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**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**

***Since Hardware (Guangzhou) Co., Ltd. v. United States*, Court No. 09-00123, Slip Op. 15-15**

Summary

The Department of Commerce (Department) has prepared these final remand results pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court) in *Since Hardware (Guangzhou) Co., Ltd. v. United States*, Slip Op. 15-15, Court No. 09-00123 (February 18, 2015) (*Since Hardware IV*). This is the Court's fourth remand order following its decision affirming the Department's determination to assign *Since Hardware (Guangzhou) Co., Ltd. (Since Hardware)* an antidumping duty margin based on adverse facts available (AFA). This action arises out of the final results of the August 1, 2006 through July 31, 2007, 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 February 17, 2011, the Department issued its First Redetermination in which it 1) declined to issue a separate rate for *Since Hardware* based upon the Department's contention that *Since Hardware's* financial information could not be verified, and 2) continued to assign *Since Hardware* an AFA rate of 157.68 percent.²

Upon consideration of the First Redetermination, the Court held that the Department failed to consider record evidence relating to *Since Hardware's* application for a separate rate.³

¹ See *Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 74 FR 11085 (March 16, 2009) and accompanying Issues and Decision Memorandum (*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 Since Hardware (Guangzhou) Co., Ltd. v. United States*, dated February 17, 2011 (First Redetermination). The First Redetermination was issued pursuant to *Since Hardware (Guangzhou) Co., Ltd. v. United States*, Court No. 09-00123 (September 27, 2010) (*Since Hardware I*).

³ See *Since Hardware (Guangzhou) Co., Ltd. v. United States*, Court No., 09-00123, Slip Op. 11-146 (November 29, 2011) (*Since Hardware II*) at 13.

Additionally, the Court determined, with respect to the Department’s conclusion in the First Redetermination, “that Since Hardware’s *de facto* independence questionnaire responses were unverifiable was neither supported by substantial evidence nor in accordance with law.”⁴ In *Since Hardware II*, the Court remanded for the Department to determine whether Since Hardware was entitled to a separate rate and, if so, to determine that rate.⁵ On May 29, 2012, the Department issued its Second Redetermination in which it determined that Since Hardware was entitled to a separate rate.⁶ However, because Since Hardware’s questionnaire responses have otherwise been determined to be unreliable, the Department continued to assign an AFA rate of 157.68 percent to Since Hardware.⁷ In the Second Redetermination, the Department also reviewed data from U.S. Customs and Border Protection (CBP or Customs), and determined that these Customs data established that selected importers paid antidumping duties of 157.68 percent.⁸

In *Since Hardware III*, the Court sustained the Department’s determination not to reopen the record of the proceeding.⁹ The Court also determined that the 157.68 percent rate was reliable.¹⁰ However, the Court found the Department did not demonstrate the relevance of the 157.68 percent AFA rate. In particular, the Court questioned whether the 157.68 percent rate represented “commercial reality” given that the Customs data used to corroborate that rate reflect

⁴ *Id.*

⁵ *Id.* at 30.

⁶ 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 Since Hardware (Guangzhou) Co., Ltd. v. United States*, dated May 29, 2012 (Second Redetermination).

⁷ *Id.*

⁸ *Id.* at 8-9.

⁹ See *Since Hardware (Guangzhou) Co., Ltd. v. United States*, Court No., 09-00123, Slip Op. 13-71 (May 31, 2013) (*Since Hardware III*) at 7-8.

¹⁰ *Id.* at 11.

a “very small number of arguably relevant entries.”¹¹ The Court directed the Department to “explain why the Customs Data represents a sufficiently large number of entries to demonstrate the relevance of the selected rate or shall otherwise corroborate its selected rate in a manner supported by substantial evidence and in accordance with the law.”¹² Upon consideration of the evidence presented on the record of that proceeding, the Department determined in *Since Hardware III* that the 157.68 percent rate is, to the extent practicable, corroborated by information from independent sources pursuant to 19 U.S.C. §1677e(c). Accordingly, the Department continued to assign *Since Hardware* an AFA margin of 157.68 percent in *Since Hardware III*.¹³

In *Since Hardware IV*, the Court rejected the analysis concerning corroboration of the 157.68 percent corroboration rate assigned to *Since Hardware*, which was outlined in the Third Redetermination.¹⁴ The Court held that the Department may not presume that the highest prior margin is relevant when corroborating the assigned rate to *Since Hardware*.¹⁵ The Court determined that the Department’s analysis of the Customs data set forth in the Third Redetermination was insufficient to corroborate the 157.68 percent AFA rate assigned to *Since Hardware*, because liquidation rates do not constitute substantial evidence of the commercial reality of plaintiff or other importers during the period of review (POR).¹⁶ Additionally, in *Since Hardware IV*, the Court ruled that the Department’s Third Redetermination failed to consider whether subject merchandise entered at rates lower than 157.68 percent were relevant to the

¹¹ See *Since Hardware III* at 13.

¹² *Id.* at 16.

¹³ 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 Since Hardware (Guangzhou) Co., Ltd. v. United States*, dated October 31, 2013 (Third Redetermination).

¹⁴ See *Since Hardware IV* at 8-22.

¹⁵ *Id.* at 8-12.

¹⁶ *Id.* at 8-20.

“commercial reality” of *Since Hardware*.¹⁷ Thus, the Court ordered that, should the Department continue to rely on the Customs data, the Department: (1) shall clarify all apparent inconsistencies in the data and conclusively establish the cash-deposit rate for the relevant entries; (2) shall explain with specificity why the cash-deposit rates for other market participants during the POR tend to corroborate the selected rate; (3) shall explain with specificity why the Customs data represent a sufficient quantity of exports of the subject merchandise to be relevant to *Since Hardware*; and (4) shall explain with specificity the significance, if any, of the subject merchandise being entered at rates below the selected rate.¹⁸ The Court ordered that the Department may reopen the record to solicit any information it finds to be necessary, and it may seek clarification and further information from CBP regarding Customs data.¹⁹ Finally, in *Since Hardware IV*, the Court ordered that if the Department “continues to maintain that there are no other independent sources reasonably at its disposal that could corroborate the assigned rate, Commerce ‘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 supposed by substantial evidence and in accordance with law.’”²⁰

In this redetermination, beyond the Customs data that were examined in the Second and Third Redeterminations of this case, we found no additional information to potentially corroborate an AFA rate for *Since Hardware*. Further, in this redetermination, and consistent with the instructions of the Court in *Since Hardware IV*, we have assigned, under protest,²¹ to

¹⁷ *Id.* at 20-22

¹⁸ *Id.* at 25.

¹⁹ *Id.*

²⁰ *Id.* at 23 (quoting *Foshan Shunde Yongjian Housewares & Hardwares Co., Ltd., and Polder, Inc., v. United States*, Court No. 10-00059, Slip Op. 14-69 (CIT June 25, 2014) (*Foshan Shunde*)).

²¹ As it is the Department’s view that it should not base any part of its decisions on information from respondents where that information has been determined to be wholly unreliable, the Department is conducting these remand results under respectful protest. See *Viraj Group v. United States* 343 F. 3d 1371 (Fed. Cir. 2003).

Since Hardware a revised AFA margin of 72.29 percent. This 72.29 percent rate is the rate assigned in the less than fair value (LTFV) investigation to separate rate companies.²² The analysis set forth in this redetermination is outlined below.

Background

Because the Customs data demonstrate that importers paid the 157.68 percent duty rate during the review period, we continued to argue in the Third Redetermination that the limited Customs data on the record of this proceeding supported the 157.68 percent AFA rate for Since Hardware.²³ We contended in the Third Redetermination that the 157.68 percent rate is relevant to Since Hardware because 1) it was a calculated rate in a prior segment and 2) Since Hardware was aware at the time it decided not to cooperate with the Department that it risked receiving a margin based on AFA.²⁴ Additionally, we argued in the Third Redetermination that Customs data listed the 157.68 percent liquidation rate as the liquidation rate for ironing tables, and thus customs entries support the conclusion that exporters can, and have chosen, to participate in the U.S. market while being assessed antidumping duties of 157.68 percent.²⁵ Based upon the foregoing, we determined in the Third Redetermination that the Customs data was specific to ironing tables and reflected the commercial reality of the ironing table industry, including Since Hardware.²⁶

However, in *Since Hardware IV*, the Court rejected the argument that the 157.68 rate is relevant to Since Hardware.²⁷ The Court held that the *Rhone Poulenc* presumption of the highest

²² 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*).

²³ See Third Redetermination at 9-10.

²⁴ *Id.* at 10.

²⁵ *Id.* at 12-13.

²⁶ *Id.*

²⁷ See *Since Hardware IV* at 8-12.

calculated rate having probative value does not substitute the Department's duty to corroborate the AFA margin.²⁸ The Court further held that *Rhone Poulenc* establishes nothing regarding whether a rate represents a respondent's "commercial reality."²⁹ On this basis, the Court held that the Department may not use the presumption that the highest prior margin is relevant to corroborate the assigned rate of Since Hardware.³⁰

Second, the Court found that there was no direct evidence that the entries examined in the Third Redetermination were classified under a specific HTS heading for ironing tables.³¹ The Court determined the HTS numbers and listed liquidation amounts shown in the Customs data were an insufficient basis to corroborate the AFA rate.³² The Court further found that the Customs data failed to conclusively establish that importers paid a cash deposit rate of 157.68 percent.³³ Finally, the Court found that even if there were substantial evidence to support the contention that entries listed in the Customs data was indeed entries of subject merchandise, the Customs data would still fail to demonstrate the relevance of the 157.68 percent rate to Since Hardware.³⁴ The Court noted that the Customs data discussed in the Third Redetermination show the liquidation rates of entries, which are unknown until after completion of the review. However, the Court indicated that the only rate known at the time of importation is the cash deposit rate. The Court further determined that the Customs data examined in the Third Redetermination failed to reflect the cash deposit rate that was in effect at the time of entry.³⁵

²⁸ *Id.* at 10-11.

²⁹ *Id.* In its discussion, the Court noted *Dongtai Peak Honey Industry Co., Ltd. v. United States*, 777 F.3d 1343 (Fed. Cir. 2015), and stated that this Federal Circuit decision "did not authorize the use of the {*Rhone Poulenc*} presumption as a substitute for actual evidence of a respondent's commercial reality."

³⁰ See *Since Hardware IV* at 10-11.

³¹ *Id.* at 12-15.

³² *Id.*

³³ *Id.* at 14.

³⁴ *Id.* at 15-20.

³⁵ *Id.* at 17.

Based upon the foregoing, the Court determined that the conclusion reached in the Third Redetermination that Since Hardware or other exporters “chose” to participate in the U.S. market “knowing that its products were subject to a 157.68 percent rate simply assumes too much.”³⁶

In *Since Hardware IV*, the Court also found that the Department did not adequately explain why corroboration from the limited amount of Customs data represents “substantial evidence.”³⁷ The Court stated that the Department had failed to consider whether merchandise entered at rates lower than 157.68 percent represented Since Hardware’s “commercial reality.”³⁸ The Court determined that the Department “has not sufficiently explained the significance of merchandise entered at lower rates, as directed on remand.”³⁹

Finally, the Court held that the Department failed to explain in its Third Redetermination why corroboration was not practicable from other sources.⁴⁰ The Court indicated that:

{I}f, on remand Commerce continues to maintain that there are no independent sources reasonably at its disposal that corroborate the assigned rate, Commerce “must describe the steps that it has undertaken so that a reviewing {c}ourt can determine if the Department’s finding that corroboration was not practicable is supported by substantial evidence and in accordance with the law.”⁴¹

On May 11, 2015, the Department released to all parties a draft of its determination on remand (Draft Redetermination).⁴² We set a deadline of March 18, 2015 for parties to comment on the Draft Redetermination. We received timely comments from Since Hardware and from HPI.

³⁶ *Id.*

³⁷ *Id.* at 19.

³⁸ *Id.* at 20-22.

³⁹ *Id.* (citing *Since Hardware III* at 16).

⁴⁰ *Id.* at 23.

⁴¹ *Id.* at 23 (citing *Foshan Shunde* at 5 n.3).

⁴² See Draft Results of Redetermination Pursuant to Court Remand Floor Standing Metal Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China Since Hardware (Guangzhou) Co., Ltd. v. United States, Court No., 09-00123, Slip. Op. 15-15 dated May 11, 2015 (Draft Redetermination).

Discussion⁴³

Lack of Independent Sources to Corroborate Since Hardware's AFA Rate

In the Third 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 and manufacturing procedures.⁴⁴ Such information includes a reliable U.S. sales listing that accurately reports both the respondent's U.S. sales transactions and the expenses incurred by the respondent on its U.S. sales transactions.⁴⁵ Additionally, in non-market economy cases, such probative information also includes a reliable response which accurately details the company's factors of production.⁴⁶ Due to the fraudulent responses that Since Hardware filed in the course of this review, information concerning Since Hardware's U.S. sales and factors of production data is unavailable.⁴⁷ Thus, given Since Hardware's failure to provide usable U.S. sales and factors of production data, the Department cannot determine a "commercial reality" specific to Since Hardware from any of the information that has been provided by Since Hardware. Moreover, while the Court has credited Since Hardware with supplying a response to Section A of our questionnaire,⁴⁸ the Court has also sustained our use of an inference that is adverse to the interests of Since Hardware.⁴⁹ The Department, thus, has no means of utilizing any of the U.S. price or factors of production information submitted by Since Hardware since the U.S. price and

⁴³ The Department is conducting these remand results under respectful protest. *See Viraj Group, Ltd. v. United States*, 343 F.3d. 1371 (Fed. Cir. 2003). (*Viraj*).

⁴⁴ *See* Third Redetermination at 8-9.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 9.

⁴⁸ *See Since Hardware I* at 15.

⁴⁹ *Id.* at 20.

factors of production information provided by Since Hardware in its Section C and D questionnaire responses were previously determined to be unreliable.⁵⁰

Moreover, in the Third Redetermination, we examined all of the corroborating Customs data that we found to be relevant to Since Hardware's "commercial reality."⁵¹ The Court found that these Customs data did not provide a sufficient basis to corroborate the selected duty rate. The Court ordered that should the Department continue to rely on the Customs data, the Department: (1) shall clarify all apparent inconsistencies in the data and conclusively establish the cash-deposit rate for the relevant entries; (2) shall explain with specificity why the cash-deposit rates for other market participants during the POR tend to corroborate the selected rate; (3) shall explain with specificity why the Customs data represents a sufficient quantity of exports of the subject merchandise to be relevant to Since Hardware; and (4) shall explain with specificity the significance, if any, of the subject merchandise being entered at rates below the selected rate.⁵² The Court ordered that the Department may reopen the record to solicit any information it finds to be necessary, and it may seek clarification and further information from CBP regarding Customs data.⁵³ Additionally, the Court ordered that should the Department be unable to identify any other sources that bear on the relevance of the 157.68 percent rate, it will explain the steps it took.⁵⁴

In the current redetermination, for purposes of corroborating the rate, the Department searched for independent sources that would bear on the relevance of 157.68 percent rate. However, we found no additional statistical data from an independent source that may represent

⁵⁰ *Id.*

⁵¹ *See* Third Redetermination at 7-13.

⁵² *Id.* at 25.

⁵³ *Id.*

⁵⁴ *Id.*

Since Hardware’s “commercial reality” or that would otherwise bear on the relevance of the 157.68 percent rate during the POR. In particular, beyond the Customs data outlined in the Third Redetermination, we found no additional data that would represent the “commercial reality” of Since Hardware for the period of August 1, 2006 through July 31, 2007.⁵⁵ Moreover, because there is no information on the record against which these other potential data sources could be compared to Since Hardware’s actual commercial reality, we continue to find that Since Hardware’s failure to provide usable U.S. sales, or factors of production data precludes determination of Since Hardware’s “commercial reality” through use of the additional data identified in the SAA.⁵⁶

In this redetermination, we noted the instructions stipulated by the Court in *Since Hardware IV*. As previously indicated, this Court ruled that the *Rhone Poulenc* presumption of the highest calculated rate having probative value is inapplicable here.⁵⁷ The 157.68 percent AFA rate selected in the *Final Results* was the calculated rate for Shunde Yongjian Housewares in the LTFV investigation.⁵⁸ 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 Since Hardware

⁵⁵ As noted, the Department is no longer assigning Since Hardware the 157.68 percent rate. Notwithstanding the Department’s draft 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 other corroborating information that is contemporaneous with the August 1, 2006 through July 31, 2007 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 were. 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.

⁵⁶ These data sources, which are stipulated in the *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) include price lists, import statistics or additional Customs data beyond the Customs data examined by the Department in the Third Redetermination.

⁵⁷ See *Since Hardware IV* at 11.

⁵⁸ See *Amended Final Determination and Order*, 69 FR at 47868.

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 Since Hardware

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 *Since Hardware IV*. The only calculated, non-AFA rate specific to Since Hardware is the 9.47 percent rate determined for Since Hardware in the LTFV investigation.⁵⁹ All of the other rates summarized below were either 1) calculated for companies other than Since Hardware, 2) are also from the LTFV investigation or otherwise pre-date the POR (and, thus, given the analysis set forth in *Since Hardware IV*, therefore, not specifically “relevant” to Since Hardware), or 3) are rates which would not induce cooperation in future reviews of this proceeding.⁶⁰

⁵⁹ See *Amended Final Determination and Order*, 69 FR at 47868.

⁶⁰ 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).

Period	Company	Rate	FR Cite
10/01/2002-3/31/2003	Since Hardware (Guangzhou)	9.47%	69 FR 47868 (August 6, 2004)
	Shunde Yongjian Housewares	157.68%	69 FR 47868 (August 6, 2004)
	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)
	Forever Holdings, Limited	10.18%	72 FR 13239 (March 21, 2007)
	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	Forever Holdings, Limited	0.00%	74 FR 11085 (March 16, 2009)

As noted in the *Final Results*, Since Hardware provided fraudulent data in response to our antidumping questionnaires.⁶¹ The Department therefore determined that an adverse inference was warranted for Since Hardware, and the Court sustained our application of an adverse inference to Since Hardware.⁶² 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 either failing to cooperate or, as here, by affirmatively providing the Department with fraudulent data, than if it had cooperated fully.⁶³ Also, as previously noted, in *Since Hardware IV*, 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

⁶¹ See *Final Results* and Accompanying Issues and Decision Memorandum at Comment 1.

⁶² See *Since Hardware I* at 20.

⁶³ See SAA at 870. (“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.”).

investigation.⁶⁴ 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 who have demonstrated they are separate from the PRC-wide entity.⁶⁵ 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 Since Hardware 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 Since Hardware for the period of August 1, 2006 through July 31, 2007 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.⁶⁶ Therefore, based upon the above, we assigned, under protest, this 72.29 percent rate as AFA to Since Hardware in this redetermination.⁶⁷

Interested Party Comments

Comment 1

Since Hardware asserts that the 72.29 percent AFA rate assigned to Since Hardware fails to address the "relevance" and "commercial reality" concerns expressed by the Court in *Since Hardware IV*. Since Hardware notes that the 72.29 percent AFA rate represents the weighted

⁶⁴ Shunde Yongjian Housewares and Since Hardware (Guangzhou) were the two mandatory respondents selected in the LTFV investigation.

⁶⁵ See *Amended Final Determination and Order* at 47868.

⁶⁶ See SAA 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)").

⁶⁷ See *Viraj*.

average rate of the 9.47 percent rate calculated for Since Hardware in the LTFV investigation and the 157.68 percent calculated for Shunde Yongjian Housewares. Since Hardware contends that as a rate calculated for two respondents, including one other than Since Hardware, the 72.29 percent rate fails to reflect the commercial reality of Since Hardware, and that the 72.29 percent AFA rate (like the previously assigned rate of 157.68 percent) is uncorroborated.⁶⁸

Since Hardware cites *De Cecco*⁶⁹ to establish that 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.”⁷⁰ Since Hardware asserts that to satisfy this corroboration requirement, it is insufficient for the Department to note that the record contains no useful corroborating information.⁷¹ Since Hardware further contends that in the draft redetermination, the Department provided “a limited statement on its review of available data.”⁷² Since Hardware argues that the “limited” description of the Department’s corroboration efforts fails to comply with the Court’s order in *Since Hardware IV*.⁷³

Since Hardware further contends that the Department should look to additional Customs data beyond that previously examined by the Department. Specifically, Since Hardware avers that for a 72.29 percent rate to be corroborated, Customs data would reflect “substantial imports into the United States with a cash deposit rate of 72.29 percent rate paid on imports”⁷⁴ However, Since Hardware observes, the Department failed to review additional Customs data. To construct an AFA rate that reflects Since Hardware’s “commercial reality,” Since Hardware

⁶⁸ See Since Hardware brief at 3-5.

⁶⁹ 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*).

⁷⁰ See Since Hardware brief at 5, citing *DeCecco*, 216 F. 3d at 1032.

⁷¹ *Id.* at 6-7.

⁷² *Id.* at 8.

⁷³ *Id.*

⁷⁴ *Id.*

asserts that the Department “should reopen the record, review additional Customs data, and explain with specificity” how the selected AFA rate reflects the commercial reality of Since Hardware.⁷⁵

Since Hardware further asserts that the Department could construct an AFA rate from reviews of Since Hardware in the subsequent 2007-2008 or 2008-2009 review periods.⁷⁶ Since Hardware argues that such a methodology is consistent with the precedent established in *Qingdao Final Redetermination* wherein the Department determined an AFA rate based upon data provided in a subsequent review period.⁷⁷ Since Hardware argues that the Department could use such “post review surrogate values” along with a “deflator factor” to determine normal values (NVs) contemporaneous with the POR,⁷⁸ Since Hardware asserts that such an approach would be consistent with that employed by the Department in *Gerber Food Final Redetermination* and in *Folding Metal Tables and Chairs*.⁷⁹

Finally, Since Hardware asserts that the Department’s application of a 72.29 AFA rate is “punitive” and runs counter to the “remedial” nature of the antidumping law.⁸⁰ Since Hardware argues that application of a 72.29 percent AFA rate punishes importers without “full due process of law.”⁸¹ Since Hardware concludes that the remedial aspect of the antidumping law compels

⁷⁵ *Id.* at 10.

⁷⁶ *Id.* at 11.

⁷⁷ *Id.*, citing the January 22, 2010 Final Redetermination in *Qingdao Taifa Grou Co., Ltd., v United States*, No.08-00245, Slip Op. 09-83 (CIT 2009) (*Qingdao Final Redetermination*).

⁷⁸ *Id.* at 12.

⁷⁹ *Id.*, citing the September 18, 1997 Final Redetermination in *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op 07-85 (*Gerber Foods Final Redetermination*) and *Folding Metal Tables and Chairs from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (Jan 18, 2006) and Accompanying Issues and Decision Memorandum at Comment 6 (*Folding Metal Tables and Chairs*).

⁸⁰ *Id.* at 13.

⁸¹ *Id.* at 14, citing *C.J. Tower & Sons v. United States*, 71 F.2d 438, 445-446 (C.C. P.A. 1934).

that the selected AFA rate “be a reasonably accurate estimate of the respondent’s actual rate, albeit with some built-in increase intended as a deterrent to non-compliance.”⁸²

Department’s Position:

We continue to maintain that our application of a 72.29 percent rate is consistent with the Court’s instructions in *Since Hardware IV*. 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 *Since Hardware IV*. As noted in the third 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.”⁸³ Additionally, in this redetermination, and pursuant to the Court’s instructions, we have 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 has yielded no such additional primary information.⁸⁴ Moreover, contrary to *Since Hardware*’s assertion, the Department’s determination that no independent sources existed to corroborate *Since Hardware*’s AFA rate was consistent with the instructions of the Court in *Since Hardware IV*. The Department determined that because *Since Hardware* had provided fraudulent information concerning its factors of production (FOP), there is no information on the record against which possible independent data can be compared to determine *Since Hardware*’s commercial reality.⁸⁵ Based upon the absence of primary information, we have determined that there is no primary information available to corroborate *Since Hardware*’s AFA rate.

⁸² See *Since Hardware* brief at 15, citing *De Cecco*, 216 F.3d at 1032.

⁸³ See Third Redetermination at 9; see also SAA at 870.

⁸⁴ See Draft Redetermination at 9.

⁸⁵ *Id.* at 8.

The Court has sustained our application of AFA to Since Hardware.⁸⁶ As noted in *Kompass*,⁸⁷ in cases wherein the Department applies AFA, the Department no longer focuses on calculating the “true margin” but instead must focus on determining an adverse margin that will induce future cooperation. Also, as noted in the Third Redetermination and in the Draft Redetermination, in this case the FOP information necessary to calculate an accurate margin for Since Hardware is unavailable due to Since Hardware’s submission of fraudulent, inaccurate and unusable data.⁸⁸ As such, the Department has no means of using any data provided by Since Hardware that would address Since Hardware’s “commercial reality.” Moreover, we dispute Since Hardware’s claim that the 72.29 percent rate is punitive and contrary to the remedial nature of the antidumping law. The selected AFA rate is based on calculated rates from the investigation, and represents the behaviors of two exporters. Thus, contrary to Since Hardware’s assertion that the rate is “punitive,” the selected 72.29 rate was applied to all separate rate respondents who were not investigated by the Department.⁸⁹ 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 there is nothing in *Since Hardware IV* that directs the Department to consider post-review data in determining an AFA margin for Since Hardware. We continue to maintain that Since Hardware’s decision to provide fraudulent sales information precludes any determination as to which AFA rate would represent its “commercial reality.”

⁸⁶ See *Since Hardware I* at 20.

⁸⁷ See *Kompass Food Trading International v United States*, 24 CIT 678, 682-83 (CIT 2000) (*Kompass*).

⁸⁸ See Third Redetermination at 8; see also Draft Redetermination at 8.

⁸⁹ 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).

Finally, we find without merit Since Hardware’s suggestion that application of an AFA rate denies due process of law to Since Hardware’s importers. In *KYD*, 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.⁹⁰ By virtue of acting as Since Hardware’s importer of record, its importers assumed fully responsibility for paying the dumping duties applicable on the transactions which are covered by the application of AFA to Since Hardware.

Comment 2

HPI argues that assigning 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 accord with the law. HPI asserts that *Since Hardware IV* does not compel the Department to abandon the 157.68 percent AFA rate previously assigned Since Hardware.⁹¹ Moreover, HPI asserts that it is impossible for the Department to determine “the ‘commercial reality’ of an individual uncooperative respondent.”⁹² HPI further argues that Since Hardware’s conduct in this review results in Since Hardware forfeiting “any benefit that might be had” concerning the determination of Since Hardware’s “true” margin.⁹³ Because there is no further available information to corroborate Since Hardware’s margin, HPI asserts that the Department has fulfilled its statutory obligation and corroborated the 157.68 percent rate “to the extent practicable.”⁹⁴

⁹⁰ See *KYD, Inc. v. United States*, 607 F. 3d 760, 768 (Fed. Cir. 2010) (*KYD*).

⁹¹ See HPI Case Brief at 4.

⁹² *Id.* at 6.

⁹³ *Id.* at 7.

⁹⁴ *Id.*

HPI further argues that the 157.68 percent AFA rate previously assigned to Since Hardware represents the calculated rate for Since Hardware’s “principal” Chinese competitor in “the U.S. ironing table market during the LTFV investigation.”⁹⁵ Citing to *Kompass*, HPI argues that given Since Hardware’s conduct, the scope of the Department’s analysis necessarily shifts from a calculation of Since Hardware’s “true” margin to an exercise whose primary concern is inducing Since Hardware to cooperate in future reviews of this proceeding.⁹⁶ HPI additionally argues that the fact pattern in the instant case is analogous to *Kompass*. In both the instant review and in *Kompass*, HPI asserts that the Department utilized “data for a cooperative and representative respondent in the LTFV investigation as an appropriate, corroborated (to the extent practicable) AFA rate”⁹⁷

HPI notes that the 72.29 percent rate assigned as AFA in the draft redetermination represents a “blended rate” of the 157.68 percent calculated for Shunde Yongjian Housewares and the 9.47 percent rate assigned to Since Hardware.⁹⁸ HPI asserts that such a combination rate is “fatally flawed in relation to any application with respect to Since Hardware”⁹⁹ First, HPI notes that the 9.47 LTFV rate calculated for Since Hardware is lower than the 10.18 percent rate assigned to Forever Holdings in the 2/03/2004-7/31/2005 review of this proceeding.¹⁰⁰ HPI thus asserts that the 9.47 percent rate assigned to Since Hardware in the LTFV investigation also represents an inappropriate constituent part of an AFA rate.¹⁰¹ More significantly, HPI asserts that Since Hardware’s “fraudulent practices” in prior reviews of this proceeding give the

⁹⁵ *Id.* at 8.

⁹⁶ *Id.* at 8, citing *Kompass*, 24 CIT 678, 682-683.

⁹⁷ *Id.* at 11.

⁹⁸ *Id.* at 15.

⁹⁹ *Id.* at 15.

¹⁰⁰ 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).

¹⁰¹ See HPI Brief at 12.

Department “ample cause to disregard all information previously submitted by Since Hardware and all results derived therefrom.”¹⁰² With regards to the LTFV investigation, HPI argues that “{i}t follows inescapably that no confidence can be placed in the Since Hardware LTFV rate calculated from such data, and the Department rightfully has declined to consider it as a potential AFA rate for Since Hardware in this action.”¹⁰³ HPI concludes that there is nothing on the record of this proceeding which serves to corroborate the 72.29 percent AFA rate assigned to Since Hardware in this redetermination.¹⁰⁴ HPI further asserts that assigning a 72.29 percent AFA rate to Since Hardware in lieu of the previously assigned AFA rate of 157.68 percent would allow Since Hardware to benefit from submission of its own unreliable information.”¹⁰⁵ Based on the foregoing, HPI asserts that the Department should continue to assign an AFA rate of 157.68 percent rate to Since Hardware, as this 157.68 percent rate has been corroborated to the extent practicable under the statute.

Department’s Position:

We continue to hold that the 72.29 percent AFA assigned to Since Hardware best reflects the “commercial reality” concerns expressed by the Court in *Since Hardware IV*. As HPI notes, the Department has identified no additional Customs data or other corroborating information that could serve to establish the “commercial reality” of any AFA rate assigned to Since Hardware. Additionally, the Court rejected the position taken by the Department in the third redetermination that *Rhone Poulenc* establishes that the highest calculated rate for a cooperative respondent has probative value.¹⁰⁶ Moreover, the Court rejected the corroboration analysis that we set forth in

¹⁰² *Id.*

¹⁰³ *Id.* at 13-14.

¹⁰⁴ *Id.* at 16.

¹⁰⁵ *Id.*

¹⁰⁶ *See Since Hardware IV* at 8-12.

the third redetermination.¹⁰⁷ In addition, and as noted in the draft redetermination, we found no additional information from our search of the internet that could serve to corroborate any AFA rate assigned to Since Hardware or which would speak to the “commercial reality” of any AFA rate assigned to Since Hardware.¹⁰⁸ As HPI notes, Since Hardware’s filing of fraudulent information precludes the Department from determining whether any AFA rate would reflect the commercial reality of Since Hardware.

However, in this redetermination, we have also noted the concerns relating to “commercial reality” expressed by the Court.¹⁰⁹ Therefore, we continue to maintain that the 72.29 percent AFA rate which we have, under protest, assigned to Since Hardware in this review, better addresses the Court’s concerns regarding “relevance” and “commercial reality” than does the previously assigned AFA rate of 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.¹¹⁰ Moreover, we find nothing in *Since Hardware IV* that would permit, or invite us, to recalculate the 72.29 percent margin assigned to Since Hardware in the LTFV. Based upon the foregoing, we have, under protest, continued to assign a 72.29 percent AFA rate to Since Hardware in this final redetermination.

Final Results of Redetermination

Based upon the foregoing, we assigned, under respectful protest, an AFA rate of 72.29 percent to Since Hardware. 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

¹⁰⁷ *Id.* at 12-15.

¹⁰⁸ *See* Draft Redetermination at 10.

¹⁰⁹ *See Since Hardware IV* at 15, citing *Gallant Ocean*, 602 F.3d at 1324.

¹¹⁰ *See* Draft Redetermination at 11.

1, 2006, through July 31, 2007, POR consistent with our final results of redetermination pursuant to Court remand.



Paul Piquado
Assistant Secretary
for Enforcement & Compliance

18 JUNE 2015

Date