

**Final Results of Redetermination Pursuant to
Tianjin Machinery Import & Export Corp. (“TMC”) and Shandong Huarong Machinery
Co., Ltd. (“Huarong”) v. United States and Ames True Temper (“ATT”),
Consol. Court No. 05-00522, Slip Op. 07-131
(August 28, 2007)**

I. SUMMARY

The U.S. Department of Commerce (the “Department” or “Commerce”) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the “Court”) in *TMC and Huarong v. United States and ATT*, Consol. Court No. 05-00522, Slip Op. 07-131 (August 28, 2007) (“*Tianjin*”). On remand, with respect to bars/wedges, the Court directed the Department to: “(1) explain (a) how the 139.31 percent rate applied to TMC’s and Huarong’s sales of bars/wedges is a reasonably accurate estimate of TMC’s actual rate with a built-in increase to deter non-compliance and, in particular, how that rate is more accurate than other rates calculated for TMC; and (b) explain in detail how any rate assigned to Huarong is reliable and bears a rational relationship to the company itself; or (2) reopen the record and calculate an AFA¹ rate to be applied to Huarong’s and TMC’s sales of bars/wedges, with an additional amount to deter future non-compliance.” *See Tianjin*, at 37.

In addition, with respect to picks/mattocks, on remand, the Court directed the Department to: “(1) explain (a) how the 98.77 percent rate for TMC’s picks/mattocks is a reasonably accurate estimate of TMC’s actual rate with a built-in increase to deter non-compliance; and (b) why it did not select as an AFA rate for TMC sales of picks/mattocks one of the previously assigned

¹ Adverse Facts Available.

lower rates, albeit with a built-in increase to deter future non-compliance; or (2) reopen the record and obtain evidence to support an actual calculated rate for TMC's sales of picks/mattocks." *See Tianjin*, at 43.

This remand addresses three AFA rates assigned in the thirteenth administrative review of the antidumping duty orders on heavy forged hand tools ("HFHTs") from the People's Republic of China ("PRC"), specifically the orders on bars/wedges and picks/mattocks. *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 Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005) ("*Final Results*") and accompanying *Issues and Decision Memorandum* ("*Decision Memorandum*").

In accordance with the Court's instructions for TMC's and Huarong's sales of bars/wedges, the Department has explained (a) how the 139.31 percent rate applied to TMC's and Huarong's sales of bars/wedges is a reasonably accurate estimate of TMC's actual rate with a built-in increase to deter non-compliance and, in particular, how that rate is more accurate than other rates calculated for TMC; and (b) explained in detail how the 139.31 percent rate assigned to Huarong is reliable and bears a rational relationship to Huarong. In addition, in accordance with the Court's instructions, for TMC's sales of picks/mattocks, the Department has explained (a) how the 98.77 percent rate for TMC's picks/mattocks is a reasonably accurate estimate of TMC's actual rate with a built-in increase to deter non-compliance; and (b) why we did not select as an AFA rate for TMC sales of picks/mattocks one of the previously assigned lower rates, albeit with a built-in increase to deter future non-compliance.

As a result of this redetermination, the Department has not revised the dumping margin

from 139.31 percent for TMC's and Huarong's sales of bars/wedges and TMC's dumping margin of 98.77 percent for its sales of picks/mattocks during the February 1, 2003 through January 30, 2004, period of review ("POR").

II. ANALYSIS

Legal Framework

Section 776(c) of the Tariff Act of 1930, as amended (the Act), requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action ("SAA") accompanying the URAA, H. Doc. No. 103-316 at 870 (1994) and 19 C.F.R. 351.308(d). The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. Neither section 776(c) of the Act nor the SAA defines how the Department should determine the relevance of the margin selected as AFA. The Court of Appeals for the Federal Circuit ("CAFC") has stated that "{b}y requiring corroboration of AFA rates, Congress clearly intended that such rates should be reasonable and have some basis in reality." *See F.Lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1034 (Fed. Cir. 2000) ("*F.Lli De Cecco*"). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. The CAFC has stated that Congress "intended for an AFA rate to be a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance." *See F.Lli De Cecco*, 216 F.3d at 1034. The Department considers information

reasonably at its disposal to determine whether a margin continues to have relevance to the respondent receiving the rate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the selected margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996) (where the Department did not apply an unrepresentative rate that could be explained by factors not associated with the overall industry, from a company that represented only a small fraction of the industry).

A. Adverse Facts Available Rate of 139.31 for TMC's and Huarong's Sales of Bars/Wedges

Background

In the *Final Results*, the Department assigned a rate of 139.31 percent to TMC's and Huarong's sales of products covered by the bars/wedges order, the highest rate ever calculated under the bars/wedges order. *See Decision Memorandum*, at Comment 3. Furthermore, in the *Final Results*, with respect to TMC, the Department determined that the 139.31 percent rate was both reliable and relevant and therefore, corroborated, because it was calculated specifically for TMC itself in the eighth administrative review and reflected TMC's recent commercial activity in exporting subject bars/wedges to the United States. *Id.* The Department also explained that this rate was reliable and relevant to Huarong because it 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. *Id.* Moreover, the Department explained that in applying an adverse rate to TMC and Huarong, the more recently calculated bars/wedges margins for other respondents would not offer an adequate incentive for TMC and Huarong to cooperate in this proceeding given that

these rates were not substantially above the most recently calculated rates. *Id.*

The Court has questioned the Department's corroboration of the 139.31 percent rate for both TMC and Huarong. *See Tianjin*, at 34-38. With respect to TMC, the Court explained that the AFA rate of 139.31 was "calculated using the respondent's own verified data, was reliable when calculated {but, the Department} has failed to explain how the rate is relevant to TMC's sales activity during the thirteenth review." *Id.* at 36. According to the Court, "such an explanation is particularly warranted here where there are more recent rates for TMC that are lower." *Id.* Therefore, the Court explained that the Department failed in its duty to estimate "respondent's actual rate" during the POR. *Id.* at 37.

With respect to Huarong, the Court explained that the AFA rate selected must be "both reliable and relevant to the individual respondent, not simply the subject industry as a whole. By merely noting that Huarong and TMC are participants in the same industry, Commerce has not sufficiently explained how the 139.31 percent rate relates to Huarong. In other words, the Department has not articulated how the 139.31 percent rate is a reasonable estimate of what Huarong's rate would have been had it complied together with a built-in increase as a deterrent." *Id.* at 37.

The Department continues to believe that it satisfactorily corroborated the reliability and relevance of this rate during the *Final Results*, and we respectfully note our disagreement with the Court's finding that the Department did not adequately demonstrate how the 139.31 percent rate applied to TMC's and Huarong's sales of bars/wedges is a reasonably accurate estimate of their actual rates with a built-in increase to deter non-compliance. *See Viraj Group, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

Determination

I. TMC

In an administrative review, if the Department chooses as total AFA a dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin. In the *Final Results*, the Department found this rate to be reliable because it was “calculated using verified information provided by TMC during the 8th administrative review of the bars/wedged order.” See *Decision Memorandum*, at Comment 3. We also noted that the 139.31 percent rate was subject to litigation in that review and was affirmed by this Court and the CAFC. *Id.* Here, the Court noted that “Commerce has shown that the rate, having been calculated using the respondent’s own verified data was reliable when calculated . . .” See *Tianjin*, at 36. For these reasons, we continue to find the 139.31 percent rate to be reliable.

Although the Department continues to believe that it provided sufficient justification in the *Final Results*, namely that the selected AFA rate was a rate calculated for TMC in a recent review period, the Department has complied with the Court’s remand instruction to provide additional factual support for selecting the 139.31 percent rate. The Department sought additional information to test whether TMC’s sales during the eighth administrative review are reflective of TMC’s commercial activity during the underlying review period. The Department obtained information from the Automated Commercial System (ACS) of U.S. Customs and Border Protection (CBP) regarding the sales values of TMC’s merchandise classifiable under harmonized tariff schedule subheading 8205.59.30, the subheading applicable to the merchandise subject to the bars/wedges order. The Department specifically queried the two review periods at issue: February 1, 1998, through January 31, 1999, and February 1, 2003, through January 31, 2004. See Appendices 1 and 2, respectively. Using this information, the Department calculated

a weighted-average unit value (AUV) for each period for TMC's sales of merchandise subject to the bars/wedges order. The Department compared the AUV from each period and found that TMC's AUVs for subject merchandise declined by [***] percent from the earlier to the later period. *See* Appendix 2. This change in TMC's AUVs contrast with little to no change in the production process used by the PRC industry to produce bars/wedges over the last five years, as demonstrated by respondent questionnaire responses and verifications from multiple administrative review proceedings. Thus, because the production process of the industry has generally stayed constant, while TMC's U.S. sales values have declined, the Department concludes that this information further substantiates the relevance of the 139.31 percent margin as AFA for TMC's sales of merchandise under the bars/wedges order.

In addition, a review of the volatility of TMC's margins in past reviews provides further factual support for the relevance of the 139.31 percent rate. In the seventh administrative review, which is the first review of bars/wedges in which TMC participated, TMC received 47.88 percent as AFA for the bars/wedges order. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Reviews*, 64 FR 43659 (August 11, 1999) ("Seventh Administrative Review"). During the eighth administrative review of bars/wedges, covering February 1, 1998, through January 31, 1999, the Department calculated a dumping margin for TMC of 139.31 percent, an increase of 92 percentage points. *See Heavy Forged Hand Tools From the People's Republic of China: Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Reviews*, 68 FR 37121 (June 23, 2003) ("Eighth Administrative Review"). In the ninth administrative review, the Department calculated a dumping margin of 0.56 percent for TMC's bars/wedges, which was a 248-fold decrease. *See*

Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 48026 (September 17, 2001) (“*Ninth Administrative Review*”). In the tenth administrative review, the Department calculated a *de minimis* dumping margin of 0.48 percent for TMC’s bars/wedges, which is a negligible change from the previous review. *See Notice of Amended Final Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China*, 68 FR 7347 (February 13, 2003) (“*Tenth Administrative Review*”). Finally, in the twelfth administrative review,² the immediately preceding review, the Department also applied the 139.31 percent rate as total AFA for TMC’s bars/wedges. *See Final Results of Antidumping Duty Administrative Reviews, Final 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 55581 (September 15, 2004) (“*Twelfth Administrative Review*”).³ TMC has experienced wide swings in its margin in the five administrative reviews of bars/wedges in which it has participated.

The Court also instructed the Department to explain how the “139.31 percent rate is more accurate than other rates calculated for TMC.” *See Tianjin*, at 37. The CAFC has explained that it “is within Commerce’s discretion to choose which sources and facts it will rely on to support an adverse inference when a respondent has been shown to be uncooperative” and that

² TMC’s sales of bars/wedges were not subject to the eleventh administrative review (February 2001 - January 2002).

³ On November 20, 2007, this Court sustained the Department’s corroboration of the 139.31 percent rate in its remand redetermination. *See Shandong Huarong Machinery Co. Ltd., Shandong Machinery Import & Export Corporation, Liaoning Machinery Import & Export Corporation, and Tianjin Machinery Import & Export Corporation v. United States*, Slip Op. 07-169 (CIT, 2008).

Commerce “is in the best position, based on its expert knowledge of the market and the individual respondent, to select AFA that will create the proper deterrent to the non-cooperation with its investigations . . .” *See F. Lli De Cecco*, 216 F.3d at 1032. Because TMC’s sales of bars/wedges are receiving total adverse facts available due to its involvement in the “agent” sales scheme, we do not find that using one of TMC’s prior lower rates would be appropriate as an AFA rate. In administrative reviews where TMC received lower rates, not only did TMC fully participate in those proceedings, but TMC did not receive total AFA. As a result, it would be difficult to reconcile applying a lower rate to TMC as AFA in this review when those lower rates were not calculated based on AFA.

Therefore, we find that application of the 139.31 percent margin as AFA to TMC is supported by the fact that this rate was calculated for TMC in the eighth administrative review. In addition, pursuant to the CIT’s instructions, although we do not believe further justification of this rate for TMC is necessary or warranted, additional facts support the Department’s application of 139.31 percent rate to TMC, namely: (1) the steep decline in TMC’s AUVs and (2) the fact that there is a history of volatility in TMC’s antidumping rates in the bars/wedges industry. For the reasons discussed above, the Department believes that the 139.31 percent rate is a “reasonably accurate estimate” of TMC’s actual rate with “a built-in increase to deter non-compliance” and is “more accurate than other rates calculated for TMC.”

II. Huarong

With respect to Huarong’s sales of bars/wedges, we continue to find that the AFA rate of 139.31 percent is sufficiently corroborated. 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. *See SAA* at 870. In doing so, the Department

examines the reliability and relevance of the information to be used. The Department considers calculated rates from prior administrative reviews as reliable secondary information from which to select an AFA rate. Prior administrative review rates are calculated based on a respondent's verified data. Unless the Department finds that the information supporting the data reported by a respondent is not accurate, the Department will base the calculation of the antidumping duty margin on that reported data. As the Department considers data from any prior administrative review used to calculate a rate as having been fully vetted by parties to that proceeding, we also consider it to be reliable for purposes of corroborating the rate as secondary information.⁴

In the *Final Results*, the Department found the 139.31 percent rate to be reliable because it was “calculated using verified information provided by TMC during the 8th administrative review of the bars/wedges order.” See *Decision Memorandum*, at Comment 3. We also noted the 139.31 percent rate was subject to litigation in that review and was affirmed by this Court and the CAFC. *Id.* Although the Department recognizes that the 139.31 percent rate was calculated for another respondent, TMC, and not Huarong, the rate is no less reliable. 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 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 e.g., *Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 44283, 44284 (July 28, 2003), and *Anhydrous Sodium Metasilicate from France: Final Results of Antidumping Duty Administrative Review*, 68 FR

⁴ See *Preliminary Results of Antidumping Duty Administrative Review: Grain-Oriented Electrical Steel from Italy*, 61 FR 36551, 36552 (July 11, 1996) (“*GOES from Italy*”) (unchanged in final results).

60080 (October 21, 2003). Therefore, given that we are using the calculated margin, affirmed in litigation, it is not necessary to question the reliability of this rate. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. Therefore, the Department continues to find that this rate satisfies the reliability prong of the corroboration analysis.

We also find that the 139.31 percent rate is relevant to Huarong. A review of the volatility of Huarong's margins in past reviews provides further factual support for the relevance of the 139.31 percent rate. Prior to the thirteenth administrative review, Huarong received dumping margins ranging from 1.27 percent to 139.31 percent (*i.e.*, 34.00 percent in the sixth administrative review, 1.27 percent in the seventh administrative review, 27.28 percent in the eighth administrative review, 47.88 percent in the ninth administrative reviews, 18.99 percent in the tenth administrative review, 30.02 percent in the eleventh administrative review, and 139.31 percent in the twelfth administrative review).⁵ See *Seventh Administrative Review*, 64 FR 43659, *Eighth Administrative Review*, 68 FR 37121, *Ninth Administrative Review*, 66 FR 48026, *Tenth Administrative Review*, 68 FR 7347, *Notice of Final Results of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools Finished or Unfinished, With or Without Handles, From the People's Republic of China of the Order of Bars and Wedges*, 58 FR 53347 (September 10, 2003) ("*Eleventh Administrative Review*"), and *Twelfth Administrative Review*, 69 FR 55581. Huarong has experienced wide swings in its margin in the seven administrative reviews of bars/wedges in which it has participated.

We analyzed the sales in the eleventh administrative review, where Huarong received a

⁵ During the twelfth administrative review, Huarong received a 139.31 percent rate for its bars/wedges sales which was based on AFA. See *Twelfth Administrative Review*.

calculated rate, to demonstrate that the rate selected as AFA is relevant to Huarong. Huarong had transaction-specific margins in the eleventh administrative review that were near 139.31 percent (*i.e.*, [* * *]). *See* Appendix 3. We also compared the transactions that approximate the proposed AFA rate of 139.31 percent to other U.S. sales of bars/wedges made by Huarong. The U.S. transactions corroborating the AFA rate do not appear to be aberrant or unusual in any way. Therefore, we find that these transaction-specific margins appear to be made in commercial quantities. Because we are making an adverse inference with regard to Huarong, we regard these transactions as representative of the margins we would have calculated for this company in the thirteenth review (with a built-in incentive to encourage cooperation) had it not received total AFA. The number of U.S. transactions receiving a margin near 139.31 percent is a representative figure whether it is measured by the number of transactions, the value of the transactions, or the quantity of the transactions. *Id.* Because these transaction-specific margins for Huarong in the eleventh review are nearly as high as the rate selected as AFA, and these margins were calculated for transactions involving the same class of merchandise sold in the same market, under similar demand and supply conditions, as the AFA rate, we find that they support the relevance of the rate selected as AFA.

Since the rate selected as AFA is a rate calculated for a cooperating respondent from data in a prior review and is consistent with certain transaction-specific margins for Huarong calculated in the most recent review where Huarong did not receive AFA, the chosen rate is a “reasonably accurate estimate of the respondent’s actual rate, albeit with some built-in increase intended as a deterrent to noncompliance.” *See F. Lii de Cecco*, 216 F.3d at 1032. Moreover, the Department’s presumption that if an uncooperative respondent could have demonstrated that its dumping margin is lower than the highest prior margin it would have provided information

showing the margin to be less. *See Rhone Poulenc*, 899 F.2d at 1185.

Accordingly, we have determined that the selected rate of 139.31 percent for bars/wedges is both reliable and relevant. Therefore, we have corroborated this rate, to the extent practicable, in accordance with section 776(c) of the Act.

B. Adverse Facts Available Rate of 98.77 Percent for TMC's Sales of Picks/Mattocks

Background

In the *Final Results*, the Department assigned a rate of 98.77 percent to TMC's sales of products covered by the picks/mattocks order. *See Final Results*, at Comment 9.A. The Court has questioned the Department's corroboration of the 98.77 percent rate for TMC. Specifically, the Court asked the Department to explain "(a) how the 98.77 percent rate for TMC's picks/mattocks is a reasonably accurate estimate of TMC's actual rate with a built-in increase to deter non-compliance; and (b) why it did not select as an AFA rate for TMC sales of picks/mattocks one of the previously assigned lower rates, albeit with a built-in increase to deter future non-compliance; or (2) reopen the record and obtain evidence to support an actual calculated rate for TMC's sales of picks/mattocks." *See Tianjin*, at 43.

Determination

With respect to TMC's sales of picks/mattocks, we continue to find that the AFA rate of 98.77 percent is sufficiently corroborated. The only source for calculated margins is administrative determinations. The 98.77 percent rate was a calculated rate for another respondent, Fujian Machinery Import and Export Corp ("FMEC"), during the seventh administrative review. *See Seventh Administrative Review*. 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 Preliminary Results of Antidumping Duty Administrative Review: Garin-Oriented Electrical Steel from Italy*, 61 FR 36551 (July 11, 1996) (“*GOES from Italy*”)(unchanged in the final results). Therefore, absent information from TMC that the 98.77 percent rate calculated using FMEC’s verified data is somehow not reliable, the Department continues to find that this rate satisfies the reliability prong of the corroboration analysis. *See Preliminary Results and Termination in Part of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People’s Republic of China*, 61 FR 57384 (November 6, 1996) (unchanged in final results).

We also find that the 98.77 percent is relevant to TMC. We analyzed sales in the twelfth review to demonstrate that the rate selected as AFA is relevant to TMC. TMC had transaction-specific margins in the twelfth administrative review that were well above 98.77 percent (*i.e.*, [*]). *See* Appendix 4. We also compared the transactions that approximate the proposed AFA rate of 98.77 percent to other U.S. sales of bars/wedges made by TMC. The U.S. transactions corroborating the AFA rate do not appear to be aberrant or unusual in any way. They appear to be made in commercial quantities. Because we are making an adverse inference with regard to TMC, we regard these transactions as representative of the margins we would have calculated for this company in the thirteenth review (with a built-in incentive to encourage cooperation) had it not received total AFA. The number of U.S. transactions receiving a margin greater than or near 98.77 percent is a representative figure whether it is measured by the number of transactions, the value of the transactions, or the quantity of the transactions. Because these transaction-specific margins for TMC in the tenth review are as high as the rate selected as AFA, and these margins were calculated for transactions involving the same class of merchandise sold in the same market, under similar demand and supply conditions, as the AFA rate, we find that they support

the relevance of the rate selected as AFA.

Since the rate selected as AFA is a rate calculated for a cooperating respondent from data in a prior review and is consistent with certain transaction-specific margins for TMC calculated in a recent review, the chosen rate is a “reasonably accurate estimate of the respondent’s actual rate, albeit with some built-in increase intended as a deterrent to noncompliance.” *See F. Lii de Cecco*, 216 F.3d at 1032. Moreover, the Department’s presumption that if an uncooperative respondent could have demonstrated that its dumping margin is lower than the highest prior margin it would have provided information showing the margin to be less. *See Rhone Poulenc*, 899 F.2d 1185.

The Court also instructed the Department to explain why “the Department did not select as an AFA rate for TMC’s sales of picks/mattocks one the previously assigned lower rates.” *See Tianjin*, at 43. The CAFC has explained that it “is within Commerce’s discretion to choose which sources and facts it will rely on to support an adverse inference when a respondent has been shown to be uncooperative” and that Commerce “is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts available that will create the proper deterrent to the non-cooperation with its investigations . . .” *See F. Lli De Cecco*, 216 F.3d at 1032. Because TMC’s sales of picks/mattocks are receiving total AFA because it could not provide factors of production information, we do not find that using one of TMC’s prior rates would be appropriate as an AFA rate. In administrative reviews where TMC received calculated rates, TMC fully participated in those proceedings and received a calculated rate based on its own data. As a result, it would be inappropriate to apply a lower rate to TMC as AFA in this review.

Accordingly, we have determined that the selected rate of 98.77 percent for picks/mattocks is both reliable and relevant. Therefore, we have corroborated this rate, to the extent practicable, in accordance with section 776(c) of the Act.

III. DRAFT REMAND CONCLUSION

Pursuant to the Court's order, we have explained (a) how the 139.31 percent rate applied to TMC's and Huarong's sales of bars/wedges is a reasonably accurate estimate of TMC's actual rate with a built-in increase to deter non-compliance and, in particular, how that rate is more accurate than other rates calculated for TMC; and (b) explained in detail how the 139.31 rate assigned to Huarong is reliable and bears a rational relationship to the company itself. In addition, we have explained (a) how the 98.77 percent rate for TMC's picks/mattocks is a reasonably accurate estimate of TMC's actual rate with a built-in increase to deter non-compliance; and (b) why we did not select as an AFA rate for TMC sales of picks/mattocks one of the previously assigned lower rates. As a result of this redetermination, the Department has not revised the dumping margin from 139.31 percent for TMC's and Huarong's sales of bars/wedges and TMC's dumping margin of 98.77 percent for its sales of picks/mattocks during the POR.

IV. COMMENTS FROM INTERESTED PARTIES

On February 27, 2008, the Department provided interested parties a copy of the draft remand redetermination. Comments to the draft remand redetermination were due on March 3, 2008. TMC and Huarong submitted comments. Ames did not submit any comments.

Comment 1: TMC contends that the Department did not properly corroborate the 139.31 percent antidumping rate for its sales of bars/wedges.

TMC contests the Department's continued application of the 139.31 percent antidumping

rate. TMC argues that this rate is punitive, and states that the Department should calculate a rate based on TMC's reported data, with an additional amount added for deterrence. TMC also argues that the Department failed to corroborate the 139.31 percent margin in the remand redetermination.

TMC contends that the Department did not utilize any measures to verify independently the reliability of the 139.31 percent AFA rate, relying instead on the position that if the Department chooses as total AFA a dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin. TMC claims that the Department failed to corroborate the information using independent sources such as published price lists, official import statistics and CBP data, and information obtained from interested parties during an investigation or review. It argues that the Department did not use any such independent information when corroborating the 139.31 percent dumping margin, claiming there are no independent sources for calculated dumping margins, and therefore, TMC states that the Department's argument is unsupported by substantial evidence. TMC agrees that there may be no sources to independently corroborate the reliability of the 139.31 percent dumping margin itself, but contends that the Department had sources that could have been used to corroborate the FOP used in arriving at the dumping margin such as (1) verified data on TMC's sales prices for the thirteenth review; (2) verified data for TMC's consumption rates for the thirteenth review; and (3) Indian import statistics for the thirteenth review. TMC states that it would not have been burdensome for the Department to consult these sources in order to satisfy its obligation to corroborate the margin.

TMC further argues that the 139.31 percent AFA rate is not relevant to TMC's current commercial activities because the decline of TMC's AUVs between the eighth and thirteenth

reviews does not establish the relevance of the 139.31 percent margin. TMC states that any number of reasons may account for TMC's decline in AUVs such as the surrogate value for steel.⁶ TMC argues that the surrogate value for steel in the eighth administrative review was aberrational as compared to the steel values for the subsequent reviews. TMC also argues that a further reason for the decline in TMC's prices between the eighth and thirteenth administrative review is because the Department did not separately calculate an AUV for each different bar/wedge product but rather has calculated a weighted-average per kilogram price for all products for each respective review period.

TMC also contends that the history of volatility of the antidumping rates in the industry does not justify a 290-fold increase from TMC's tenth review rate, nor does it support the relevance of the rate. TMC also argues that the Department should have looked to TMC's calculated weighted-average margins from the prior reviews as a starting point and then added deterrence amounts, for example, the companies' forgone profits. Finally, TMC contends that the increase does nothing to respond to the CIT's request that the Department explain why the chosen rate represents a reasonably accurate estimate of TMC's actual rate to which it has added an amount to encourage future cooperation.

The Petitioners did not comment on this issue.

Department's Position:

We disagree with TMC. Based on the information on the record of this review and the court's order, we continue to find that 139.31 percent is both reliable and relevant to TMC in this review.

⁶ The surrogate values for steel are not part of the record. Moreover, TMC provided a comparison of the Chinese and Indian surrogate values in its comments which are not considered here because that is not part of the administrative record for the 13th review under consideration.

A. Reliability of the 139.31 Percent Rate

As we stated in the Draft Redetermination, in an administrative review, if the Department chooses as total AFA a dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin. In the *Final Results*, the Department found this rate to be reliable because it was “calculated using verified information provided by TMC during the 8th administrative review of the bars/wedged order.” See *Decision Memorandum*, at Comment 3. We also noted in the *Final Results* that the 139.31 percent rate was subject to litigation in the 8th review and was affirmed by this Court and the CAFC. *Id.* Here, the Court noted that “Commerce has shown that the rate, having been calculated using the respondent’s own verified data was reliable when calculated . . .” See *Tianjin*, at 36. For these reasons, we continue to find the 139.31 percent rate to be reliable.

TMC incorrectly argues that the Department should compare the data supporting the calculation of the 139.31 percent rate with data from the thirteenth review, such as factors of production or surrogate values. TMC misapprehends the Department’s analysis of reliability. The question of reliability goes to the validity of the calculated margin for the period for which it was calculated. As this rate was calculated with TMC’s data and was affirmed, the rate calculated for the eighth review is reliable. A comparison of the underlying data with current TMC data, even if it were appropriate, goes to the question of the continued relevance of the margin. In this instance however, it would not be appropriate to compare the sales, FOP data or surrogate values from the eighth review to TMC’s data in this review because the Department has no confidence in the completeness or accuracy of TMC’s data given the finding that total adverse facts available is appropriate and has been affirmed by the Court in this instance. Therefore, we continue to find that 139.31 percent is reliable. Moreover, as we noted above, the

Court has already found this rate to be reliable. *Id.*

B. Relevance of the 139.31 Percent Rate

As we stated in the Draft Redetermination, the Department compared the AUV from the 8th administrative review with the AUVs from this administrative review and found that TMC's AUVs for subject merchandise declined by [* * *] percent from the earlier to the later period. *See* Appendix 2. This change in TMC's AUVs is accompanied by little to no change in the production process used by the PRC hand tools industry to produce bars/wedges over the last five years, as demonstrated by respondent's questionnaire responses and verifications from multiple administrative review proceedings. TMC has not challenged that the production process has remained constant over this period. Thus, because the production process of the industry has generally stayed constant, while TMC's U.S. sales values have declined, the Department concludes that this information further substantiates the relevance of the 139.31 percent margin as AFA for TMC's sales of merchandise under the bars/wedges order.

TMC argues that any number of reasons may account for TMC's decline in AUVs such as the surrogate value for steel or differences in product mix between administrative reviews. As shown in the draft remand redetermination, the history of volatile dumping margins in this industry demonstrates that a large increase or decrease in dumping margins is not unusual. The Department has not used the volatility as a reason explaining *why* the increase occurred, but only that it is reasonable to infer that such an increase could have occurred. This is consistent with the Department's analysis which was affirmed in *Shandong Huarong 9th Review IV*, where the Department used the volatility in the hand tools market to confirm the relevancy of the AFA rate applied. *See Shandong Huarong General Group Corporation and Liaoning Machinery Import & Export Corporation v. United States*, Slip Op. 07-4 (January 9, 2007) ("*Shandong Huarong 9th*

Review IV”). Thus, the Department’s discussion of the rate volatility has the limited purpose of demonstrating that such increases and decreases, while dramatic, are characteristics consistent with the record of this proceeding.

TMC also argues that the Department should have looked to TMC’s calculated weighted average margins from the prior reviews as a starting point and then added an amount for a deterrence, for example, the companies’ forgone profits. In *Rhone Poulenc*, the CAFC ruled that the best information for selecting AFA is not necessarily the most recent. *See Rhone Poulenc*, 899 F.2d at 1190 (“Although we see no escape from our earlier reasoning that Congress desired the ITA always to use the most recent information in administrative reviews, it does not follow . . . that the ITA must equate ‘best information’ with ‘most recent information.’ What is required is that the ITA obtain and consider the most recent information in its determination of what is best information”). Thus, the fact that TMC received *de minimis* margins in prior reviews is not dispositive of its activity in the underlying review and thus, is not necessarily appropriate as a basis for an AFA rate.

Moreover, because TMC’s sales of bars/wedges were found to warrant total adverse facts available due to its involvement in the “agent” sales scheme, and its failure to report relevant information upon request, we do not find that using one of TMC’s prior lower rates would be appropriate as an AFA rate. In administrative reviews where TMC received lower rates, not only did TMC fully participate in those proceedings, but TMC did not receive total AFA. As a result, it would be inconsistent with the goal of encouraging respondents to respond in an accurate and timely manner to the Department’s request, to apply a lower rate to TMC in this review when those lower rates were based on TMC’s cooperation.

Finally, TMC argues that by selecting the 139.31 percent rate, the Department does nothing to respond to the CIT's request that the Department explain why the chosen rate represents a reasonably accurate estimate of TMC's actual rate to which it has added an amount to encourage future cooperation. Given that the application of the 139.31 percent margin as AFA to TMC is supported by the fact that this rate was calculated for TMC in the 8th administrative review and that there was a steep decline in TMC's AUVs, and that there is a history of volatility in TMC's antidumping rates in the bars/wedges industry, the Department believes that the 139.31 percent rate is a "reasonably accurate estimate" of TMC's actual rate with "a built-in increase to deter non-compliance" and is "more accurate than other rates calculated for TMC."

As a result, we continue to find that it is appropriate to apply the 139.31 percent margin as AFA to TMC's sales of bars/wedges in the 13th administrative review of HFHTs from the PRC.

Comment 2: Huarong contends that the 139.31 percent antidumping rate based on TMC's data is not relevant to Huarong's sales of bars/wedges.

Huarong argues that the Court instructed the Department to impose an AFA rate that is both a reasonably accurate estimate of the respondent's actual rate and is an effective deterrent to non-compliance. Huarong contends that the Department failed to consider that the facts applying to TMC's bars/wedges experience in the 8th review were very different from those of Huarong in the 13th review, including the type of products sold by each company. Huarong reiterates the same arguments as TMC discussed above regarding the valuation of the steel input and the history of volatility in the dumping rates as explanation of why the 139.31 percent rate is aberrational and not relevant.

the eleventh review were similar to the rate selected as AFA, and these margins were calculated for transactions involving the same class of merchandise sold in the same market, under similar demand and supply conditions, as the AFA rate, we found that they support the relevance of the 139.31 percent rate selected as AFA.

Huarong argues that the Department failed to consider that the facts applying to TMC's bars/wedges experience in the 8th review were very different from those of Huarong in this review, including the type of products sold by each company. The Department finds that the data underlying Huarong's arguments are not part of the record in this review and thus, cannot be considered in our analysis. Furthermore, the Department cannot compare the sales and FOP data from the 8th review to this review because the Department has no confidence in the completeness or accuracy of Huarong's reported data in this review given the finding that total adverse facts available is appropriate.

With regard to the volatility of the dumping margins with respect to Huarong, we find that the history of volatile dumping margins in this industry demonstrates that a large increase or decrease in dumping margins is not unusual. This is consistent with the Department's analysis which was affirmed in *Shandong Huarong 9th Review IV*, where the Department also used volatility in the hand tools market to confirm the relevancy of the AFA rate applied. *See Shandong Huarong 9th Review IV* at 7-8. Thus, the Department's discussion of the rate volatility has the limited purpose of demonstrating that such increases and decreases, while dramatic, are characteristics consistent with the record of this proceeding.

We also disagree with Huarong's suggestion that the Department should begin with its previous weighted-average margin of 34.00 percent and add a built-in increase as a deterrent for non-compliance. Specifically, Huarong proposes taking its 34.00 percent margin from a prior

Comment 3: TMC contends that the Department did not properly corroborate the 98.77 percent antidumping rate for its sales of picks/mattocks.

TMC argues that the selected rate is unreliable because the Department failed to corroborate the 98.77 rate using secondary information as required by section 351.308(c)(1)(iii) of the Department's regulations. TMC argues that there may be no sources to independently corroborate the reliability of the 98.77 percent dumping margin itself, but contends that the Department had sources that could have been used to corroborate the FOP used in arriving at the dumping margin" such as (1) verified data on TMC's sales prices for the thirteenth review; (2) verified data for TMC's consumption rates for the thirteenth review; and (3) Indian import statistics for the thirteenth review. TMC states that it would not have been burdensome for the Department to consult these sources in order to satisfy its obligation to corroborate the margin.

TMC also argues that the Department failed to corroborate the relevance of the Fujian Machinery Export Company ("FMEC")'s 98.77 rate to TMC. TMC argues that the Department should consider FMEC's product mix, different producing factories, and the steel surrogate values.⁷ TMC also argues that the Department should begin with its previous weighted-average margin of 4.76 percent and add a built-in increase as a deterrent for non-compliance. In this case, TMC proposes taking its 4.76 percent from a prior review and adding the surrogate profit margin used in the Department's calculation in this administrative review.

Department's Position:

We disagree with TMC. The Department corroborated the 98.77 percent margin to the extent practicable with respect to TMC. Accordingly, the Department has determined it will continue to apply the 98.77 percent rate to TMC's entries as AFA.

⁷ The product mix, factory identities or the surrogate values for steel are not part of the record.

A. Reliability of the 98.77 Percent Rate

The 98.77 percent rate calculated using FMEC's verified data is reliable because 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*. Therefore, absent information from TMC that the 98.77 percent rate calculated using FMEC's verified data is somehow not reliable, the Department continues to find that this rate satisfies the reliability prong of the corroboration analysis.

TMC incorrectly argues that the Department should compare the data supporting the calculation of the 98.77 percent rate with data from the thirteenth review, such as factors of production or surrogate values. TMC misapprehends the Department's analysis of reliability. The question of reliability goes to the validity of the calculated margin for the period for which it was calculated. As this rate was calculated with another respondent's data, the rate calculated for the eighth review is reliable. A comparison of the underlying data with current TMC data, even if appropriate, goes to the question of the continued relevance of the margin. In this instance, however, it would not be appropriate for the Department to compare the sales, FOP data or surrogate values from the seventh review to this review because the Department has no confidence in the completeness or accuracy of TMC's reported data in this review given the finding that total adverse facts available is appropriate. Therefore, we continue to find that this rate is reliable with respect to TMC's sales of picks/mattocks.

B. Relevancy of the 98.77 Percent Rate

With respect to relevancy, we analyzed TMC's sales in the twelfth review (the most recent review in which TMC fully cooperated) to demonstrate that the rate selected as AFA is

relevant to TMC. TMC had transaction-specific margins in the twelfth administrative review that were well above 98.77 percent (*i.e.*, [* * * * *]). *See* Appendix 4. Because these transaction-specific margins for TMC in the twelfth review are as high as the rate selected as AFA, and these margins were calculated for transactions involving the same class of merchandise sold in the same market, under similar demand and supply conditions, as the AFA rate, we find that they support the relevance of the rate selected as AFA. In addition, we found that because TMC's sales of picks/mattocks are receiving total AFA because it could not provide factors of production information, we do not find that using one of TMC's prior rates would be appropriate as an AFA rate. In administrative reviews where TMC received calculated rates, TMC fully participated in those proceedings and received a calculated rate based on its own data and, therefore, those rate are inappropriate here as AFA.

TMC argues that the Department should consider FMEC's product mix, different producing factories, and the steel surrogate values. The Department finds that the data underlying TMC's arguments are not part of the record in this review and thus, cannot be considered in our analysis. Furthermore, the Department cannot compare the sales and FOP data from the prior review to this review because the Department has no confidence in the completeness or accuracy of TMC's reported data in this review given the finding that total adverse facts available is appropriate.

TMC also argues that the Department should begin with its previous weighted-average margin of 4.76 percent and add a built-in increase as a deterrent for non-compliance. Specifically, TMC proposes taking its 4.76 percent from a prior review and adding the surrogate profit margin used in the Department's calculation in this administrative review. In *Rhone Poulenc*, the CAFC ruled that the best information for selecting AFA is not necessarily the most

recent. *See Rhone Poulenc*, 899 F.2d at 1190. Thus, the fact that TMC received a lower rate in prior reviews is not dispositive of its activity in the underlying review and thus, is not necessarily appropriate as a basis for an AFA rate.

Moreover, because TMC's sales of picks/mattocks are receiving total AFA due to not providing factors of production from its suppliers, and its failure to report relevant information upon request, we do not find that using one of TMC's prior lower rates would be appropriate as an AFA rate. In administrative reviews where TMC received lower rates, not only did TMC fully participate in those proceedings, but TMC did not receive total AFA. As a result, it would be inconsistent with the goal of encouraging respondents to respond in an accurate and timely manner to the Department's request to apply a lower rate to TMC in this review when those lower rates were based on TMC's cooperation.

In this case, the 98.77 percent rate was calculated, based upon verified data for FMEC in a previous proceeding. The Department found this 98.77 percent rate to be relevant to TMC based on an examination of TMC's transaction-specific margins in the twelfth administrative review that were well above 98.77 percent (*i.e.*, [* * * * *]). *See* Appendix 4. Since the rate selected as AFA is a rate calculated for a cooperating respondent from data in a prior review and is consistent with certain transaction-specific margins for TMC calculated in the most recent review where TMC did not receive AFA, the chosen rate is a "reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to noncompliance." *See F. Lii de Cecco*, 216 F.3d at 1032. Moreover, the Department's presumption is that if an uncooperative respondent could have demonstrated that its dumping margin is lower than the highest prior margin it would have provided information showing the margin to be less. *See Rhone Poulenc*, 899 F.2d at 1185. Therefore, we find that the relationship

of the selected rate to TMC in this case is relevant.

III. FINAL REMAND CONCLUSION

Pursuant to the Court's order and consideration of the comments received, we have explained (a) how the 139.31 percent rate applied to TMC's and Huarong's sales of bars/wedges is a reasonably accurate estimate of TMC's actual rate with a built-in increase to deter non-compliance and, in particular, how that rate is more accurate than other rates calculated for TMC; and (b) explained in detail how the 139.31 rate assigned to Huarong is reliable and bears a rational relationship to the company itself. In addition, we have explained (a) how the 98.77 percent rate for TMC's picks/mattocks is a reasonably accurate estimate of TMC's actual rate with a built-in increase to deter non-compliance; and (b) why we did not select as an AFA rate for TMC sales of picks/mattocks one of the previously assigned lower rates. As a result of this redetermination, the Department has not revised the dumping margin from 139.31 percent for TMC's and Huarong's sales of bars/wedges and TMC's dumping margin of 98.77 percent for its sales of picks/mattocks during the POR.

Ronald K. Lorentzen
Acting Deputy Assistant Secretary
for Import Administration

Date