

FINAL RESULTS OF REDETERMINATION  
PURSUANT TO COURT REMAND  
SHANDONG HUARONG GENERAL GROUP CORPORATION and LIAONING  
MACHINERY IMPORT & EXPORT CORPORATION v. UNITED STATES  
Court No. 01-00858

SUMMARY

The Department of Commerce (“the Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“Court”) in Shandong Huarong General Group Corporation and Liaoning Machinery Import & Export Corporation v. United States, Court No. 01-00858, Slip Op. 03-135 (October 22, 2003) (“Huarong”). This remand pertains to the Department’s application of adverse facts available (“AFA”) to Shandong Huarong General Group Corporation (“Huarong”) and Liaoning Machinery Import & Export Corporation (“LMC”) because of their failure to provide information required for the Department’s antidumping analysis. 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) (“Final Results”).

BACKGROUND

In the underlying administrative review, the Department preliminarily found that Huarong and LMC submitted complete responses to the separate rates section of the Department’s section A questionnaire. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People’s Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews and Notice of Intent Not To Revoke in Part, 65 FR 66691, 66693 (November 7, 2000). The evidence submitted by Huarong and LMC included government laws and regulations on corporate ownership, business licences, and narrative information regarding the companies’ operations and selection of management. We preliminarily concluded that the evidence was consistent with our separate rates findings in previous reviews and supported a finding that control of companies in the People’s Republic of China (“PRC”) has been decentralized and the respondent companies’ operations were, in fact, autonomous from the PRC government. See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People’s Republic of China, 65 FR 43290 (July 13, 2000).

Pursuant to sections 776(a)(2)(A) and (C) of the Tariff Act of 1930, as amended (“the Act”), the Department determined in the Final Results that it was appropriate to rely upon adverse facts available for purposes of determining the dumping margins for Huarong and LMC. Moreover, the

Department determined that, due to the nature of Huarong's and LMC's verification failures, and the inadequacy of their cooperation, the integrity of each respondents' reported data, on the whole, was compromised. The Department therefore determined that Huarong and LMC had not adequately demonstrated their entitlement to rates separate from the government entity. As a consequence, the Department determined that Huarong and LMC should receive the PRC-wide rate. See Final Results 66 FR at 48028.

In its October 22, 2003 opinion, the Court stated that the findings that justified the use of facts available and a resort to AFA, 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. The Court ordered the Department to: (1) consider the separate rates evidence submitted by the companies, (2) determine whether the assignment of separate rates for the companies is warranted, *i.e.*, that the companies have demonstrated an absence of state control both in law and in fact, and (3) if the Department finds that the assignment of separate rates is warranted, calculate separate antidumping duty margins for Huarong and LMC. See Huarong at 45.

## ANALYSIS

### The Assignment of Separate Rates

Pursuant to the Court's order, we have reconsidered our determination that the verification findings call into question the separate rates information provided by Huarong and LMC during the course of the administrative review. Since the Department found no specific discrepancies with respect to the separate rates information, we therefore determine that Huarong and LMC are entitled to separate rates.

### The Use of AFA

In Huarong, the Court agreed with the Department that both Huarong and LMC "withheld" the correct sales information, and "significantly impeded" the Department's verification. See Huarong at 30, 32. Therefore, the Court sustained the Department's determination to base the dumping margins for Huarong and LMC on facts available. The Court also affirmed the Department's determination that the administrative record showed that Huarong and LMC did not make their maximum effort to produce sales records in order to respond to the Department's questionnaires, because the information contained in the companies' questionnaire responses was inaccurate. In addition, the Court affirmed

the Department's determination that Huarong did not do everything possible to substantiate its use of factor of production "caps," because it did not retain the worksheets upon which the caps were based, or make any effort to replicate them during the Department's verification. As a result, the Court affirmed the Department's determination that Huarong and LMC failed to act to the best of their abilities, and found that the Department satisfied the statutory requirements for the use of adverse inferences as articulated by the Court of Appeals for the Federal Circuit in Nippon Steel Corp. v. United States, 337 F.3d 1373,1382 (Fed. Cir. 2003).

#### AFA Rate Selected

Having been affirmed by the Court with respect to the application of AFA, the Department must now select the appropriate AFA rate to apply to Huarong and LMC. Section 776(b) of the Act, authorizes the Department to use, as AFA, information derived from the petition, the final determination in the investigation, a previous administrative review, or any other information placed on the record. We have determined that the appropriate AFA rate for Huarong and LMC is 139.31 percent, a dumping margin calculated for bars/wedges in the 1998-1999 administrative review of the order.<sup>1</sup> 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) (1998-1999 Hand Tools Review). This rate is the highest calculated dumping margin for bars/wedges (that has not been judicially invalidated) from any prior segment of the proceeding.

In determining the relevant AFA rate, the Department assumes 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, Inc. v. United States, 899 F.2d 1185, 1190-91 (Fed. Cir. 1990) ("Rhone Poulenc"). Given the failure of Huarong and LMC to cooperate to the best of their abilities in the administrative review at issue, we have no reason to believe that their dumping margins for this order would be any less than the 139.31 percent rate we have selected. See Huarong at 34-37. Selecting 139.31 percent for bars/wedges as the AFA rate ensures that these respondents do not benefit by failing to cooperate fully. See Kompass Food

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<sup>1</sup> The bars/wedges margin refers to the margin applicable under the antidumping order on bars and wedges, one of the four orders in the proceeding titled under the heading of Heavy Forged Hand Tools. See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China, 56 FR 6622 (February 19, 1991).

Trading Int'l v. United States, 2000 Ct. Intl. Trade LEXIS 92 15 Slip Op. 2000-90 (July 31, 2000). The Department's practice of selecting the highest calculated margin and applying it to uncooperative respondents is also in accordance with law, as it has been affirmed by both the Federal Circuit and this Court. See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330 (Fed. Cir. 2002) (Ta Chen).

#### Corroboration of the AFA Rate

Section 776(c) of 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.R. Doc. No. 103-316 at 870 (1994) and 19 CFR 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). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses, as total AFA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin if it was calculated from verified sales and cost data. See 1998-1999 Hand Tools Review. Furthermore, this rate was not judicially invalidated. Therefore, we consider this rate to be reliable.

As to the relevance of the AFA rate, the courts have stated that “{b}y requiring corroboration of adverse facts available rates, Congress clearly intended that such rates should be reasonable and have some basis in reality.” F.lli De Cecco Di Filippo Fara S. Martino S.p.A., v. U.S., 216 F.3d 1027, 1034 (Fed. Cir. 2000) (F.lli De Cecco). Given that Huarong and LMC failed to cooperate in the underlying review, the Department concludes that the dumping margins that would have been calculated for the respondents in the review are likely higher than the dumping margins calculated for Huarong and LMC in the immediately preceding administrative review, specifically 27.28 percent and 27.18 percent, respectively. See 1998-1999 Hand Tools Review. Without complete and verifiable information from the respondents, it is not possible to definitively determine how much higher; however, the rate of 139.31 percent rate was calculated for another PRC company, TMC, also in the

immediately preceding review, and therefore reflects recent commercial activity by Chinese respondents that export bars/wedges to the United States. Moreover, upon being affirmed by the Court, this rate became the current PRC-wide rate for the bars/wedges order in the eleventh administrative review. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 53347, 53348 (September 10, 2003).

Therefore, for the above reasons, we determine that the 139.31 percent rate for bars/wedges is appropriate to use as a separate AFA rate for both Huarong and LMC.

Interested Party Comments:

Comment 1: The Department's Use of AFA is Unwarranted

Huarong and LMC do not concede that the Department's use of AFA was warranted. Huarong and LMC state that they answered all of the Department's questions in a timely manner and reasonable format. According to Huarong and LMC, the issue of which company was responsible for the sales in question was addressed by an agreement between the two companies, which Huarong provided. Huarong and LMC liken their situation to that of the respondent in Color Picture Tubes From Japan, where, given the level of cooperation by the respondent, the Department found that a failure to fully communicate certain information to the Department did not warrant the use of adverse facts available (the respondent provided information that could be used to calculate an accurate margin for a majority of its U.S. sales). See Color Picture Tubes From Japan; Final Results of Antidumping Administrative Review, 62 FR 34201, 34209 (June 25, 1997). Huarong and LMC assert that they provided information such that the Department could calculate an accurate margin.

DOC Position:

As stated above, the Court sustained the Department's determination to base the dumping margins for Huarong and LMC on facts available. In addition, the Court affirmed the Department's determination that Huarong and LMC failed to act to the best of their abilities, and found that the Department satisfied the statutory requirements for the use of adverse inferences. See The Use of AFA, supra.

Comment 2: The Selected AFA Rate is Inappropriate

Huarong and LMC rebut the Department's presumption that the highest prior margin is the appropriate rate for them in this case by arguing that the 139.31 percent rate arises from a set of facts in the eighth administrative review that cannot reasonably be applied to them in the ninth administrative review.<sup>2</sup> In presenting this argument, Huarong and LMC present fact-specific information from the eighth administrative review. As we explain below in the Department's Position on this section, we have determined that this information is new information and, therefore, will not be considered for purposes of these final results of redetermination.

In addition, citing Nippon Pillow Block Sales Co., Ltd. v. United States, 820 F. Supp. 1444 (CIT, 1993) ("Nippon Pillow"), Huarong and LMC note that if a company that substantially cooperated with the Department's requests fails to provide information in the form required by the Department, the Department selects, as AFA the higher of, either the company's rate or the "all others" rate from the less than fair value investigation, or the highest calculated rate from the current review. Huarong and LMC argue that, rather than basing the AFA margin on a prior rate calculated for neither Huarong or LMC, Nippon Pillow should be followed in this case, as both companies provided all the information needed to determine the seller of the disputed sales, even though they failed to submit the information in the required form.

Finally, Huarong and LMC argue that the Department's approach of presuming that the highest rate is the most appropriate AFA rate because, if it were not, a respondent would have demonstrated that its rate is lower than this rate, should not have been followed here because it assumes that the failure to cooperate is a rational decision. Huarong and LMC argue that they would have no reason to view the 139.31 percent rate as the rate which would be applied for failure to cooperate, noting that this rate was not calculated for either of them. Further, they contend that their rates from the eighth administrative review, 27.28 percent and 27.18 percent, are significantly more probative of the current conditions than TMC's rate in the eighth administrative review.

DOC Position:

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<sup>2</sup> According to Huarong and LMC, the Court acknowledged in Rhone Poulenc that the Department's selection of an AFA rate may be rebutted by the respondent. Also, Huarong and LMC note that evidence showing that another margin may be more probative of current conditions is labeled a "rebuttable presumption" in later cases citing Rhone Poulenc, e.g., see Industria de Fundicao Tupy v. United States, 936 F.Supp 1009 (Ct. Intl. Trade 1996) ("Tupy").

The Department agrees that its selection of an AFA rate may be rebutted by the respondent; however it must be rebutted using evidence on the record. The information submitted by Huarong and LMC to rebut the Department's selection of AFA is not on the record of the ninth administrative review. Consequently, the Department considers this information to be new information and has rejected it from the record for purposes of these final results of redetermination. Moreover, the information from this instant administrative review, that Huarong and LMC used to compare to the rejected "new" information, was part of the information the Department determined was not reliable for use in calculating an antidumping duty margin. Therefore, there is no reason for the Department to consider such information when choosing an AFA rate or to address any arguments raised by Huarong and LMC that are based on such information.

In addition, the Department's practice of selecting the highest calculated margin assigned to any respondent in an antidumping proceeding and applying it to uncooperative respondents is also in accordance with law, as it has been affirmed by both the Court of Appeals for the Federal Circuit (CAFC) and this Court. See Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States, 276 F. Supp. 2d 1371, 1381 (Ct. Intl. Trade, 2003). See also Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330 (Fed. Cir. 2002) (affirming the Department's application of adverse facts available and use of an adverse inference to apply the highest available dumping margin to an uncooperative respondent); Reiner Brach GmbH & Co. KG v. United States, 206 F. Supp. 2d 1323 (Ct. Int'l Trade 2002) (affirming the Department's determination that it was within its discretion to use the highest available margin against uncooperative respondents); Branco Peres Citrus, S.A., v. United States, 173 F. Supp. 2d 1363 (Ct. Int'l Trade 2001) (affirming the Department's use of the highest calculated transaction-specific dumping margin as respondent's facts available rate to ensure that the respondent did not obtain a more favorable rate by being uncooperative).

Furthermore, Huarong and LMC cannot rely upon Nippon Pillow, which applies to a respondent that substantially cooperated with the Department's requests for information, because the Court ruled in this case that Huarong and LMC did not cooperate with the Department in the underlying administrative review. Specifically, the Court stated that "the record does not support the Companies' argument that they cooperated with Commerce's requests for information." See Huarong at page 28.

Moreover, in Rhone Poulenc, the CAFC found that the presumption that "the highest prior margin was the best information of current margins" was a permissible interpretation of 19 U.S.C. § 1677e(c). See Rhone Poulenc 899 F.2d at 1190. In upholding this presumption, the CAFC cited the

rationale underlying the adverse inference rule, that the presumption “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” Id. Huarong and LMC have participated in numerous segments of the hand tools proceeding, a proceeding in which the Department has, in the past, selected the highest calculated margin assigned to any respondent and applied it to uncooperative respondents. Therefore, it is not reasonable for Huarong and LMC to claim that the 139.31 percent rate is inappropriate because they would have no reason to view that rate as the rate that would be applied for failure to cooperate.

Comment 3: The 139.31 Percent Rate is Punitive

Huarong and LMC contend that the selected AFA rate is based on assumptions that do not apply in this case and note that the application of an AFA rate is punitive if the Department rejects “low margin information in favor of high margin information that was demonstrably less probative of current conditions.” See Rhone Poulenc, at 1190 and Tupy. Huarong and LMC state that the AFA rate should not be punitive, but probative.

DOC Position:

Contrary to Huarong and LMC’s contention, the rate selected is probative of current conditions, as it has been selected from the immediately preceding review period. Furthermore, as stated above, the purpose behind permitting the Department to resort to AFA is to induce respondents to provide the Department with requested information in a timely, complete and accurate manner. Selecting an AFA rate ensures that respondents do not receive a more favorable rate by not fully cooperating. The rate selected was corroborated, as explained in the analysis section of this redetermination, and the Department has fully demonstrated the reliability and relevance of this rate.

Additionally, both the CAFC and this Court have emphasized the Department’s discretion in applying AFA to uncooperative respondents. In F.iii De Cecco, the CAFC held that:

{i}n the case of uncooperative respondents, the discretion granted by the statute appears to be particularly great, allowing Commerce to select among an enumeration of secondary sources as a basis for its adverse factual inferences...

216 F.3d at 1032 (emphasis added). Before explaining that the Department’s discretion is not

“unbounded,” the CAFC emphasized the importance of the respondent’s level of cooperation in the Department’s adverse facts available analysis, holding that:

we are convinced 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. Particularly in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.

Id. (emphasis added). Here, because Huarong and LMC chose not to cooperate, the Department selected the highest calculated rate from a prior segment of the proceeding in order to deter future uncooperative behavior by Huarong and LMC. The Department acted within its discretion when it applied this AFA rate and then properly corroborated it. See Ta Chen, 298 F.3d at 1339 (relying on F.lli De Cecco, 216 F.3d at 1032 (holding that “{s}o long as the data is corroborated, the Department’s acts within its discretion when choosing which sources or facts it will rely on to support an adverse inference.”))).

Separate Rates for Huarong and LMC

The Court ordered the Department to issue separate AFA rates for Huarong and LMC. Accordingly, the applicable dumping margins are:

Shandong Huarong General Group Corporation	
bars/wedges.....	139.31%
Liaoning Machinery Import & Export Corporation	
bars/wedges.....	139.31%

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James J. Jochum

Assistant Secretary  
for Import Administration

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Date