Final Results of Redetermination Pursuant to Court Order
Tianjin Machinery Import & Export Corp. and Shandong Huarong Machinery Co., Ltd.
v. United States,
Court No. 05-00522 (June 8, 2009)

I. SUMMARY

The U.S. Department of Commerce ("Department" or "Commerce") has prepared these results of redetermination pursuant to remand based upon the order of the U.S. Court of International Trade (the "Court") in *Tianjin Machinery Import & Export Corp, et. al v. United States* Court No. 05-00522 (June 8, 2009) ("*Tianjin II*"). On remand, with respect to bars/wedges, the Court ordered the Department to: (1) open the record to permit Tianjin Machinery Import & Export Corp. ("TMC") and Shandong Huarong Machinery Co., Ltd ("Huarong") (collectively "plaintiffs") to place on the record the charts annexed to their comments at exhibits 1 and 2, along with documents cited therein, and arguments concerning the relevance of the charts; (2) provide Ames True Temper ("ATT") with an opportunity to present arguments to the Department responsive to the plaintiffs' submissions; and (3) address the impact of plaintiffs' charts and the parties' related submissions, to their selection of the adverse facts available ("AFA") rates for TMC's and Huarong's sales of bars/wedges. *See Tianjin II*, at 6-7.

This remand addresses the corroboration of the AFA rates assigned to TMC and Huarong for bars/wedges in the 13th administrative review of the antidumping duty orders on heavy forged hand tools ("HFHTs") from the People's Republic of China ("PRC").[1] *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*

[1] Although the Court's initial remand also encompassed the selection of the AFA rate for TMC's picks/mattocks, the Court's order in *Tianjin II* and the information and comments filed in this remand proceeding involve only the selection of the AFA rate for TMC's and Huarong's sales of bars/wedges. *See Tianjin II*, at 7.

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 order, the Department (1) opened the record so that plaintiffs could place on the record the charts annexed to their comments at exhibits 1 and 2, along with documents cited therein, and arguments concerning the relevance of the charts (*see* Plaintiffs' Submission, dated June 18, 2009), (2) provided ATT with an opportunity to present arguments to the Department responsive to the plaintiffs' submissions (*see* ATT's Submission, dated June 29, 2009), (3) and, in these Remand Results, addressed the impact of plaintiffs' charts and the parties' related submissions upon the Department's selection of AFA rates for TMC's and Huarong's sales of bars/wedges.

Based upon parties' submissions, the Department determines that TMC and Huarong have not provided information or argument sufficient to change the Department's selection of the 139.31 percent rate for either TMC's or Huarong's sales of bars/wedges. Accordingly, the Department continues to find that it has corroborated the dumping margin of 139.31 percent for TMC's and Huarong's sales of bars/wedges for the February 1, 2003, through January 30, 2004, period of review ("POR"), to the extent practicable in accordance with section 776(c) of the Tariff Act of 1930, as amended ("the Act") and *Tianjin II*.

II. ANALYSIS

Background

The Department applied total AFA to TMC and Huarong in the *Final Results*. As total AFA, 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 in the 8th 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. The Department explained that this rate bore a rational relationship to Huarong's commercial activity because both Huarong and TMC exported identical products covered by the bars/wedges order and competed for sales within the U.S. market. *Id.* The Department also explained that in selecting an adverse rate for TMC and Huarong, the rates from other respondents were not representative of TMC's and Huarong's behavior, nor would any of those rates provide an incentive to cooperate. *Id*.

In the first remand, the Court affirmed the application of total AFA for TMC and Huarong. However, the Court remanded to the Department, *inter alia*, the selection of the 139.31 percent AFA rate for both TMC's and Huarong's sales of bars/wedges, and ordered the Department to further explain and support its corroboration of this rate for each company. *See TMC and Huarong v. United States*, Consol. Court No. 05-00522, Slip Op. 07-131 (August 28, 2007) ("*Tianjin I*"). With respect to TMC, the Court found that the AFA rate of 139.31 percent 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 reasoned that the Department failed in its duty to estimate the "respondent's actual rate" during the POR. *Id.,* at 37. With respect to Huarong, the Court stated:

> 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.

Pursuant to the Court's first remand order and after consideration of the comments received, we explained in the first remand redetermination: (a) how the 139.31 percent rate applied to TMC'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 the company itself. *See* Final Results of Redetermination Pursuant to Remand, dated March 11, 2008 ("Remand I").

Specifically, we determined that the 139.31 percent rate was both reliable and relevant to TMC's and Huarong's sales of bars/wedges in the 13th administrative review. With respect to the reliability of the rate, as we explained in Remand I, "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* Remand I, at 10. With respect to the relevance of the rate to TMC we determined that (1) this rate was calculated for TMC in a prior review; (2) based on data obtained from U.S. Customs and Border Protection, TMC's U.S. sales values declined while production processes in the industry remained constant; and (3) the volatility of TMC's margins in past reviews further supported the relevance of the rate. *See* Remand I, at 6-9. With respect to the relevance of the rate to Huarong we determined that 1) transaction-specific margins for Huarong's sales of bars/wedges in the 11th administrative review supported the relevance of this rate to Huarong; and 2) the volatility of Huarong's

margins in past reviews further supported the relevance of the rate. *Id*. at 9-13.

On June 8, 2009, the Court ordered the Department to allow plaintiffs to place additional information on the record, provide an opportunity for comments from ATT, and address the impact of the plaintiffs' information on the Department's analysis. On June 18, 2009, TMC and Huarong submitted additional information and arguments and, on June 30, 2009, ATT submitted comments regarding that additional information.

Legal Framework

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 Uruguay Round Agreements Act, 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 1032. 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, 6814 (February 22, 1996). It is under this framework that the Department now analyzes the data and argument submitted by plaintiffs.

Comments from Interested Parties

TMC and Huarong

As explained above, TMC and Huarong submitted certain information and comments to the Department in support of their claim that the Department should reconsider its selection of the AFA rate for sales of bars/wedges. TMC and Huarong argue first that because of changes in the type of steel used and the surrogate values for the steel input over the course of several administrative reviews and an alleged "positive correlation" between the margins and the steel surrogate values, the Department must compare the steel surrogate values in assessing the relevance of the chosen AFA rate. Specifically, TMC and Huarong argue that the 139.31 percent rate was based on the rate for TMC in the 8th administrative review which included a surrogate value for a different type of steel than the surrogate value used in the 9th through 13th administrative reviews. "As the information in Charts 1 and 2 shows, the Department calculated rates for both TMC and Huarong in other reviews with surrogate steel values comparable to ones applicable to the 13th review period." *See* TMC's and Huarong's Submission, dated June 18, 2009, at 1. TMC and Huarong further argue that "{w}ith the production processes being similar

over the years, margins are highly surrogate value sensitive." *Id*. at 1-2. TMC and Huarong claim that the Department must assess the impact of the change in surrogate values on the margin. *Id.* at 3-4, 6. TMC and Huarong rely on their submissions in the 13th administrative review to demonstrate that the steel used by these companies to produce bars/wedges was not the same as the steel surrogate value used to calculate the 8th administrative review margin. *Id*. at 4, 5.

TMC and Huarong also argue that the rate for bars/wedges for TMC in the 8th administrative review is not relevant to TMC's or Huarong's sales during the 13th administrative review because TMC only sold two types of bars and five types of wedges in the 8th administrative review, whereas they sold numerous types of bars and wedges in the 13th administrative review period. Similarly, plaintiffs argue that Huarong only produced and sold bars, not wedges in the 13th administrative review, whereas they sold both bars and wedges in the 8th administrative review. Plaintiffs argue that "{s}uch a dramatic shift in the product mix could alone be responsible for a significant change in the average unit value." *Id.* at 3.

ATT

ATT argues that the Department determined that the underlying data in the 13th administrative review was unreliable and therefore, should not be used in any analysis as relying on it would be contrary to Department policy. *See* ATT's Submission, dated June 20, 2009, at 4. Moreover, ATT argues that even if the Department were to consider the information, the evidence on the record shows that the Department valued TMC's steel inputs using surrogate values for (1) carbon steel bars, (2) carbon steel billets, and (3) steel railroad wheels and rails, which is consistent with what was used in the 13th administrative review. *Id*. ATT also argues that an analysis of Huarong's own data in the 13th administrative review, reveals that a

calculated margin would be 101.50 percent based on Huarong's own sales and factors data, thus the Department's selected AFA rate of 139.31 percent is reasonable. *Id.*

Analysis and Redetermination

In accordance with the Court's instructions, we have considered plaintiffs' charts and comments and ATT's comments. TMC and Huarong argue that we should reconsider the selection of the AFA rate of 139.31 percent rate because the type of steel supplied to TMC in the 8th administrative review and used to calculate the 139.31 percent margin is different than the steel supplied to TMC and Huarong in the 13th administrative review. However, we cannot compare the steel used for TMC or Huarong in the 13th administrative review with the 8th administrative review because we found their data to be unreliable in the *Final Results*, a finding that this Court affirmed. *See Tianjin I*, at 13-17. As such, the Department has no reliable information upon which to conclude that the steel surrogate values would be different – or how they would be different – than the surrogate values applied in the 8th administrative review.

Even if the Department were to consider plaintiffs' claims regarding the steel used in the 13th administrative review, this is insufficient to explain why the margin could not have been similar to the margin in the 8th administrative review or even higher due to other factors. The only reliable data regarding the 13th administrative review, which the Department gathered in Remand I, demonstrate that the average unit values for TMC's bars/wedges declined dramatically between the 8th and the 13th administrative reviews. While plaintiffs claim that the margin is highly sensitive to surrogate value changes, so too, is a margin highly sensitive to changes in U.S. price. While plaintiffs seem to claim that the surrogate values that would have been used in the 13th administrative review would have been lower than the surrogate value for steel used in the 8th administrative review, U.S. prices at least for TMC's bars/wedges also

declined. Accordingly, it is not clear that a decline in surrogate values, if any, would have resulted in any decline in a calculated margin had TMC and Huarong cooperated and provided the Department with reliable data.

Additionally, when the Department calculates a margin, as it did for TMC in the 8th administrative review, it does so using a methodology prescribed by its regulations at 19 C.F.R. 351.408. That methodology requires the Department to calculate normal value by multiplying the respondent's factors of production ("FOP") by the surrogate values for each input and summing the cost of each of the FOP to generate a normal value. This calculated normal value is then compared to U.S. price to determine the margin of dumping. Plaintiffs' argument examines only one component of the normal value, *i.e.*, the surrogate value, for purposes of corroboration. Without considering the differences in consumption rates for all FOP (*e.g.*, material inputs, energy and labor) between segments, we cannot assume, as plaintiffs argue, that the difference in margins would simply be due to a change in the surrogate values for steel.

Finally, we do not find that plaintiffs have supported their claim that there is a positive correlation between the steel values used and the margins, or that any such correlation is sufficient to undermine the relevance of the 139.31 percent rate to TMC and Huarong in the 13th administrative review. For example, in Exhibit 2 to TMC's and Huarong's Submission, dated June 18, 2009, plaintiffs provide figures showing a decline in the surrogate steel value between the 7th and the 8th administrative reviews. However, the margin applicable to Huarong increased over twenty-fold. Further, although plaintiffs claim that Huarong's rate was calculated in the 9th administrative review, in fact this rate was an AFA rate, and thus the surrogate values provided

in the chart do not correspond to the rate applied to Huarong in that review.[2] Additionally, Exhibit 1 shows only three calculated margins for TMC: in the 8th, 9th and 10th administrative reviews. While the surrogate value of steel declined from the 8th administrative review value of 37.52 Rs/kg to a range of values between 5.43 Rs/kg and 9.327 Rs/kg, the margins declined at a much steeper rate: from 139.31 percent in the 8th administrative review to 0.56 percent and 0.48 percent in the 9th and 10th administrative reviews, respectively. Thus plaintiffs' own data does not support their assertion regarding the correlation between the surrogate values and the margins. With respect to the relevance of the 139.31 percent rate to Huarong, in Remand I, we examined transaction-specific margins for Huarong in the 11th administrative review and found dumping margins close to the 139.31 percent rate, using the lower surrogate steel values than the steel values underlying the 139.31 percent rate.

TMC and Huarong also argue that the rate for bars/wedges for TMC in the 8th administrative review is not relevant to the kind of merchandise TMC and Huarong sold during the 13th administrative review. Plaintiffs argue that TMC only sold two types of bars and five types of wedges in 8th administrative review as compared to numerous types of bars and wedges in the 13th administrative review period. Huarong argues that it only produced and sold both bars and wedges in the 8th administrative review, whereas it only produced and sold bars in the 13th administrative review. Again, TMC and Huarong request that the Department examine information provided by TMC and Huarong in the 13th administrative review that was found to be unreliable. *See Tianjin I*, at 13. An analysis of such data from the 13th administrative would require the Department to rely on U.S. sales data that this Court has already found to be

[2] *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, 48028 (Sept. 17, 2001).

unreliable. *Id*. Therefore, it would be inappropriate for the Department to consider any claimed difference in products sold by TMC and Huarong in the 8th and 13th administrative reviews because this necessarily requires relying on data subject to an AFA determination.

Therefore, after considering the comments and data submitted by the parties, we continue to find that the 139.31 percent margin as AFA is relevant to TMC because (1) this rate was calculated for TMC in the 8th administrative review, (2) there was a steep decline in TMC's AUVs between the 8th and 13th administrative reviews, and (3) there is a history of volatility in TMC's antidumping rates in the bars/wedges industry. For the reasons discussed above and in Remand I, the Department finds 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." *See* Remand I.

With respect to Huarong, we continue to find that the 139.31 percent margin as AFA is relevant to Huarong because (1) the fact that there is a history of volatility in Huarong's antidumping rates in the bars/wedges industry, and (2) because certain transaction-specific margins for Huarong in the 11th administrative review are nearly as high as the rate selected as AFA, and the margins were calculated for transactions involving the same class of merchandise sold in the same market, under similar demand and supply conditions. For the reasons discussed above and in Remand I, the Department finds that the 139.31 percent rate is a "reasonably accurate estimate" of Huarong's actual rate with "a built-in increase to deter non-compliance" and is "more accurate than other rates calculated for TMC." *Id*.

III. COMMENTS FROM INTERESTED PARTIES

On August 21, 2009, the Department provided interested parties a copy of the draft remand redetermination. Comments to the draft remand redetermination were due on August 28,

2009. TMC and Huarong submitted comments. ATT did not submit any comments.

Comment 1: TMC and Huarong argue that the 139.31 AFA percent rate is not reliable.

TMC and Huarong argue that the 139.31 AFA rate is not reliable because it is based on "the weighted-average margin the Department calculated for TMC in the 8th administrative review that involved two types of bars and five types of wedges….TMC's sole producer of bars and wedges that TMC exported to the United States during the 8th administrative review period was the Dagang factory." *See* TMC's and Huarong's Comments to Draft Remand Redetermination, dated August 28, 2009 ("TMC and Huarong Comments"). TMC and Huarong also argue that "it is statistically invalid to compare the TMC 8th administrative review results, based on incomplete and minimal data, to either Huarong's or TMC's 13th review data." Specifically, TMC and Huarong note that the U.S. Customs and Boder Protection ("CBP") entries of bars/wedges used in the AUV analysis represent a smaller volume than those reported by TMC in the 13th administrative review. *Id*. Additionally, TMC and Huarong argue that the delivery terms for AUVs from the two periods were unclear, which may account for the differences. *Id*.

Department's Position:

We disagree with TMC and Huarong concerning the reliability of the 139.31 percent rate. In the *Final Results*, the Department found the 139.31 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 concerning that review and was affirmed by the Court and the CAFC. *Id.* Moreover, the Court has already affirmed the Department's finding that the 139.31 percent rate is reliable for purposes of the instant review. In *Tianjin I*, the Court

stated; "Commerce has shown that the rate, having been calculated using the respondent's own verified data was reliable when calculated . . ." *See Tianjin I*, at 36. In short, the rate has been upheld by the courts in litigation concerning the 8th administrative review and, moreover, found reliable by the Court in the instant case.

Additionally, the Department does not agree with plaintiffs' argument that the Department should compare data from the 8th administrative review utilized in calculation of the 139.31 percent rate with certain data from the 13th administrative review. Specifically the alleged differences in products and the number of production facilities used by TMC in 8th administrative review as compared to the production facilities of the 13th administrative used by TMC and Huarong. This approach is inconsistent with the Department's reliability analysis. The question of reliability goes to the validity of the calculated margin for the period for which it was calculated, not whether precisely the same processes are present in the later review. As described above, the 139.31 percent rate was calculated with TMC's data in the 8th administrative review and was affirmed by this Court and CAFC; thus the rate is reliable. Moreover, plaintiffs' suggestion that the Department compare data from the 8th administrative review and what plaintiffs submitted in the instant review ignores the Department's determination that TMC's and Huarong's data in the instant review is unreliable and that, based upon this determination, the Court has affirmed our reliance upon AFA. Accordingly, it would not be appropriate to compare the sales, FOP data or surrogate values from the 8th administrative review to TMC's or Huarong's data in the instant review because the Department has no confidence in the completeness or accuracy of TMC's or Huarong's data in the instant review.

We also disagree with TMC's and Huarong's argument that the AUV analysis is based on a small volume of entries. The AUVs used in the analysis were obtained from the Automated

Commercial System (ACS) of 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 information in this system reflects the actual entries made by TMC and Huarong in the two comparison periods. TMC and Huarong argue that according to their sales information reported during the 13th administrative review proceeding, the volume of entries should be higher and therefore, this comparison is statistically invalid. However, TMC's and Huarong's analysis is flawed because it is based upon sales reported by TMC and Huarong during the 13th administrative review, which the Department found to be unreliable. Specifically, TMC and Huarong participated in an "agent" sales scheme, and, as acknowledged by the Court failed to report relevant information upon request. *See Tianjin I*, at 13-16. It is inappropriate and inaccurate to compare CBP entry data with TMC's or Huarong's reported sales data submitted during the 13th administrative review because data from the 13th administrative review is not reliable. In fact, the Department's AUV analysis is the most accurate and reliable comparison. The CBP data underlying the Department's analysis shows that, between the 8th and 13th administrative review period, TMC's AUVs declined by over 30 percent.

Finally, we disagree with TMC and Huarong that the delivery terms for the CBP AUV data is unclear. At the time of filing an entry summary or warehouse withdrawal for consumption, U.S. importers are required to submit a completed entry summary document (CBP Form 7501). CBP Form 7501 requires the importer to provide the quantity and value of the imported product net of freight expenses. In other words, freight is not included in the quantity and value provided in the CBP Form 7501. The Department has noted in prior cases where AUVs are based on import statistics, that the figures are FOB, free of freight value. *See Notice*

of Initiation of Antidumping Duty Investigations, Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam, 74 FR 19049, 19052 (April 27, 2009) The quantity and value data in the CBP Form 7501 is available on the ACS and was used in our AUV analysis. Therefore, all entries used to calculate the AUVs for comparison between the two periods is on the same basis and consequently, did not cause the analysis to be distortive or unreliable.

Comment 2: TMC and Huarong argue that the Department should rely on the verification report data in comparing the relevance of the 139.31 percent AFA rate.

TMC and Huarong argue that the type of steel used to produce bars/wedges differed greatly between the 8th and 13th administrative review and this difference calls into question the relevance of the 139.31 percent AFA rate applied to TMC and Huarong. TMC and Huarong argue that the Department can make this comparison based on the data contained within the verification reports.

Department's Position:

We disagree with TMC and Huarong. In order to accurately calculate an antidumping duty margin, the Department collects U.S. sales data from each exporter of the subject merchandise. Once the exporter identifies the sales to the United States during the review period, then the exporter can collect the corresponding FOP used to produce the products sold to the United States. This process is fundamental to preparing a complete and accurate response to our antidumping duty questionnaire and for calculating the antidumping duty margin.

As affirmed by this Court, the Department applied AFA to plaintiffs' sales of bars/wedges sold during the POR because they were engaged in an "agent sales scheme" where plaintiffs specifically failed to properly report the seller and, moreover, it was also "apparent

from the court's review of the record that plaintiffs' failure to submit accurate and complete data in response to the Department's initial questionnaire prevented the agency from considering correct sales data." *See Tianjin I*, at 15. When a respondent fails to properly report its U.S. sales data, then the FOP data are equally unreliable because the FOP data corresponds to the U.S. sales made during the review period. Although the Department conducted a verification of certain Huarong bars/wedges FOP, this verification does not substitute for the incorrect and unreliable U.S. sales data. Therefore, it would be inappropriate for the Department to consider any differences in production figures reported by TMC and Huarong in the 13th administrative review because this analysis would be dependent on U.S. sales data that the Court has already found to be unreliable. For TMC, the Department did not conduct a verification of TMC's bars/wedges FOP, therefore, it is factually inaccurate for TMC to argue that we should rely on our verification findings since there was no verification.

Comment 3: TMC and Huarong argue that the Department should consider all the data collected in the 8th administrative review in order to complete its comparison with the 13th administrative review.

TMC and Huarong argue that if the Department believes that the decline in AUVs between the 8th and 13th administrative reviews is highly sensitive to changes in U.S. prices then TMC and Huarong request that the Department consider all the data of the 8th administrative review.

Department's Position:

TMC and Huarong are requesting that the Department improperly expand the scope of the Court's remand order. This Court ordered the Department to reopen the record and allow plaintiffs to "place on the record, the charts annexed to plaintiffs' comments at Exhibits 1 and 2,

along with the documents cited therein, and arguments concerning the relevance of these charts." *See Tianjin II*, at 6. The Court further ordered that "no party shall otherwise supplement the record with any other information." *Id.* at 7. These instructions expressly limit the parameters of this remand. As such, we will not consider placing additional data on the record or consider it in our analysis.

Moreover, such information is not relevant to the Department's determination. The Department has determined that the 139.31 percent rate, based on all TMC's data on the record of the 8th review, is reliable, which the Court has affirmed. The Department further determined that the AUVs for bars/wedges declined significantly since then, and has concluded that information and argument placed on the record by plaintiffs do not impact the Department's conclusion that the 139.31 percent rate remains relevant to TMC and Huarong. As the Department stated above, the margin is dependent on any number of items such as, surrogate values, utilization rates, adjustments, and prices. TMC and Huarong have not provided any data or argument that persuades the Department that, given the decline in AUVs, the 139.31 percent rate is not still relevant.

Comment 4: TMC and Huarong argue that the Department should test the impact on the 8th administrative review margin using the 13th administrative review steel surrogate values, which will show a high, positive correlation between steel surrogate values and margins.[3]

TMC and Huarong disagree with the Department that there are a number of factor inputs

3 As part of this general argument, TMC and Huarong provide an analysis of steel surrogate values in Comments 5 and 6 of their submission. However, these arguments still rely on an analysis of the steel surrogate values without consideration of other factor inputs or U.S. price, which were found to be unreliable in the 13th administrative review. As such, our response to Comment 4 here addresses TMC's and Huarong's analysis.

which could also explain the differences in margins between the 8th and 13th administrative reviews. According to TMC and Huarong, the Department should simply replace the surrogate values from the 8th administrative review with those used in the 13th administrative review which will reveal the correlation to the margin. In performing this exercise, TMC and Huarong argue that the Department should leave all other FOP and surrogate values, as well as prices, constant.

Department's Position:

We disagree with plaintiffs' suggestion to recalculate the antidumping margin from the 8th administrative review using surrogate steel values from the 13th administrative review. In short, plaintiffs request that the Department ignore all other variables that factor into the antidumping margin calculation and swap out surrogate steel values. As explained above, this approach is misguided because it ignores other factors that influence the antidumping margin calculation, including U.S. price, FOP, surrogate financial ratios, etc. The result would be inherently distorted because it places an artificial emphasis on one surrogate value, namely steel, to the exclusion of all other factors that are critical to calculating an accurate antidumping margin.

IV. FINAL REMAND DETERMINATION

In accordance with the Court's instructions and after considering the comments to the Draft Remand for TMC's and Huarong's sales of bars/wedges, the Department (1) opened the record so that plaintiffs could place on the record, the charts annexed to their comments at exhibits 1 and 2, along with documents cited therein, and arguments concerning the relevance of the charts, (2) provided ATT with an opportunity to present arguments to the Department responsive to the plaintiff's submissions, (3) and addressed the impact of plaintiffs' charts and the parties' related submissions, to their selection of AFA rates for TMC's and Huarong's sales

of bars/wedges. As a result of the Department's examination of the information placed on the record, we have not selected an alternative AFA rate for TMC's and Huarong's sales of bars/wedges during the February 1, 2003 through January 30, 2004, POR and continue to assign as AFA a rate of 139.31 percent to TMC's and Huarong's sales of bars/wedges.

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Ronald K. Lorentzen
Acting Deputy Assistant Secretary
for Import Administration

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Date