verification that the reported price adjustment for the sale included retroactive price increases for other sales.

The Petitioner argues that Huarong has failed to justify that it properly allocated the reported price adjustment of this sale. According to the Petitioner, the Department requires that companies report price adjustments and expenses based on a transaction-specific basis, which Huarong has not done. See Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR 62134 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 10.

The Petitioner further contends that, pursuant to section 351.401(g) of the Department's regulations, the burden is placed on the respondent to demonstrate that the adjustment and its allocation is reasonable. However, the Petitioner notes that in the commercial invoice of this sale

[4] Huarong did not address a number of issues related to adverse facts available directly in their rebuttal comments. Rather, Huarong submitted a general comment rebutting Petitioner's argument on adverse facts available. See Respondents' rebuttal brief at 2-5.

the total price adjustment for the sale was allocated by the applicable amount to previous commercial invoices. See Huarong's October 21, 2004 submission at Exhibit 12. Accordingly, the Petitioner maintains that this sale's commercial invoice establishes that Huarong incorrectly allocated the reported price adjustments. The Petitioner argues that the Department must therefore revise Huarong's U.S. sales database by allocating the reported price adjustments to the corresponding commercial invoice and revise the reported gross unit price of each line item of this sale to their gross unit price not including the price adjustment.

Huarong did not comment on this issue in their rebuttal brief.

Department's Position:

The Department agrees with the Petitioner.

The Department agrees with the Petitioner that the allocation methodology used by Huarong for its price adjustment regarding certain sales of axes/adzes results in inaccurate and unreliable allocations. Section 351.401(g)(1) of the Department's regulations provide that we may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided we are satisfied that the allocation method used does not cause inaccuracies or distortions. Further, the regulations state that "{a}ny party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions." See 19 CFR 351.401(g)(2).

In its supplemental Section C response, Huarong reported that when the price of steel increased in China, Huarong notified its customers that it would increase the price by a certain percentage to offset these steel price increases. See Huarong's August 13, 2004, response at Supp C-9. Additionally, Huarong stated that the gross unit price of axes/adzes sales reported in the Section C database includes the price adjustment for these steel price increases, and the price adjustment field contains the percentage price increase that Huarong applied to the gross unit price. See Huarong's November 15, 2004, response at C-7. However, at verification, the Department tested Huarong's method of allocating its reported price adjustment and noted that the actual price adjustment for each line item reported by Huarong for sales of axes/adzes exceeded the reported percentage increase. See Huarong Verification Report at 9. When asked about this discrepancy, company officials stated that the actual price adjustment for these line items contained both the price increase of the line item and the increased charge for other commercial invoices. *Id.*

Since the allocation method did not correspond with what Huarong had previously reported to the Department, the Department requested that company officials explain the allocation method used to calculate these price adjustments. According to Huarong's company officials, the increased charge for the other commercial invoices was divided by the total value of the commercial invoice and then multiplied by the unit price for the reported line item to obtain the

reported price adjustment of that line item. See Huarong Verification Report at 10 and Exhibit 13. The Department reviewed the allocation method provided by Huarong and noted that the increased charge applied to the price adjustment for line items in Huarong's axes/adzes Section C database were for commercial invoices of non-subject merchandise. Additionally, the Department noted that two of these commercial invoices were invoiced prior to the date that Huarong stated that it applied the price increase. Moreover, the Department observes that the allocation method provided for these price adjustments contradicts a previous statement made by Huarong. Previously, Huarong stated that the price adjustments for these sales of axes/adzes do not include the price adjustment for certain sales that were shipped at the time of the announced increased and then later invoiced at the higher price. See Huarong's January 26, 2005, response at Supp 3-27.

The Department's review of Huarong's reported and verified actual price adjustment allocation methodology used for Huarong's sales of axes/adzes revealed numerous discrepancies. Specifically, the Department found that the reported price adjustment for each axes/adzes sale was significantly greater than the verified percentage price increase that Huarong applied to its United States' customers. Additionally, the Department found that contrary to previous statements made by Huarong, the reported price adjustments for these sales of axes/adzes included not only the price increase for this line item but also the price increase for other sales. The Department notes that under section 351.402(g)(4) of the Department's regulations, the Department will not reject an allocation method solely because the method includes expenses incurred with respect to sales of that do not constitute subject merchandise. However, the Department observes that, in the course of this review, Huarong has never, as is required under section 351.402(g)(2), provided an explanation to the Department for why this allocation methodology is not inaccurate, distortive or unreasonable. Therefore, the Department finds that the difference between the actual and allocated price adjustment is so great as to indicate that the allocation methodology does not result in a per-line item adjustment that reasonably approximates the actual price adjustment. Accordingly, the Department is denying Huarong the price adjustment for these sales of axes/adzes at the final determination. As a result, the Department will revise the gross unit price of these sales of axes/adzes and, thus, the gross unit price of these sales will not include the price adjustment.

B. AFA for Movement Expense

The Petitioner argues that the Department discovered at verification that Huarong had not reported a movement expense for certain sales of scrapers. The Petitioner maintains that sales documentation for certain sales contradicts what Huarong reported in the Section C database for movement expenses. In its Section C database for sales of scrapers to the United States, Huarong reported that the subject merchandise was not sent to a domestic intermediate location, including a distribution warehouse, after the merchandise left the factory. See Huarong's August 13, 2004 submission at Supp C-10. At verification, the Petitioner notes, the Department reviewed documentation for certain scraper sales which state that the subject merchandise incurred

movement expense "Z." See Petitioner's Case Brief at 17 for further explanation of movement expense "Z"; see also Huarong Verification Report at 17.

Based on the documentation of certain sales of scrapers obtained by the Department at verification, the Petitioner argues that it is evident that Huarong did not report all movement expenses (*i.e.*, transportation and other expenses, including warehousing) for these sales as required pursuant to section 772(c)(2)(A) of the Act. See Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware from the People's Republic of China, 65 FR 31144 (May 16, 2000), and accompanying Issues and Decision Memorandum at Comment 4; see also 12th Review Prelim at 11371, 11381. Accordingly, the Petitioner contends that the Department must find that Huarong failed to cooperate to the best of its ability based on Huarong's failure to both report and provide information the Department regarding this movement expense. According to the Petitioner, the Department should take as an adverse inference the average of the difference in days between the invoice date and shipment date, and use that time period as the number of days that the merchandise incurred movement expense Z. In addition, the Petitioner contends that the Department should value this movement expense by utilizing the surrogate value that the Department applied for a similar movement expense in the 12th administrative review. See 12th Review Prelim at 11381.

Huarong rebuts the Petitioner's request for the Department to value all movement expenses for Huarong. According to Huarong, the Petitioner has provided no factual evidence as support for their argument that all movement charges incurred by Huarong were not reported to the Department. Huarong maintains that they have reported all movement expenses incurred of sales of subject merchandise during the POR to the Department. If the Department has concerns regarding the movement expenses of these sales, Huarong asserts that the Department should request further information from Respondents regarding these movement expenses. However, Huarong notes that movement expense "Z" occurs in such a short amount of time that this movement expense is incidental. Therefore, Huarong argues, the Department should disregard these insignificant adjustments pursuant to section 351.413 of the Department's regulations.

Huarong also takes issue with Petitioner's request that Department reopen the record if surrogate values regarding these movement expenses are not available. According to Huarong, the Petitioner had over a year prior to the Preliminary Results to place information on the record regarding these movement expenses. Therefore, Huarong contends that the allowable amount of time for the Petitioner to place this information on the record has passed and, thus, the Department cannot reopen the record at the Petitioner's request.

Department's Position:

The Department agrees with the Petitioner.

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

The Department finds that the application of facts otherwise available is warranted under section 776(a)(2)(A) of the Act because the Department may use facts otherwise available in reaching the applicable determination if the respondent withheld information that had been requested by the Department. The Department notes that under section 772(c)(2)(A) of the Act Huarong is required to report all movement expenses that are incurred for its sales. As has been established in prior administrative cases, the respondent must report all movement expenses, which includes transportation and other expenses, such as warehousing. See Final Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Fittings from Taiwan, 66 FR 65899 (December 1, 2001) and accompanying Issues and Decision Memorandum at Comment 1 ("Butt-Welds from Taiwan").

In its questionnaire responses, after being asked twice by the Department, Huarong reported that it did not ship the subject merchandise from the factory to a distribution warehouse, and, thus, did not incur this movement expense. See Huarong's June 9, 2004 response at C-23; Huarong's August 13, 2004, response at Supp C-9. At verification, however, the Department noted that the loading notification notice for one sale listed an unreported movement expense. See Huarong Verification Report at 17 and Exhibit 27. The Department asked for and received the loading notification notice for other sales, which also listed this unreported movement expense. *Id.* at Exhibits 29-36. Moreover, when Huarong was asked about this expense, Huarong stated that this expense is incurred for all merchandise even though the Department noted that it was not reported in Huarong's U.S. sales database. Accordingly, the Department was not aware until it was discovered at verification that Huarong had not reported further movement expenses. Therefore, the Department finds that Huarong withheld this information requested by the Department under section 776(a)(2)(A) of the Act.

The Department further finds that Huarong failed to act to the best of its ability during this administrative review. Pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party fails to cooperate by not acting to best of its ability. See Shandong Huarong I;, Shandong Huarong II; Butt-Welds from Taiwan at Comment 1; Nippon Steel Corp. v. United States, 337 F. 3d 1373, 1377 (Fed. Cir. 2003) ("Nippon Steel II"). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to

cooperate than if it had cooperated fully." See SAA. Furthermore, "{a}ffirmative evidence of bad faith on the part of a Respondent is not required before the Department may make an adverse inference." See Antidumping Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997).

The Department finds that the adverse inference is warranted due to Huarong's failure to put forth its maximum efforts to report and obtain information from its records regarding all incurred movement expenses as requested. Huarong's knowledge of this movement expense and its decision not to report it, despite repeated questionnaires, properly warrants the use of AFA. A reasonable Respondent would have reviewed the Department's questionnaires and its records and reported the movement expenses. The Respondents cannot unilaterally decide what requested information to provide. Accordingly, Huarong did not cooperate to the best of its ability with regard to the Department's request for information during the course of the administrative review. It was only at the Department's request at verification that Huarong acknowledged that this unreported movement expense was incurred for all sales of axes/adzes. Therefore, consistent with the Department's practice in cases where a respondent fails to cooperate to the best of its ability, and pursuant to section 776(b) of the Act, the Department finds that the use of partial AFA is warranted for Huarong's unreported movement expense.

In applying partial AFA for this movement expense, the Department used a method applied in previous cases. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 61 FR 69067 (December 31, 1996) at Comment 1 ("Pipe and Tube from Turkey"); Butt-Welds from Taiwan at Comment 1. In both Pipe and Tube from Turkey and Butt-Welds from Taiwan, the Department applied AFA for unreported movement expenses using the highest unreported freight rate to those sales that reported no freight expense. Accordingly, the Department is using as an adverse inference the highest number of days, between the date of invoice and the shipment date, as the time period in which expense "Z" occurred for all sales in which this movement expense was not reported. Additionally, the Department is valuing this unreported movement expense for all sales with a publicly available Indian surrogate value because there is no surrogate value information on the record due to Huarong's failure to disclose this movement expense. See Final Factor Memo.

Finally, with regard to Huarong's argument that the Department should disregard this movement expense as an insignificant adjustment pursuant to section 777A(a)(2) of the Act, the Department disagrees. Section 777A(a)(2) of the Act clearly stipulates that the administering authority may "decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise." Whether to make an adjustment, pursuant to section 777A(a)(2) is a decision to be made by the Department, not the respondent. See Butt-Welds from Taiwan at Comment 1. Therefore, Huarong's argument that it could disregard this movement expense by not reporting it at all, because it is an insignificant adjustment, is misplaced.

C. AFA for Labor

The Petitioner argues that at verification the Department was unable to verify Huarong's reported labor usage rates. Based on Huarong's failure at verification, the Petitioner contends that the Department should apply AFA to Huarong, pursuant to section 776(a) and (b) of the Act.

At verification, the Petitioner notes, the Department found that Huarong's labor usage rates from the recently submitted factors of production database did not reconcile to the labor usage rates provided by Huarong. The Petitioner claims that the Department determined that the labor usage rates from the factors of production database could not be verified because the denominator, raw steel input, used to calculate the labor usage rates provided by Huarong did not correspond. See Huarong Verification Report at 24.

The Petitioner also notes that Huarong failed to calculate the average hours worked per day in the workshops whose labor figures Huarong used to calculate the labor usage rates. According to the Petitioner, Huarong only calculated the average hours worked per day in the wrecking bar workshop for July 2003, which was applied as the average working hours of both the entire POR and the other workshops, because it was easier for Huarong to do so in calculating the labor usage rates. *Id.* However, the Petitioner argues that the Department found at verification that the average hours worked per day in the wrecking bar workshop for July 2003 was not representative of the average hours worked per day in Huarong's other workshops for the entire POR.

Accordingly, the Petitioner maintains that at verification Huarong failed to verify its labor usage rates. The Petitioner asserts that Huarong failed to reconcile the labor usage rates of the scraper, shearing, and painting/packing workshops to each workshop's labor records. Moreover, the Petitioner claims that Huarong has not cooperated to the best of its ability by failing to provide to the Department labor usage rates representative of the production of the subject merchandise during the entire POR. The Department must follow past agency precedent, the Petitioner claims, by applying AFA because Huarong has both provided unverifiable labor usage rates and failed to cooperate to the best of its ability. See Final Results of Antidumping Duty Administrative Review: Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China, 64 FR 27506 (May 20, 1999) and accompanying Issues and Decision Memorandum at Comments 1, 6, and 12; Tianjin Machinery Imp. & Ex. Corp. v. United States, 353 F. Supp. 2d 1294, 1302-6 (CIT 2004) ("Tianjin Machinery"); Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware from the People's Republic of China, 62 FR 32757, 32758 (June 17, 1997) and accompanying Issues and Decision Memorandum at Comment 6. Therefore, the Petitioner concludes that the Department in making its final determination should use the highest reported labor usage rate for each segment of Huarong's reported labor production process.

Huarong rebuts the Petitioner's argument that the Department should apply AFA to Huarong.

Huarong notes that the Department is required to use facts available under section 776(a) of the Act only when a party: (1) withholds requested information; (2) fails to provide such information by the deadline or in the manner requested; (3) significantly impedes the proceeding; and/or (4) provides information that cannot be verified. Additionally, Huarong observes that the Department may use an adverse inference in the selection of facts available under section 776(b) of the Act only after the Department finds that the party has failed to cooperate to the best of its ability. Huarong contends that before the Department can apply AFA to a party, the Department must explain why the party failed to comply to the best of its ability and why the absence of this information is of consequence to the proceeding. See Ferro-Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1332 (CIT 1999) ("Ferro-Union"); Mannesmannrohren-Werke AG v. United States, 77 F. Supp. 2d 1302, 1314 (CIT 1999) ("Mannesmann").

Huarong argues that the Department can only apply AFA if a respondent's failure to provide information is more than an "inadvertent" error. See Nippon Steel Corporation v. United States, Slip Op. 2000-137 (CIT October 26, 2000) ("Nippon Steel I") at 27; Mannesmann at 1316. However, Huarong notes that the court has found that while parties must "exercise care in their submissions, it is unreasonable to require perfection," and, thus, the Department cannot require this of the respondent. See NTN at 1204, 1208.

Accordingly, Huarong concludes that the Department cannot apply AFA to Huarong because it reported the information requested by the Department in as best a manner as they could. As found by the court, the Department can only apply AFA to a party after reviewing the party's errors:

> in light of its overall conduct, the importance of the information, the particular time pressures of this {review}, and any other information that will bear on the determination of whether this was an excusable inadvertence on {Respondents'} part or a demonstration of lack of due regard for its responsibilities in the {review}. See Nippon Steel Corp. v. United States, 118 F. Supp. 2d. 1366, 1379 ("Nippon Steel II").

Therefore, Huarong argues that after the Department analyzes the "alleged" errors made by Huarong, the Department will find that it behaved responsibly and reported all of the data regarding sales/factors of production to the best of Huarong's ability. Consequently, Huarong argues, the Department cannot apply AFA to Huarong.

Department's Position:

The Department agrees with the Petitioner.

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

The Department finds that the application of facts otherwise available is warranted under section 776(a)(D) of the Act because the Department may use facts otherwise available in reaching the applicable determination if the respondent provides information but the information cannot be verified. At verification, the Department was unable to verify Huarong's reported labor usage rates. First, the Department found that the labor usage rates provided by Huarong did not reconcile with the labor usage rates from Huarong's most recently submitted factors of production database. See Huarong Verification Report at 23. The Department noted that these usage rates did not correspond because they had different denominators and raw steel input, and were from Huarong's November 15, 2004 database, which was not the most recent database used in the Preliminary Results. Accordingly, the Department found that the labor usage rates provided by Huarong at verification were not the most recently submitted factors of production used in the Preliminary Results, and, thus, were not subject to verification pursuant to section 351.307 of the Department's regulations.

Second, the Department found at verification that the average hours per day that Huarong used to calculate the labor usage rates for production of scrapers were not based on the production records of the scraper, shearing, and painting/packing workshops. At verification, Huarong stated the average working hours per day for the entire POR used to calculate Huarong's reported labor usage rates were based solely on the attendance sheets of the wrecking bar workshop for July 2003. The Department was conducting verification on the axes/adzes order, not the bars/wedges order. Accordingly, the Department was unable to verify Huarong's labor usage rates for the production of axes/adzes because Huarong calculated its labor rates based on the production records of wrecking bars.

Third, the Department found that the average hours Huarong calculated for July 2003 were not, in fact, representative of the production experience of the scraper, shearing, and painting/packing workshops for the entire POR. See Huarong Verification Report at 24. At verification, the Department observed that the total number of attendance days in the scraper, shearing, and painting/packing workshops varied for each month in the POR. This contradicted previous statements made by Huarong that because its production process was the same throughout the POR, the output per labor hour in a representative month should reflect the actual experience for

the entire year. See Huarong's November 15, 2004, submission at D-3. After review of Huarong's labor allocation, the Department finds that Huarong's reported labor usage rates were unverifiable because these labor usage rates were not representative of Huarong's production experience of the subject merchandise during the POR.

The Department finds that facts available is also warranted pursuant to section 776(a)(A) of the Act because Huarong did not provide certain information requested by the Department. At verification, the Department requested clarification for why Huarong could not calculate average hours based on the production records of the subject merchandise for each month of the POR. In response, Huarong stated that they reported the average working hours for the wrecking bar workshop for July 2003 because it was representative of their production experience and because it made calculating the labor usage rates easier for Huarong. See Huarong Verification Report at 24. The Department notes that prior to verification the Department twice asked Huarong to calculate its labor usage rates using production/payroll records for the entire POR. However, Huarong did not provide labor usage rates based on Huarong's production/payroll records for the entire POR despite the Department's repeated requests. See Huarong's November 15, 2004 submission at D-3, D-10 to D-11; Huarong's January 26, 2005 submission at Supp 3-31. Labor usage rates derived from Huarong's monthly production records for the entire POR, however, were of critical importance in the completion of a successful verification of Huarong by the Department. The Department notes that labor is a statutory element of the factors of production segment of the normal value calculation for NME proceedings under section 773(c)(3) of the Act, as Huarong, an experienced respondent understood.

The Department further finds that Huarong failed to act to the best of its ability during the investigation. Pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party fails to cooperate by not acting to best of its ability. See Shandong Huarong I; affirmed. Shandong Huarong II; Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808 (October 16, 1997); Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002). Additionally, the Department notes that, contrary to Huarong's contention, the standard for using AFA does not condone "inattentiveness, carelessness, or inadequate record keeping." See Nippon Steel II at 1382. Accordingly, adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA, at 870. Furthermore, "{a}ffirmative evidence of bad faith on the part of a Respondent is not required before the Department may make an adverse inference." See Antidumping Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997).

The Department finds that an adverse inference is warranted due to Huarong's failure to put forth its maximum efforts to report labor usage rates representative of the production experience of the

subject merchandise for the entire POR. As an experienced respondent, Huarong understood the importance of accurately reporting its labor usage rates. Despite numerous opportunities, Huarong did not act to the best of its ability to do so. Contrary to the Department's request and Huarong's pre-verification representations, the labor usage rates reported by Huarong were not representative of the costs incurred. Consistent with the Department's practice in other cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b) of the Act, the Department finds that the use of partial AFA is warranted for Huarong's unverifiable labor usage rates. See Tianjin Machinery at 1302-6 (the Department's final determination to apply AFA because Huarong's labor was unverifiable); 10th Review Final at Comment 18. Therefore, for the final determination, the Department will apply as partial AFA, the single highest month of attendance days in each segment of production to calculate the AFA labor usage rate for Huarong's total direct, indirect, unskilled, and packing labor under the axes/adzes order. See Notice of Final Determination of Sales at Less than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China, 69 FR 34130 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 1; Notice of Final Antidumping Duty Determination of Sales at Less than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) ("Vietnam Fish Fillets")and accompanying Issues and Decision Memorandum at Comment 1.

D. AFA for Packing

The Petitioner argues that at verification the Department was unable to verify certain packing factors (*i.e.*, plastic bags, metal strips, and labels) reported by Huarong in its factors of production database. According to the Petitioner, the Department requested, but Huarong did not provide, the Department with the total quantity of non-market economy purchases of these factors of production. Based on Huarong's inability to provide the Department with the requested quantities of these purchases, the Petitioner contends that the Department was unable to verify these factors of production. See Huarong Verification Report at 26.

The Petitioner notes that Huarong neither explained why it would not provide the Department with these purchases nor did it provide the Department with an alternative method for verifying these factors of production. Moreover, the Petitioner further claims that Huarong refused to provide the Department with the requested purchases despite both having control of the requested purchases and prior knowledge that the Department would request these purchases. See Huarong's U.S. Sales and Factors of Production Verification Outline (March 22, 2005), at 18. Accordingly, the Petitioner concludes that Huarong's refusal to provide the Department with the requested purchases clearly demonstrates that Huarong has significantly impeded this administrative review and failed to cooperate to the best of its ability. Therefore, the Department must apply AFA, pursuant to section 776(b) of the Act, by utilizing the highest reported value for each of these three factors of production.

For Huarong's general AFA comment, please see Huarong's rebuttal argument in Comment 8.C. above.

Department's Position:

The Department disagrees with the Petitioner.

At verification, the Department requested but did not receive the total quantity of purchases for three packing factors, which were not on the record at the Preliminary Results. See Huarong Verification Report at 26. However, the Department reviewed the material source chart provided by Huarong and notes that, in fact, Huarong only sourced these packing factors from one supplier. See Huarong's February 11, 2005, submission at Exhibit 1. Consistent with the Department's practice, the Department only calculates a weighted-average distance of inland freight based on the purchases for that input when there is more than one supplier. Accordingly, the Department finds that, while these packing factors' purchases are not on the record, these purchases are not necessary to calculate the surrogate freight values for these packing factors.

The Department finds that there is no basis to use facts otherwise available for these packing factors under section 776(a)(1) and (2) of the Act. The Department notes that in another case, the Department applied partial AFA for the respondent's packing expenses because the respondent failed to provide useable information regarding supplier distances and modes of transportation. See Notice of Final Determination of Sales at Less than Fair Value and Negative Critical Circumstances: Certain Color Television Receivers from the People's Republic of China, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 38. Unlike the respondent in that case, however, Huarong: (A) provided relevant supplier distances and modes of transportation as requested by the Department; (B) submitted the information regarding supplier distances and modes of transportation in a timely manner; (C) did not significantly impede this proceeding; and (D) the information was verified. See Huarong Verification Report at 24-25. Given that, the Department finds that there is no basis for using facts otherwise available, the Department further has no basis for applying partial AFA to Huarong for these packing factors in the final results.

E. Scrap Offset

The Petitioner argues that the Department should follow past agency precedent and deny Huarong's scrap offset to normal value. According to the Petitioner, the Department in previous administrative reviews has denied Huarong's scrap offset based on Huarong's inability to provide accurate information regarding the scrap offset. The Petitioner maintains that the Department

would be consistent with past practice in denying Huarong's scrap offset because Huarong has continued to not provide information documenting the scrap offset.

The Petitioner contends that while Huarong claims that the sales revenue generated from its scrap sales was documented in the company's income statement as a component of "other business income," Huarong was unable to provide documentation that reconciled Huarong's scrap income. See Huarong's August 30, 2004, submission at D-15.

The Petitioner further maintains that statements by Huarong cast doubt about the accuracy of Huarong's scrap offset. First, the Petitioner claims that Huarong acknowledges that some of the scrap sales during the POR were generated from merchandise produced prior to the period of review. *Id.* at D-16. Second, the Petitioner contends that Huarong admits the generation and sales of scrap occurs through both the production of subject and non-subject merchandise. *Id.* Third, the Petitioner notes that Huarong concedes that it is impossible to correlate the production of subject merchandise to specific scrap sales. See Huarong's November 15, 2004 submission at D-11. Based on these statements, the Petitioner states that the Department can neither ascertain that the scrap produced by Huarong was sold during the POR nor reconcile scrap sales to only production of subject merchandise. Accordingly, the Petitioner concludes that the Department must follow past practice to deny Huarong a scrap offset based on Huarong's inability to demonstrate that it is entitled to a scrap offset.

Huarong rebuts the Petitioner's argument that the Department must follow past practice to deny Huarong a scrap offset. According to Huarong, the Act requires that the Department should value inputs based on the factors of production actually used by the respondent. In addition, Huarong notes that its factory has been verified by the Department on numerous occasions.

Department's Position:

The Department disagrees with the Petitioner.

With respect to granting a respondent an offset to normal value for their scrap byproduct, it is the Department's practice to grant an offset only under the following circumstances. The Department will offset production costs with the sales revenue only if the byproduct is either re-sold or has commercial value and re-enters the respondent's production process. See *e.g.*, Notice of Final Determination of Sales at Less than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 18; Notice of Final Determination of Sales at Less than Fair Value: Silicon Metal from Russian Federation, 68 FR 6885 (February 11, 2003); Notice of Final Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of

China, 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum at Comment 13; Notice of Final Determination of Sales at Less than Fair Value: Steel Concrete Reinforcing Bars from the People's Republic of China, 66 FR 33522 (June 22, 2001) and accompanying Issues and Decision Memorandum at Comment 5 ("Steel Concrete Reinforcing Bars"). The Department will not grant the offset when the respondent fails to show either that the byproduct was sold, or that it had commercial value and was re-used in the production process. See Steel Concrete Reinforcing Bars at Comment 5C.

In the instant case, Huarong claimed a byproduct offset for its sales of scrap. According to Huarong, the amount of scrap allocated for subject merchandise is based on allocating total scrap sales for the POR divided by total steel input used for the production of both subject and non-subject merchandise and then multiplied by the steel used in production of subject merchandise. See Huarong's August 30, 2004, submission at Supp D-16; Huarong's November 15, 2004, submission at Exhibit 13. Huarong noted that it used this allocation method because it could not differentiate between scrap generated from production of subject and non-subject merchandise since scrap was collected for sale from all of its workshops.

The Department finds that Huarong is entitled to continue to receive an offset for its sales of steel scrap. At verification, the Department verified the total quantity and value of steel scrap sales in December 2003 and tied the value of those sales to Huarong's FY 2003 accounting records and financial statement. See Huarong Verification Report at 23 and Exhibit 23; Huarong's November 15, 2004, submission at Exhibit 13. Accordingly, the Department finds that Huarong is entitled to the scrap offset because both Huarong's accounting records and financial statement demonstrate that Huarong had sales of scrap during the POR. See Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the PRC, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 8C.

Moreover, the Department finds that Huarong's allocation method for the scrap offset is appropriate. Although the Petitioner is correct that in a past administrative review of this order the Department denied Huarong the scrap offset (11th Review Final at Comment 14), the Department finds that the facts of this review regarding Huarong's offset are distinguishable. First, while the Department determined that Huarong's accounting records cannot differentiate scrap sales generated by subject and non-subject merchandise, the Department finds that the scrap offset should not be denied because there was a sufficient link between the recovery and sale of scrap generated by subject merchandise. See Huarong Verification Report at 18, 23; Lock Washers at Comment 3. This is contrary to the facts of the 11th Review Final, where the Department denied Huarong the offset because there was an insufficient link between the recovery and sale of subject merchandise. See 11th Review Final at Comment 14.

Second, the Department notes there is information on the record in this review demonstrating

that Huarong was able to allocate total scrap for the POR generated by subject and non-subject merchandise. At verification, the Department found that Huarong's allocation method was reasonable because Huarong was able to allocate total scrap sales based on the steel input consumed by subject and non-subject merchandise. See Huarong Verification Report at Exhibit 23. Again, this is contrary to the facts of the 11th Review Final where the Department denied the offset because Huarong could not allocate the quantity of scrap sold between subject and non-subject merchandise. See 11th Review Final at Comment 14. However, the Department notes that the 11th Review Final found that it is appropriate, which is true for this review, to grant a respondent an offset when the necessary information is available to calculate the offset for the subject merchandise. *Id.*; see also 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) ("Tables and Chairs I") and accompanying Issues and Decision Memorandum at Comment 16.

Third, the Department finds that Huarong was able to take the total amount of scrap allocated for axes/adzes during the POR to calculate a per-unit amount of scrap allocated to one kilogram of the finished subject merchandise. Huarong was unable to do this in the 11th review. See 11th Review Final at Comment 14. Accordingly, the Department finds that the Petitioner's argument to deny Huarong's scrap offset based upon the Department's practice in previous reviews is not valid. Therefore, the Department is continuing to grant Huarong the scrap offset because, in contrast to the 11th Review Final, Huarong was able to provide a per-unit scrap offset only with regard to the quantity of scrap actually sold from production of subject merchandise during the POR.

F. Surrogate Value for Steel Billet

The Petitioner notes that the Department valued Huarong's main input into the subject merchandise, steel billets, using two categories (three HTS numbers) of Indian import statistics.[5] See Prelim Factors Memo at 4. The Petitioner also notes that they advised the Department that India had changed its HTS classification scheme and that there was an additional HTS number the Department should consider in valuing billets.[6] See Petitioner's December 28, 2004 submission at 4. According to the Petitioner, because their recommended fourth HTS number (7207.20.10) has an identical description to one of the HTS numbers used by the Department to value billets (7207.20.01), this fourth HTS number should also be used to value billets.

[5]The HTS subheadings are: 7207.20.01, semifinished products of iron or steel, forging quality; 7207.20.90, semifinished products of iron or non-alloy steel, <25% carbon-others; and 7207.20.09, semifinished products of iron or non-alloy steel, <25% carbon-others.

[6] This HTS subheading is 7207.20.01, semifinished products of iron or steel, forging quality.

In their rebuttal brief, the Respondents argue that the Department has verified that the Respondents use scrap rail, scrap wheels and billets in the production of subject merchandise, not hexagonal bars. The Respondents contend that the Department should use an approach in the 13th Review of HFHTs that is consistent with the previous twelve reviews, specifically to value steel billet with HTS category 7207.20.09.

Department's Position:

The Department agrees with the Petitioner.

The Department inadvertently mislabeled one of the HTS subheadings used to value steel billet in the Prelim Factors Memo. See Prelim Factors Memo at Exhibit 3. The column which was labeled HTS subheading 7207.20.01 should have been labeled HTS subheading 7207.20.10. The quantity and value used by the Department matches that of HTS 2707.20.10 which was placed on the record by the Department. See Memo to the File, from Paul Walker, Case Analyst, dated February 28, 2005.

The Respondents' assertion that in past administrative reviews of Huarong the Department has verified that scrap rail and scrap wheels are used as the main input in the production of subject merchandise is irrelevant in the instant review. In the instant review, the Department was only able to verify the factors of production for one Respondent, Huarong, which used billet as the main input in the production of subject merchandise. See Huarong Verification Report at 20. Contrary to the Respondents' claim, the Department notes that in the 12th review, the Department used multiple HTS subheadings to value steel billets, specifically HTS subheadings 7207.20.01 and 7207.20.09. See Petitioner's December 29, 2004 submission.

G. Surrogate Value for Brokerage & Handling

The Petitioner argues that the Department should not have valued brokerage and handling ("B&H") using a surrogate value from the Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 50406 (October 3, 2001) ("HR from India"). The Petitioner contends that the Department should have valued B&H using a surrogate value from the new shipper reviews in certain stainless steel wire rod from India because wire rod is packaged and shipped more similarly to HFHTs than are hot-rolled coils. See Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews, 63 FR 48184 (September 9, 1998) ("SSWR NSRs"). The Petitioner notes that the SSWR NSRs value was used in the 12th review of HFHTs and that this surrogate value was recently upheld by the court. See Shandong Huarong III. Citing Shandong Huarong III, the Petitioner argues that in utilizing SSWR NSRs as a surrogate for

B&H, the Department, in the 11th review, relied upon the fact 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. *Id.* Additionally, the court sustained the Department's finding that both stainless steel wire rod and HFHTs are containerized, whereas hot-rolled coil is not. Moreover, the court also noted that the method of shipment has an influence upon the overall brokerage fee rate, and that hot-rolled coils has little in common with HFHTs. *Id.* at 14. Accordingly, the Petitioner notes that the court found reasonable the Department's "determination that the type of merchandise being shipped, and the method by which it is shipped, provide a more accurate surrogate value than a more contemporaneous value for a dissimilar product that is not containerized." *Id.* at 16. Therefore, the Petitioner asserts that the Department should remain consistent with the Department's practice in prior reviews and the findings of the court by valuing B&H for the final determination using the surrogate from SSWR NSRs.

The Respondents did not comment on this issue in their rebuttal brief.

Department's Position:

The Department disagrees with the Petitioner. The Petitioner argues that, for the final results, the Department should value B&H using a value from SSWR NSRs. However, the only B&H value on the record of this review is the one used in the preliminary results. Section 351.301(c)(3)(ii) of the Department's regulations allow interested parties to submit factor value information up to 20 days after the preliminary results. Consequently, we note that after the preliminary results, the Petitioner had an opportunity to place the SSWR NSRs B&H value on the record, but did not. The Department cannot use information not on the record of this review for purposes of valuing B&H in these final results and, therefore, will continue to use the B&H surrogate value from HR from India. We note that the brokerage and handling value in HR from India is generally contemporaneous with the POR and, thus, is an appropriate surrogate.

H. Inclusion of Packing Weight in Movement Expenses' Calculation

The Petitioner argues that in the Preliminary Results, the Department's calculation of movement expenses for the Respondents, on the basis of a net weight, was incorrect. The Petitioner asserts that the Department's calculation failed in two respects. First, the Petitioner notes that the net weight per piece of the subject merchandise used by the Department in the Preliminary Results was not on the same basis as the surrogate value. According to the Petitioner, the Department should have included the weight of the packing materials for the subject merchandise because shipping companies use gross weight rather than net weight to calculate freight charges. Second, the Petitioner asserts that the Department's methodology in the Preliminary Results failed to account for the full weight of one of TMC's CONNUMs. The Petitioner argues that the Department's calculation of movement expenses for TMC's CONNUM did not account for

"object X." See Petitioner's Case Brief at 11 for definition of "object X." Therefore, the Petitioner contends that the Department should calculate the movement expenses for the Respondents in the final determination on a gross weight basis, which includes the weight of the packing materials and "object X."

The Respondents did not comment on this issue in their rebuttal brief.

Department's Position:

The Department agrees with the Petitioner, in part.

The issue of whether to use a gross or net weight in calculating movement expenses was raised as an issue in the 11th review of HFHTs. See 11th Review Final at Comment 14. The Department noted in the 11th Review Final that the record evidence, *i.e.*, bills of lading and packing lists, identified the actual weight of the subject merchandise, which serves as the basis of the movement expenses being incurred. *Id.* The record of this proceeding, however, is factually different. In the instant case, the Respondents incurred their movement expenses based on the gross weight (*i.e.*, the weight of the finished product and the weight of the packing materials). At Huarong's verification, the Department was provided with documentation, including commercial invoices, packing lists and bills of lading which showed that the Respondents shipping expenses are billed on a gross weight basis. See Huarong Verification Report at 16 and Exhibit 27. Accordingly, the Department has adjusted the Respondents' movement expenses from a net weight basis to a gross weight basis for the final determination.

With respect to the Petitioner's argument that the Department's calculation of movement expenses must account for the weight of "object X," we need not reach that decision. As noted in Comment 9.A, TMC is receiving total AFA because the Department was unable to verify factors of production for TMC at verification. See Comment 9.A. Because the Department is not calculating a margin for TMC for the final results, issues concerning TMC's movement expenses are moot.

I. Factors of Production for Pallets

The Petitioner argues that the Department's Preliminary Results did not fulfill its obligations under the antidumping statute to calculate a margin that accurately reflects the production and transportation cost of all factors of production. The Petitioner notes that the Respondents have reported that they use metal pallets to transport subject merchandise. However, according to the Petitioner, the Respondents have not provided information concerning the associated factors used

in producing these pallets, *i.e.*, electricity, oxygen, acetylene, welding solder or rods, and labor.

The Petitioner contends that it is the Department's practice to value all factors of production. The Petitioner notes that in a past case the Department valued inert gasses, such as argon, nitrogen and oxygen, which were used in cutting torches. See Carbon and Certain Alloy Steel Wire Rod from Moldova: Notice of Preliminary Determination of Sales at Less Than Fair Value, 67 FR 17401 (April 10, 2002) ("Wire Rod from Moldova"). In addition, the Petitioner notes that the Department has previously valued the welding wire and solder that was used to produce the subject merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China, 69 FR 35296 (June 24, 2004) and accompanying Issues and Decision Memorandum at Comment 4 ("Tables and Chairs II"). Accordingly, the Petitioner contends that the Department must abide by agency precedent by valuing all the inputs for metal pallets.

Finally, the Petitioner argues that for the Department to fulfill its statutory obligations under the antidumping statute, it must re-open the record of this administrative review to collect information concerning the factors of production used to produce pallets. The Petitioner argues that by re-opening the record, the Department will permit parties an opportunity to submit information concerning the correct surrogate values used to value pallet material factors of production.

The Respondents did not comment on this issue in their rebuttal brief.

Department's Position:

The Department disagrees with the Petitioner.

Because the Department is applying AFA to TMC due to its failed verification, issues involving TMC's margin calculation are moot. Regarding Huarong, Huarong stated that the manufacturing process for pallets involves welding flat steel into the shape of a pallet with an electric welder. See, *e.g.*, Huarong's August 30, 2004 submission at 18. The Department notes that Huarong reported all labor, electricity and steel used in the production of pallets and that the Department verified these usage factors. See Huarong Verification Report. A careful review of Huarong's verification report reveals that the Department noted no solder, welding rods, gas tanks or inert gases in Huarong's packing facility. See Huarong Verification Report at 18 and 24-25. In addition, there is no evidence on the record to indicate that Huarong has used solder, welding rods or inert gases in the manufacture of pallets. Therefore, we disagree with the Petitioner that there is a need to reopen the record of this review.

The Department agrees with the Petitioner that all factors of production used to produce pallets must be reported to the Department. However, there is no reason to believe the Respondents have not reported all relevant pallet factors in this review.

J. Application of Packing Materials and the Byproduct Offset in the Calculation of Normal Value

The Petitioner argues that the Department's calculation of the financial ratios in the Preliminary Results was incorrect. According to the Petitioner, the Department's calculation of the financial ratios departed from the methodology used in prior reviews. The Petitioner notes that in the Preliminary Results, the Department added packing materials to normal value ("NORMVAL") and deducted byproducts from NORMVAL. However, the Petitioner notes that in the 12th Review Final, the Department subtracted the byproduct offset from the cost of manufacture ("COM") and added packing to the total COM ("TOTCOM").

The Petitioner argues that the Department has changed its methodology regarding packing materials and the byproduct offset in its calculation of NORMVAL. According to the Petitioner, the underlying Indian financial statements (collected by the RBI) are utilized in such a manner that all costs, whether they are direct materials, scrap offsets, or packing materials are accounted for in the financial ratios. Therefore, the Department should apply the packing materials and byproduct offset in an apples-to-apples manner as it has done in past reviews of HFHTs from the PRC.

The Respondents did not comment on this issue in their rebuttal brief.

Department's Position:

The Department disagrees with the Petitioner.

With respect to the application of the byproduct offset to NORMVAL, it is the Department's current practice to apply the financial ratios in a manner consistent with the facts of the case and with the accounting methodology used by the surrogate companies to account for byproduct revenue. It is appropriate to apply the surrogate financial ratios to the Respondents' COM in a manner consistent with the surrogate companies' treatment of COM. See Vietnam Fish Fillets at Comments 5, 6 & 12; see also Notice of Final Antidumping Duty Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 710005 (December 8, 2004) ("Vietnam Shrimp"), and accompanying Issues and Decision Memorandum at Comment 4B. In Vietnam Shrimp, the Department noted that the

Department found "no mention of by-products sales" in the surrogate company's financial report. *Id.* Therefore, the Department determined that in the absence of other information to the contrary, the byproduct offset should be applied to NORMVAL. *Id.* In the instant review, a careful review of the RBI Bulletin reveals that there is no reference to byproducts in the calculations of surrogate financial ratios. The Department cannot assume, as the Petitioner suggests, that byproduct sales must be captured by COM. As the RBI Bulletin contains no information with respect to byproduct sales, there is no basis on which the Department can find that the COM amount in the RBI Bulletin is net of byproduct sales. Accordingly, there is no reason for the Department to apply the byproduct offset to any amount other than to NORMVAL.

Regarding the Petitioner's argument on the application of packing materials, the Department was not able to determine whether the RBI data contains any evidence of how packing materials were accounted for. It is not appropriate to include packing expenses in the COM to which the surrogate financial ratios are applied when it cannot be ascertained that packing expenses are in the surrogate financial ratio calculations. See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 69 FR 33626 (June 16, 2004) at Comment 6 ("Garlic"). In Garlic, the Department could not identify where and to what extent packing expenses were accounted for in the surrogate company financial ratios. We concluded in that case that applying the surrogate financial ratios to production costs that include amounts for packing materials would distort the amount of overhead, SG&A, and profit in the margin calculation. To avoid this distortion, the Department accounted for packing expenses in NORMVAL. *Id.* In the instant review, a careful review of the RBI Bulletin reveals that there is no reference to packing materials in the calculations of surrogate financial ratios. The Department cannot assume, as the Petitioner suggests, that packing materials must be captured by TOTCOM. Accordingly, there is no reason for the Department to apply packing material costs to any amount other than to NORMVAL.

Comment 9: TMC[7]

A. AFA for Failure at Verification

The Petitioner argues that the Department must apply total AFA to TMC in the final results on the basis of TMC's failure at verification. The Petitioner notes that the Department was unable to verify one of TMC's supplier's (Dagang) factors of production of picks/mattocks, at verification. See TMC Verification Report at 1 and 12-13. According to the Petitioner, the Department has repeatedly applied AFA in cases where an exporter was not able to provide factors of production due to a noncompliant factory. The Petitioner notes that in Garlic the Department found that by not submitting an adequate FOP response and regardless of its

[7] TMC did not address a number of issues related to adverse facts available directly in their rebuttal comments. Rather, TMC submitted a general comment rebutting the Petitioner's argument on adverse facts available. See Respondents' rebuttal brief at 2-5.

intentions, the Respondent withheld necessary information within the meaning of section 776(a)(2)(A) of the Act. See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd., 68 FR 75210 (December 30, 2003) ("Garlic NSR II"), and Accompanying Issues and Decision Memorandum at Comment 1. The Petitioner also notes that the Department concluded in Garlic NSR II that a Chinese producer is an "interested party" under the definition of that term in section 771(9) of the Act and that AFA is warranted if either the respondent or the producer failed to act to the best of its ability. *Id.* The Petitioner argues that the Department cited a long and consistent history for this conclusion. See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 68 FR 36767 (June 19, 2003) ("Garlic NSR I") (applying AFA when respondent failed to provide FOP data in a timely manner because of an uncooperative supplier); see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504 (Apr. 21, 2003) (applying AFA to a respondent which failed to provide total production and FOP data for the period of review in a timely manner, and finding that the respondent did not act to the best of its ability to comply with the Department's request for information). As a result of Dagang's failed verification, the Petitioner asserts that the Department should apply a rate based on AFA for TMC's sales of picks/mattocks to the United States.

The Petitioner notes that in determining a margin based on adverse inferences, the Department can choose from among four types of information under section 776(b) of the Act: information derived from: (1) the petition, (2) a final determination in the investigation, (3) any previous review, or (4) any other information placed on the record. The Petitioner argues that in determining an adverse inference for TMC, the Department is required to consider whether TMC and Dagang benefitted by failing to cooperate with respect to the Department's attempt to verify Dagang under 19 CFR 351.309(b)(1). The Petitioner notes that the preliminary margin calculated for TMC's pick/mattock sales is the highest calculated rate in the history of that order. The Petitioner contends that TMC's final rate, had TMC passed verification, would not only result in a higher assessment and deposit rate for TMC than it would have received if it had failed to respond whatsoever, but would also raise the rate applied to the PRC entity.

Based upon the possibility that TMC had an incentive to fail verification, the Petitioner argues that for the final results the Department should rely on the record evidence provided by TMC. According to the Petitioner, the Department should not rely on a final margin calculation from a prior administrative review because TMC and Dagang could have purposely failed verification in the hopes of gaining the prior AFA rate of 98.77 percent rather than the preliminary calculated rate of 129.93 percent. At a minimum, the Petitioner argues that the Department should presume that had TMC's supplier, Dagang, been able to provide evidentiary support that the factors of production were lower than reported then TMC would have reported these revised factors in its prior responses. Accordingly, the Petitioner asserts that had the Department been able to proceed, and found that Dagang's factors of production were supported at verification, then any errors in reporting would have resulted in higher, rather than lower, factors of production.

Finally, the Petitioner argues that the Department would be following prior agency precedent in using the highest margin as the AFA rate, which was upheld by the court. In Rhone Poulenc, the court stated that the rationale underlying the adverse inference rule is that "the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing the rule, would have produced current information showing the margin to be less." See Rhone Poulenc, 889 F.2d at 1185, 1190 (Fed Circ. 1990). The Petitioner contends that the Department must conclude that TMC believed it would benefit from refusing to cooperate with the Department's requests for verification of its reported factors of production. Accordingly, the Petitioner argues that because the Department found few discrepancies with TMC's sales data at verification, the Department need only find an AFA plug for TMC's factors data. Therefore, the Petitioner proposes that, as an AFA plug, the Department should use TMC's factors of production under Section 776(b)(1) in conjunction with TMC's sales data.

TMC rebuts the Petitioner's argument that the Department should apply AFA to TMC. TMC notes that the Department is required to use facts available under section 776(a) of the Act only when a party: (1) withholds requested information; (2) fails to provide such information by the deadline or in the manner requested; (3) significantly impedes the proceeding; and/or (4) provides information that cannot be verified. Additionally, TMC observes that the Department may use an adverse inference in the selection of facts available under section 776(b) of the Act only after the Department finds that the party has failed to cooperate to the best of its ability. TMC contends that before the Department can apply AFA to a party, the Department must explain why the party failed to comply to the best of its ability and why the absence of this information is of consequence to the proceeding. See Ferro-Union; Mannesmann.

TMC argues that the Department can only apply AFA if a respondent's failure to provide information is more than an "inadvertent" error. See Nippon Steel I at 27; Mannesmann at 1316. However, TMC notes that the court has found that while parties must "exercise care in their submissions, it is unreasonable to require perfection," and, thus, the Department cannot require this of the respondent. See NTN at 1204, 1208.

Accordingly, TMC concludes that the Department cannot apply AFA to TMC because it reported the information requested by the Department in as best a manner as they could. As found by the court, the Department can only apply AFA to a party after reviewing the party's errors:

> in light of its overall conduct, the importance of the information, the particular time pressures of this {review}, and any other information that will bear on the determination of whether this was an excusable inadvertence on {Respondents'} part or a demonstration of lack of due regard for its responsibilities in the {review}. See Nippon Steel II.

Therefore, TMC argues that after the Department analyzes the "alleged" errors made by TMC, the Department will find that it behaved responsibly and reported all of the data regarding sales/factors of production to the best of TMC's ability. Consequently, TMC argues, the Department cannot apply AFA to TMC.

Department's Position:

We agree with the Petitioner, in part. In accordance with section 776(a)(2)(D) of the Act, the Department finds applying facts available to TMC is warranted because TMC provided factors of production ("FOP") data that the Department was unable to verify for TMC's sales of picks/mattocks.[8] Furthermore, in accordance with section 776(b) of the Act, the Department finds that TMC failed to cooperate to the best of its ability with the Department's request for information and, therefore, finds an adverse inference is warranted in determining the facts otherwise available. See Hand Trucks from the PRC at Comment 1; see also Automotive Replacement Glass Windshields from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 25545, 25550 (May 7, 2004) (In both cases, the Department concluded that companies did not cooperate to the best of their ability when the Department was unable to verify information submitted due to a lack of cooperation at verification).

The Department was unable to verify TMC's FOP data. On April 18, 2005, the day the Department began verification, TMC notified the Department that the books and records[9] of its supplier of picks/mattocks, Dagang, were seized by the Tianjin Tax Authority ("TTA"). See TMC Verification Report at 12. On April 19, 2005 the Department conducted verification at Dagang's facilities to confirm that these records were no longer in the possession of Dagang and concluded that Dagang's FOPs were unverifiable. *Id.* at 13. As a result of the TTA's seizure of Dagang's FY 2003-2004 books and records, the Department was unable to verify TMC's FOP data. In addition, as Dagang was TMC's sole supplier of picks/mattocks, the Department does not have a verified FOP database upon which to calculate a normal value. Therefore, the Department must rely on the facts otherwise available in order to determine a margin for TMC, pursuant to section 776(a)(2)(D) of the Act.

We find that an adverse inference is warranted in determining the facts otherwise available because TMC failed to act to the best of its ability for two reasons. First, TMC failed to notify the Department in a timely manner that Dagang's books and records had been seized. TMC did not notify the Department of the seizure until April 18, 2005. The TTA seized Dagang's books

[8] Of the four HFHT orders, TMC received AFA for three (axes/adzes, hammers/sledges and bars/wedges) due to its participation in an "agent" sales scheme. See Comment 2 above.

[9] The accounting books covered all of fiscal year ("FY") 2003 and FY 2004.

and records on April 1, 2005, and TMC learned of the seizure on April 4, 2005. See TMC Verification Report at 12-13. On April 4, 2005, the same date the TMC learned of the seizure, TMC requested that the Department postpone verification so that TMC could attend the "Canton Trade Fair." *Id.* and Exhibit 7; see TMC's April 4, 2005 submission at 1. Thus, we have reason to question whether TMC misrepresented the reason for the request to postpone verification. In any event, on April 5, 2005, TMC withdrew its request to postpone verification, making no mention of the seizure of Dagang's books and records. See TMC's April 5, 2005, submission at 1-2. When asked why it had not informed the Department of the seizure, TMC responded that it was not "{their} concern." See TMC Verification Report at 12-13. As the Department was verifying TMC's FOPs, it was incumbent upon TMC to inform the Department of any issue related to the scheduled verification.

Second, TMC failed to provide any alternative methodology to verify its factors of production. In the verification outline released to TMC, the Department advised TMC to make available documents relating to its reported FOP. Section 782(c)(1) of the Act provides that, if an interested party is unable to submit the information requested or in the requested form, that party is required to notify the Department promptly and must suggest a reasonable alternative. As stated above, TMC did not notify the Department in a timely manner. Nor is there any evidence that TMC made any effort to contact TTA to ascertain, for example, how long the documents would be held or whether the documents or copies could be made available to the Department. In addition, while the Department requested at verification that Dagang provide an alternative method of verifying its FOPs, neither TMC nor Dagang were prepared to proffer alternatives. See TMC Verification Report at 13.

Under section 782(c)(1) of the Act, the Department may modify its requirements if a respondent promptly notifies the Department of its difficulties in supplying information. TMC's failure to inform the Department of the seizures made it impossible for the Department to consider any modifications. China Steel Corp. v. United States, 264 F.Supp. 2d 1339, 1358 (CIT 2003) (duty to assist not triggered). As stated above, TMC did not disclose the information that their supplier's books and records had been seized by the TTA until verification, despite having ample time to do so before verification. Had TMC provided the information in a timely manner the Department may have had time to pursue any proposed alternatives, including, for example, alternative methods of verifying TMC's factors of production data, contacting the TTA in an attempt to gain access to the data necessary for verification, or postponing verification.[10] As a result of TMC's untimely notification, at a minimum, TMC foreclosed the Department's ability to consider such alternatives.

[10] The Department notes that TMC submitted factors of production in the 14th administrative review of HFHTs on June 3, 2005. It would be reasonable to conclude that at some point in May 2005 Dagang's records were returned, at which point the Department could have conducted verification.

The Petitioner argues that the Department should use the dumping margin calculated at the Preliminary Results, or create an "AFA plug" for TMC's factors of production using that information. The Department disagrees and, instead, has determined to use a rate calculated for another respondent and the PRC-wide rate as AFA. The Department was unable to conduct verification of the factors of production used in the preliminary rate calculation. In addition, many aspects of the preliminary rate have been challenged in the parties' comments, and we believe that a calcualted margin would likely be substantially reduced based on these comments. Therefore, for the final results, the Department is not using the information submitted by TMC for its FOPs and is assigning the rate of 98.77 percent, which is a calculated rate that also currently serves as the PRC-Wide rate, to TMC's sales of pick/mattocks.

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that "corroborate" means to determine that the information used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. See GOES from Italy.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in Flowers from Mexico, the Department disregarded the highest margin in that case as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. See Fresh Cut Flowers from Mexico at 6812, 6814. Similarly, the Department does not apply a margin that has been discredited. See D&L at 1220, 1221 (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. Accordingly, for TMC's sales of pick/mattocks we have used the highest margin from this or any prior segment of the proceeding, 98.77 percent, as the margin for these final results.

B. Separate Rate

According to the Petitioner, TMC has submitted evidence to the Department that clearly demonstrates that TMC is not entitled to a separate rate due to its status as a state-owned entity.

First, the Petitioner contends that TMC is not entitled to a separate rate due to the company's status as a state owned enterprise ("SOE"). The Petitioner asserts, under PRC law, that there are several basic types of business organizations, specifically, "all people ownership" and "sole state ownership," which are two distinct types of business enterprises in terms of both organization and governance. The Petitioner contends that sole state ownership companies are a subtype of limited liability company and are governed by *The Company Law of the People's Republic of China* ("*Company Law*"). The Petitioner argues that Article 64 of the *Company Law* stipulates that a wholly state-owned company, or SOE, is a limited liability company established through sole investment by a state authorized investment entity or state authorized department. The Petitioner contends that the type of SOE or limited liability company outlined in the *Company Law* is consistent with what is stated in TMC's business license. Moreover, the Petitioner asserts that TMC confirmed at verification that it is a limited liability company, and, thus an SOE. See TMC Verification Report at 3.

In contrast to SOEs, the Petitioner argues that "all people" ownership companies are a type of collective enterprise and are governed by the *All-People Ownership Industrial Enterprise Law of the People's Republic of China*. The Petitioner notes that the phrase "all people ownership" appears in the name of the law and, consistently, in the body of the law, while the phrase for "sole state ownership" does not appear in this law. Therefore, according to the Petitioner, a company cannot have "all people ownership" and also be a SOE because they are two separate and distinct enterprise types governed by different PRC laws.

Second, the Petitioner contends that TMC's claim to be a "limited liability, all people ownership" company is false because the record demonstrates that TMC is a SOE. According to the Petitioner, TMC's business license, as well as other documents,[4] state that TMC is a SOE and not a limited liability company. See Petitioner's Case Brief at 24-5 for a description of the translations of TMC's and other HFHT companies' business licenses. Additionally, the Petitioner cites to multiple web sites that identify TMC as a SOE, including TMC's parent company's website. *Id.* at Exhibit 1for printouts of these web sites.

Third, the Petitioner asserts that TMC is not only owned, but also controlled, by the PRC government. According to the Petitioner, TMC is controlled by the state because TMC's general manager is appointed by the state. See TMC's May 12, 2004 submission at 8. The Petitioner argues that this state control contradicts TMC's statements on the record that it is independent of control by any national, provincial, or local governments. *Id.* at 3. Based upon TMC's status as a

[4]These documents include TMC's corporate charter (see TMC's July 30, 2004 submission at Exhibit 7); the business licence of TMC's affiliate (see TMC's November 1, 2004 submission at Exhibit 11); TMC's 2002 and 2003 financial statements (see TMC's May 12, 2004 submission at Exhibit 10, see also TMC's November 1, 2004 submission at Exhibit 22); the financial statement of TMC's parent company (see TMC's November 1, 2004 submission at Exhibit 12); and TMC's parent company's business licence (see TMC Verification Report at Exhibit 6).

SOE and TMC's general manager's appointment by the state, the Petitioner asserts that TMC does not demonstrate an absence of *de jure* or *de facto* control from the PRC government.

Fourth, the Petitioner argues that TMC has impeded the Department's investigation in three additional ways: (1) TMC withheld information about its current general manager and his relationship with TMC's parent company by providing materially incomplete statements; (2) TMC's parent company's website shows that TMC has withheld information about its U.S. subsidiaries, specifically, two sales offices besides CMC T.M. Incorporated; and (3) TMC initially withheld information as to the identity of its parent company. However, the Petitioner notes that TMC admitted to its general manager's relationship with TMC's parent company and the identity of their parent company only after the Department requested further information on these issues in supplemental questionnaires.

Fifth, the Petitioner argues that counsel to TMC submitted false certifications as to the accuracy of the submissions provided by TMC. The Petitioner notes that TMC's counsel has repeatedly argued that TMC was an "all peoples owned" company in spite of possessing documentary evidence to the contrary. Accordingly, the Petitioner asserts that the discrepancies found in the statements and the record evidence provided by TMC's counsel regarding TMC's "actual" ownership clearly demonstrates that TMC's counsel also submitted false or inaccurate translations. Therefore, the Petitioner requests that the Department to further investigate whether any party to this proceeding has submitted false certifications to the Department.

The Petitioner contends that TMC and its counsel have consistently impeded the Department's investigation by withholding information, (*i.e.*,including ownership, management structure, affiliation, and misrepresenting English translations of pertinent documents), pivotal to the Department granting TMC a separate rate. As a result of TMC's impeding of this proceeding, failure to cooperate to the best of its ability, and submission of false statements, the Petitioner argues that the Department should deny TMC its separate rate status and assign a margin based on total AFA for all four orders.

TMC did not address this issue in its rebuttal brief.

Department's Position:

Because the Department is applying total adverse facts available to TMC and placing TMC back into the PRC-Wide entity for this order thereby losing their separate rates status, this issue is moot. This is consistent with a recent determination involving tissue paper products. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China, 70 FR 7475 (February 14, 2005) and accompanying Issues and Decision Memorandum at page 2.

C. AFA for Suppliers

The Petitioner argues that the Department must assign AFA for all of TMC's sales manufactured by suppliers who failed to respond to the Department's April 4, 2004 questionnaire. The Petitioner notes that five of TMC's suppliers[5] are named in the Department's March 22, 2004, Notice of Initiation. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part ("Notice of Initiation"), 69 FR 15788 (March 26, 2004). According to the Petitioner, "the Department makes a rebuttable presumption that all exporters or producers located in the NME country comprise a single exporter under common government control, 'the NME entity.' The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate." See Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from Belarus, 68 FR 09055 (Feb. 27, 2003). The Petitioner contends that because TMC's suppliers failed to participate, Commerce's presumption that they are part of the PRC entity holds and these companies (and the PRC entity) are assigned a margin, as Respondents, based on AFA.

The Petitioner argues that when a respondent receives an AFA margin, the Department applies that margin to all exporters of that entity's merchandise. According to the Petitioner, the Department has faced this identical factual situation in TRBs from the PRC I. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, 62 FR 61276 (Nov. 17, 1997) ("TRBs from the PRC I") and accompanying Issues and Decisions Memorandum at Comment 1. In TRBs from the PRC I, a respondent argued that the Department should not have used facts available for models supplied by a firm that received facts available because such a decision penalizes the respondent unfairly. *Id.* However, the Petitioner notes, the Department disagreed, explaining that the AFA margin should apply to all sales of merchandise produced by the supplier regardless of whether the exporter had any ability to influence the responsiveness of its supplier. The Department further noted that "if we do not use adverse facts available for sales of merchandise from an uncooperative supplier, we would invite manipulation and producers whose merchandise enters the United States *via* an unaffiliated reseller could benefit from their failure to comply fully with our requests for information." See TRBs from the PRC I at Comment 1. Based upon the Department's practice, the Petitioner contends that TMC should receive total AFA for all sales of models supplied by Laiwu, Dandong, Dagang, Wuqiao, Zhengtai because these companies are receiving total AFA as Respondents.

The Petitioner also argues that the Department cannot allow interested parties to control an investigation. According to the Petitioner, this fundamental concept has been an underpinning of the Department's approach to conducting investigations and there is a long history of judicial rulings supporting this concept. The Petitioner notes that the Department has established in previous proceedings that "respondents cannot be allowed the unilateral discretion to decide

[5](Laiwu, Dandong, Dagang, Wuqiao, Zhengtai.)

which information to provide the Department." See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France, 64 FR 30820 (June 8, 1999) (citing Olympic Adhesives, Inc. v. United States, 899 F.2d 1565, 1571 (CIT 1990); see also Mitsubishi Heavy Indus., Ltd. v. United States, 833 F. Supp. 919, 924 (CIT 1993) (It is Commerce, not the respondent, that determines what information is to be provided for an investigation.) Accordingly, the Petitioner argues that while TMC reported factors for all of these companies, the Department cannot allow an interested party to selectively participate in some, but not all, instances. The Petitioner notes that the court has repeatedly found that if the Department allowed parties to selectively participate this would allow parties to obtain a more favorable result than had they fully and completely participated, which is not permissible under the law. See Chinsung Indus. Co. v. United States, 705 F. Supp. 598, 601 (CIT 1989) (rejected plantiffs' argument on the basis that it would undermine the administrative process and place the burden of creating an adequate record on the Department instead of the respondents); Brother Industries, Inc. v. United States, 771 F. Supp. 374, 383 (CIT 1991) (upheld the Department's use of BIA stating: "The law does not permit a party to pick and choose information it wishes to present to the agency."); Rhone Poulenc, Inc. V. United States, 710 F. Supp. 341, 346 (CIT 1989) (where total BIA applied when the response was only partially complete); Persico Pizzamiglio v. United States, Slip Op. 94-61 (CIT 1994). Therefore, the Petitioner asserts that the Department should follow agency precedent, which has been upheld by the court, by assigning a margin of AFA in the final determination for all of TMC's sales for models supplied by TMC's suppliers.

Finally, the Petitioner argues that Department erred in the 12th review when it considered a similar argument and found that it should not apply AFA to TMC. See 12th Review Final at Comment 13. First, the Petitioner argues that the Department's summary in the 12th Review Final regarding its precedent established in TRBs from the PRC I is simply incorrect. The Petitioner argues that in TRBs from the PRC I, the Department did not apply AFA to the respondent's sales of subject merchandise produced by the supplier because that supplier did not cooperate with respect to its sales to the respondent. Instead, the Petitioner contends that the supplier received AFA for failing to cooperate as a respondent to the Department's questionnaire and that the Department then applied AFA to any exporter that sold this respondent's merchandise. See TRBs from the PRC I at Comment 1. Accordingly, the Petitioner argues that because only respondents and not suppliers are eligible for a margin, it is clear that the Department did not use adverse inferences for the supplier's behavior as a supplier, but as a respondent in its own right.[6]

[6] According to the Petitioner, the Department's practice of assigning an AFA rate to the respondent's suppliers in TRBs from the PRC I is as follows: (1) having determined that Company X was non-cooperative with respect to Company X's own exports to the United States (*i.e.*, as a respondent), (2) then the Department would assign the same margin to any exporter for which Company X acted as a supplier. The Petitioner notes that the Department did consider whether the supplier cooperated with respect to the factors of production for merchandise it supplied to other respondents. However, the Department concluded that Company X's cooperation in that case does not mitigate the fact that Company X failed to participate as a respondent and fairly attributed AFA to Company Y's sales of Company X's merchandise.

It is evident, the Petitioner argues, that the distinction the Department attempted to make between Company Y's participation in the 12th Review Final and the findings of TRBs from the PRC I is incorrect. The Petitioner claims that the Department mistook the precedent established in TRBs from the PRC I when it stated that the Department applied AFA to a respondent's sales because the supplier refused to participate with respect to these sales. See 12th Review Final at Comment 13. According to the Petitioner, the Department applied AFA, in TRBs from the PRC I, to both the respondent and its supplier, even though the supplier cooperated with the respondent's questionnaire, because that company failed to participate with respect to its own sales. It is apparent, the Petitioner argues, that the Department's conclusion in the 12th Review Final that applying AFA would discourage cooperation on the part of the respondents is in direct conflict with the findings of TRBs from the PRC I. The Petitioner concludes that the Department's findings in the 12th Review Final are not in accordance with prior agency precedent and, thus, the Department must rectify this error in this proceeding. Therefore, the Department should apply AFA for all TMC's sales by its suppliers that were non-cooperative to the Department's questionnaire.

For TMC's general AFA comment, please see TMC's rebuttal argument in Comment 9.A. above.

Department's Position:

The Department noted in the Preliminary Results that the companies identified by Petitioners in this comment are part of the PRC-Wide rate because they did not respond to our questionnaire. See Preliminary Results at 11940. Therefore, Petitioners' argument that we should apply total adverse facts available is misplaced as these companies are already part of the PRC-Wide rate, which is the adverse facts available rate.

D. Discounts

The Petitioner argues that in the final results the Department should calculate TMC's price adjustments on a transaction-specific basis. According to the Petitioner, TMC stated that the company was able to report a warranty claim or post-sale adjustment on a transaction-specific basis. However, the Petitioner notes that in the Section C database TMC instead reported the adjustment to invoices not related to the original sale. The Petitioner observes that pursuant to section 351.401(g) of the Department's regulations, TMC must report this expense on a transaction-specific basis. Moreover, the Petitioner argues that TMC has placed on the record information that allows the Department to calculate these price adjustments on a transaction-specific basis. Therefore, the Petitioner contends, the Department should recalculate the reported price reductions and assign them on a transaction-specific basis for the final determination

TMC did not comment on this issue in their brief.

Department's Position:

As noted in Comment 9.A., TMC is receiving total AFA. See Comment 9.A. Because the Department is not calculating a margin for TMC for the final results, issues concerning TMC's price reduction are moot.

E. Surrogate Value for Scrap Rail

The Respondents argue that the Department improperly valued scrap railroad rails. According to the Respondents, the Department has consistently utilized a different methodology in calculating a surrogate value for scrap railroad rails in past reviews of HFHTs. See *e.g.*, Memorandum to the File, through Mark Manning, Acting Program Manager, from Thomas E. Martin, Import Compliance Specialist, Subject: Surrogate Values Used for the Preliminary Results of the Twelfth Administrative Reviews of Certain Heavy Forged Hand Tools From the People's Republic of China - February 1, 2002 through January 31, 2003 (March 1, 2004); 12th Review Final at Comment 3. The Respondents note that in the instant review, the Department weight averaged Indian imports of HTS 7302.10.01, railway track construction - railway rails, and HTS 7302.10.10, railway track construction - railway rails, to derive a surrogate value for rail. The Respondents also note that the Department weight averaged Indian imports of HTS 7204.50.00, ferrous waste and scrap-other waste and scrap, HTS 7204.49.09, ferrous waste and scrap-other, and HTS 7204.49.00, ferrous waste and scrap- remelting scrap ingots, to derive a surrogate value for scrap metal. Moreover, the Respondents note that the Department then applied a straight average to the weighted averages for scrap and rail to derive a value for scrap rail. The Respondents argue that the only purpose of including the HTS numbers for rail in the surrogate value calculation is to distort the true value of scrap rail. The Respondents also contend that the Department had an opportunity to verify all factors of production and should modify its methodology to value scrap rail.

In their rebuttal brief, the Respondents also assert that the Department verified that the Respondents use scrap rail, scrap wheels and billets in the production of subject merchandise, not hexagonal bars. The Respondents contend that the Department should use an approach in the 13th Review of HFHTs that is consistent with the 12th review, specifically, to value scrap steel using HTS category 7204.49.09. According to the Respondents, the Department must value factors of production based on the factors actually used in the production of subject merchandise and that the Respondents' production facilities have been verified numerous times. The Respondents note that Jinma's factory used scrap railroad rails and that these rails have been collected as scrap when the old rails have worn out and must be replaced with new rails. The Respondents contend that scrap rails cannot be used as rails any longer and therefore their sole value can only be that of scrap. The Respondents rebut the Petitioner's assertion that there is no

difference between scrap rails and new rails because the Indian tariff schedule does not segregate between new rail steel and used steel rail.

Finally, the Respondents note that they placed on the record of the 12th review U.S. import statistics for calendar years 1998-2003 in anticipation that the petitioner would make arguments that the steel values for bars/wedges were incorrect. The Respondents argue that this data is relevant because the statute provides that if the Department finds the "available information is inadequate for purposes of determining the normal value," under section 773(c)(2) of the Act, then the Department "shall determine the normal value on the basis of the price at which merchandise that is (a) comparable to the subject merchandise, and (b) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, that is sold in other countries, including the United States." See section 773(c)(2) of the Act. Therefore, the Respondents conclude that the Department should use the U.S. import data provided by the Respondents if the Department finds that the FOPs for the bars/wedges order provided by the Respondents is inadequate.

In their rebuttal brief, the Petitioner contends that the Respondents' request for the Department to utilize HTS 7204.49.09 instead of HTS 7302.10.01 as the surrogate value for scrap rail is inappropriate. The Petitioner notes that the factor value memorandums from the 11th and 12th reviews cited as support by the Respondents are proprietary documents that are not the record of this proceeding. Accordingly, the Petitioner asserts that the Department cannot consider these documents in this proceeding.

The Petitioner also contends that contrary to the Respondents' argument, the Department has the authority to change its selection of the surrogate value for a factor of production. According to the Petitioner, the Department may adjust its calculation when the Department determines a new surrogate value will provide a more accurate representation of that value. In this proceeding, the Petitioner asserts that the Department correctly identified that the existing surrogate value for scrap rail used in previous reviews was inappropriate. The Petitioner contends that the previous surrogate value, which was for "bottom-of-the-barrel" ferrous waste and scrap, was inappropriate based on: (1) the higher quality of steel in steel rails; and (2) the fact that miscellaneous scrap, such as turnings, are not in the form that the Respondents use in their production process.

Finally, the Petitioner contends that the Department should not utilize a surrogate value for scrap rail in the final determination. The Petitioner contends that because the Respondents utilize finished steel products rather than scrap in their production process it is inappropriate for the Department to value scrap rail. Therefore, the Petitioner asserts that the Department in its final determination should reconsider the inclusion of any HTS scrap category in the surrogate value for scrap rail.

Department's Position:

The only Respondent in the instant review to use scrap rail as a factor of production is TMC. As noted in Comment 9.A., TMC is receiving total AFA. See Comment 9.A. Because the Department is not calculating a margin for TMC for the final results, issues concerning TMC's factors of production are moot.

Comment 10: Jinma

Jinma notes that the Department failed to rescind the review for Jinma in its Preliminary Results although Jinma reported that it had no sales of subject merchandise during the POR. See Jinma's April 23, 2004 submission at 1; see also the Department's Memo to the File dated May 3, 2004 at 1. Jinma also notes that it resubmitted these documents, including a fax confirming the Department's receipt and acknowledgment that Jinma had no shipments during the POR, to the Department after the Preliminary Results. See Jinma's April 27, 2005 submission at 1. According, to Jinma, the Department should rescind the reviews for Jinma in its final determination.

The Petitioner did not comment on this issue.

Department's Position:

The Department agrees with Jinma.

The Department inadvertently did not preliminarily rescind the review of HFHTs with respect to Jinma in the Preliminary Results. However, the Department did preliminarily rescind the review with respect to Jinma on June 7, 2005. See the Department's letter dated June 7, 2005. In the June 7, 2005 letter, the Department noted that Jinma reported that: (1) they made no shipments of subject merchandise to the United States during the POR; (2) no interested party has placed evidence on the record to indicate that Jinma had sales of subject merchandise during the POR; and (3) the shipment data furnished by Customs did not indicate that there were U.S. entries of subject merchandise from Jinma during the POR. Therefore, for the final results of review, the Department is rescinding the reviews of HFHTs with respect to Jinma.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of review and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
Joseph A Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date_____