

October 10, 2014

A-570-888
8/11/2007-7/31/2008
Remand Ct # 10-00059
Slip Op. 14-69
6 RPS; OFF VI
Public Document

**Final Results of Redetermination Pursuant to Court Remand
Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's
Republic of China
Foshan Shunde Yongjian Housewares & Hardware Co., Ltd., and Polder, Inc., v. United
States, Court No. 10-00059, Slip Op. 14-69 (CIT June 25, 2014)**

Summary

The Department of Commerce (Department) prepared these final remand results pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court) in *Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. and Polder, Inc., v. United States*, Court No. 10-00059, Slip Op. 14-69 (June 25, 2014) (*Foshan Shunde III*). This action arises out of the final results of the August 1, 2007, through July 31, 2008, administrative review of the antidumping duty order on floor-standing metal top ironing tables and certain parts thereof from the People's Republic of China.¹ On June 11, 2012, the Department issued its First Redetermination in which it granted a separate rate to Foshan Shunde and continued to assign Foshan Shunde an adverse facts available (AFA) margin of 157.68 percent.² In *Foshan Shunde I*, the Court affirmed the Department's determination to assign Foshan Shunde an antidumping duty margin based on AFA. However, in *Foshan Shunde II*, the Court rejected the corroboration analysis set forth by the Department in the First Redetermination.³ On July 8, 2013, the Department issued its Second Redetermination, in which it continued to argue that the limited Customs data on the record of this proceeding support the 157.68 percent AFA rate for Foshan

¹ See *Floor-Standing Metal Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 75 FR 3201 (January 20, 2010) (*Final Results*).

² See *Final Results of Redetermination Pursuant to Court Remand Floor Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China (First Redetermination)*. The First Redetermination was issued pursuant to *Foshan Shunde Yongjian Housewares & Hardware Co., Ltd., and Polder, Inc., v. United States*, Court No. 10-00059, Slip Op. 11-123 (CIT Oct. 11, 2011) (*Foshan Shunde I*).

³ See *Foshan Shunde Yongjian Housewares & Hardware Co., Ltd., and Polder, Inc., v. United States*, Court No. 10-00059, Slip Op. 13-47 (CIT April 8, 2013) (*Foshan Shunde II*).

Shunde because these data demonstrate that importers paid the 157.68 percent during the review period.⁴

In *Foshan Shunde III*, the Court determined that the Department's analysis of the Customs data set forth in the *Second Redetermination* was insufficient to corroborate the 157.68 percent AFA rate assigned to Foshan Shunde.⁵ Additionally, in *Foshan Shunde III*, the Court ordered that "should the Department continue to assign Foshan Shunde the 157.68 percent rate" the Department shall open the record and make a practicable effort to identify independent sources reasonably at its disposal that bear on the relevance of the 157.68 percent rate.⁶ Further, if the Department is unable to identify any independent sources that bear on the relevance of the 157.68 percent AFA rate, the Court ordered the Department to explain what independent sources it considered and why those sources contained no relevant information.⁷ In this redetermination, we found no additional information to potentially corroborate an AFA rate for Foshan Shunde beyond the Customs data that were examined in the *First* and *Second Redetermination* of this case. Further, in this redetermination, and consistent with the instructions of the Court in *Foshan Shunde III*, we assigned, under protest, to Foshan Shunde a revised AFA margin of 72.29 percent, which is the rate assigned in the less-than-fair-value (LTFV) investigation to separate rate companies.⁸ The analysis set forth in this redetermination is outlined below.

⁴ See *Final Results of Redetermination Pursuant to Court Remand Floor Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China (Second Redetermination)*. The *Second Redetermination* was issued pursuant to *Foshan Shunde II*.

⁵ See *Foshan Shunde III* at 9-21.

⁶ *Id.* at 20.

⁷ *Id.* at 21.

⁸ 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). (*Amended Final Determination and Order*).

Background

In the Second Redetermination, we continued to argue that the limited Customs data on the record of this proceeding support the 157.68 percent AFA rate for Foshan Shunde because these data demonstrate that importers paid the 157.68 percent during the review period.⁹ Additionally, in defending the 157.68 percent margin in both the First Redetermination and the Second Redetermination of this case, we argued that *Rhone Poulenc* establishes that the highest calculated margin intrinsically has probative value because that margin reflects “a common sense inference that the highest prior margin is the most probative evidence of current margins.”¹⁰ Moreover, we argued in the Second Redetermination that the 157.68 percent rate is relevant to Foshan Shunde because: 1) it was a calculated rate in a prior segment, and 2) Foshan Shunde was aware at the time it decided not to cooperate with the Department that it risked receiving an AFA rate.¹¹ Additionally, we argued in the Second Redetermination that Customs data listed the 157.68 percent liquidation rate as the liquidation rate for ironing tables. We, thus, determined in the Second Redetermination that the Customs data were specific to ironing tables. Finally, we indicated in the Second Redetermination that some of the entries listed in the Customs data were of Foshan Shunde’s merchandise, thus, indicating that these Customs data are probative of Foshan Shunde’s “commercial reality.”¹²

In *Foshan Shunde III*, the court rejected the argument that the 157.68 rate is relevant to Foshan Shunde.¹³ The Court further held that the *Rhone Poulenc* presumption of the highest calculated rate having probative value can only be applied within the current statutory framework “where (1) the rate was calculated in a prior review segment for the party now failing

⁹ See Second Redetermination at 6.

¹⁰ See *Rhone Poulenc, Inc. v United States*, 899 F.2d 1185, 1190 (Fed Cir.1990) (*Rhone Poulenc*).

¹¹ See Second Redetermination at 6.

¹² *Id.* at 7-8.

¹³ See *Foshan Shunde III* at 12-15.

to cooperate, and (2) the party failing to cooperate did not respond to our questionnaires in any way.”¹⁴ The Court thus held that because the 157.68 percent rate was assigned to a different respondent in the LTFV investigation and because Foshan Shunde responded to some aspect of our questionnaire, albeit in an unacceptable manner,¹⁵ our reliance on the *Rhone Poulenc* presumption was invalid.¹⁶ Second, the Court found that there was no direct evidence that the entries examined in the second redetermination were classified under a specific HTS classification subheading for ironing tables.¹⁷ The Court also found the HTS numbers and listed liquidation amounts to be an insufficient basis to corroborate the AFA rate.¹⁸ The Court further found that the Customs data failed to identify each of the relevant HTS headings or the names of the importers.¹⁹ Finally, the Court found that even if there were substantial evidence to support the contention that entries listed in the Customs data were indeed entries of subject merchandise, the Customs data would still fail to demonstrate the relevance of the 157.68 percent rate to Foshan Shunde.²⁰ The Court indicated the Customs data discussed in the Second Redetermination shows the liquidation rates of entries which are unknown until after completion of the review. However, the Court indicated the only rate known at the time of importation is the cash deposit rate. The Court further held that the Customs data provided to the Court in the Second Redetermination failed to consider the cash deposit rate that was in effect at the time of entry.²¹ Based upon the foregoing, the Court determined that our Second Redetermination that

¹⁴ *Id.* at 14.

¹⁵ The Court noted that Foshan Shunde had responded to Section C and D of our questionnaire, “albeit in an unacceptable manner.” See *Foshan Shunde III* at 14. Therefore, Foshan Shunde’s section C and D questionnaire responses are not reliable.

¹⁶ *Id.* at 14-15.

¹⁷ *Id.* at 15.

¹⁸ *Id.*

¹⁹ *Id.* at 16.

²⁰ *Id.* at 17-18.

²¹ *Id.* at 17.

Foshan Shunde or other exporters "chose" to participate in the U.S. market knowing its products were subject to a 157.68 percent rate assumed too much.²²

In *Foshan Shunde III*, the Court also found that the Department did not adequately explain why corroboration is not practicable from other sources.²³ The Court noted that the statute does not require the Department "to go to extraordinary lengths" to corroborate secondary information where the record is deficient.²⁴ However, the Court stated that "the Department must still seek relevant independent sources to corroborate secondary information, and if it cannot locate such information, it must describe the steps that it has taken so that a reviewing Court can determine if the Department's finding that corroboration was not practicable is supported by substantial evidence and in accordance with law."²⁵

On September 9, 2014, the Court granted the Department a 28-day extension for filing the final results of redetermination.²⁶ On September 15, 2014, the Department released to all parties a draft of its results of redetermination (Draft Redetermination) and allowed parties until September 22, 2014 to comment on the Draft Redetermination. We received timely comments from Foshan Shunde/Polder, Inc., and Home Products International (HPI), the Petitioner in this proceeding. For these final results of redetermination, we continued to assign an AFA margin of 72.29 percent to Foshan Shunde.

²² *Id.* at 17-18.

²³ *Id.* at 18-20.

²⁴ *Id.* at 19.

²⁵ *Id.* at 19-20 citing *Toyota Motor Sales U.S.A., Inc. v. United States*, 22 CIT 643, 651, 15 F. Supp. 2d 872, 877-79 (1998).

²⁶ See *Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. and Polder, Inc. v. United States*, Document ECF No. 142.

Discussion²⁷

Lack of Independent Sources to Corroborate Foshan Shunde's AFA Rate

In the *Second Redetermination*, the Department noted that in determining the margin for a respondent that fully responds to the Department's questionnaires, the Department typically relies upon verifiable information concerning that respondent's U.S. sales, manufacturing procedures, and financial data.²⁸ Such information includes both a reliable U.S. sales listing that accurately reports the respondent's U.S. sales transactions and the expenses incurred by the respondent on its U.S. sales transactions.²⁹ Additionally, in non-market economy cases, such probative information also includes a reliable response which accurately details the company's factors of production.³⁰ In this review, information concerning Foshan Shunde's U.S. sales and factors of production data is unavailable. Thus, given Foshan Shunde's failure to provide usable U.S. sales and factors of production data, the Department cannot determine a "commercial reality" specific to Foshan Shunde. Moreover, while the Court has credited Foshan Shunde with attempting to respond to Sections C and D of our questionnaire,³¹ the Court also sustained our use of an inference that is adverse to the interests of an uncooperative party in this case.³² The Department, thus, has no means of utilizing any of the U.S. price or factors of production information submitted by Foshan Shunde since the U.S. price and factors of production information provided by Foshan Shunde in its Section C and D responses was previously determined to be unreliable.

²⁷ The Department is conducting these remand results under respectful protest. See *Viraj Group, Ltd. v. United States*, 343 F.3d. 1371 (Fed. Cir. 2003).

²⁸ See *Second Redetermination* at 7-8.

²⁹ *Id.*

³⁰ *Id.*

³¹ See *Foshan Shunde III* at 16.

³² See *Foshan Shunde I* at 30-34.

In the Second Redetermination, we also examined all of the corroborating Customs data that we found to be relevant to Foshan Shunde's "commercial reality."³³ The Court found these Customs data did not provide a sufficient basis to corroborate the selected rate. The Court then ordered that if the Department continued to assign Foshan Shunde the 157.68 percent rate, the Department should open the record and make a practicable effort to identify independent sources "reasonably at the Department's disposal that bear on the relevance of the 157.68 percent rate to Foshan Shunde."³⁴ The Court also ordered that "should the Department be unable to identify any independent sources that bear on the relevance of the 157.68 percent rate, it will explain what independent sources it considered and why those sources contained no relevant information."³⁵ In the current redetermination, for purposes of corroborating the rate, the Department opened the record, searched for independent sources that would bear on the relevance of 157.68 percent rate, but found no additional statistical data from an independent source that may represent Foshan Shunde's "commercial reality," or that would otherwise bear on the relevance of the 157.68 percent rate. In particular, beyond the Customs data outlined in the Second Redetermination, we found no additional data that would represent the commercial reality of Foshan Shunde for the period of August 1, 2007 through July 31, 2008.³⁶ Moreover, we continue to find that Foshan Shunde's failure to provide usable U.S. sales or factors of production data precludes determination of Foshan Shunde's "commercial reality" through use of the additional data

³³ See Second Redetermination at 12-18.

³⁴ See *Foshan Shunde III* at 20.

³⁵ *Id.* at 21.

³⁶ The Court ordered the Department to explain what independent sources it considered and why those sources contained no relevant information, if the Department continued to assign Foshan Shunde the 157.68 percent rate. As noted, the Department is no longer assigning Foshan Shunde the 157.68 percent rate. Notwithstanding the Department's decision not to apply the 157.68 percent rate, to follow the Court's order, we note the Department searched the internet in an attempt to find any "primary information" that is contemporaneous with the August 1, 2007 through July 31, 2008 review period and could address the commercial reality concerns identified by the Court. We found no relevant information. We also re-examined the record to determine whether any additional Customs data had been overlooked. None was. We also considered whether any additional Customs data might be useful, but could not identify any additional Customs data or sources reasonably at the Department's disposal.

identified by the Court from the SAA (i.e., price lists, import statistics or additional Customs data) because there is no information on the record against which these data could be compared to determine Foshan Shunde's commercial reality.³⁷

In this redetermination, we noted the instructions stipulated by the Court in *Foshan Shunde III*. As previously indicated, this Court ruled that the *Rhone Poulenc* presumption of the highest calculated rate having probative value is only valid where the rate was (1) calculated in a prior review segment for the party now failing to cooperate, and (2) the party now failing to cooperate has "in no way" responded to our antidumping questionnaire.³⁸ The 157.68 percent AFA rate selected in the *Final Results* was the calculated rate for Shunde Yongjian Housewares in the LTFV investigation.³⁹ Thus, given the criteria for the *Rhone Poulenc* presumption set forth by this Court, absent further corroboration from independent sources, we find that the calculated rate for a cooperating company (157.68 percent) that was assigned to Foshan Shunde is unsuitable for use as the rate to be applied with an inference that is adverse to the interests of the uncooperative party.

Selection of an Adverse Facts Available Rate for Foshan Shunde

Because the 157.68 percent margin has been determined to be unsuitable for use as an AFA rate, we looked to other rates that may be considered for use as AFA. In this regard, we find that other rates calculated in the history of this proceeding (which are summarized below) would similarly fail to qualify as a potential source for AFA given the criteria set forth by the Court in *Foshan Shunde III*. The only calculated, non-AFA rate specific to Foshan Shunde is the

³⁷ See *Foshan Shunde III* at 10.

³⁸ *Id.* at 14.

³⁹ See *Amended Final Determination and Order*, 69 FR at 47868.

2.37 percent rate determined for Foshan Shunde in the 2004-2005 review of this order.⁴⁰ All of the other potential AFA rates summarized below were either 1) calculated for companies other than Foshan Shunde, 2) are from the LTFV investigation or otherwise pre-date the period of review (and, thus, given the analysis set forth in *Foshan Shunde II* and *Foshan Shunde III*, therefore, not specifically “relevant” to Foshan Shunde, or 3) are rates that are too low to induce cooperation in future reviews of this proceeding and are therefore unsuitable for use as an AFA rate.⁴¹

Period	Company	Rate	FR Cite
10/01/2002-3/31/2003	Since Hardware (Guangzhou)	9.47%	69 FR 47868 (August 6, 2004)
10/01/2002-3/31/2003	Shunde Yongjian Housewares	157.68%	69 FR 47868 (August 6, 2004)
10/01/2002-3/31/2003	Rate assigned to Separate Rate Respondents	72.29%	69 FR 47868 (August 6, 2004)
02/03/2004-7/31/2005	Foshan Shunde	2.37%	72 FR 13239 (March 21, 2007)
02/03/2004-7/31/2005	Forever Holdings, Limited	10.18%	72 FR 13239 (March 21, 2007)
02/03/2004-7/31/2005	Since Hardware (Guangzhou)	0.45%	72 FR 19689 (April 19, 2007)
08/01/2005-7/31/2006	Since Hardware (Guangzhou)	0.34%	73 FR 14437 (March 18, 2008)
08/01/2006-7/31/2007	Since Hardware (Guangzhou)	157.68%	74 FR 11085 (March 16, 2009) ⁴²
08/01/2006-7/31/2007	Forever Holdings, Limited	0.00%	74 FR 11085 (March 16, 2009)

As noted in the *Final Results*, Foshan Shunde withheld U.S. price and factors of production information necessary to complete the administrative review. The Department previously determined, therefore, that an adverse inference is warranted for Foshan Shunde, and

⁴⁰ 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) (*First Administrative Review*).

⁴¹ As previously noted the *Amended Final Determination and Order* covered the period October 1, 2002 through March 31, 2003, and the Department calculated the 2.37 percent rate for Foshan Shunde in the course of the *First Administrative Review*. The Department issued Amended Final results for Since Hardware (Guangzhou) on April 19, 2007. See *Notice of Amended Final Results of Antidumping 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). Finally, the Department issued the Final Results for the 08/01/2005-7/31/2006 administrative review on March 18, 2008. 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).

⁴² This is a rate based upon adverse facts available.

the Court sustained our application of an adverse inference to Foshan Shunde.⁴³ As such, the AFA rate to be selected must induce future cooperation and ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.⁴⁴ As previously noted, in *Foshan Shunde III*, the Court expressed concern regarding the importance of “relevance” and “commercial reality” in selection of a rate based upon an adverse inference. Of the rates outlined above, we have determined that the 72.29 percent rate assigned to the Separate Rate Respondents in the LTFV investigation best addresses these concerns regarding “relevance” and “commercial reality.” This rate represents the weighted average of two calculated rates, the 157.68 percent rate assigned to Shunde Yongjian Housewares and the 9.47 percent rate assigned to Since Hardware (Guangzhou) in the LTFV investigation.⁴⁵ As a rate that is culled from the history of two respondents, the 72.29 percent AFA rate is broader in scope than is a single rate. In addition, this rate is the current rate in effect for all companies which have demonstrated they are separate from the PRC-wide entity.⁴⁶ Based upon the foregoing, we find that this 72.29 percent rate better addresses the Court’s expressed concerns regarding “relevance” and “commercial reality” compared to a single rate that was calculated for one company. Unlike lower rates that range from zero to 10.18 percent, in selecting from among the facts available we find that 72.29 percent represents a rate that is sufficient to induce future cooperation and ensures that Foshan Shunde does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. Similar to our efforts to corroborate the 157.68 percent rate, we find no additional data that would represent the commercial reality of Foshan Shunde for the period of

⁴³ See *Final Results, and accompanying Issues and Decision Memorandum* at Comment 2.

⁴⁴ See *Statement of Administrative Action Accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 103-316 at 870, reprinted in 1994 U.S.C.C.A.N. 4040, 4199 (1994) (SAA) (“In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation.”).

⁴⁵ Shunde Yongjian Housewares and Since Hardware (Guangzhou) were the two mandatory respondents selected in the LTFV investigation.

⁴⁶ See *Amended Final Determination and Order* at 47868.

August 1, 2007 through July 31, 2008 that would allow us to corroborate the 72.29 percent rate. Although corroboration is not practicable in this circumstance, we continue to apply an adverse inference in this case.⁴⁷ Therefore, based upon the above, we assigned, under respectful protest, this 72.29 percent rate as AFA to Foshan Shunde in this redetermination.

Interested Party Comments

Comment 1

Foshan Shunde/Polder, Inc. assert that the 72.29 percent AFA rate assigned to Foshan Shunde fails to address the “relevance” and “commercial reality” concerns expressed by the Court in *Foshan Shunde III*. Foshan Shunde/Polder, Inc. note that the 72.29 percent AFA rate represents the weighted average rate of the 9.47 percent rate calculated for Since Hardware (Guangzhou) in the LTFV investigation and the 157.68 percent calculated for Shunde Yongjian Housewares. Foshan Shunde contends that as a rate calculated for two respondents other than Foshan Shunde, the 72.29 percent rate fails to reflect the commercial reality of Foshan Shunde.⁴⁸

Foshan Shunde/Polder Inc. assert that *De Cecco*⁴⁹ establishes an AFA rate should be determined by a “reasonably accurate estimate of the respondent’s actual rate, albeit with some built-in increase intended as a deterrent to non-compliance.”⁵⁰ Foshan Shunde/Polder Inc. assert that to satisfy this corroboration requirement, it is insufficient for the Department to note that the record contains no useful corroborating information.⁵¹ Foshan Shunde/Polder Inc. further contend that in the draft redetermination, the Department provided “a limited statement on its

⁴⁷ See *SAI* at 870 (“The fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference under subsection (b)”).

⁴⁸ See Foshan Shunde/Polder Inc. brief at 2.

⁴⁹ 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*).

⁵⁰ See Foshan Shunde/Polder Inc. brief at 6, citing *DeCecco* at 1032.

⁵¹ *Id.* at 7.

review of available data”.⁵² Foshan Shunde/Polder Inc. argue that the “limited” description of the Department’s corroboration efforts fails to comply with the Court’s order in *Foshan Shunde III*.

Foshan Shunde/Polder Inc. further contend that no importer could stay in business paying cash deposits of 72.29 percent.⁵³ To construct an AFA rate that reflects Foshan Shunde’s “commercial reality,” Foshan Shunde assert that the Department should begin with an examination of the 2.37 cash deposit rate that was in effect for Foshan Shunde during the POR. Using this 2.37 cash deposit rate as a starting point, Foshan Shunde/Polder Inc. assert that the Department could add an additional amount to this rate in order to assure Foshan Shunde’s cooperation in future reviews.⁵⁴

Finally, Foshan Shunde/Polder Inc. assert that the Department’s application of a 72.29 AFA rate is “punitive” and runs counter to the “remedial” nature of the antidumping law.⁵⁵ Foshan Shunde/Polder Inc. argue that application of a 72.29 percent AFA rate punishes Polder which Foshan Shunde/Polder Inc. describe as an “innocent U.S. importer.”⁵⁶ Additionally, Foshan Shunde/Polder Inc. dispute the Department’s past reliance on *KYD, Inc.* as precedent for U.S. importers being responsible for the actions of foreign manufacturers.⁵⁷ Foshan Shunde/Polder Inc. cite to the dissenting opinion in *KYD, Inc.* averring “the dissent could be the majority someday.”⁵⁸

⁵² See Foshan Shunde/Polder Inc. brief at 10.

⁵³ *Id.* at 12.

⁵⁴ *Id.* at 13.

⁵⁵ *Id.* at 14.

⁵⁶ *Id.* at 15.

⁵⁷ See *KYD, Inc. v. United States*, 607 F. 3d 760, 768 (Fed. Cir. 2010) (*KYD, Inc.*).

⁵⁸ See Foshan Shunde/Polder Inc. brief at 18.

Department's Position:

We continue to maintain that our application of a 72.29 percent rate is consistent with the Court's instructions in *Foshan Shunde III*. In this redetermination, we have based our selection of the 72.29 percent AFA rate using both the criteria established by 19 U.S.C. §1677e(c) and the additional instructions issued by the Court in *Foshan Shunde III*. As noted in the Second Redetermination, 19 U.S.C. §1677e(c) directs the Department to corroborate secondary information "to the extent practicable" using "information from independent sources that are reasonably at the Department's disposal."⁵⁹ Additionally, in this redetermination, and pursuant to the Court's instructions, we searched the internet in an attempt to find additional primary information contemporaneous with the POR which could address the commercial reality concerns identified by the Court. As noted in the Draft Redetermination, our search yielded no such additional primary information.⁶⁰ Moreover, contrary to Foshan Shunde's assertion, the Department's determination that no independent sources existed to corroborate Foshan Shunde's AFA rate was not based on the fact that Foshan Shunde put no reliable information on the record. Rather, the Department determined that because Foshan Shunde failed to provide usable U.S. sales or factors of production data, there is no information on the record against which possible independent data can be compared to determine Foshan Shunde's commercial reality.⁶¹ Based upon the absence of primary information, we have determined that there is no primary information available to corroborate Foshan Shunde's AFA rate.

The Court sustained our application of AFA to Foshan Shunde.⁶² As noted in *Kompass*,⁶³ in cases wherein the Department applies AFA, the Department no longer focuses on calculating

⁵⁹ See Second Redetermination at 12, see also SAA at #70.

⁶⁰ See Draft Redetermination at 6-8.

⁶¹ See Draft Redetermination at 6-7.

⁶² See *Foshan Shunde I* at 30-34.

the “true margin” but instead must focus on determining an adverse margin that will induce future cooperation. Also, as noted in the *Second Redetermination* and in the Draft Redetermination, in this case the U.S. sales and factor of production information necessary to calculate an accurate margin for Foshan Shunde is unavailable.⁶⁴ As such, the Department has no means of using any data provided by Foshan Shunde that would address Foshan Shunde’s “commercial reality.” Moreover, Foshan Shunde’s claim that the 72.29 percent rate is not an amount that would allow any importer to stay in business is unsubstantiated and ignores the fact that the rate is based on calculated rates from the investigation that represent the behaviors of two exporters. Contrary to Foshan Shunde’s portrayal of the AFA rate, the 72.29 percent rate is not a punitive rate, but is in fact the average of two calculated rates applied to all separate rate respondents which were not investigated by the Department.⁶⁵ As such, the 72.29 percent rate is a rate that was established early in the history of the order and exporters of ironing tables were on notice regarding this rate. Additionally, we note that in *Foshan Shunde II*, the Court rejected Foshan Shunde/Polder Inc.’s argument that the selected AFA rate should begin with an examination of the 2.37 cash deposit rate that was in effect for Foshan Shunde during the POR.⁶⁶ Moreover, as we noted in the Draft Redetermination, the selected AFA rate must be sufficiently adverse to induce cooperation in future reviews.⁶⁷ We continue to maintain that an AFA rate beginning with an examination of a 2.37 percent rate would be too low to induce such future cooperation, and would not be based upon an adverse inference in selecting from among the facts available. We note here that Foshan Shunde/Polder Inc. suggest we use the 2.37 percent rate

⁶⁴ See *Kompass Food Trading International v United States*, 24 C.I.T. 676, 682-83 (CIT 2000).

⁶⁵ See *Second Redetermination* at 7; see also *Draft Redetermination* at 5-6.

⁶⁶ 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, 2014).

⁶⁷ See *Foshan Shunde II* at 6-7.

⁶⁸ See *Draft Redetermination* at 8.

with "some built in increase as a deterrent to non-compliance"⁶⁸ without offering any hint of what level of built-in increase would be sufficient to serve its deterrent purpose.

Finally, we find without merit Foshan Shunde/Polder Inc.'s reliance on the dissenting opinion in *KYD, Inc.* In *KYD, Inc.* the Federal Circuit reiterated the well-established precedent that pursuant to 19 U.S.C. §1673g(b)(4), and 19 C.F.R. §141.1(b)(1), importers are legally responsible for paying the assessed duties associated with the goods they import.⁶⁹ By virtue of acting as Foshan Shunde's importer of record, Polder Inc. is fully responsible for paying the dumping duties applicable on the transactions which are covered by the application of AFA to Foshan Shunde.

Comment 2

HPI argues that assignation of a 72.29 percent AFA rate rather than the previously-assigned 157.68 percent rate is inconsistent with the Court's remand instructions, arbitrary, not supported by substantial evidence and not in accordance with the law. HPI asserts that the Department could obtain additional primary information that would corroborate the 157.68 percent rate according to the standards set forth in *Foshan Shunde III*. Specifically, HPI contends that information relating to volume and value of Foshan Shunde shipments which HPI identified in Foshan Shunde's 2007-2008 U.S. sales listing would satisfy the volume threshold for corroboration set forth by the Court in *Foshan Shunde II* and *Foshan Shunde III*.⁷⁰ HPI argues that the Department should obtain relevant entry information from Customs and Border Protection for purposes of determining whether these entries satisfy the volume threshold set forth by the Court in *Foshan Shunde II* and *Foshan Shunde III*.

⁶⁸ See *Foshan Shunde/Polder Inc.* brief at 13, quoting *De Cecco*.

⁶⁹ See *KYD, Inc.* at 768, *en banc reh'g denied*, 2010 U.S. App. LEXIS 18890 (Fed. Cir. Aug. 20, 2010).

⁷⁰ See HPI brief at fn 2 and Attachment 1. The volumes and sales value of these shipments are business proprietary information.

HPI notes that in *Foshan Shunde II*, the Court found the import volumes encompassed by the Customs data to be “somewhat limited” and requiring further explanation from the Department.⁷¹ HPI asserts that if the entries referenced in the non-public version of *Foshan Shunde II* were shown to be of subject merchandise, it would establish that the volume of entries was sufficiently large to meet the corroboration standard articulated by the Court in *Foshan Shunde II*.⁷²

Additionally, HPI argues that the previous analysis set forth by the Department in both the first and second redeterminations of this case justifies continued use of the 157.68 percent AFA rate. HPI asserts that the Department fully described in footnote 34 of its draft redetermination the steps that it took to meet the Court’s instructions concerning corroboration of the 157.68 percent AFA rate. Having undertaken these steps, HPI contends that the Department has corroborated to the extent practicable the 157.68 percent rate and that there is no reason for the Department to “change its rate ‘under protest’.”⁷³ Finally, HPI contests the conclusion reached by the Department in the draft redetermination that the 72.29 percent AFA rate best addresses the Court’s concerns regarding “relevance” and “market reality.” HPI argues that as a rate culled from the history of two respondents, the 72.29 percent AFA rate is “completely arbitrary and very much at odds with the Court’s instructions to make sure that any new rate is supported by substantial evidence and is in accordance with law.”⁷⁴

Department’s Position:

We continue to hold that the 72.29 percent AFA assigned to *Foshan Shunde* best reflects the “commercial reality” concerns expressed by the Court in *Foshan Shunde III*. As HPI notes, the Department examined available Customs data in both the first and second redetermination of

⁷¹ See HPI brief at 3 citing *Foshan Shunde II* at 11-14.

⁷² *Id.* at 4.

⁷³ *Id.* at 8.

⁷⁴ *Id.* at 9.

this case. From these examinations, we determined that Customs data corroborate the 157.68 AFA rate and represent “commercial reality” of Foshan Shunde in so much as these data demonstrate that “importers are currently paying [the 157.68 percent rate] and participating in the U.S. market.”⁷⁵ However, in *Foshan Shunde III*, the Court rejected the corroboration analysis reached by the Department in both the first and second redeterminations. In addition to expressing concerns regarding both the shipment volume encompassed by these data, and these data reflecting liquidations during the POR rather than cash deposits,⁷⁶ the Court also outlined several other objections concerning the probative value of these data. *Inter alia*, the Court questioned how the HTS items associated with Customs data relate to sales of subject merchandise,⁷⁷ as well as whether Foshan Shunde shipped non-subject merchandise that could be embedded within these Customs data.⁷⁸ Moreover, we note that basing corroboration exercises upon cash deposit data raises additional concerns relating to the “commercial reality” of these data. Cash deposits represent an estimate of the antidumping duty ultimately to be paid.⁷⁹ However, the actual amount of dumping duty paid by the importer at the time of liquidation frequently differs significantly from the cash deposit amount collected at the time of entry.⁸⁰ Based upon the foregoing, we conclude that no available Customs data would adequately address the concerns relating to “commercial reality” expressed by the Court in *Foshan Shunde III*.

We also continue to maintain that the 72.29 percent AFA rate which we have, under protest, assigned to Foshan Shunde in this review, better addresses the Court’s concerns regarding “relevance” and “commercial reality” than does the previously assigned AFA rate of

⁷⁵ See First Redetermination at 9-10; see also Second Redetermination at 5-9.

⁷⁶ See *Foshan Shunde III* at 17-18.

⁷⁷ *Id.* at 15.

⁷⁸ *Id.* at 16.

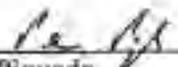
⁷⁹ See Sections 733(d)(1)(B) and 735(c)(1)(B)(ii) of the Act.

⁸⁰ See Sections 736(a)-(b) of the Act.

157.68 percent. As we noted in the Draft Redetermination, the 72.29 percent rate is culled from the history of two respondents, and is thus broader in scope than is a single rate.⁴¹ Therefore, we continued to assign this 72.29 percent AFA rate to Foshan Shunde in this redetermination.

Final Results of Redetermination

Based upon the foregoing, we have, under respectful protest, assigned an AFA rate of 72.29 percent to Foshan Shunde. Upon a final and conclusive decision in this case, the Department will instruct U.S. Customs and Border Protection to liquidate appropriate entries for the August 1, 2007, through July 31, 2008, period of review consistent with our final results of redetermination pursuant to Court remand.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

10 OCTOBER 2014
Date

⁴¹ See Draft Redetermination at 9-10.