

Home Products International Inc. v. United States
Consol. Court No. 07-00123, (CIT August 23, 2011)
Home Prods. Intl, Inc. v. United States
No. 2010-1194, 2011 WL 2490997 (Fed. Cir. June 23, 2011)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce (“the Department”) has prepared these final results of redetermination pursuant to the decision of the U.S. Court of Appeals for the Federal Circuit (“CAFC”) and remand order of the U.S. Court of International Trade (“CIT”) issued on August 23, 2011.¹ The CIT’s *Remand Order* concerns the first administrative review (“AR1”) of *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China*.² The CIT’s *Remand Order* follows prior proceedings where the CAFC held that if a party to litigation presents “clear and convincing new evidence sufficient to establish a *prima facie* case that the agency proceedings under review were tainted by material fraud, . . . the [CIT] abuse[s] its discretion in refusing to order a remand to allow [the Department] to reconsider its decision in light of the new evidence.”³ In accordance with the factors set forth in *Home Products I*, the Department has weighed the factors and determined to reopen the closed *ARI Final Results* in light of newly discovered evidence; and in doing so, the Department concludes that Since Hardware (Guangzhou) Co. Ltd. (“Since Hardware”), the respondent, provided unreliable, incomplete, and unverifiable information related to its factors of production (“FOP”)

¹ See *Home Products International Inc. v. United States and Since Hardware (Guangzhou) Co. Ltd.*, 2011 U.S. App. LEXIS 12838, 2010-1194 (June 23, 2011) (“*Home Products I*”) and *Remand Order in Home Products International, Inc. v. United States*, Consol. Court No. 07-00123 (August 23, 2011) (“*Remand Order*”).

² See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 13239 (March 21, 2007) (“*AR1 Final Results*”) and *Notice of Amended Final Results of Antidumping Duty Administrative Review: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China*, 72 FR 19689 (April 19, 2007) (review covering imports from February 3, 2004, through July 31, 2005) (“*AR1 Amended Final Results*”).

³ See *Home Prods. Intl, Inc. v. United States*, 633 F.3d 1369 (Fed. Cir. 2011) (“*Home Products I*”).

which necessarily impacted its separate rate responses and tainted the Department's verification. Because Since Hardware failed to establish its entitlement to a separate rate, the Department treats Since Hardware as part of the People's Republic of China ("PRC")-wide entity and assigns it the 157.68 percent rate assigned to the PRC-wide entity as an adverse facts available ("AFA") margin.

BACKGROUND

Home Products International, Inc. ("Home Products"), the domestic interested party, and Since Hardware initiated separate actions in the CIT challenging the final results of the Department's first administrative review.⁴ These cases were consolidated into CIT Case Number 07-123. While the parties' challenges were pending before the CIT after a previous remand, the Department conducted its third administrative review ("AR3") of the same antidumping order.⁵ During that administrative review, based on different arguments made by the parties, the Department determined that Since Hardware provided unreliable and incomplete documentation in support of its claimed market economy ("ME") inputs.⁶ Specifically, the Department determined that "numerous typographical errors and discrepancies appear in the documentation that Since Hardware submitted concerning its alleged purchases of inputs from ME suppliers."⁷ The Department found that: (1) "[t]he certificates submitted by Since Hardware relating to its claimed purchase of a steel input from a ME supplier are clearly not used by the regulatory agency responsible for certifying the origin of the input;" (2) "identical typographical errors and other discrepancies appear on documentation submitted from multiple, independent, unaffiliated

⁴ See *Since Hardware (Guangzhou) Co. Ltd. v. United States*, Court No. 07-126 and *Home Products Int'l, Inc. v. United States*, Court No. 07-123 (challenging *AR1 Final Results* and *AR1 Amended Final Results*).

⁵ See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 11085 (March 16, 2009) ("*AR3 Final Results*") and accompanying Issues and Decision Memorandum.

⁶ See *AR3 Final Results* and accompanying Issues and Decision Memorandum at Comment 1.

⁷ *Id.*

suppliers;” and (3)“claimed purchases of a major steel input is not supported by trade data.”⁸

With regard to the certificates-of-origin, the Department found: (1) that the certificates contained typographical errors that were inconsistent with genuine exemplar certificates-of-origin supplied by the certifying agency; (2) that the certificate numbers were in a different alpha-numeric format, as opposed to basic sequential numbering format; (3) that the date stamp lacked an official logo and used a different date format; and, (4) that the certifying signature of the agency official was different than the genuine exemplar signature of the agency official.⁹

Accordingly, the Department revoked Since Hardware’s separate rate and treated Since Hardware as part of the PRC-wide entity. The Department determined that the PRC-wide entity, through Since Hardware’s conduct, failed to cooperate to the best of its ability. Accordingly, the Department applied AFA to determine the dumping margin for the PRC-wide entity.¹⁰ Home Products moved for a remand of the *ARI Final Results* based upon the new information discovered, and relied upon, in the *AR3 Final Results*. Before the CIT, the Department opposed Home Products’ motion because it failed to demonstrate that the *ARI Final Results*, which it challenged, was not supported by substantial evidence based upon the *ARI Final Results* administrative record. The CIT agreed with the Department, holding that Home Products had not demonstrated a basis for a remand to the Department where the proposed remand was based upon a determination in AR3, and not based upon the administrative record of the second administrative review.¹¹

⁸ *Id.*

⁹ See *Home Products*, 633 F.3d at 1373-74 (citing Adverse Facts Available Memorandum accompanying *AR3 Final Results*).

¹⁰ While the CIT affirmed the Department’s decision to calculate Since Hardware’s margin using AFA, the decision to revoke Since Hardware’s separate rate was remanded to the Department for further explanation, and that remand redetermination is currently pending before the court. See *Since Hardware (Guangzhou) Co., Ltd. v. United States*, Slip Op. 10-108 (CIT 2010).

¹¹ *Home Products International, Inc. v. United States*, 675 F. Supp. 2d 1192 (CIT 2009).

Home Products appealed the CIT decision to the CAFC.¹² The CAFC stayed the briefing schedule in this case appeal pending the outcome of Home Products’ appeal in the second administrative review (“AR2”).¹³ In *Home Products I*, the CAFC held that “generally, for a court reviewing an agency decision, the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.”¹⁴ But, the CAFC stated, “the so-called ‘record rule’ is not without exceptions.”¹⁵ Accordingly, the CAFC recognized “an exception to the record rule where new evidence of material fraud has been brought to light which calls into question the integrity of the agency’s proceedings.”¹⁶ Thus, the CAFC held that although the Department did not make an express determination of fraud in AR3, “Home Products submitted clear and convincing evidence which could support a finding that Since Hardware committed fraud in the third administrative review.”¹⁷

Turning to AR2, the CAFC held that because “Since Hardware’s certificates from the second administrative review clearly contain the same discrepancies [the Department] observed in certificates from the third administrative review, including the same typographical errors, different certificate numbering system, different date stamp, and noticeably different signatures, . . . Home Products has presented clear and convincing new evidence, sufficient to establish a *prima facie* case that Since Hardware was guilty of fraud in the second administrative review.”¹⁸ In remanding the matter to the Department, the CAFC “express[ed] no opinion as to

¹² Home Products also moved for a remand in its challenge to the second administrative review. The Court similarly rejected that remand request. Home Products appealed that decision to the CAFC.

¹³ See *Home Products II*.

¹⁴ *Home Products I*, 633 F.3d at 1379 (internal citations omitted).

¹⁵ *Id.*

¹⁶ *Id.*, at 1380.

¹⁷ *Id.*; see also *Home Products II* (“Home Products produced clear and convincing evidence that the proceeding below was tainted by material fraud”).

¹⁸ *Home Products I*, 633 F.3d at 1380-81.

whether [the Department] must exercise its authority to reopen.”¹⁹ As a result of the redetermination on remand, the Department reopened the closed *AR2 Final Results*²⁰ and re-considered the calculation of Since Hardware’s antidumping duty rate taking into account the problematic certificates-of-origin. Accordingly, because Since Hardware’s accounting information was tainted by non-*bona fide* documents which tied to ledger entries, the Department determined that Since Hardware’s accounting system was unreliable and that any information provided, which relied upon the accounting system, was also unreliable. Because Since Hardware’s separate rate responses linked to the unreliable accounting system, the Department concluded that Since Hardware failed to overcome the presumption of government control necessary to obtain a separate rate. The Department treated Since Hardware as part of the PRC-wide entity, which is assigned a rate of 157.68 percent. That remand redetermination is currently pending before the court.²¹

Because the CAFC in *Home Products II* held that “this matter is controlled by *Home Prods. I*,” the Department followed the same general outline presented in its Remand Redetermination in Court No. 08-00094.

ISSUE 1: Whether to Open a Closed Proceeding

The CAFC instructed that, “[i]n deciding whether the proceeding should be reopened, [the Department] may appropriately consider the interests in finality, the extent of the inaccuracies in the second administrative review, whether fraud existed in the second administrative review, the strength of the evidence of fraud, the level of materiality, and other

¹⁹ *Id.*, at 1381.

²⁰ See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 14437 (March 18, 2008) (“*AR2 Final Results*”) (review covering imports from August 1, 2005, through July 31, 2006).

²¹ See *Final Results of Redetermination Pursuant to Court Remand, Home Products Int’l Inc. v. United States*, CIT Court No. 08-00094 (August 30, 2011).

appropriate factors.”²² We consider each of these enumerated factors below within the context of AR1.

First, with regard to finality of the Department’s administrative proceedings, the Department has consistently explained, and the CIT has agreed, that each administrative review results in a separate determination based upon the administrative record in that review.²³ Thus, the Department could reach a different conclusion from one administrative review to the next based upon a different analysis, but reconsideration generally would not be appropriate. Because of the strict statutory timelines to conduct investigations and reviews, and the specified time period to correct errors in section 751(h) of the Tariff Act of 1930, as amended (“the Act”), the Department considers its determinations as final and conclusive on all parties, unless specific issues are challenged before the CIT. This approach provides all parties to the Department’s proceedings certainty in the amount of duties to be levied on entries of subject merchandise and certainty as to which issues remain open through litigation. This is particularly imperative as the interval of time increases between the final determination and the discovery of new evidence. The Department has consistently considered administrative reviews to be final and conclusive, except for the exceptional circumstances, where a separate administrative process or tribunal has concluded that the agency’s proceeding was tainted by fraud, collusion, or perjury, thereby calling into question the integrity of the agency’s decisions.²⁴ Because the CAFC affirmed the

²² *Home Products I*, 633 F.3d at 1381.

²³ *See Shandong Huarong Mach. Co. v. United States*, 29 C.I.T. 484, 491 (CIT 2005) (“As [the Department] points out ‘each administrative review is a separate segment of proceedings with its own unique facts.’”); *see also Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006) (“each administrative review of the order represents a separate administrative proceeding and stands on its own”); *Fresh Garlic From the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) (“what transpired in previous reviews is not binding precedent in later reviews”).

²⁴ *See, e.g., Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1360-61 (Fed. Cir. 2005) (reopening of the record is permissible through the use of a changed circumstances review to address claims of fraud in a closed segment of a proceeding) (“TKS”).

Department's changed circumstances review in *TKS* by holding "administrative agencies possess inherent authority to reconsider their decisions, subject to certain limitations, regardless of whether they possess explicit statutory authority to do so,"²⁵ the Department adopted limits on reopening closed records and final decisions to those in which a court, like the district court in *TKS*, or other administrative authority, made a finding of fraud.

Balanced against finality of the Department's decisions are the factors set forth by the CAFC in *Home Products I*; *i.e.*, the extent of the inaccuracies in the administrative review, whether fraud existed, the strength of the evidence of fraud, and the level of materiality.

Extent of the irregularities

In reviewing the record of the *AR1 Amended Final Results*, the Department finds that one certificate-of-origin was placed on the record of AR1 that contains similar irregularities to those found on the record of AR2 and AR3.²⁶ This certificate-of-origin contains the same irregularities as the certificates-of-origin submitted by Since Hardware in AR2 and AR3. Specifically, the name of the certifying government is misspelled, the certificate number contains letters, the stamp from the certifying authority shows the date in the incorrect format (*i.e.*, yyyy/mm/dd), and the signature of the authorizing officer on the form submitted by Since Hardware is far different from the copy of the official's signature that is kept on file by the certifying authority.

During the course of AR3, Home Products placed on the record certain exemplar certificates-of-origin from the same country-of-origin as Since Hardware's purported steel purchases. We have placed these exemplar certificates on the record of this remand proceeding and have compared these exemplar certificates to the certificate that Since Hardware submitted

²⁵ See *TKS*, 529 F.3d at 1361 (emphasis added)

²⁶ See Memorandum to the File, through Scot Fullerton, Program Manager, from Steven Hampton, International Trade Compliance Analyst, regarding Placing Supporting Documents on the Remand Record: First Administrative Review of Floor Standing, Metal Top Ironing Tables from the People's Republic of China dated October 21, 2011 at Attachments #1 and #2.

to respond to the Department's request during verification for sales documentation and ledger listings to support an alleged ME purchase of a primary steel input.²⁷ Similar to our conclusion in *AR3 Final Results*, we find that the AR1 certificate-of-origin is also non-*bona fide* due to significant discrepancies between the exemplar documents and those Since Hardware submitted. These irregularities are discussed in detail below:

1) Typographical Errors Appearing in the Purported Certificate-of-Origin Submitted by Since Hardware

The documentation provided by Since Hardware at verification contained a number of typographical errors. First, in the purported certificate-of-origin form submitted by Since Hardware, the name of the certifying government is clearly misspelled.²⁸ Second, the official version of the form shows a word in the lower left section of the form.²⁹ In contrast, the forms submitted by Since Hardware misprint this word.³⁰ Similarly, the official version of the form³¹ bears an expression in the lower left section of the form whereas the forms submitted by Since Hardware use a different variation of this phrase.³² Finally, the official form uses an expression separated by a forward slash.³³ The forms provided by Since Hardware include this expression without the slash.³⁴

2) Certificate Number

Each of the forms submitted by Since Hardware bear an alpha-numeric certificate number in the top right corner. These certificate numbers contain two letters.³⁵ However, the certifying

²⁷ *Id.* at Attachment #3.

²⁸ *See* Attachment #2.

²⁹ *See* Attachment #3.

³⁰ *See* Attachment #2.

³¹ *See* Attachment #3.

³² *See* Attachment #2.

³³ *See* Attachment #3.

³⁴ *See* Attachment #2.

³⁵ *Id.*

authority has indicated that it uses a six-digit sequential numbering system.³⁶ That is, the official form does not employ an alpha-numeric numbering system. Rather, on its forms, the certifying authority uses no letters other than a single letter suffix to the six digit number.³⁷

3) Stamp

The official form contains a stamp from the certifying authority. This stamp is in the format of a two-cogged logo stamp, bears the name of the certifying authority, and shows the signature date in a day/month/year format (*i.e.*, d/m/yy).³⁸ In contrast, the forms submitted by Since Hardware do not contain a cogged logo, and record the date in a four-digit year/two digit month/two digit day format (*i.e.*, yyyy/mm/dd).³⁹

4) Signature of the Authorizing Officer

On the forms submitted by Since Hardware, the signature of the authorizing officer is difficult to discern.⁴⁰ However, Home Products acquired a list of authorizing officers with their official signatures from the certifying authority.⁴¹ After examination, the apparent signature on the forms submitted by Since Hardware most resembles that of a particular official. However, the purported signature appearing on the forms submitted by Since Hardware is far different from the copy of the official's signature that is kept on file by the certifying authority.⁴²

Materiality of the irregularities

These discrepancies are material to the Department's calculation of Since Hardware's antidumping duty margin in the *ARI Amended Final Results*. Because dumping occurs when an exporter sells a product in the United States at a price lower than the product's normal value

³⁶ See Attachment #3.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Attachment #2.

⁴⁰ *Id.*

⁴¹ See Attachment #3.

⁴² Compare Attachment #2 with Attachment #3.

(“NV”); the amount by which NV exceeds the U.S. price is determined to be the dumping margin.⁴³ In all cases involving a non-market economy (“NME”) country, NV is calculated based on a FOP analysis whereby each input is valued based upon data from a surrogate ME country.⁴⁴ However, if the NME exporter purchases a portion of a given input from a ME supplier and pays for it in ME currency, the Department will normally value that portion of the input according to the actual price paid.⁴⁵ Further, if the exporter purchases at least 33 percent of a given input, the Department will normally use the price paid to the ME supplier, rather than a surrogate value, to value all of the material for that given input, even if some is sourced within the NME.⁴⁶ As applied to this case, if the Department did not rely on Since Hardware’s purported ME purchase information to value the cold-rolled steel input, the Department would use a surrogate value for this input pursuant to statute. Thus, by submitting non-*bona fide* ME purchase documentation, Since Hardware is able to have the Department use the manipulated and erroneous price for the steel input in the calculation of its NV.⁴⁷ Because the steel input is one of the primary inputs, the use of the manipulated and erroneous ME purchase price would have a significant effect on the normal value calculation, and, consequently, the dumping margin.

Additional factors

Finally, we turn to additional factors which the Department may consider in its decision to reopen the record as opposed to the finality of a segment of the proceeding. As the

⁴³ See section 773(a) of the Act.

⁴⁴ *Id.*

⁴⁵ See 19 CFR 351.408(c)(1).

⁴⁶ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-18 (October 19, 2006).

⁴⁷ The Department applied a benchmarking methodology to test whether the input prices were above world market price because of the supplier being majority owned by a Chinese entity. Pursuant to this methodology, the Department applied a surrogate value for cold-rolled steel which failed the benchmark test. See *ARI Final Results and accompanying Issues and Decision Memorandum* at Comment 6.

Department determined in reconsidering a sunset determination of large newspaper printing presses,⁴⁸ the Department finds that re-opening the *ARI Amended Final Results* also protects the integrity of our proceedings. The courts have held that agencies have this inherent authority.⁴⁹ Moreover, it is well established that “federal agencies have the power to reconsider their final determinations.”⁵⁰ In *LNPPs*, a federal district court concluded that the respondent and its former counsel falsified business records, destroyed documents, and “agreed to a fraudulent price increase to avoid a finding of dumping,” which occurred during the 1997-1998 administrative review of the antidumping duty order.⁵¹ There, we found it reasonable to reconsider the sunset review to examine the likelihood of continued dumping, and to allow all parties an opportunity to participate. We found that such an examination is necessary because the respondent’s misconduct in the 1997-1998 administrative review was so egregious that it renders the results of the subsequent sunset review unreliable.⁵² These same considerations are present here because of Since Hardware’s submission of the non-*bona fide* certificate-of-origin that the Department relied upon, which created unreliability in Since Hardware’s calculated dumping margin.

Since Hardware manipulated the calculation of the NV equation by claiming ME purchase treatment. However, Since Hardware’s certificate-of-origin is unreliable and inauthentic as compared to the exemplar certificates obtained from the certifying authority. The CAFC determined that Since Hardware provided fraudulent documentation in AR2, which

⁴⁸ See *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Reconsideration of Sunset Review*, 73 FR 67131 (November 13, 2008) and accompanying Issues and Decision Memorandum at Issue 1 (“*LNPPs*”).

⁴⁹ See, e.g., *Tokyo Kikai Seisakusho, Ltd. et al. v. United States*, 529 F.3d 1352, 1360 (Fed. Cir. 2008); *Alberta Gas Chem. Ltd. v. Celanese Corp.*, 650 F.2d 9, 13-14 (2d Cir. 1981).

⁵⁰ See *Elkem Metals Co. v. United States*, 193 F. Supp. 2d 1314, 1320 (CIT 2002) (citing *Trujillo v. Gen. Elec. Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980) (“Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider”).

⁵¹ See *Goss Int'l Corp. v. Tokyo Kikai Seisakusho, Ltd.*, 321 F. Supp. 2d 1039 (N. D. Iowa 2004), *aff'd by Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 434 F.3d 1081 (8th Cir. 2006), *denied certiorari by Tokyo Kikai Seisakusho, Ltd. v. Goss Int'l Corp.*, 126 S. Ct. 2363 (2006).

⁵² See *LNPPs*.

contains identical discrepancies to the certificate on the record of AR1. Because the certificate resulted in Since Hardware's dumping margin being *de minimis*,⁵³ the Department determines that the evidence of fraudulent documents and the materiality of those documents mitigate in favor of reopening the closed *ARI Final Results*.

Accordingly, we are reopening and reconsidering our conclusions in the *AR 1 Final Results*.

ISSUE 2: Since Hardware Failed Verification

As explained above, Since Hardware provided unreliable and incomplete documentation in support of its claimed purchase of ME inputs at verification. In examining the effect of the certificate-of-origin on our determination had the exemplar certificate been brought to light prior to the conclusion of the *ARI Final Results*, we now determine that Since Hardware's questionnaire responses failed to verify and that Since Hardware failed to cooperate to the best of its ability at verification. The facts supporting these conclusions are discussed below.

In AR1, as in AR2 and AR3, Since Hardware provided a copy of a ledger entry that is associated with the purchase of a steel input which Since Hardware claimed to have sourced from a ME supplier. Since Hardware provided this information along with the non-*bona fide* certificate in response to the Department's request at verification for sales documentation and ledger listings to support the source of a claimed ME-sourced input.⁵⁴ The supplied ledger entry is consistent with the certificate-of-origin submitted by Since Hardware, which is consistent with the non-*bona fide* certificates-of-origin. Because Since Hardware's own accounting records reflect unreliable and inaccurate information, the Department is unable to trust the validity of the

⁵³ See *ARI Amended Final Results*.

⁵⁴ See Memorandum to the File from James Doyle, Director, Office 9, and Carrie Blozy, Program Manager, Office 9: Verification of the Sales and Factors Response of Since Hardware (Guangzhou) Co. Ltd. in the First Antidumping Administrative Review of Floor-Standing, Metal-Top Ironing Tables from the People's Republic of China dated January 22, 2007 at 28.

data which Since Hardware retrieved from its accounting system for the Department to examine at verification.

Although the Department originally found that Since Hardware passed verification, the Department now finds that, based upon new evidence, the Department previously relied upon an unreliable set of accounting records that were built upon unreliable data. Because the unreliable information was integrated into Since Hardware's accounting records, the Department was able to link all of Since Hardware's information through the original verification. The non-*bona fide* certificate-of-origin and its link to Since Hardware's ledgers calls into question the reliability of the other documents that Since Hardware provided at verification. Furthermore, if the non-*bona fide* certificate had been discovered at verification, the Department could have asked additional questions, could have more closely looked at Since Hardware's other documents, and would have allowed the Department to consider: (1) whether Since Hardware's response was accurate and reliable, consistent with the purpose of verification; (2) whether we verified an unreliable set of documents; or (3) whether Since Hardware failed verification by providing the Department with an unreliable and non-*bona fide* document.

Taking this evidence into account now, along with the other evidence from this administrative review, we determine that Since Hardware's submitted information failed to verify. Specifically, the verification report from this administrative review states “{f}inally with respect to market economy purchases, the team requested Since {Hardware} to gather and provide sales documentation and ledger listings to support the source of certain of the claimed market economy-sourced steel coils.”⁵⁵ These documents are included in Verification Exhibit 24, which the Department has placed on the record of this proceeding.⁵⁶ Exhibit 24 links the

⁵⁵ *Id.*

⁵⁶ *See* Attachment #2.

non-*bona fide* certificate-of-origin to different sub-ledgers in Since Hardware's accounting system to different voucher pages reflecting the ME purchase price paid. Accordingly, the Department was provided documents based upon, and tied to, the non-*bona fide* certificate-of-origin.

Section 776(a)(2) of the Act, provides that if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) of the Act if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission... in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.”⁵⁷

The Department determines that Since Hardware provided information in this review, which cannot be verified in accordance with section 776(a)(2)(D). Because of Since Hardware’s obfuscation in providing the Department with a non-*bona fide* certificate-of-origin, the Department finds that it is not practicable to provide Since Hardware with the opportunity to remedy or explain the deficiency in accordance with section 782(d) of the Act. Section 782(e) provides that the Department may decline to use information which cannot be verified. Because Since Hardware’s responses depended upon the invalid ME information, Since Hardware’s information could not be verified.

Moreover, Since Hardware failed to cooperate to the best of its ability to comply with the Department’s requests for information. Compliance with the “best of its ability” standard is determined by assessing whether an interested party has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.⁵⁸ To conclude that an exporter or producer has not cooperated to the best of its ability and to draw an adverse inference under section 776(b) of the Act, the Department examines two factors: (1) that a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations; and (2)

⁵⁷ See also Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreement Act, H.R. Rep. No. 103-316 at 870 (1994).

⁵⁸ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to respond fully is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.⁵⁹

Here, the CIT has found that “it came to light that the company {Since Hardware} had submitted false and fraudulent documentation regarding the country of origin and valuation of the claimed market economy purchases.”⁶⁰ Since Hardware acted in a way contrary to the way a reasonable respondent would by providing Department officials with a set of documents based upon a non-*bona fide* certificate-of-origin. Since Hardware provided the Department’s verifiers with information that was not produced by the regulatory agency responsible for that document. Where a respondent continued to claim the accuracy of certain favorable valuations, despite the existence of discoverable falsifications, the CIT has affirmed the Department’s conclusion that the party fails to cooperate to the best of its ability.⁶¹

Further, in addition to Since Hardware’s separate rate status (discussed below in Issue 3), the Department also considered that several additional omissions were discovered at verification. These omissions related to the calculation of freight distance, brokerage and handling on imported inputs, and unreported factors of production.⁶² Taken together, the production of a non-*bona fide* certificate-of-origin and these omissions contribute to a pattern of behavior on the part of Since Hardware as a non-cooperative respondent. Had the Department discovered the non-*bona fide* certificates at verification in conjunction with these other omissions, the Department would have considered whether Since Hardware was successfully verified or

⁵⁹ *Id.*

⁶⁰ See *Since Hardware (Guangzhou) Co. Ltd. v. United States*, Slip Op. 10-108 * 8.

⁶¹ See *Tianjin Magnesium Int’l v. United States*, Slip Op. 11-100 * 5 (Ct. Int’l Trade 2011)

⁶² See Attachment #1 at page 2.

whether this pattern of behavior constituted a failure to cooperate to the best of Since Hardware's ability.

Accordingly, the Department finds that Since Hardware's information is unreliable *in toto*, that Since Hardware's responses failed to verify, and that Since Hardware failed to cooperate to the best of its ability.

ISSUE 3: Since Hardware's Separate Rate Status

Pursuant to the Department's practice, in a NME administrative review, the Department starts with a rebuttable presumption that all companies within the NME are subject to government control and therefore, should be assigned a single antidumping duty rate. It is the Department's policy to assign all exporters this single rate unless an exporter demonstrates through verifiable evidence the absence of *de jure* and *de facto* government control.⁶³

Generally, the following *de jure* criteria are analyzed in establishing entitlement to a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.⁶⁴ Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions. They are: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management;

⁶³ See Policy Bulletin 05.1 Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries, April 5, 2005 ("Policy Bulletin") (citing *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996)).

⁶⁴ See Policy Bulletin; see also *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53655 (September 12, 2006) ("ARI Preliminary Results").

and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.⁶⁵

With respect to *de facto* government control, the Department finds that Since Hardware's responses with regard to the first and fourth factors are invalid and unverifiable.

For the first factor of the *de facto* analysis, the Department examines whether the company's exports are set by or subject to the approval of a government agency. In its Section A questionnaire response at Page 7, Since Hardware explains that it "based prices for its direct U.S. sales and the U.S. sales through Best Unity on production costs, overhead and administrative expenses, other expenses incurred during the ordinary course of business, and the need to generate a profit on its sales of the merchandise under consideration." Because Since Hardware's Section A questionnaire response implicates its production costs and profit in making export pricing decisions, the Department examines certain accounting records. As explained above, Since Hardware's own accounting records reflect unreliable and inaccurate information, and the Department is unable to rely on the accuracy and validity of the data which Since Hardware retrieved from its accounting system. The separate rate response given by Since Hardware, however, cites to specific accounting ledgers and implicates the production costs ledger in the accounting records. Under accounting principles, these ledger accounts must tie into the general ledger, which in turn ties into the financial records. Without reliable accounting ledgers upon which this information relies, Since Hardware's separate rate response is unverifiable.

⁶⁵ See *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994); see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995); *ARI Preliminary Results*, 71 FR at 53658.

Likewise, regarding the fourth factor in the *de facto* section of the separate rate analysis, the Department's analysis involves examining how profits are calculated, whether the entity is entitled to retain profits and losses, and whether there are any restrictions on the entity's export sales profits. With regard to export revenues, Since Hardware indicated that, "Neither Since Hardware nor Best Unity are restricted in how they may use the revenue earned through the export sales of merchandise under consideration. The companies' accounting personnel have access to and control over the companies' bank accounts."⁶⁶ With regard to how the profits are calculated, Since Hardware stated "[t]he formula to calculate export profits is as follows: Income from exports sales [minus] Production costs (for Since Hardware) or Purchase costs (for Best Unity) [minus] Operating expenses [equals] Profit from export sales."⁶⁷ Since Hardware also explained that Since Hardware and Best Unity, "use their foreign currency earnings to fund their continuing operations."⁶⁸

In verifying Since Hardware's responses, the Department "{r}evie[w] {ed} the process by which Since {Hardware} deals with convertible currency from export sales."⁶⁹ This analysis examines the general ledger including all relevant sub-ledgers, and "the sales receipts banking transactions records" for selected transactions.⁷⁰ As detailed in the verification report, the Department's verifiers reviewed the general procedures by which Since Hardware records production and financial data in the normal course of business.⁷¹ Then, the Department's verifiers reviewed the sales observation noted in the verification of the fourth factor of the *de facto* analysis.⁷² The Department's verifiers examined the individual notification of the

⁶⁶ See Since Hardware Section A Questionnaire Response at 9.

⁶⁷ *Id.*

⁶⁸ *Id.* at 10.

⁶⁹ See Attachment #1 at 7.

⁷⁰ *Id.*

⁷¹ See Attachment #1 at 8-9.

⁷² *Id.* at 14-20 (citing Exhibits 14 and 20).

payments and transfers to ensure Since Hardware reconciles the “monies received with the moneys owed” and “keep{s} track of which customers have paid.”⁷³ Because Since Hardware’s Section A questionnaire response indicated a precise formula for calculating export profits and how Since Hardware uses foreign currency, the verifiers examined the production sub-ledgers, and the overhead sub-ledgers, and determined whether Since Hardware accurately documented the amount of money received from export sales.

Accounting principles require that a business maintain various accounts which collectively comprise the firm’s general ledger which, in turn, flow into the firm’s financial statements. The Department must be able to verify that the accounting system includes controls to ensure that all transactions are fully captured. However, because certain elements of Since Hardware’s financial ledgers have been found invalid; reconciling these accounts through a verification cannot be done. What the Department did at verification was to prove that Since Hardware’s books and records were reliably based upon ME purchase information. Had the ME purchase information been valid, this would establish that Since Hardware’s responses verified. Where this information is invalidated, the Department’s verification proves that the remainder of Since Hardware’s accounting system is invalidated.

The separate rates analysis requires that the respondent provide evidence to rebut the Department’s presumption of NME control over all exporters. Where a respondent is unable to overcome the presumption with verifiable statements, the Department will treat that respondent as part of the PRC-wide entity. Here, Since Hardware provided certain documents it claims to have been produced by the Government of the PRC and that establish *de jure* separation from the government. Since Hardware also provided documentation explaining that it selected its management and that it did not cooperate with any entity to set process or sell subject

⁷³ *Id.* at 19.

merchandise.⁷⁴ Nonetheless, Since Hardware's responses related to its export sales process and its disposition of export proceeds directly implicates its accounting system, which we have determined to be wholly unreliable. Because of Since Hardware's inconsistent, unreliable, and unverifiable answers to the Department's questionnaires on the record of this administrative review, we find that necessary information is unavailable to support its eligibility for a separate rate. Therefore, the Department finds that Since Hardware failed to cooperate to the best of its ability.⁷⁵ Accordingly, and as a result of Since Hardware's unverifiable responses related to its separate rate status, as AFA, the Department is finding that Since Hardware is part of the PRC-wide entity. As such, the PRC-wide entity, which includes Since Hardware, is now considered to be a respondent in AR1.

ISSUE 4: Adverse Facts Available Rate for the PRC-Wide Entity

As established above, because Since Hardware did not rebut the Department's NME presumption, it is part of the PRC-wide entity. Further, because the PRC-wide entity, including Since Hardware, did not cooperate to the best of its ability, pursuant to section 776(b) of the Act, the PRC-wide entity is assigned a dumping margin based upon AFA.⁷⁶ As AFA, we have used the highest dumping margin calculated for a respondent in prior segments of this proceeding. This dumping margin has been applied as the dumping margin for the PRC-wide entity

⁷⁴ See Since Hardware Section A Questionnaire Response at 3 and 4.

⁷⁵ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) ("intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate").

⁷⁶ In all NME cases, the Department imposes a rebuttable presumption that all exporters located in an NME country comprise a single exporter under common government control, referred to as the "NME entity" or, in cases involving the PRC, the "PRC-wide entity." In conducting this investigation, the Department provided all known PRC exporters of floor-standing, metal-top ironing tables with the opportunity to respond to an initial questionnaire to provide evidence of each respondent's eligibility for a separate rate. Because certain known PRC companies did not respond to this questionnaire, the Department applied its presumption that these exporters constituted a single enterprise under common control by the PRC government. Further, because these companies did not respond, the Department applied AFA in determining the single dumping margin for the PRC-wide entity. 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, 35297 (June 24, 2004).

throughout the history of this antidumping duty order.⁷⁷ The AFA dumping margin applied here to the PRC-wide entity, including Since Hardware, is the AFA rate calculated from the investigation and applied to the PRC-wide entity throughout this proceeding.⁷⁸ This rate was calculated based on information provided by Shunde Yongjian Housewares Co., Ltd.⁷⁹ No additional information has been presented in the current review which calls into question the reliability or relevance of the information. Therefore, the Department finds that the information continues to be reliable. In addition, this rate is currently in effect for the PRC-wide entity.

Furthermore, in *Watanabe v. United States*⁸⁰, the CIT found that the Department need not corroborate the PRC-wide rate with regards to that specific respondent which the Department is now treating as part of the PRC-wide entity. Specifically, the CIT stated: “where Commerce has found the respondent part of the PRC-wide entity based on adverse inferences, Commerce need not corroborate the PRC-wide rate with respect to information specific to that respondent because there is ‘no requirement that the PRC-wide entity rate based on adverse facts available relate specifically to the individual company.’”⁸¹ The Department’s determination here that

⁷⁷ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004) (applying the highest calculated rate for Shunde Yongjian Housewares Co., Ltd. as the PRC-wide rate); see also *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 883 (January 9, 2009) (the Department revoked a respondent's separate rate status and applied the PRC-wide rate to an entity AFA).

⁷⁸ 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) (the Department applied AFA to determine the single antidumping duty rate, the PRC-wide rate, applicable to all other PRC exporters comprising this single enterprise); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004).

⁷⁹ *Id.*

⁸⁰ Slip Op. 10-139 Court No. 09-00520, (CIT 2010).

⁸¹ Slip Op. 10-139 at 9 (citing *Peer Bearing Co.-Changshan v. United States*, 587 F. Supp. 2d 1319, 1327 (CIT 2008); *Shandong Mach. Imp. & Exp. Co. v. United States*, Slip Op. 09-64, 2009 WL 2017042, (CIT 2009) (Commerce has no obligation to corroborate the PRC-wide rate as to an individual party where that party has failed to qualify for a separate rate)).

Since Hardware is part of the PRC-wide entity means that inquiring into Since Hardware's separate sales behavior ceases to be meaningful or reliable.

COMMENTS FROM INTERESTED PARTIES

On October 26, 2011, Since Hardware filed comments on the Department's draft remand results.⁸² Since Hardware's comments focused upon two issues: (1) the Department's application of the PRC-wide rate as AFA without properly addressing Since Hardware's separate rate status; and (2) the Department's application of total AFA, rather than partial facts available.

We address those issues below:

1. Since Hardware's Separate Rate Status.

Since Hardware contends that the Department acted inconsistent with the law by assigning Since Hardware the PRC-wide rate. Since Hardware also claims that the administrative record establishes that Since Hardware operated free from government control.

With regard to whether the Department acted in accordance with law, Since Hardware cites to several court cases, which it contends, limit the Department's authority to treat it as part of the PRC-wide entity. First, Since Hardware cites to *Qingdao Taifa* where it contends that although the Court affirmed that the Department's application of AFA on the basis of the respondent failing to report complete U.S. sales and FOP data and for acts of misconduct at verification, including the destruction of documents sought by the Department, the Court struck down the Department's selection of the PRC-wide rate as AFA.⁸³ Second, Since Hardware cites to *Gerber I* where the Court rejected the Department's application of the PRC-wide rate as total AFA based on the existence of an export agency agreement between two respondents to avoid

⁸² See Comments on Draft Results of Redetermination Pursuant to Remand, filed October 26, 2011 ("Since Hardware Comments").

⁸³ See *Qingdao Taifa Group Co., Ltd. v. United States*, 637 F. Supp. 2d 1231, 1241 (CIT 2009) ("*Qingdao Taifa*").

dumping duties.⁸⁴ Likewise, Since Hardware cites to *Gerber II* where the Court reviewed the Department's remand determination from the *Gerber I* decision.⁸⁵ Since Hardware cites to the *Gerber II* holding that:

“both Gerber and Green Fresh are free of government control. As the court noted in Gerber I, Commerce acts unlawfully in imposing a rate that presumes government control, such as the PRC-wide rate applied in this case, when a respondent has been found to be independent of government control.”⁸⁶

Finally, Since Hardware cites *Shandong Huarong* where the Court reviewed the Department's application of AFA and the PRC-wide entity rate due to the submission of inadequate U.S. sales and FOP responses by the respondents.⁸⁷ Since Hardware relies upon the Court's conclusion that, “the findings that justified the use of facts available and a resort to adverse facts available with respect to the Companies' sales data and factors of production, cannot be used to accord similar treatment to issues relating to the Companies' evidence of independence from state control” for support of its position that the Department acted unlawfully in the draft remand results.⁸⁸

Based on the foregoing, Since Hardware contends that the Department's facts available finding is limited to its ME purchase information. Since Hardware contends that the Department's remand results fail to discredit record evidence showing Since Hardware's independence from state control. Accordingly, Since Hardware argues that the Department's application of the PRC-wide rate as total AFA under the circumstances of this case is contrary to law.⁸⁹

⁸⁴ See *Gerber Food (Yunnan) Co., Ltd. v. United States*, 387 F. Supp. 2d 1270, 1287 (CIT 2005) (“*Gerber I*”).

⁸⁵ See *Gerber Food (Yunnan) Co., Ltd. v. United States*, 491 F. Supp. 2d 1326, 1350 (CIT 2007) (“*Gerber II*”).

⁸⁶ *Gerber II*, 491 F. Supp. 2d at 1350 (citations omitted).

⁸⁷ Since Hardware Comments at 16, citing *Shandong Huarong General Group Corp. v. United States*, 27 C.I.T. 1568, 1594-95 (October 22, 2003) (“*Shandong Huarong*”).

⁸⁸ Since Hardware Comments at 16 (citing *Shandong Huarong*).

⁸⁹ *Id.*

With regard to its argument that the Department's remand is unsupported by substantial evidence, Since Hardware claims that the reliability of its books and records is not a basis for the Department to find that Since Hardware is not separate from the PRC government.⁹⁰ Since Hardware explained that the specific accounting document which the Department found unreliable was the production costs ledger which included one entry associated with the purchase of a claimed ME steel input.⁹¹

Since Hardware contends that in accordance with basic accounting practices, even if certain information booked into an accounting system is found to lack integrity, and cannot be relied upon, that does not support a parallel finding that an accounting system lacks integrity.⁹² Since Hardware claims that whether or not an accounting system as a whole lacks integrity is an altogether separate determination based on the tracking of other items and expenses to determine if all the calculations balance, and the supposed inaccuracy of one item does not indicate that any other item is inaccurate or that the system itself is flawed.⁹³

Since Hardware argues that during the course of the review, it submitted a complete U.S. sales reconciliation which was verified by the Department.⁹⁴ Since Hardware claims that the unreliable information reflected in the company's subledger regarding the ME purchases and valuation of raw materials was not in the recordation of Since Hardware's sale prices to the U.S. and that the methodology used to trace U.S. sales invoices and proceeds from sales to the company financial statement was not impacted by the subledger.⁹⁵ Since Hardware states that an incorrect valuation of a raw material input does not impact how export sales and the proceeds

⁹⁰ *Id.* at 18.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 18-19.

⁹⁵ *Id.* 19.

from those sales are recorded in Since Hardware's accounting system and reported in the company's sales ledger, general ledger, and financial statement.⁹⁶ Since Hardware claims that the Department can still evaluate whether the company's prices and proceeds from export sales are subject to influence or control by the PRC government even if cost items for raw material inputs are unreliable.⁹⁷

Citing the Department's verification report⁹⁸, Since Hardware argues that the Department can verify U.S. sales (export) transactions from the company's sales revenue subledger, accounts receivable subledger, payment receipt voucher, and bank notice. Since Hardware claims that the review of the sales information establishes that the amounts paid for a company's inputs does not implicate or relate to the evaluation of control or price of sales and proceeds from sales.⁹⁹

Moreover, none of the analysis undertaken by the Department concerned costs of the FOPs.¹⁰⁰ Since Hardware concludes that in the *Draft Results*, the Department did not establish a link or relationship between the ME purchase valuation information and information contained in the financial statement to determine whether any level of the PRC government controls Since Hardware's export sales and disposition of profits.¹⁰¹

Furthermore, Since Hardware claims that it is independent from government control because it negotiates its export prices directly with customers.¹⁰² Since Hardware contends that these customer negotiations have been documented with substantial evidence on the record, and

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See Memorandum to the File, from Steven Hampton, International Trade Compliance Analyst, regarding Placing Supporting Documents on the Remand Record: First Administrative Review of Floor Standing, Metal Top Ironing Tables from the People's Republic of China dated October 21, 2011, at Attachment #1.

⁹⁹ Since Hardware Comments at 19.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

that in order to meet its burden of analyzing the *de facto* criteria, the Department has the obligation to examine the record that contains these negotiations.¹⁰³

Since Hardware contends that sales information is independent from cost information because sales information begins with a customer's purchase order, not FOP or ME prices. Since Hardware argues that the Department should analyze the substantial evidence in the separate sales sub-ledger, sales reconciliation reports, and sample price negotiations, which show that the PRC government does not control Since Hardware's prices.¹⁰⁴

Since Hardware argues that it is independent from PRC government control because it determines whether to retain its sales proceeds and dispose of profits. Since Hardware contends that the Department's sales reconciliation at verification traced the sales proceeds into the books and records of the company and verified that the proceeds do not leave the company.¹⁰⁵ Since Hardware explains that the sales reconciliation, which ties to the sales revenue line in the financial statement, is not affected at all by the import values, and establishes the absence of *de facto* government control.¹⁰⁶ Since Hardware concludes that there is no record evidence to detract from finding that Since Hardware is the decision maker with respect to retention and disposition of profits and not the PRC government.¹⁰⁷

Finally, Since Hardware contends that the Department's *Draft Results* are at odds with the Department's practice. Since Hardware claims that, consistent with *Cased Pencils*¹⁰⁸, the Department should find that deficiencies in ME purchase price documentation does not require revocation of separate rate status. Since Hardware states that in *Cased Pencils*, the Department

¹⁰³ *Id* at 20.

¹⁰⁴ *Id.* at 22-23.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Since Hardware Comments at 24.

¹⁰⁸ Since Hardware Comments at 24, citing *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33406 (July 13, 2009) and accompanying Issues and Decision Memorandum at Comment 2 ("*Cased Pencils*").

was presented with unreliable ME purchase information, the Department did not find an impact on the accounting ledgers or accounting system of the company, and importantly, the Department calculated a separate antidumping margin for the respondent company.¹⁰⁹ In contrast to the present case, Since Hardware contends that the Department found that the flawed ME purchase documentation did not compromise the integrity of the accounting system and subsequently used surrogate values rather than ME prices to calculate an individual margin.¹¹⁰ Since Hardware claims that the Department does not explain why flawed documents regarding costs did not compromise the integrity of an accounting system in *Cased Pencils*, but such flawed documents result in total AFA here.¹¹¹

Department's Position

With respect to Since Hardware's arguments that the Department acted unlawfully by assigning Since Hardware the PRC-wide rate, we disagree. In each of the cases cited by Since Hardware, the Court held that the failure to provide requested information and cooperate to the best of the respondents' ability was limited to discrete issues. Here, Since Hardware's responses with regard to its factors of production valuation impact the separate rate status. Thus, the Department does not find those cases applicable where, here, Since Hardware's own separate rate responses, as verified, tie to the FOPs data. Because each response relied upon interdependent ledgers, Since Hardware's separate rate answers unraveled when it included unreliable and non-*bona fide* information in its accounting records. Because the Department is making a specific finding regarding Since Hardware's separate rate status, the cited case law is inapplicable in this case.

¹⁰⁹ Since Hardware Comments at 24.

¹¹⁰ Since Hardware Comments at 25.

¹¹¹ *Id.*

Regarding the *de facto* criteria, the Department disagrees with Since Hardware's claim that the administrative record establishes that Since Hardware operated free from government control and that it determines whether to retain sales proceeds and dispose of profits. For these criteria, the Department determines whether the export prices are set by or are subject to the approval of a government agency. In its Section A questionnaire response at Page 7, Since Hardware explains that it "based prices for its direct U.S. sales...on production costs, overhead and administrative expenses, other expenses incurred during the ordinary course of business, and the need to generate a profit on its sales of the merchandise under consideration." This response, on its face, requires the Department to examine Since Hardware's accounting records because it cites to Since Hardware's production costs and profit as support for export-pricing decisions. However, taking the non-*bona fide* certificate-of-origin into account, the Department would never be able to verify this statement knowing the truth that Since Hardware's accounting records include fabricated ME purchase information.

Furthermore, because Since Hardware's own accounting records reflect unreliable and inaccurate information, the Department is unable to trust the validity of the data that Since Hardware retrieved from its accounting system for the Department to examine at verification. Although Since Hardware initially passed verification, the Department now finds that, based upon new evidence, the Department previously relied upon an unreliable set of accounting records that were built upon unreliable data. Because the unreliable information was integrated into Since Hardware's accounting records, the Department was able to link all of Since Hardware's information through the original verification. Therefore, the non-*bona fide* certificate-of-origin and its link to Since Hardware's ledgers calls into question the reliability of the other documents that Since Hardware provided at verification.

Finally, with respect to *Cased Pencils*, the respondent withdrew its claim for ME treatment when it did not have the requisite documentary proof. The respondent did not include in its accounting records a non-*bona fide* certificate-of-origin, or pass off a non-*bona fide* certificate-of-origin as proof of entitlement to market economy treatment.

Therefore, the Department continues to find that Since Hardware's separate rate response is unverifiable and it is ineligible for a separate rate in this review.

2. *The Department's Application of Total Facts Available.*

Since Hardware contends that the Department overreached in applying total AFA and that the statute and judicial precedent require the application of partial AFA under the circumstances of this case.¹¹² Since Hardware contends that the passage of the Uruguay Round Agreements Act ("URAA") and its amendments to the antidumping law had a significant impact on the permissible manner in which the Department could apply facts available. Furthermore, Since Hardware contends that the CIT has ruled that the "new statutory scheme is designed to prevent the unrestrained use of facts available..."¹¹³ In addition, Since Hardware notes, the CAFC has made similar findings.¹¹⁴ Moreover, Since Hardware claims that the Department's application of total AFA under the present statutory scheme requires it to make subtle judgments that must be supported by substantial evidence.¹¹⁵

Next, Since Hardware argues that the legislative history of these provisions makes clear that the application of AFA cannot be made in an indiscriminate manner. Since Hardware contends that the legislative history states:

¹¹² Since Hardware Comments at 1-8.

¹¹³ *See Borden Inc. v. United States*, 4 F. Supp. 2d 1221, 1245 (CIT) 1998), *reversed on other grounds* by 7 Fed. Appx. 938 (Fed. Cir. March 12, 2011).

¹¹⁴ Since Hardware Comments at 2 (citing *See F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000))("De Cecco").

¹¹⁵ Since Hardware Comments at 2 (citing *World Finer Foods, Inc. v. United States*, 24 C.I.T. 541, 545 n.3 (CIT 2000)).

“Where a party has not cooperated, [the Department] may employ adverse influences about **the missing information** to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹¹⁶

Accordingly, Since Hardware claims that in accordance with the directives of the statute and legislative history, the CIT and Federal Circuit have routinely reversed overreaching applications of AFA that have indiscriminately applied AFA in a manner contrary to the statutory scheme.

Since Hardware cites *Krupp Thyssen*¹¹⁷ where the CIT reversed the Department on the basis of the overreaching manner in which the Department applied AFA.¹¹⁸ Since Hardware also cites to *Shandong Huarong* to contend that the Department’s application of total AFA here is contrary to law.¹¹⁹ Since Hardware argues that in *Shandong Huarong*, the Department used the PRC-wide margin despite the fact that the respondents’ data relating to their entitlement to separate rate status had been fully verified by the Department found to be accurate.¹²⁰ The Court found that overly broad manner in which the Department applied AFA was contrary to the law.¹²¹ Specifically, Since Hardware contends that the Department is unable to apply total AFA and the PRC-wide rate where the respondent’s data relating to their entitlement to separate status had been fully verified by the Department and found to be accurate. Similarly, Since Hardware contends that even in cases where there was evidence of misconduct by a respondent, the CIT has refused to condone the Department’s indiscriminate and overreaching application of total

¹¹⁶ See SAA at 870 (emphasis added).

¹¹⁷ *Krupp Thyssen Nirosta GmbH v. United States*, 24 C.I.T. 666 (July 31, 2000).

¹¹⁸ *Id.*

¹¹⁹ Since Hardware Comments at 5, citing *Shandong Huarong*, 27 C.I.T. at 1568 (CIT 2003).

¹²⁰ Since Hardware Comments at 5.

¹²¹ See *Shandong Huarong General Group Corporation v. United States*, 27 C.I.T. at 1595-6 (CIT 2003)(emphasis added). See also *Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. et. al. v. United States*, Slip Op. 11-123, at 37, Court No. 10-00059 (CIT October 12, 2011) citing *Since Hardware (Guangzhou) Co., Ltd. v. United States*, 33 CIT at __, Slip Op 10-108, at 16, and finding that the Department may “not deny separate-rate status to a respondent by applying AFA based solely upon the reliability of that respondent’s questionnaire responses regarding its factors of production and/or sales data.”

AFA to information that was not deficient.¹²² With respect to this proceeding, Since Hardware's argues that the Department's factual and legal findings with respect to the use of both facts available and the application of an adverse inference were made with respect to Since Hardware's ME purchases and the Department should apply AFA just to the ME purchases at issue.¹²³

Since Hardware states that in the *Draft Results*, the Department cited omissions noted at verification of Since Hardware as support for finding Since Hardware non-cooperative. However, Since Hardware argues that the *Draft Results* did not cite to any deficiencies with respect to its U.S. sales database, its FOP database, or information submitted by Since Hardware to establish its entitlement to separate rate status.¹²⁴ With respect to these omissions, Since Hardware claims that the Department's conclusion in the *Draft Results* fails to address that in the final results of the first review, the Department found the matter "inconsequential" and readily made adjustments for the findings at verification.¹²⁵ Since Hardware contends that the Department did not find the discrepancies tilted toward a finding of uncooperativeness by Since Hardware and that the Department should not now put these factors in such a light for support for this finding upon remand.¹²⁶

Since Hardware argues that section 782 of the Act still requires the Department, in selecting AFA, to continue to incorporate Since Hardware's U.S. sales database, FOP database and information relating to its entitlement to a separate rate.¹²⁷ Contrary to the Department's *Draft Results*, Since Hardware asserts that the U.S. sales database, FOP database, and separate

¹²² Since Hardware Comments at 6 (*citing Gerber I.*)

¹²³ Since Hardware Comments at 7.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Since Hardware Comments at 8.

¹²⁷ Since Hardware Comments at 8-9.

rate information submitted by Since Hardware met all these criteria, and therefore were required for use instead of applying AFA.¹²⁸ Moreover, Since Hardware claims that the focus of the Department's *Draft Results* is deficiencies with respect to the ME purchase information, and not other data submitted by Since Hardware.¹²⁹ Therefore, even if total AFA were to be applied to Since Hardware under section 776 of the Act the statutory scheme still requires the Department to incorporate Since Hardware's information in the Department's selection of facts available.¹³⁰ Since Hardware cites a Federal Circuit decision that determined the incorporation of section 782 of the Act into the antidumping law was necessary to "block any temptation by Commerce to overreach reality in seeking to maximize deterrence."¹³¹

Since Hardware claims that the valuation of ME purchases are not essential to the calculation of Since Hardware's margin.¹³² Since Hardware contends that ME purchase information, although often used in the calculation of normal value to value reported FOP when the requirements of 19 CFR 351.408(c)(1) are met, cannot not be considered as "core" data that is essential to the calculation of respondents' antidumping margin.¹³³ Since Hardware states that core information is information necessary for the Department to have in order to calculate a margin for an individual respondent.¹³⁴ According to Since Hardware, in NME cases, "core data" would include the United States sales data and the FOP data.

Since Hardware explains that if ME purchase information is not submitted, or if submitted ME purchases information does not meet the requirements of 19 CFR 351.408(c)(1), or if submitted ME data is determined not to be reliable, and when complete "core" data

¹²⁸ Since Hardware Comments at 9.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *De Cecco*, 216 F.3d at 1032.

¹³² Since Hardware Comments at 10.

¹³³ *Id.*

¹³⁴ *Id. citing PAM S.p.A. v. United States*, 582 F.3d 1336 (Fed. Cir. 2009) (total AFA applied to a ME respondent who failed to submit a complete home market sales listing).

regarding U.S. sales and complete FOP are present, then the Department can calculate a margin by valuing the reported FOP in accordance with section 782 of the Act.¹³⁵ In this case, in the absence of reliable ME purchase information, the reported FOP should have been valued using record information relating to surrogate prices from India.¹³⁶ Consequently, Since Hardware asserts the Department's determination that Since Hardware's ME information was essential to the Department's analysis is incorrect.¹³⁷

Since Hardware explains that it reported ME purchases of cold-rolled steel, hot-rolled steel, wire rod, powder coating, cotton fabric, springs, bolts, center nails and nail heads, rivets, cartons, corrugated paper, and labels.¹³⁸ But Since Hardware contends that the Department's findings of irregularities are limited to cold rolled steel.¹³⁹ Accordingly, Since Hardware explains that the appropriate partial AFA in this case would be the rejection of Since Hardware's ME purchase claim, and to calculate normal value using the Indian surrogate values for Since Hardware's reported FOPs.¹⁴⁰

Finally, Since Hardware argues that *Cased Pencils* shows that deficiencies in documents regarding ME purchases do not warrant the assignment of an AFA rate. In *Cased Pencils*, the respondent claimed to have purchased ME materials, the documentation for which could not be validated at verification.¹⁴¹ In *Cased Pencils*, the Department found that the company was able to demonstrate that individual revenue and expense accounts "linked to the financial statements...[and] were supported by source documents such as *sales invoices* and *stock-in-*

¹³⁵ Since Hardware Comments at 10-11.

¹³⁶ Since Hardware Comments at 11.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Since Hardware Comments at 12.

slips”.¹⁴² The Department found that “alleged failure to report certain information does not warrant application of AFA...”¹⁴³ Instead, the Department in *Cased Pencils* applied facts available without an adverse inference.¹⁴⁴ Since Hardware argues that in contrast to this administrative proceeding, the Department in *Cased Pencils* found that flawed documentation did not compromise the integrity of the accounting system and subsequently used surrogate values rather than ME prices.¹⁴⁵

Department’s Position

Since Hardware’s contentions here depend upon a finding that Since Hardware is entitled to a separate rate. But, as explained above, Since Hardware failed to overcome the presumption of non-market control with verifiable and reliable responses. Accordingly, Since Hardware will be treated as part of the PRC-wide entity and receive the PRC-wide rate. Because the PRC-wide entity did not cooperate with the Department, the PRC-wide rate is based upon adverse inferences.¹⁴⁶

In any event, Since Hardware failed to cooperate to the best of its ability by submitting a non-*bona fide* certificate to support a favorable valuation. Application of adverse inferences to Since Hardware’s responses is consistent with the Court’s holding in *Since Hardware (Guangzhou) Co., Ltd. v. United States*, Slip Op. 10-108 (CIT 2010) (“given the pervasiveness of the inaccuracies in Since Hardware’s questionnaire responses, Commerce acted reasonably in determining it could not rely on any of the company’s financial information.”).

¹⁴² *Id.*, citing *Cased Pencils* and accompanying Issues and Decision Memorandum at Comment 2 (emphasis added).

¹⁴³ *Id.* at 24.

¹⁴⁴ *Id.* at 25.

¹⁴⁵ *Id.*

¹⁴⁶ Slip Op. 10-139 at 9 (citing *Peer Bearing Co.-Changshan v. United States*, 587 F. Supp. 2d 1319, 1327 (CIT 2008); *Shandong Mach. Imp. & Exp. Co. v. United States*, Slip Op. 09-64, 2009 WL 2017042, (CIT 2009) (Commerce has no obligation to corroborate the PRC-wide rate as to an individual party where that party has failed to qualify for a separate rate)).

Regarding Since Hardware's claim that the CIT's decision in *Shandong Huarong* applies here, we disagree. Although Since Hardware initially passed verification, the discovery of the non-*bona fide* certificate-of-origin and the associated ledger entry implies that Since Hardware's accounting records reflect unreliable and inaccurate information. Therefore, the Department is unable to trust the validity of the data which Since Hardware retrieved from its accounting system for the Department to examine at verification with respect to its separate rate status.

With respect to the omissions noted at verification, the Department notes that the minor omissions at verification by themselves are not sufficient to cause the Department to find Since Hardware uncooperative. However, if the non-*bona fide* certificate had been discovered at verification in conjunction with these other omissions, the Department would have considered these omissions in deciding whether Since Hardware was successfully verified or whether we verified an unreliable set of documents. Furthermore, taking into account these omissions, the discovery of non-*bona fide* certificates-of-origin on the record of three consecutive administrative reviews establishes a pattern of behavior where Since Hardware has failed to cooperate to the best of its ability in accordance with section 776 of the Act.

Regarding Since Hardware's argument that pursuant to section 782 of the Act, that the Department should have used some of Since Hardware's information, the Department finds that it cannot segregate the problematic information from the remainder of Since Hardware's responses. Accordingly, as the Department explained in denying Since Hardware a separate rate, Since Hardware's responses are all interdependent and incapable of separation sufficient for the Department to have confidence that the data are not tainted by a non-*bona fide* certificate-of-origin maintained and included within the accounting records. Since Hardware is mistaken that its ME purchase information which was included in its accounting documentation is not "core"

information. The Department finds that, faced with identical facts, the Court held that “the missing information on production inputs goes to the core of the antidumping duty rate determination, *i.e.*, the inputs at issue are a “major portion of the production inputs of the subject merchandise.”¹⁴⁷ The Court explained that “the unsubstantiated market economy purchase prices were included in Since Hardware’s accounting ledgers, themselves found to reflect unreliable and inaccurate information.” Accordingly, the Court concluded that “[the Department} acted reasonably in determining it could not rely on any of the company’s financial information.”¹⁴⁸

Finally, Since Hardware is mistaken that the facts of this case are substantially similar to those in *Cased Pencils*. In *Cased Pencils*, the Department explained:

In our verification, we confirmed that Three Star’s accounting records can be directly tied to Three Star’s audited financial statements. Three Star was able to demonstrate, in turn, that individual revenue and expense accounts that we linked to the financial statements, are consistently and comprehensively supported by source documents such as sales invoices and stock-in-slips. Given the consistency of Three Star’s accounting and production records with its audited financial statements and financial statement notes, we find nothing to suggest that the flawed documentation Three Star submitted to support its market economy claims in any way compromised the integrity of Three Star’s accounting and inventory records.

Unlike the facts here, the Department fully verified a cooperative respondent in *Cased Pencils*: whereas Since Hardware failed to cooperate to the best of its ability by providing the Department with non-*bona fide* ME purchase information, which tainted the Department’s verification. For example in *Cased Pencils*, “[o]n the particular issue of market economy inputs, Three Star sought the supporting information requested by the Department and when it was not able to obtain that information, the company acknowledged its inability to do so and withdrew its claim for use of the market economy input prices it had submitted.” In contrast, Since Hardware obtained a *de minimis* dumping margin by providing the Department with a non-*bona fide*

¹⁴⁷ *Since Hardware (Guangzhou) Co. Ltd. v. United States*, Slip-Op. 10-108 * 22.

¹⁴⁸ *Id.*

document which directly linked to information included within its accounting ledgers.¹⁴⁹ The distinctions between these two cases demonstrate that the Department was justified in finding the respondent's information otherwise reliable in *Cased Pencils*, and is also justified in finding that Since Hardware's information is not otherwise reliable.

CONCLUSION

As a result of this redetermination on remand, we have reopened the closed *ARI Final Results* and have re-considered the calculation of Since Hardware's antidumping duty rate. Accordingly, because Since Hardware failed to overcome the presumption of government control necessary to obtain a separate rate, we are treating Since Hardware as part of the PRC-wide entity, which is assigned a rate of 157.68 percent. If the Court approves these final results of redetermination, the Department will issue liquidation instructions directly to U.S. Customs and Border Protection to liquidate appropriate entries for the period February 3, 2004, through July 31, 2005, at this rate.

Paul Piquado
Assistant Secretary
for Import Administration

Date

¹⁴⁹ See *ARI Amended Final Results*, 72 FR at 19690.