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September 3, 2002

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for Import Administration, Group II

SUBJECT: Issues and Decision Memorandum for the Administrative Reviews of Heavy Forged Hand Tools from the People=s Republic of China
C February 1, 2000 through January 31, 2001

Summary

We have analyzed the comments and rebuttal comments of interested parties in the 2000-2001 administrative reviews of the antidumping duty orders covering heavy forged hand tools (HFHTs) from the People=s Republic of China (PRC). As a result of our analysis, we have made changes in the margin calculations, including corrections resulting from verification. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum.

Background

On March 6, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on HFHTs from the PRC (the preliminary results). Imports covered by these orders comprise the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. On February 27, 2001, the petitioner, Ames True Temper (the petitioner), requested administrative reviews of all four classes or kinds of subject merchandise for the following companies: Shandong Machinery Import & Export Corporation (SMC), Fujian Machinery & Equipment Import & Export Corporation (FMEC), Tianjin Machinery Import & Export Corporation (TMC), Liaoning Machinery Import & Export Corporation (LMC), and Shandong Huarong General Group Corporation (Huarong). The petitioner also requested a review of hammers/sledges from Shandong Jinma Industrial Group Co., Ltd. (Jinma). The period of review (POR) is February 1, 2000, through January 31, 2001.

List of Issues

Below is the complete list of the issues in these administrative reviews for which we received comments from parties:

Part I - General Issues

1. "Zeroing" Methodology
2. Inland Freight Distances
3. Calculation of Overhead, Selling, General and Administrative Expenses (SG&A) and Profit
4. Calculation of Marine Insurance

Part II - General Surrogate Value Issues

5. Aberrational Data
6. Harmonized Tariff System (HTS) Classification of Steel Billet
7. Surrogate Value for Tool Handles
8. HTS Classification for Steel Scrap for Scrap Offset
9. HTS Classification of Steel Scrap for Factors of Production (FOP)

Part III - LMC Comments

10. LMC=s Unreported Hammer Sale
11. LMC Ocean Freight
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14. Huarong Unreported Axe/Adze and Pick/Mattock Sales
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18. Huarong Labor Rate
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21. TMC Unreported Sales
22. TMC FOP Verification and Application of Adverse Facts Available (AFA)
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28. TMC Margin Calculation Errors
29. TMC Inland Freight Distances
30. TMC Inland Freight Calculation Errors
31. TMC Packing
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33. TMC Marine Insurance Charges
34. TMC Ocean Freight
35. TMC Steel Tool Handles and Steel Wedges
36. TMC Revocation
37. TMC Minor Errors and Corrections Presented at Verification

Changes Since the Preliminary Results of Review

Since the preliminary results, we have made the following changes in our calculations:

1. We corrected errors in the calculation of SG&A expenses and profit for all reviewed companies.
2. We corrected errors in the calculation of the surrogate values for steel billet and steel scrap.
3. We applied total AFA to LMC with respect to the hammers/sledges order.
4. We applied reported market economy ocean carrier charges to LMC's nonmarket economy (NME) ocean carrier shipments, pursuant to current practice.
5. We adjusted certain Huarong sales for discounts.
6. We applied as facts available (FA) the highest labor rate calculated at verification for bars produced by Huarong.
7. We applied as FA the highest packing and freight costs reported for TMC hammers to all hammers sold by TMC.
8. We applied a weighted-average of the surrogate values of the three types of steel consumed by the verified TMC hammer supplier to all of TMC's hammers.
9. We increased the consumption rate for paint, coal and electricity for all TMC hammers.
10. We corrected errors with respect to TMC's calculated margins.
11. We corrected the adjustment made to one of TMC's sales.
12. We corrected TMC's minor errors.

Discussion of Issues

Part I - General Issues

Comment 1: "Zeroing" Methodology

The respondents state that the Department's practice of setting negative margins to zero is contrary to U.S. law and the World Trade Organization (WTO) rules under the Appellate Body decision, European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001) (Bed Linens). The respondents assert that, while the United States was not a party to the administrative determination at issue in Bed Linens, it

should, as a member of the WTO, respect the decisions of the Appellate Body. The respondents further assert that there is no conflict between the WTO rule and the dumping statute in that nothing in the statute requires the Department to use a zeroing methodology but rather the statute requires it to use a fair comparison between normal value (NV) and the export price (EP) or constructed export price (CEP). According to the respondents, "zeroing" is, therefore, not an express statutory creation of U.S. law which should prevail over a WTO obligation.

The respondents[1] cite to section 771(35)(A) of the Tariff Act of 1930, as amended (the Act), that defines a "dumping margin" as the amount by which the NV exceeds the EP or CEP of the subject merchandise. Further, the respondents cite to section 771(35)(B) of the Act, which defines a "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." According to the respondents, these sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and to divide this amount by the value of all sales. However, the respondents assert that the Department has inserted the word "individual" where it does not exist. Thus, the respondents state, that, by reading the statute to require that margins be calculated on an individual basis, the Department ignores the express statutory mandate from Congress that margins be calculated in the aggregate.

The respondents conclude that the Department's practice increases the likelihood of finding dumping and does not result in accurate margins. They cite the example of the situation where an exporter has a hundred sales above NV but only one sale below NV. In this example, the Department does not use the negative values derived when the U.S. price exceeds the NV in calculating dumping margins. The respondents state that by zeroing all sales made above NV, the Department does not reduce the margin as much as if those sales had not been "zeroed out." Therefore, the respondents conclude that the Department's calculation does not reflect the true average of the difference between the NV and the EP or CEP, which is plainly contrary to the antidumping statute.

The petitioner states that the Department is not required to alter its practice of "zeroing out" negative dumping margins when calculating the weighted-average dumping margin. Moreover, according to the petitioner, the Department must maintain its current practice because the antidumping statute mandates it. According to the petitioner, the antidumping statute does not provide for calculation of negative dumping margins. In fact, the petitioner states, the antidumping statute requires the Department to determine an estimated weighted-average dumping margin for each exporter and producer investigated. According to the petitioner, the statute defines a dumping margin as the amount by which the NV exceeds the EP or the CEP of the subject merchandise. Therefore, according to the petitioner, an individual dumping margin

[1]The Department refers to "the respondents" when the issue at hand was raised in the context of all or several of the respondents. Issues related to an individual company will be discussed in terms of that company's name.

may only reflect the amount by which the NV exceeds the EP or CEP, not the amount by which the NV is less than EP or CEP. Moreover, according to the petitioner, the weighted-average dumping margin is based on the aggregation of individual margins, each of which may only reflect the amount by which NV exceeds EP or CEP.

The petitioner states that the zeroing methodology was applied correctly in the preliminary results, and that it is the position of the Department that Bed Linens has no impact on U.S. law or Department practice. The petitioner further states that the Bed Linens decision applies only to the European Communities (EC), not to decisions made by the United States. According to the petitioner, this is because the U.S. antidumping law is different from EC antidumping law in that the U.S. law provides for retrospective duties while the EC law imposes prospective duties. The petitioner concludes that a WTO ruling applying to the EC's antidumping law and practice should not be construed to apply to the United States as well.

Department's Position:

We disagree with the respondents. As we have discussed in prior cases, the Department properly calculated weighted-average margins in the preliminary results in accordance with U.S. law. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 55782, August 30, 2002 (Steel Wire Rod). Sales that did not fall below NV are included in the weighted-average margin calculation as sales with no dumping margin. The value of such sales is included in the denominator of the calculation of the weighted-average margin along with the value of dumped sales. The Department does not, however, allow sales that did not fall below NV to cancel out dumping found on other sales. We agree with the petitioner that the Act requires that the Department employ this methodology. Section 771(35)(A) of the Act defines a "dumping margin" as the amount by which the NV exceeds the EP or CEP of the subject merchandise. Section 771(35)(B) of the Act defines a "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margin" in section 771(35)(B) of the Act makes clear that the singular "dumping margin" in section 771(35)(A) of the Act applies on a comparison-specific level and does not itself apply on an aggregate basis. At no stage in this process is the amount by which EP or CEP exceeds NV on sales that did not fall below NV permitted to cancel out the dumping margins found on other sales. This does not mean, however, that sales that did not fall below NV are ignored in calculating the weighted-average rate. It is important to note that the weighted-average margin will reflect any "non-dumped" merchandise examined during the investigation because the value of such sales is included in the denominator of the dumping rate, while no dumping amount for "non-dumped" merchandise is included in the numerator. Thus, a greater amount of "non-dumped" merchandise results in a lower weighted-average dumping margin.

Finally, with respect to the respondents' WTO-specific arguments, U.S. law, as implemented

through the Uruguay Round Agreements Act, is consistent with our WTO obligations. See Statement of Administrative Action, H.R. Doc. No. 103-316(1994) at 669. Accordingly, we are continuing to apply our margin calculation methodology pursuant to Department practice.

Comment 2: Inland Freight Distances

The respondents state that the Department was able to verify specific freight distances from supplier factories to tool factories and to ports of export in the instant and prior reviews of this proceeding for the purposes of calculating freight costs pursuant to Sigma Corporation v. United States, 117 F. 3d 1401 (Fed. Cir.1997) (Sigma) for FOPs in the calculation of NV and the adjustment of U.S. sales values. The respondents assert that these verified figures should be relied upon rather than the distances determined from the online maps of www.mapquest.com (Mapquest), some of which, according to the respondents, contradict one another. The respondents also claim that the Department's methodology does not accurately reflect the distance from the factory to the port of export, but rather it measures the distance from the city center to the port of export. The respondents further state that they have been unable to find the Mapquest figures cited by the Department verifiers.

The petitioner points out that the respondents' arguments against using Mapquest distances do not allege that the Mapquest figures are "inaccurate in any way." On this basis alone, according to the petitioner, the Department should reject the respondents' "vague complaints" and rely upon the Mapquest figures.

The petitioner also points out that the Department's use of Mapquest figures was limited to the TMC verification report. The petitioner further asserts that the Department's use of the Mapquest figures was merely a comparison of the respondent's reported distances to a reference source, and that the distances used in the Department's verification reports have no shared city pairs, and thus do not contradict each other.

Department's Position:

We agree with the petitioner. TMC reported freight charges representing the distances from the factory to the port of eight different factories. For verification, the Department actually visited one factory. However, the Department was unable to verify the freight distance reported by TMC for this factory. As a result, we applied AFA for the calculation of freight for this one factory. (See the Department's Position on Comment 22.) The Department did not visit the other seven factories. It attempted to verify the distances of these seven other factories during the verification of TMC. Company officials did not provide any documents to substantiate TMC's reported freight charges. Therefore, the Department looked to Mapquest as a means of testing the reported figures. The Department compared the distances reported by TMC to the distances calculated from maps available on Mapquest. As stated in the verification report, of the seven factories, three of the reported distances were the same as the Mapquest figures; four of the reported distances were different. While the respondents placed mileage data from prior reviews on the record of the instant review, these data were not verified in those prior reviews and do not correspond with the distances in question. Since there were differences between

Mapquest and four of the reported distances, and the Mapquest figures represent a publicly available and independent source, we decided to rely upon the Mapquest figures for all seven of the these factories, rather than relying on the unverified data from the previous reviews.

The Department has considerable latitude in choosing which items it will examine at verification. See Monsanto Co. v. United States, 698 F. Supp. 275, 281 (CIT 1988) (citing Hercules, Inc. v. United States, 673 F. Supp. 454, 469 (CIT 1987)). When the Department cannot verify any part of a response at verification, and the information cannot be found on the record of the instant review, it relies upon the facts otherwise available under section 776(a) of the Act. In this case, it used its discretion and relied upon Mapquest maps and map keys as a reference, which are publicly available.

Under Sigma, the Department applies as a surrogate the cost of inland freight between the factory and the closer of the actual supplier source or the nearest seaport. Contrary to what the respondents suggest, the Mapquest data used by the Department do not contradict one another. The Department used Mapquest to test the distances between the port and each of seven supplier factories. We note that the respondents' argument that some of the Mapquest figures contradict one another is without merit. Each supplier factory was located at a different site than the other supplier factories, and a different distance was calculated for each one.

Comment 3: Calculation of Overhead, SG&A Expense, and Profit

The respondents state that the Department preliminarily calculated overhead, SG&A, and profit in a manner that is contrary to both the statute as well as the Department's calculation memorandum. The Department multiplied the cost of the total FOP by the overhead, SG&A and profit surrogate value percentages to calculate overhead, SG&A and profit. The respondents point out that, according to the Department's calculation memorandum, the Department should have calculated overhead as a percentage of direct materials, labor and energy (i.e., the total cost of manufacturing (TOTCOM)), SG&A as a percentage of TOTCOM and overhead, and profit as a percentage of TOTCOM, overhead and SG&A. In addition, respondents claim that the Department incorrectly included the cost and freight for packing materials in the FOP used to calculate overhead, SG&A and profit. The respondents conclude that the Department should recalculate the surrogate value percentages to correct for these errors.

The petitioner agrees with the respondents that there was a calculation error with respect to overhead, SG&A and profit, but disagrees that packing costs should be excluded from the calculation of these costs. The petitioner points out that, in the preliminary results, the Department described its normal methodology for calculating overhead, SG&A and profit, but did not apply the methodology in its actual calculations. The petitioner also states that there is no evidence that the financial ratios upon which the Department's surrogate values are based exclude packing costs.

Department's Position:

The Department agrees with the respondents. The Department intended to calculate overhead as

a percentage of direct materials, labor and energy (i.e., the total cost of manufacturing (TOTCOM)), SG&A as a percentage of TOTCOM and overhead, and profit as a percentage of TOTCOM, overhead and SG&A and has done so for these final review results. In addition, the respondents' argument that the packing FOP should not be included in the calculation of overhead, SG&A and profit is consistent with the Department's methodology. It is the Department's practice to exclude the packing FOP in the denominator for the calculation of overhead, SG&A and profit, and it has done so for these final results.

Comment 4: Calculation of Marine Insurance

The respondents state that the Department erred by calculating marine insurance based upon weight rather than cost since its surrogate value was based upon cost.

The petitioner states that, while marine insurance is generally based upon value, the Department correctly applied the surrogate value it obtained from Stainless Steel Wire Rod from India; Final Results of Administrative Review, 63 FR 48184 (September 9, 1998) (Stainless Steel Wire Rod from India) as in this case it was based upon weight. The petitioner concludes that the Department should reject the respondents' argument.

Department's Position:

The Department agrees with the petitioner. The Department's surrogate value for marine insurance is based upon an Indian rupees-per-metric-ton-value obtained from Stainless Steel Wire Rod from India. To use this surrogate value to make adjustments for U.S. sales values, the Department only had to convert it to a kilogram value. Therefore, the Department has made no changes from the preliminary results with respect to marine insurance.

Part II - General Surrogate Value Issues

Comment 5: Aberrational Data

The respondents state that the Department should disregard imports from NME countries and imports that are aberrational and made in small quantities in calculating surrogate values. According to the respondents, the Monthly Statistics of the Foreign Trade of India (MSFTI) contain data for imports into India from numerous countries. Some imports are from countries the Department considers NMEs and has excluded from its surrogate value calculations in other reviews. In addition, the respondents point out that some imports represent extremely small quantities and/or extremely high values when compared with the import category as a whole. According to respondents, the Department has also excluded this type of aberrational import data from its surrogate value calculations in other reviews.

The respondents assert that aberrational or small quantities do not reflect reasonable values for commercial quantities of the non-unique FOP and packing materials involved with HFHTs. The respondents argue that the Department generally excludes data pertaining to small quantities of imports from individual countries when the per-unit value is at a variance with other information

on the record. The respondents maintain that, in calculating surrogate values, the Department should follow its stated policy of excluding aberrational data. For imports from countries that were less than 100 kilograms, the Department should consider this level of imports as not representing "commercial quantities," particularly when compared with the large quantities of material and packing inputs used by the factories. The respondents contend that while these quantities, in relation to the total quantities for the POR, are de minimis and excluding these values from the calculations makes minimal differences, the purpose of the statute is to calculate margins as accurately as possible.

In rebuttal, the petitioner argues that the respondents have cherry-picked the surrogate values to eliminate any import values that do not help them. The petitioner maintains that this manipulation takes two forms. First, the respondents have thrown out shipments from "countries that were less than 100 kilograms," although not consistently. Second, the respondents have excluded any "aberrational" data. The petitioner argues that the respondents do not even bother stating what standard should be used to deem a value aberrational. As it turns out, an "aberrational" value is anything that would raise the average unit value (AUV) of a particular

FOP. Therefore, the petitioner contends that the Department should reject the respondents' result-driven methodology for purposes of the final results.

Department's Position:

We agree with the respondents in part. In calculating surrogate values, the Department excludes data that is based on aberrational quantities and values when such data is shown to be distortive. 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 99-00), and accompanying Issues and Decision Memorandum at Comment 11. However, in regard to the respondents' argument about aberrational quantities, the Department notes that respondents have asserted but not demonstrated that quantities of less than 100 kilograms have values associated with them that are aberrational. As a result, the Department did not adjust the surrogate values in question for these final results.

However, the Department has determined that South Korea, Thailand, and Indonesia maintain broadly available, non-industry specific export subsidies which may benefit exports to all markets. Thus, we have eliminated the quantities and values of imports from these countries from the import statistics used to calculate the surrogate values. See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China, 67 FR 6482 (February 12, 2002).

Comment 6: HTS Classification of Steel Billet

The respondents state that the Department should recalculate the surrogate value for steel billet based only on Indian HTS category 7204.20.09, as only one quality of billet was used in the production of hand tools. According to the respondents, in calculating the surrogate value for

steel billet, the Department included incorrect data by using data from more than one HTS category. The respondents maintain that these data should be corrected for the final results.

In rebuttal, the petitioner states that the respondents' argument that the Department should utilize HTS number 7204.20.09 for purposes of valuing the billets used to produce certain subject merchandise may be a typographical error. The petitioner notes that elsewhere, the respondents have recalculated the Department's unit prices for steel billets utilizing Indian import statistics under HTS number 7207.20.09. While the petitioner does not object to respondents' calculations for this HTS number, the petitioner argues that publicly available information on the record suggests that a better surrogate is available.

The petitioner states that in reviewing MSFTI, it appears that a more appropriate surrogate is available for valuing the forged billets used to produce subject merchandise. Specifically, the current surrogate selection classified under HTS 7207.20.09 is a basket category, the true characteristics of which are virtually unknown. In contrast, the petitioner argues, MSFTI lists entries of semi-finished, carbon steel billet specifically produced for forging applications. The petitioner urges the Department to use item number 7207.20.09.

Department's Position:

We agree that the respondents mistakenly referred to the Indian HTS category for classification of steel billets as 7204.20.09. The exhibit referenced by the respondents in their July 31, 2002, case brief, refers to the Department's surrogate value calculation worksheet, which uses the HTS category 7207.20.09. The Department assumes that the respondents intended to reference this category when they stated that incorrect data were included.

With respect to the input categories the Department should use to value steel billet, the Department disagrees with both respondents and the petitioner when they state that only one quality of billet was used in the production of subject merchandise. We note that while the scope of the orders states that HFHTs are manufactured through a hot forge operation, it does not state that this is the only operation that is used to make HFHTs or the only process covered by the scope of the orders. Moreover, nothing in the record of this case suggests that the Department had reason to limit the scope of this proceeding to a single production type. On the contrary, the Department has found that the language of the orders referencing the predominant production method, the hot forging method, is illustrative not exclusionary, allowing for variations in the exact process to be used. See Final Scope Ruling–Antidumping Duty Orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China - Request by Tianjin Machinery I/E Corp. for a Ruling on Pulaski Tools, dated March 8, 2001 (unpublished) (Pulaski Tools). Furthermore there is nothing on the record of this review to suggest that only one quality of billet was used in the production of HFHTs. For these reasons, for the final results, the Department will continue to use Indian import data from both HTS 7207.20.01 ("forging quality" billet) and 7207.20.09 ("Other" billet) to value the billets used to produce the HFHTs in question.

Comment 7: Surrogate Value for Tool Handles

Respondents contend that the Department should use Indonesian import data for HTS category 4417.00.00 to value both wooden and fiberglass tool handles. According to the respondents, the Indian import data have no separate category for fiberglass tool handles and the "basket" category that presumably would include fiberglass handles is so broad as to provide no meaningful surrogate value for this material input.

Alternatively, the respondents maintain that the Department, should continue to use the Indian surrogate value for both the wooden and the fiberglass handles in the final results, as it did in the preliminary results. However, the respondents argue that the Indian import statistics used to value handles contains aberrational data. The surrogate value calculated for handles in the preliminary results was 627.72 Rupees/kilogram, or US$13.87/kilogram. Respondents argue that in calculating a surrogate value, the Department should follow its stated policy of excluding aberrational data. Since the preliminary results, the respondents note that they submitted for comparison purposes U.S. import data for HTS category 4417.00.80.10, the statistical item number used in the United States for imports of wooden tool handles. While the U.S. import statistics specifically break out the volume and the value of wooden tool handle imports, the Indian statistics do not. The respondents state that in contrast to the surrogate values used by the Department during the year 2000, the total U.S. Customs value for HTS subcategory 4417.00.08.10 was $1.62/kilogram while the cost, insurance, and freight (CIF) sales term value was $1.82/kilogram.

The respondents point out that TMC's input was a semi-finished handle and the import category the Department used to value handles includes finished items such as boot trees and boot lasts. Thus, according to the respondents, notwithstanding the type of simple, unfinished handles being used in these HFHTs, the figure used to value the wooden handle was far higher than the value of the steel in the subject merchandise.

The respondents maintain that the Indonesian import data are far more substantial and specific than the Indian data. The respondents assert that the Indonesian import data are consistent with the U.S. benchmark value, contemporaneous with the POR, and on the record. Accordingly, the respondents state that the Department should use the Indonesian import data as the surrogate value for wooden and fiberglass handles.

In rebuttal, the petitioner asserts that the respondents have done nothing more than find data that suits their end-game purposes. According to the petitioner, Indonesian import values for the year 2000 were $1.95/kilogram, but in 1999, unit values were $11.16/kilogram. The petitioner maintains, therefore, that the reported Indian value of $13.87 is not nearly as aberrational as the respondents would lead the Department to believe. The petitioner argues that given that both Indian and Indonesian import statistics have reported approximately equivalent values over time, and that the Department has used Indian values in all previous administrative reviews, the Department should not deviate from using Indian HTS number 4417.00.00 again for the final results.

Finally, the petitioner notes that the market reality is that fiberglass handles are more expensive than wooden handles. Therefore, if the Department is using a wooden handle surrogate to value fiberglass handles, and is choosing between two different surrogate values, it should choose the higher of the two to capture the higher expense associated with fiberglass.

Department's Position:

We agree with the petitioner. The Department will continue to rely upon the Indian data for these final review results. While the respondents portray the Indonesian values of HTS item number 4417.00.00 as more appropriate than the Indian values, there is nothing on the record to validate this statement. In fact, the respondents have not provided any specific information that would show the Indonesian HTS item number is more specific or reliable than the Indian import data for this category of merchandise. However, the Department accepts that the preliminary surrogate value of 628 rupees/kilogram (U.S. $13.88/kilogram) for this component, based upon import data for the review period, included certain aberrational data. The Department has excluded from the Indian import data the month of January 2001, which has a monthly value that is high enough in relation to the U.S. benchmark and the rest of the Indian data to be considered aberrational. See Changes to Surrogate Values Used in Preliminary Results for the Final Results of the Tenth Administrative Reviews of Certain Heavy Forged Hand Tools From the People's Republic of China - February 1, 2000 through January 31, 2001 (Changes to Surrogate Values) at 3. As a consequence, the import data cited by the respondents for U.S. imports of tool handles under HTS item number 4417.00.8010 ($1.8235/kilogram) corresponds more closely to the data the Department's relying upon to calculate the surrogate value for this HFHT component in these final review results. Although this correspondence is not necessary to validate surrogate values, it provides some assurance that the data is not aberrational. The Department made a similar decision in Heavy Forged Hand Tools From the People's Republic of China: Final Results of New Shipper Administrative Review, 66 FR 54503 (October 29, 2001). See Issues and Decision Memorandum for the New Shipper Review of Heavy Forged Hand Tools from the People's Republic of China -- February 1, 2000 through July 31, 2000 at Comment 1.

With regard to the petitioner's comment regarding the market reality of fiberglass handles, the Department does not find any specific category for fiberglass tool handles in the Monthly Statistics of the Foreign Trade of India. Volume II: Imports. The classification 7019.90.03, which is a basket category made up of articles of fiberglass, is even less specific to tool handles than 4417.00.00. Thus, the Department will continue to apply the 4417.00 Indian HTS category. See Final Results 99-00 and accompanying Issues and Decision Memorandum at Comment 15. We also note that the preponderance of reported sales under the hammers/sledges order cover only hammer heads. Hammers with wooden handles is the second largest category, while hammers with fiberglass handles is the smallest category of reported sales under the hammers/sledges order. Therefore, the impact of this valuation issue for handles is not significant.

Comment 8: HTS Classification for Steel Scrap for Scrap Offset

The respondents state that in the preliminary results, the Department used HTS category 7204.49.01 and 7204.49.09 to value the steel scrap that the factories sold after producing the subject merchandise. According to the respondents, this surrogate value was incorrect for two reasons. First, 7204.49.01 covers "Defective Sheet of Iron and Steel." The respondents maintain that the scrap the factories sold was not sheet, but rather turnings, shavings, and chips. Second, while HTS category 7204.49.09 covers "Other" waste and scrap, this category more appropriately includes scrap inputs such as scrap railroad rails and wheels. The respondents point out that HTS category 7204.41.00 specifically includes turnings, shavings, and chips which are the actual scrap produced from the hand tools shearing and grinding operations.

In rebuttal, the petitioner argues that the proposed surrogate value for steel scrap is inappropriate. With regard to the respondents' contention that the Department should not utilize inputs of defective sheet of iron and steel because the producing factories' scrap steel was purportedly "turnings, shavings, and chips," the petitioner maintains that the respondents have provided no information to support their claim. To the contrary, the petitioner alleges that evidence indicates that the steel scrap created in the production of subject merchandise is much more substantial. The petitioner asserts that, given the respondents' use of large sections of billet/bar to produce certain items of subject merchandise, the residual scrap is of substantial size and weight. Therefore, the petitioner contends that it is absurd for the respondents to characterize the scrap steel as turning, shaving, chip, sawdust, mill waste.

With respect to respondents' argument that the HTS number 7204.49.09 is an inappropriate value, the petitioner maintains that the respondents' argument is arbitrary, results-oriented, and without factual or logical support. Therefore, the petitioner contends that the Department must reject the respondents' arguments.

Department's Position:

We agree with the petitioner. At verification, the Department found that the scrap left from the manufacture of subject merchandise was not turnings and shavings. Rather, the scrap offset is made up of pieces of scrap rails, billets and rods that have been cut with a cutting torch or other machine and are too small to be used to make a HFHT product. See Verification of the Questionnaire Responses of (TMC hammer supplier), in the Antidumping Duty Administrative Review of Certain Heavy Forged Hand Tools from the People's Republic of China (TMC Supplier Report) at 3. These pieces cannot be described as turnings or shavings. The dust that is the result of grinding is not included in the scrap offset, but rather is accounted for in the FOPs (see Comment 24). Therefore, the Department will continue to value the scrap offset using the import statistics for other waste and scrap. The Department reached the same conclusion based on similar facts in the last review period. See Final Results 99-00 and the accompanying Issues and Decision Memorandum at Comment 13.

Comment 9: HTS Classification of the FOP for Steel Scrap

The respondents maintain that the Department should use only HTS category 7204.49.09, which covers "other" waste and scrap, to value the scrap railroad rails and wheels under the production of HFHTs. In the preliminary results, the Department used HTS categories 7204.49.01 and 7204.49.09 together to value the scrap railroad rails and wheels. The respondents contend that they have found no other "cases" where the Department has used HTS category 7204.49.01. According to the respondents, it should only be used where defective sheet is involved.

The petitioner argues that there is no basis for the respondents to distinguish their steel scrap factor input between these two classifications.

Department's Position:

We agree with the respondents. The Department's use of some data from the 7204.49.01 classification rather than 7204.49.09 in the preliminary results was an error which the

Department has corrected in these final results. The Monthly Statistics of the Foreign Trade of India Volume II: Imports identifies the broad HTS category 7204 as "Ferrous waste and scrap; Remelting scrap ingots of iron or steel," and then describes the more narrow HTS category 7204.49 as "other waste and scrap." However, the Department notes that respondents are correct that this category is further broken down into two categories: 7204.49.01 covering "Defective Sheets of Iron and Steel" and 7204.49.09 covering "Other." The Department considers that defective sheet of iron and steel is a different scrap product than scrap railroad rails. Thus, for these final results of review, the Department has determined to use only the HTS category 7204.49.09 to value the scrap used in hand tool production since scrap railroad rails are likely to be included within this category rather than in the category for defective sheets of iron and steel. The Department reached the same conclusion based on the same fact pattern in the last review period. See Final Results 99-00 and accompanying Issues and Decision Memorandum at Comment 12.

Part III - LMC Comments

Comment 10: LMC's Unreported Hammer Sale

The petitioner asserts that the Department initiated a review of all four classes or kinds of subject merchandise, that LMC reported no sales of any classes or kinds of subject merchandise other than bars/wedges, and that the unreported hammer sale, found at verification, requires the application of AFA. As AFA, the petitioner suggests that the Department use the highest corroborated margin in this or any previous segment of the proceeding. The petitioner further states that the Department's discovery of an unreported hammer sale at LMC during its spot check is a "fatal flaw" and that the Department must assume that it would have found other unreported hammer sales had its check been complete.

LMC argues that the petitioner's claim that LMC should receive AFA because it failed to report a single hammer sale is irrelevant because it is not participating in the administrative review for

hammers. Additionally, respondent claims that since the Department verified "100 percent" of all sales, failure to report one hammer sale does not indicate that there were additional unreported sales. LMC also argues that the petitioner seems to advocate a zero tolerance policy where finding one unreported sale is akin to a failure to cooperate to the best of one's ability. LMC concludes that this is not a correct interpretation of the law.

Department's Position:

We agree with the petitioner. In its antidumping duty questionnaire response, LMC stated that the only subject merchandise that it sold to the United States during the POR was bars. Based on LMC's questionnaire response the Department preliminarily rescinded the review with respect to hammers/sledges, picks/mattocks and axes/adzes. However, at verification, we found that LMC had made one hammer sale to the United States during the POR. After verification, we reviewed entry data from the U.S. Customs Service (Customs) and confirmed that LMC did make a hammer/sledge sale during the POR. (see Memorandum from Thomas Martin through Ronald Trentham to the File, dated August 16, 2002). This one sale constituted all of LMC's sales of hammers/sledges to the United States during the POR. Consequently, since we found an unreported sale of subject merchandise and LMC is not participating in this particular review, with respect to LMC's sales of hammers/sledges, we applied AFA to LMC. See Application of Adverse Facts Available to Liaoning Machinery Import & Export Corporation (LMC), dated concurrently with this memorandum for a discussion of the rates assigned to LMC's hammers/sledges merchandise and the basis for it.

Comment 11: LMC Ocean Freight

LMC states that the Department should apply its market economy ocean freight rates paid in U.S. dollars to its NME shipments, citing Shakeproof Assembly Components Division of Illinois Tool Works v. United States, 268 F.3d 1376, 1382 (Fed. Cir. 2001) (Shakeproof). Additionally, LMC cited unspecified calculation errors in three observations that would be corrected by applying the market economy rates.

The petitioner agrees that there are calculation errors in three observations, but disagrees that LMC has a "significant" number of market economy carrier shipments under the Shakeproof rule.

Department's Position:

We agree with LMC. The Department is required to establish dumping margins as accurately as possible. According to Shakeproof, the actual price paid for any inputs imported from a market economy in meaningful quantities (including market economy carrier ocean freight) is the best available information for valuing production factors. In this review, the overwhelming majority of LMC's sales were shipped on market economy carriers, and these shipments were paid for in a market economy currency. Therefore, the Department will apply the Shakeproof methodology and use market economy ocean freight rates to value ocean freight. This is consistent with our

treatment of ocean freight in the last review (see Final Results 99-00 and accompanying Issues and Decision Memorandum at Comment 20).

Comment 12: Agency Sales

LMC asserts that the Department properly combined certain sales of merchandise produced by another party with LMC's sales to calculate LMC's preliminary margin. LMC further asserts that LMC was the exporter of that merchandise and that such an approach is consistent with the Department's regulations.

The petitioner did not comment on this issue.

Department's Position:

The Department disagrees with LMC. The sales to which LMC refers will not be included among the sales used to calculate LMC's margin for these final results. In the preliminary results, the Department accepted LMC's assertion about these sales pending verification. At verification, the Department found that LMC was not the seller or exporter of the merchandise in question, but rather the selling agent for these transactions. See Verification of the Questionnaire Responses of Liaoning Machinery Import & Export Corporation in the Antidumping Duty Administrative Review of Heavy Forged Hand Tools from the PRC (LMC Verification Report) at 3-4. Therefore, we have not included the sales in question in LMC's margin calculations.

Comment 13: LMC Unreported Port Charges

LMC asserts that the transportation and handling charges which the Department characterizes as unreported in its verification report are part of LMC's reported ocean freight charges. LMC also claims that the transportation discrepancies found at verification are insignificant and that no adjustments to the reported data should be made pursuant to these discrepancies since there would be no effect on the margin.

The petitioner states that there is no record evidence to indicate that these charges are part of the reported ocean freight charges, and that the Department should use an average per-unit charge, based on its verification findings, to calculate a surrogate charge for all of LMC's U.S. sales.

Department's Position:

The Department agrees with the petitioner. During verification, the Department reviewed a separate sales expense ledger, which recorded transportation expenses. See LMC Verification Report at 7. We found unreported port charges pertaining to six reported sales and unreported freight forwarder charges related to seven additional sales. LMC produced documents substantiating these charges, which demonstrated that these expenses were separate and distinct from the other transportation charges the Department verified for these sales.

Section 776(a)(2) of the Act provides that (A) if an interested party withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. In the instant case, LMC did not report either any port charges. Since these reductions to price were not reported, the Department concludes, pursuant to sections 776(a)(2)(A) of the Act, that LMC withheld information that was requested by the Department. Moreover, because this information was within LMC's control, it did not act to the best of its ability when it failed to provide this information.

To calculate the surrogate values for these port charges, we relied upon the charges for services rendered to containers and containerized cargo set by the Board of Trustees of Jawaharlal Nehru Port, effective March 17, 1997, and still currently in effect. Specifically, we used the rate for moving a normal loaded twenty foot container from the container yard to the ship. See Changes to Surrogate Values at 7. Since LMC failed to report these significant charges to the Department, we applied an adverse inference and subtracted the charge from every U.S. sale.

Part IV - Huarong Comments

Comment 14: Huarong Unreported Ax/Adze and Pick/Mattock Sales

The petitioner contends that the Department should base its final results for axes/adzes and picks/mattocks upon total AFA because Huarong failed to report sales of axes and picks. As FA, the petitioner recommends that the Department apply the highest prior corroborated margins with respect to axes/adzes and picks/mattocks. The petitioner contends that Huarong did not act to the best of its ability because Huarong had the information about its unreported sales within its control, but failed to report it. Furthermore, the petitioner asserts that the Department must assume that it would have found other unreported sales because the Department found these sales only through a spot check of Huarong's export sales ledger over a portion of the POR.

In rebuttal, Huarong notes that one of the two unreported axe sales mentioned in the verification report was invoiced on December 19, 1999, a date early enough that the shipment most likely entered the United States before the POR. The other axe sale was to a non-U.S. customer, but shipped to a destination in the United States. Concerning the two unreported pick sales discussed in the verification report, Huarong notes that one of these sales was to a non-U.S. customer, but shipped to a destination in the United States, while the other pick sale was made to a non-U.S. customer and shipped to a non-U.S. destination. Thus, Huarong concludes that a careful reading of the evidence on the record demonstrates that there were, in fact, no unreported sales of axes or picks.

Department's Position:

Contrary to the petitioner's comment, the Department performed an exhaustive search of all of Huarong's U.S. sales for the year 2000. See Verification of the Questionnaire Responses of Shandong Huarong General Group Corporation in the Antidumping Duty Administrative Review of Heavy Forged Hand Tools from the PRC (Huarong Verification Report) at 5.

In its antidumping duty questionnaire response, Huarong stated that the only subject merchandise that it sold to the United States customers during the POR was bars/wedges. Based upon Huarong's questionnaire response, the Department preliminarily rescinded the review with respect to hammers/sledges, picks/mattocks and axes/adzes. Upon verification of Huarong's export sales ledger for the year 2000, the Department discovered that Huarong not only sold bars/wedges, but apparently also sold axes/adzes and picks/mattocks. The Department subsequently examined all invoices of axes and picks in order to determine whether the exports of these sales were to the United States. The Department found two sales of axes and two sales of picks to the United States. Customs' data confirmed that these sales were not entered for consumption into the United States during the POR (see Memorandum from Thomas Martin through Ronald Trentham to The File, dated August 16, 2002). We note, however, that, for one of the sales of picks and for one of the sales of axes, Huarong knew that the merchandise was shipped to the United States. According to its comments, Huarong is unaware whether this merchandise entered during the POR. While, ultimately, this merchandise did not enter the U.S. Customs territory during the POR, Huarong should have reported this sale as a U.S. sale. However, we disagree with the petitioners that we should apply AFA for these sales. Since the merchandise did not enter into the U.S. Customs territory for consumption during the POR, the Department will not analyze these sales for this POR and will finally rescind the reviews of Huarong with respect to these products.

Comment 15: Huarong Unreported Bar/Wedge Sales

The petitioner argues that the Department should apply total AFA for Huarong's sales of bars/wedges because the Department found an unreported sale of bars to the United States. Although the Department found only one unreported sale, the petitioner notes that the quantity of bars from this sale is a significant percentage of the total quantity of bars/wedges sold by Huarong to the United States during the POR. The petitioner asserts that the Department should apply adverse inferences because Huarong controlled the unreported information and, therefore, did not act to the best of its ability. Secondly, the petitioner asserts that the unreported sale of bars includes a line item for large scraper blades with handles (mutts), which the petitioner argues is subject merchandise.

Huarong observes that during verification the Department found a sale of bars that might have entered the United States during the POR and asked Huarong to provide entry documents to verify the entry date of the sale in question. However, Huarong argues that the Department's request was unclear and, because of this confusion, Huarong mistakenly provided during verification entry documents that did not match the invoice number in question. Huarong provided in its case brief a document it claims is evidence that the sale in question entered after the POR. Huarong concludes that because this document demonstrates that the bar sale in

question entered after the POR, and since Huarong is participating only in the administrative review of bars, Huarong has no unreported sales.

Huarong also argues that mutts are non-subject merchandise and should not be included in the scope of the bars/wedges antidumping duty order. According to Huarong, the petitioner's claim that mutts are subject merchandise is unsubstantiated. Huarong observes that the mutts at issue are not subject merchandise for the following four reasons. First, the mutts at issue are less than eighteen inches in length, whereas the scope for the order on bars/wedges excludes those that are eighteen inches in length or shorter. Second, Huarong notes that the mutts at issue were entered under the HTS category 8205.59.5510, whereas the scope of the HFHT reviews provides that subject merchandise is currently provided for under other HTS subheadings. Third, mutts are not mentioned anywhere in the original petition and investigation or the International Trade Commission's final injury report. Fourth, the scope language suggests that bars and wedges within the scope of the order do not have handles, whereas mutts must be used with handles.

In its rebuttal brief, the petitioner contends that Huarong submitted new factual information past the deadline set forth in section 351.301(b)(2) of the Department's regulations by including in its case brief a document that supposedly provides evidence that the bar sale in question entered the United States after the POR. The petitioner concludes that the Department should not allow Huarong to supplement the factual record with information that it failed to provide at verification. For this reason, the petitioner urges the Department to reject the Huarong's case brief.

Department's Position:

We agree with Huarong that there were no unreported Huarong bar/wedge sales. The proof of entry date that Huarong submitted to the Department has been retained on the record, although the Department disagrees that Huarong could have misunderstood the written directions provided during verification, especially since other similar records were produced timely. See Huarong Verification Report at 4. Moreover, after returning from verification, the Department independently reviewed Customs data to determine whether the bar sale in question was in fact entered for consumption into the United States during the POR. The Customs data confirmed that Huarong did not ship any bars/wedges to the United States during the POR. See Memorandum from Thomas Martin through Thomas Futtner to The File, dated August 5, 2002.

Since the sale in question did not enter the United States during the POR, the issue of whether mutts are subject to the order is not relevant to the sales under review. The Department will address this issue if it is raised in the context of a scope ruling request or a subsequent administrative review.

Comment 16: Huarong Discounts

The petitioner asserts that the Department should apply AFA to Huarong's U.S. sales because the Department found during verification unreported discounts for several U.S. sales of subject

merchandise. As AFA, the petitioner urges the Department to reduce all of Huarong's U.S. sales by the highest discount granted on any of the sales found at verification to have unreported discounts. The petitioner argues that the use of AFA is warranted because Huarong controlled the unreported discount information and, thus, did not act to the best of its ability in responding to the Department's request for information.

Huarong characterizes the discounts found at verification as post sale price adjustments which were allocated on a transaction-specific basis and are permitted pursuant to section 351.401(g) of the Department's regulations. The respondent contends that these post-sale price adjustments, which cover items such as rust and overweight shipping charges, require no adjustment to the reported gross unit price. Furthermore, the respondent notes that these post-sale price adjustments were made for both subject and non-subject merchandise, thus indicating that the intent of these adjustments was not to reduce dumping margins.

Department's Position:

The Department agrees with the petitioner that the failure of Huarong to report price reduction information regarding certain sales to the United States during the POR warrants the application of AFA. Clearly, Huarong controlled the unreported price reduction information in question and, by failing to report this information, Huarong did not act to the best of its ability. While Huarong characterizes these price reductions as "post sale price adjustments," the point is that none of these adjustments were reported to the Department. Huarong cites section 351.401(g) of the Department's regulations to say that post sale price adjustments allocated on a transaction-specific basis are permitted. However, Huarong's argument is misplaced. Section 351.401(g) states that the Department "may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions." It does not say that these price reductions need not be reported to the Department.

Section 776(a)(2) of the Act provides that (A) if an interested party withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. In the instant case, Huarong did not report either a transaction-specific or an allocated price adjustment. Since these reductions to price were not reported, the Department concludes, pursuant to section 776(a)(2)(A) of the Act that Huarong withheld information that was requested by the Department. Moreover, because this price adjustment information was solely within the control of Huarong, it failed to act to the best of its ability to provide this information.

At verification, the Department reviewed the invoices for all of Huarong's sales of subject merchandise to the United States during the POR and identified all U.S. sales which received price reductions. Thus, for each of those sales where a price reduction was found, the

Department will apply as AFA the highest price reduction granted for any of those sales.

Comment 17: Huarong Inland Freight Distances

The petitioner contends that the Department should apply AFA toward Huarong's inland freight distances because the Department found during verification that Huarong purchased steel from three unreported suppliers. The petitioner urges the Department to use as AFA the longest freight distance between the factory and any of the reported and unreported steel suppliers, and to use this distance in calculating NV for all models. The petitioner argues that the use of AFA is warranted because Huarong controlled the unreported freight distance information and, thus, did not act to the best of its ability.

Huarong argues that the verification report mistakenly states that Huarong failed to report all of its steel suppliers. According to Huarong, it reported all of these suppliers in its January 25, 2002, submission, at exhibit 4. Thus, the petitioner's argument that the Department should apply AFA and use the longest freight distance of the steel suppliers is not warranted. Moreover, Huarong claims that the Department must apply the verified distance between the factory and the port of export, under Sigma. Any supplier distance greater than the distance between Huarong and the port does not matter since the "Sigma cap" applies.

Department's Position:

The Department agrees with Huarong. The Department has reviewed exhibit 4 of Huarong's January 25, 2002, submissions, and the steel suppliers noted in that submission do appear to be the same suppliers provided to the Department at verification. Further, the Department notes that, in accordance with the "Sigma cap" rule, with respect to two of the supplier factories, which are both much farther from Huarong than the port of Qindago, we used the distance between the port and the factory. With respect to the third, we used the distance between the supplier and the factory as this was the shorter of the two distances.

Comment 18: Huarong Labor Rate

The petitioner urges the Department to recalculate Huarong's labor usage rate based on AFA because Huarong's "caps" for labor are so inaccurate that they are unusable. The petitioner notes that the verified labor rates demonstrate that Huarong significantly under-reported its labor consumption rates. The petitioner also states that it is unclear whether Huarong actually used "caps" in its labor consumption methodology because the verification report explains that Huarong relied on a formula for reporting its labor consumption.

Huarong asserts that the labor rates used to prepare its responses to the Department's questionnaire are the same labor rates previously verified by the Department in the last administrative review, and provides excerpts from that review's verification report. Since the last review's verification occurred during May 2001, the respondent concludes that last year's verified rates are actually more contemporaneous with the period covered by the current review,

February 2000 through January 2001, than the numbers the Department used to verify Huarong's responses during its most recent verification during May 2002. Furthermore, Huarong contends that the Department used an incorrect formula for verifying the labor consumption rates for certain production processes. Specifically, Huarong claims that the Department should have included the number of workers in the denominator as well as the numerator to calculate the labor rate for certain production processes.

In its rebuttal brief, the petitioner asserts that Huarong violated section 351.301(b)(2) of the Department's regulations by submitting new factual information in its case brief, through the inclusion of the Department's verification report from the 1999-2000 administrative review. The petitioner urges the Department to reject this new factual information. Furthermore, the petitioner states that the Department was correct in verifying the labor factors reported in Huarong's response by trying to recreate the reported results using the same methodology that Huarong claimed to apply in its response. The petitioner recommends that the Department reject this new formula for calculating the reported labor caps. Moreover, the petitioner notes that the respondent provides no rationale for why this new formula should be used for certain production processes and not other processes. Lastly, the petitioner notes that even in the instances where the respondent applied the new formula to the data obtained at verification, the resulting "verified" values still do not match the reported labor caps, where the results are both over and under the reported caps.

The respondent rebuts the petitioner's argument that the Department did not successfully verify Huarong's labor figures by providing four reasons for the discrepancies found at verification. The respondent states that: (1) the formulas used by the Department to verify Huarong's labor consumption rates do not accurately account for the output by the "team" of workers; (2) the Department did not include in its verification report the correct labor consumption rate actually reported for one of the products; (3) the labor consumption rate calculated by the Department during verification for painting one of the products is erroneous given the fact that painting is a simple process; and (4) the corrections provided by the petitioner in its case brief of certain computational errors generates results that are consistent with the labor input figures the Department verified in the previous two years.

Department's Position:

The Department agrees with the petitioner. Huarong's reported "caps" for labor could not be verified. As a result, the Department will apply AFA in the calculation of Huarong's labor rate by using the highest reported labor rate for bars to all of Huarong's bar sales.

In calculating labor inputs, the Department used the methodology reported in Huarong's January 15, 2002, supplemental questionnaire response, which company officials confirmed they used at verification. That methodology, as described by Huarong in that submission, was to calculate the fraction of labor hours required for each piece by multiplying the number of workers by the number of shift hours and by dividing the result by the number of pieces produced during that shift. See Heavy Forged Hand Tools from the People's Republic of China - Huarong's Response

to Supplemental Questionnaire at 12. The number of hours in a shift was stated to be eight hours. Id. Despite Huarong's contentions to the contrary, it was the results of using this formula which the Department attempted to recreate at verification.

We agree with petitioner that Huarong's attempt in its brief to modify post verification the company's explanation for its labor hour calculation is inappropriate and unacceptable. Nonetheless, we note that in Exhibit 7 of its July 31, 2002 brief, Huarong does not consistently apply its new methodology to each labor process, but randomly applies the methodology to some labor processes without explanation. Moreover, even if the Department adopted Huarong's new methodology for calculating labor inputs, the actual labor figures still do not support the reported figures. For the product used as an example in the respondent's case brief, the new calculation is still roughly ten times the amount of unskilled labor reported. See Respondents' July 31, 2002, Case Brief at 23.

Finally, Huarong's assertion that the labor rates verified in the previous review period should be applied in the instant review is wholly without merit. Labor rates are a function of the production environment, including the number of production workers, and can vary over time. The production records examined by the Department at the verification in this case pertain to specific days within the instant POR, February 1, 2000 through January 31, 2001. The use of a labor rate from a previous review period would not necessarily be relevant or accurate, nor have respondents demonstrated the relevance of these rates.

According to Section 776(a)(2) of the Act provides that (A) if an interested party withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. In the instant case, Huarong provided information regarding labor rates, but this information could not be verified. Since this information could not be verified, the Department concludes, pursuant to sections 776(a)(2)(D) of the Act that the application of FA is appropriate. Moreover, because Huarong was on notice that verification of its labor rate information was necessary, and yet Huarong did not take the steps necessary to ensure verification, we determine that Huarong did not act to the best of its ability. Therefore, for these final results, the Department will apply as AFA the highest labor rate reported by Huarong for any bar product to all of Huarong=s bars.

Comment 19: Huarong Packing FOP

The respondent argues that the Department should accept Huarong=s reported packing "caps" because the difference between the weights tested during verification and the weights Huarong reported was small and insignificant for most items.

The petitioner asserts that Huarong's reported packing "caps"are grossly inaccurate. The petitioner notes that several of the packing items examined during verification showed that the

reported “caps”significantly under-reported the actual weight.

Huarong rebuts the petitioner=s argument that its reported packing “caps”are inaccurate by stating that the discrepancies regarding packing weight noted in the verification report are caused by certain errors in the Department’s analysis. Specifically, the respondent contends that the Department failed to include the most recently reported packing weights in its comparison to the verified weights. Respondent argues that had the most recently reported packing weights been used in the verification report, the discrepancies found for packing materials would have been insignificant. Furthermore, the respondent notes that the reported packing weights are generally higher or just under the verified figures, thus indicating that there was no attempt to reduce the dumping margin. Lastly, the respondent notes that the packing weight comparison table in the verification report may contain two errors for a particular CONNUMU. First, the respondent argues that the verified figures for metal strip and wire might be reversed. Second, the respondent states that the Department made an arithmetic error in its calculation of the verified figure for wire weight per piece.

In its rebuttal brief, the petitioner urges the Department to recalculate packing factors based on AFA because Huarong significantly under-reported several packing inputs and, if the reported packing weights were replaced by the verified weights, significant increases in NV would result. The petitioner also asserts that the respondent submitted new information in its case brief past the deadline set forth in section 351.301(b)(2) of the Department’s regulations by including the Department’s verification report for Huarong from the prior review.

Department’s Position:

The Department agrees with Huarong. The Department’s verification report contained a number of errors regarding the packing factors. After correcting these mistakes, all of the actual packing weights proved to be reasonably similar to the reported weights. Therefore, the Department will make no changes to Huarong’s reported packing from the preliminary results.

With respect to the petitioner’s allegation that the Huarong verification report from the last review period was untimely submitted, the Department notes that Huarong put its verification report on the record in the instant review in a February 26, 2002, submission, which the Department accepted.

Comment 20: Huarong Steel FOP Input

The petitioner argues that in the event the Department values steel with a billet surrogate value, the Department should utilize imports of forging quality steel billets categorized under Indian HTS number 7207.20.01 to make this valuation.

Huarong contends that the Department should value the steel used to produce bars/wedges as billet. Huarong states that billet is a semi-finished steel product, and that Huarong uses a hot-rolling process to roll the purchased billet into bar with the desired physical dimensions. The

respondent objects to the petitioner's argument for the application of "forging quality" billet surrogate values on the basis that it is procedurally too late, and that the data for the classification contains shipments of less than commercial quantities.

Department's Position:

The Department agrees with Huarong that the steel it uses to produce bars/wedges is a billet. With regard to the valuation of the billet, see the Department's response to Comment 6.

Part V - TMC Comments

Comment 21: TMC Unreported Sales

TMC notes that the Department found six unreported pick sales, three unreported hammer sales, and one unreported axe sale. TMC states that of the ten possibly unreported sales, six were reported in the ninth review. According to TMC, three sales were of non-subject merchandise (one of which was entered after the POR and is being reported in the eleventh review). Thus, TMC maintains that only one sale was not previously reported.

With regard to the pick sales, TMC contends that three of the sales were of cast iron picks, which are non-subject merchandise. According to TMC, the remaining three pick sales were reported in the ninth review.

According to TMC, of the three unreported hammer sales that were entered during the POR, two were reported in the ninth review. Thus, only one hammer sale was not previously reported. Further, with respect to the one unreported axe sale, this sale was reported in the ninth review.

TMC argues that since TMC has reported all its sales with the exception of one sale (the hammer sale), the Department should use the data from these sales to calculate TMC's margins as this would result in the most accurate margins possible. However, TMC contends that if the Department still concludes that TMC has failed to report all its sales properly, it should not apply AFA but instead use TMC's own data from the current segment of this proceeding as FA.

TMC maintains that it did not intend to exclude any sales from its database. Rather, TMC maintains that it failed to include the unreported sales because it had already reported them in the ninth review. Thus, TMC argues that these sales were not left unreported. TMC claims that there was no effort to hide sales from the Department and there is no need to compel TMC to cooperate because it has fully cooperated. Therefore, using an adverse inference is inappropriate.

In rebuttal, the petitioner asserts that TMC, at Exhibit 10 (a sales listing) and Exhibit 11 (a "Receiver Detail" page with a fax date stamp of July 29, 2002 (two days prior to the case brief)) of its case brief, has placed new factual information on the record. According to the petitioner these documents were not taken at verification and should be stricken from the record.

Also, the petitioner states that TMC has failed to report all of it sales by applying an inconsistent date of sale methodology. Further, the petitioner asserts that TMC admits to one unreported sale. The petitioner notes that this sale was discovered by the Department at verification during a random, sample test. According to the petitioner, the Department must assume that there are other unreported sales and conclude that total AFA is warranted for TMC's failed completeness test.

In its rebuttal brief, TMC states that it addressed the issue of sales reporting in its case brief. According to TMC, its case brief clarifies that TMC did not intentionally fail to report any subject merchandise sales.

Department's Position:

The Department disagrees with TMC that six of the unreported sales (or, to be precise, seven sales on six invoices) were reported in the ninth POR. While the three pick sales, two hammer sales, and one axe sale were originally reported in the ninth POR, TMC argued that these sales did not enter during the ninth POR and removed these sales from its computer sales response. Therefore, these sales were not included in the Department's analysis in the ninth POR. However, the relevant portions of TMC's August 25, 2000, submission, reporting these sales in the prior review, have been put on the record in the current review. See Memorandum from Thomas Martin through Ronald Trentham to The File, dated August 22, 2002. TMC was certainly aware of the required reporting methodology with regard to date of sale when it removed the sales in question from its sales listing in the ninth POR, but it nonetheless failed to correct the reporting error in the current review. Instead, the Department discovered these sales at verification. See Verification of the Questionnaire Responses of Tianjin Machinery Import & Export Corp., in the Antidumping Duty Administrative Review of Certain Heavy Forged Hand Tools from the People's Republic of China (TMC Verification Report) at 2. It was not until after the verification that TMC reported to the Department that these sales were submitted and then removed from its sales response in the previous review. However, because the Department was able to verify these sales and, pursuant to section 782(e)(4) of the Act, the information is not so incomplete that it cannot serve as a reliable basis for reaching our determination, the Department does not consider the application of adverse inferences to be warranted for these sales, and will include these sales in calculating TMC's margins for the current review.

In regard to the three sales of cast iron picks, the Department first learned of these sales at verification. At no point prior to verification did TMC raise the issue of scope coverage regarding cast iron picks. As a result, the Department was unable to completely analyze whether these sales were properly excluded from the scope of the hand tools orders. We note that, as stated in the Department's position to Comment 3, nothing in the record of this case suggests that the Department had reason to limit the scope of this proceeding to a single production type. On the contrary, the Department has found that the language of the orders referencing the predominant production method, the hot forging method, is illustrative not exclusionary, allowing for variations in the exact process to be used. See Pulaski Tools. Thus, it is not immediately apparent whether these sales of cast HFHTs would necessarily be excluded from

the hand tools orders. We assume that TMC was aware of the Pulaski Tools ruling. In fact, TMC states that it intends to report at least one of these sales in the eleventh review (the sale allegedly entered the United States during the eleventh POR, February 1, 2001, through January 31, 2002). The Department, therefore, assumes that TMC concedes that the cast iron picks in question are subject to the hand tools orders, and should have been reported as subject merchandise[2].

Thus, in regard to the three cast iron pick sales, according to Section 776(a)(2) of the Act provides that (A) if an interested party withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. In the instant case, TMC failed to report information that was requested by the Department. Since the sales in question were not reported, the Department concludes, pursuant to sections 776(a)(2)(A) of the Act, that Huarong withheld information that was requested by the Department. Moreover, because this information was solely within the control of TMC, its failure to report these sales reflects that it did not act to the best of its ability. Thus, for the three cast iron pick sales, the Department will use AFA for these sales by adding them to U.S. sales listing and assigning them the highest margin found on any of the U.S. sales of subject merchandise by TMC.

For the one unreported hammer sale admitted to by TMC, we note that this one sale represents less than one percent of the total sales of hammers/sledges reported by TMC. Because this sale is such a small percentage of the total reported sales, and because TMC otherwise clearly cooperated in responding to the Department's requests for information in regard to the review of hammers/sledges, we will not apply facts available. Instead, for our analysis, we are including the one unreported sale with the reported sales.

Comment 22: TMC FOP Verification and AFA

The petitioner claims that TMC's reported quantities of steel, paint, coal, and electricity differed significantly from the consumption amounts found at verification. Additionally, according to the petitioner, the packing and freight quantities were unverifiable. Petitioners assert that, consequently, AFA should be applied with respect to these consumption inputs.

In its case brief, TMC notes that the verification report for the hammer supplier indicated that some of the data was not available. In large part, as the report acknowledges, the factory had been closed. Had this fact been reported to the Department's verifiers when the verification

[2]Although TMC states that it intends to report one of the cast iron pick sales as a sale for the eleventh POR, there is no information on the record of the instant review to indicate when the sale actually entered the U.S. for consumption. Therefore, the Department will include all three sales in the analysis of the instant review.

schedule was being prepared, the Department would have selected an alternative factory. However, TMC claims that, consistent with its obligations, the hammer supplier retained all pertinent records and cooperated with the Department to the best of its ability. TMC asserts that those items that could not be verified were clearly beyond the control of the factory, which had disposed of all inventory along with the equipment. Similarly, some records were not easily available and the factory officials had to rely on their recollections to make informed estimates. TMC contends that the estimates were consistent with the information provided to the Department in prior reviews and verifications.

In rebuttal, the petitioner states that a failed verification cannot be remedied by using information in past reviews. The petitioner points out that each segment of a proceeding is distinct. A finding in one annual review is not necessarily linked to a subsequent and contrary finding. Information in the prior review is not part of the record for the current review. Moreover, according to the petitioner, the TMC hammer supplier's operating status does not excuse it or TMC from responding to the Department's questionnaire in a verifiable manner. In conclusion, the petitioner argues that the failures described in its case brief are not altered or ameliorated by data from past reviews.

In its rebuttal brief, the respondent states that the factory operation was relatively small and never maintained detailed records because detailed records were not required for its operations. TMC again notes that although the factory was closed and had been closed for one year, the officials of the factory provided the Department verifiers with all available company records and could explain the entire operation.

Department's Position:

The Department agrees with the petitioner that the packing and the freight factors used by TMC's hammer supplier were unverifiable. As stated in the Department's Position on Comment 2, TMC reported freight distances for eight different supplier factories. See TMC Verification Report. Two of these factories supplied hammers/sledges to TMC. The Department visited one of these supplier factories but was unable to verify the reported freight distances. Unlike the other seven factories, the Department was not able to use Mapquest as a means of testing this reported distance because the Mapquest maps are not detailed enough to identify the exact location of this factory. The factory was located outside of the nearest major city. The Department, therefore, had no independent means of substantiating the claimed freight distances.

Similarly, the Department was unable to verify TMC's packing weights. We note that TMC's statement that the factory had been closed and that this fact was reported to the Department when the verification was being scheduled, is not wholly accurate. The Department only visited one of TMC's hammer supplier factories. It was the Department's clear understanding that the factory in question had not closed, but had temporarily ceased production. And, in fact, the factory produced subject merchandise during the POR. TMC has been subject to administrative reviews of the hand tool orders for a number of years. It prepared a questionnaire response which included information regarding freight and packing. The Department assumes that, when

a respondent prepares its response, it would maintain the records which were used to compile its data. In fact, while the factory in question was closed, TMC nonetheless maintained records for a variety of reported FOP, including consumption records for material and energy. It is, therefore, reasonable to assume that it would have maintained records for all reported FOP. While the Department attempted to work within the constraints of the verification of a closed factory, we were not able to verify TMC's reported packing weights or freight distances.

The Department concludes that, pursuant to sections 776(a)(2)(D) of the Act, information submitted by TMC could not be verified and, therefore, that application of FA is appropriate. Moreover, because TMC was responsible for demonstrating the reliability of its own data, its failure to do so supports our conclusion that TMC did not act to the best of its ability. Therefore, the Department will apply AFA to packing and freight for TMC's hammers/sledges class of merchandise. For packing, the Department will apply the highest reported packing amount for each packing FOP of hammers and sledges to each model. For freight, the Department will apply the highest reported freight charge for each FOP of TMC's hammers/sledges to each model reported by TMC.

The Department disagrees with the petitioner's contention that the reported steel, paint, coal and electricity differed significantly from consumption amounts found at verification. See TMC Verification Report. See Comment 23, 26 and 27.

Comment 23: Verification of TMC Steel Consumption

According to the petitioner, steel is the primary element affecting the cost of the subject merchandise and verification of its consumption rate is therefore crucial. The petitioner claims that the Department was unable to verify the reported consumption rate for TMC, finding that: 1) the TMC hammer supplier's reported rate was based on budgeted rather than actual usage; 2) the budgeted usage was based on ten-year-old estimates; 3) the usage rate did not account for actual production variances; 4) the reported usage rate did not include all of the material withdrawn from inventory; 5) the claimed scrap offset was also based on the theoretical difference between the budgeted usage rate and the budgeted weight of the finished product rather than the actual scrap sold; 6) the TMC hammer supplier could not link the particular type of steel to a particular finished good; and 7) the TMC hammer supplier could not produce a single monthly production report to substantiate any of its reported production figures. The petitioner contends that these combined findings amount to verification failure.

Further, the petitioner states that it is unclear why the Department attempted a "reasonableness test" based on an aggregate of all hammers when the reporting methodology was incorrect. Nevertheless, the Department's attempt to verify total steel consumption should be disregarded because it is again based on budgeted amounts.

The petitioner notes that the Department's methodology was to compare the aggregate per unit amount derived by multiplying the cap sheet amount by the number of pieces and comparing that to the steel consumed as recorded in the raw materials consumption ledgers by the same number

of pieces. However, the petitioner argues, because the raw materials consumption ledger is also based on the cap sheet, it is not surprising that the results are close. The petitioner states that it is unclear as to the purpose of the Department's aggregate reasonableness test. While these "caps" have been used in prior reviews, they must be rejected when unsupported by facts or record evidence.

According to the petitioner, the dumping margins are not calculated on an aggregate basis, but by model. Therefore, at best, the Department's reasonableness test is testing only the overall production usage. This is not a substitute for the verification of model-specific costs. The petitioner argues that the TMC hammer supplier could not produce any document that demonstrates either the accuracy of its cap estimates, its actual production records, or its model-specific production variances. Moreover, the TMC hammer supplier's entire reporting methodology and its accounting system are based on budgeted usage, not actual usage. Therefore, the TMC hammer supplier cannot be said to pass this crucial element of verification.

In rebuttal, the respondent claims that the Department's verification of steel tracked the records maintained by the factory in the ordinary course of its business. The records for steel showed exactly how much steel the factory used in the production process. The record keeping process satisfied the factory-s requirements and were fully in accord with the requirements of Chinese law and accounting principles. According to TMC, during the verification, the factory was able to provide the Department verifiers with records showing the amount and type of steel the factory used.

TMC maintains that the methodology the Department used to test the "caps" was reasonable and supported the reasonableness of the factory's reported figures. According to TMC, the main concern seems to be that the factory did not maintain detailed records on the type and amount of steel used for each item produced. But, TMC claims that the factory did maintain complete records showing the type and amount of the steel it used.

According to TMC, to verify the accuracy of the steel "caps," the Department verifiers used the weighted average of the reported steel "caps"and compared this average with the actual amounts of steel used to produce hammers. TMC argues that this methodology was sound and accurately measured the factory's consumption of steel. TMC states that the difference between the reported average and the calculated usage was small. The deviation was on the low side, indicating that the factory over-reported, rather than under-reported, its steel consumption.

TMC argues that the fact that the Department had verified the same factory previously further supports the reasonableness of the factory's steel caps. TMC points out that the previous verification for the 1998-1999 POR took place a little more than a week before the current POR started in February of 2000, and the production the Department reviewed would have included hammers sold during the tenth POR. TMC states that the steel consumption figures were verified.

Department's Position:

The Department agrees with TMC in part, and will accept TMC's steel consumption rates based upon the methodology applied in its verification report in the current review. The Department found, in previous reviews of the HFHTs orders, that the reported "caps" were reasonable. In the sixth review, for example, the Department made this determination after the verifiers had calculated an average consumption rate for coal using the factory's books and records and determined that there was no significant difference between their calculations and the reported caps. 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, 63 FR 16758, 16761 (April 6, 1998). The verifiers did the very same thing in the seventh review, but found significant differences between reported "caps" and consumption rates calculated based upon the respondent's books and records. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results and Partial Recission of Antidumping Duty Admin. Reviews, 64 FR 43659 (August 11, 1999). Because the verifiers in the seventh review calculated an average consumption rate for these production factors, but found a significant difference between these calculations and the reported "caps," the Department concluded that the "cap" data was flawed.

In this POR, the Department applied the very same methodology that it applied in prior reviews, and it found the "caps" to be reasonable. We first verified that the steel consumption rates reported to the Department were directly derived from consumption cap figures. The factory provided us with its steel cap sheet, which reported the weight of steel cut (pre-production), weight of finished product, and the difference between the two (scrap). We reviewed the factory's inventory withdrawal slips and the raw material sub-ledger. The inventory withdrawal slips identify the number of pieces, by hammer size, to be produced from the uncut lengths of steel being taken out of inventory. The kilograms of steel in the raw material consumption ledger (also listed by steel type) were calculated by taking the number of pieces to be cut from the steel (as listed on the withdrawal slips) and multiplying it by the steel cap for the appropriate hammer size to calculate the total weight of steel consumed. Since the raw material consumption ledger did not record consumption by hammer size, we resorted to testing the reported consumption rates on a weighted-average basis. Since the factory was no longer in production at the time of verification, there was no alternative method (such as weighing) other than to rely upon these accounting records to test the reasonableness of the consumption "caps." Just as in previous reviews, our methodology was to calculate the weighted-average steel consumption rate for all sizes of hammers from the raw material sub-ledger, and then to compare this with the weighted-average consumption rate for all sizes of hammers from the "cap" sheet. If the results were reasonably close, we considered the consumption rate verified.

While the petitioner argues that the Department tested the reasonableness of the reported "caps" by comparing them to ledgers based on "caps," we note that the Department must rely upon the books and records maintained by the company unless we have reason to believe these records are inaccurate or unreliable. There is nothing on the record to indicate this was the case in regard to TMC. The Department was in the position of verifying books and records of a factory that was not producing subject merchandise at the time of verification. Working within these constraints, the Department found that TMC's reported "caps" were reasonable.

Comment 24: TMC Scrap Offset

With regard to scrap offsets, the petitioner points out that on page two of the verification report, TMC hammer supplier officials state that they do not track production yield and production loss in their accounting system and on page one state that they do not know where the production records are located. In addition, the petitioner notes that these officials state that the cutting torch operator will make various cuts to a length of "rail top" leaving anything less than two pounds as scrap. Thus, according to the petitioner, regardless of how much steel is withdrawn from inventory, the budgeted amount is used. The petitioner maintains that the reported scrap offset is simply the mathematical difference between the theoretical finished weight and the theoretical input weight. The petitioner alleges that this figure is false and the amount is unsubstantiated.

According to the petitioner, by reporting the mathematical difference, TMC's hammer supplier is stating that it has a 100 percent scrap recovery rate. This, the petitioner maintains, is a physical impossibility given the nature of the cutting and production operations. The petitioner points out that, during production, there is an amount of material that is vaporized and is unrecoverable. Moreover, the petitioner argues, the Department only accepts the scrap actually sold as a reporting methodology, not scrap recovered; and certainly not the estimated scrap recovered.

TMC notes that the difference between the reported consumption rate for scrap and the actual amounts are extremely small. TMC claims that the factory recovers all the scrap for sale. Lastly, TMC claims that the Department examined the scrap issue during verification and concluded that it was not necessary to collect any additional data. Such a decision, according to the respondent, was within the Department's authority.

Department's Position:

With respect to scrap production, the Department can distinguish between the two types of scrap generated in the production of hand tools. The first type of scrap material is the cuttings from billet and rail that are substantial in size but too small for making subject products. The second kind of scrap is the steel dust left from grinding. The large pieces of steel are easy to recover for subsequent resale. The steel dust is difficult to recover, and the Department does not consider it to be part of the scrap offset. Rather, the Department considers this dust to be included in the company's cost of manufacturing. See Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review, 65 FR 13717 (March 14, 2000) at Comment 7. While the petitioner asserts that 100 percent recovery of these larger pieces of steel is not possible, there is no evidence on the record to demonstrate that TMC's hammer supplier's accounting of scrap is not reasonable. Therefore, the Department is accepting TMC's reported methodology of accounting for scrap for these final results.

Comment 25: TMC Type of Steel

The petitioner claims that the TMC hammer supplier was unable to substantiate which type of

steel was used as an input. According to the petitioner, although it claimed that "rail top" was used for export and billet and round bar were used for PRC customers, the verification report states that the TMC hammer supplier was unable to support these assertions. The petitioner argues that this fundamental failure pertains to one of the most important issues of previous review, the steel input.

TMC does not specifically address this issue.

Department's Position:

The Department agrees with the petitioner. The Department will value the steel input for TMC's hammers based upon a weighted average of the three surrogate values applicable to the steel purchased by TMC's hammer supplier which the Department verified. The weighted average will be based upon the proportion of each type of steel that the TMC hammer supplier purchased for the year 2000.

Comment 26: TMC Paint Consumption

The petitioner states that the TMC hammer supplier reported paint using the same methodology as for steel (see Comment 23 above). According to the petitioner, the Department attempted a "reasonableness test" in the same manner as steel. The petitioner maintains that for the same reasoning as it noted above for steel, the TMC hammer supplier's methodology is unacceptable and the Department must consider this input as unverified.

In rebuttal, the respondent notes that the petitioner made no specific arguments regarding the reported paint factors in its case brief. Instead, the petitioner simply criticizes the Department's verification methodology. The respondent observes that the Department's verification results for paint closely match the reported average cap.

Department's Position:

The Department agrees with the petitioner that the reported product-specific paint "caps" should be verified against actual consumption based upon the respondent's books and records. However, the Department was only able to verify the total consumption figures for paint based upon its review of the factory's raw material consumption ledger. The only products made in this factory which use paint are subject merchandise. Therefore, the Department will consider all paint consumed by TMC's hammer supplier to be consumed for production of hand tools. We will allocate the full consumption to the merchandise subject to the review as follows: we will calculate a percentage difference between the reported consumption average, and increase paint consumption for every TMC hammer by that percentage.

Comment 27: TMC Coal and Electricity Consumption

The petitioner states that the Department's task at verification was to verify the numerator (coal

or electricity consumed) and denominator (steel consumed) in the production of hammers. The petitioner states that TMC's hammer supplier reported the values of coal, electricity and steel consumed and is responsible for demonstrating, at verification, how it determined these amounts. The petitioner contends that TMC's hammer supplier did not support any of these figures.

According to the petitioner, the Department found that amounts for coal and electricity were under-reported. Therefore, the petitioner asserts that TMC's hammer supplier failed verification of these amounts. The petitioner argues that the under-reporting is so substantial that it cannot be corrected or justified; it must be rejected.

Further, the petitioner maintains that "the Department's estimates of under-reporting are without value because they are based on an estimate for coal usage and an estimate for electricity usage." According to the petitioner, company officials had no basis of support for these estimated values either. The petitioner argues that verification is not intended to correct a response or to ameliorate a reporting deficiency and it would be inappropriate for the Department to calculate a "plug" for a failed verification item that is again based on an unverifiable number.

In rebuttal, TMC notes that the petitioner, in its case brief, argues that the factory was unable to support its reported consumption figures for electricity and coal. TMC states that the difference between the reported consumption figures and the verified consumption figures is small and easily explained by the fact that some figures were estimates made by factory personnel. In addition, TMC notes that the Department successfully verified electricity and coal in the 1998-1999 review and that figures reported for both factors in that review are comparable to figures reported in the instant review.

Department's Position:

The Department agrees with the petitioner in part. Unsubstantiated estimates of production use for any given factor of production cannot be accepted by the Department. However, the Department does not find that the coal and electricity consumption amounts found at verification should be entirely rejected. When the Department finds at verification that reported data is based upon unsubstantiated estimates, it may look to available records that may provide appropriate data. For instance, in Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246 (December 31, 1998), and accompanying Issues and Decision Memorandum at Comment 9, the Department rejected a respondent's yield-based allocation methodology for materials and other non-packing labor costs because the method relied purely on unsubstantiated estimates. Instead of relying upon the estimates, the Department allocated these costs to the different sizes of mushrooms based on production weights maintained by the company in its normal books and records.

The Department attempted to verify the coal consumption rates reported in TMC's response for the products manufactured in that factory. TMC reported a methodology which allocated the total consumption of coal to each tool based upon the ratio of total coal to the total steel consumed. Although the Department could not verify the product-specific coal consumption

rates because no records of product-specific coal consumption were available, it is reasonable for the Department to rely upon the total consumption figures for coal and steel based upon its review of the factory's raw material consumption ledger. We recalculated TMC's ratio for coal consumption based upon the total consumption figures derived at verification.

Similarly, the Department attempted to verify the electricity consumption rates reported in TMC's response for the products manufactured in that factory. TMC reported a methodology which allocated the total consumption of electricity to each tool based upon the ratio of total electricity consumed to the total steel consumed. Similar to the coal consumption rate stated above, the Department could not completely verify the electricity consumption rates provided by TMC. However, the Department verified three months of actual electricity bills and steel consumption, and was able to calculate a ratio of total electricity consumption to steel usage on that basis. In the absence of product-specific consumption rates for electricity, the Department recalculated TMC's electricity consumption rate based on the sampled three month period.

Comment 28: TMC Margin Calculation Errors

TMC alleges that the Department used incorrect formulas in calculating its margins. According to TMC, in the preliminary results, the Department applied incorrect formulas in the calculation of TMC's margins, where potential unpaid dumping duties (PUDD) were applied against U.S. values. TMC claims that this error grossly distorted TMC's preliminary dumping margins.

The petitioner did not address this issue.

Department's Position:

The Department agrees with TMC that an error was made with respect to the ranges used in margin calculations and it has been corrected for these final results.

Comment 29: TMC Inland Freight Distances

According to TMC, the Department calculated certain inland freight cost for one of its factories using the actual distance from the supplier to the factory that were further than the distance to the nearest port. TMC claims that this approach is contrary to the procedure mandated by the Courts and adopted by the Department in every other post-Sigma case.

In response, the petitioner states that while it normally agrees that the Department is forced to use the Sigma rule, that rule does not override verification failures. According to the petitioner, the Department examined one of TMC's factories which completely failed the inland freight portion of the verification. Thus, the petitioner argues that the Department must assume that all of TMC's factories misreported inland freight.

The petitioner points out that TMC's hammer suppliers are all part of the PRC entity. According to the petitioner, neither factory has established that it qualifies for a separate rate and neither

has submitted evidence that it is independent. The petitioner argues that if one part of the PRC entity fails, it all fails. In addition, the petitioner maintains that the Department simply cannot examine every transaction and every factory. Therefore, the petitioner contends that the Department should extrapolate that inland freight is unverifiable for all of TMC's suppliers and conclude that total AFA is warranted for TMC's failed inland freight. As AFA, the petitioner states that the Department should use the longest reported distance from any respondent in this review in lieu of the Sigma rule for the final results.

Department's Position:

As stated in comment 22, TMC had two hammer suppliers during the POR. The Department visited one of these suppliers, but was unable to verify the reported freight distances. As stated in comment 22, the Department is applying AFA for TMC's freight FOPs. Nonetheless, the Department finds that the Sigma distance cap still applies, as verification failure should not affect the policy rationale of Sigma. Under Sigma, the Department uses the lesser of the inland freight distances between the input supplier and the tool manufacturer, or the tool manufacturer and nearest port. In the instant review, none of the input suppliers' freight distances exceeded the distance to the nearest port. For a further discussion of the Department's position regarding the use of AFA for TMC's freight distances, see Comment 22 above.

Comment 30: TMC Inland Freight and Brokerage and Handling Calculation Errors

TMC maintains that in the Department's margin calculation sheet, the domestic inland freight and brokerage and handling charges appear to be based on the value of the merchandise rather than weight. TMC points out that while the column heading indicates weight, the calculation reflects value. Furthermore, the values are based on NVs. According to TMC, the Department's methodology for calculating inland freight and brokerage and handling double counts the charges.

The petitioner agrees with TMC.

Department's Position:

The Department disagrees with the petitioner and respondent. The surrogate value for inland freight in China was calculated on an Indian rupees per kilogram per kilometer basis. This value was applied in NV calculations for each CONNUMU on the basis of the weight of each factor of production, and, for the U.S. sales value adjustments, was converted to U.S. dollars. As there was no error, the Department will make no change in this calculation from the preliminary results.

Comment 31: TMC Packing

With regard to the verification of packing for TMC's hammer supplier, the petitioner notes that the Department found that TMC's hammer supplier's packing factors were unverifiable.

In its case brief, TMC notes that the fact that items, such as the packing material weights, could not be verified, was clearly beyond the control of the hammer supplier, which had disposed of all inventory along with the equipment. Further, TMC claims that some records were not easily available and the factory officials had to rely on their recollections to make informed estimates. In addition, in its rebuttal brief, TMC notes that there is no way, short of actually weighing the products packed and ready for shipment, to determine the weights of the packing materials. Since the factory was not in operation and had no inventory, such an approach was impossible. However, TMC points out that the packing weights reported in the instant review are virtually the same as those reported by TMC for similar hammers produced by a different factory, and that these have been verified.

Department's Position:

The Department was unable to verify TMC's packing weights. The Department visited only one of TMC's hammer supplier factories. As noted in comment 22, the Department was under the impression that the factory in question had not closed, but had temporarily ceased production. We note that TMC does specify the type of "similar" hammers or the verification report in its reference to packing weights for similar hammers which were verified. The Department cannot rely on data which is not on the record in the current review, whether it is verified or not. For a discussion of the Department's position regarding the application of AFA for TMC's packing FOP, see Comment 22 above.

Comment 32: TMC Discount/Adjustment

TMC alleges that there was an error in the Department's calculation of TMC's margin in that the Department deducted an amount for a "discount" for one of TMC's U.S. sales. TMC argues that upon checking TMC's records for this particular item, there was no discount but instead this item was a post-sale price adjustment, and that the Department verified this. TMC argues that the amount of this post-sale price adjustment should have been added, rather than deducted, to the gross unit price.

The petitioner claims that TMC has provided new information past the deadline set forth in section 351.301(b)(2) of the Department's regulations by including an invoice in its case brief that the petitioner could not find among the TMC verification exhibits; the invoice purports to prove that TMC reported a discount which was verified by the Department. The petitioner further notes that the Department made no reference to the verification of the discount in question in its verification report.

Department's Position:

The Department agrees with TMC in part. After reviewing TMC's February 6, 2002, submission, the Department finds that TMC did state on the record that the sale in question had a post-sale price adjustment that was incorrectly reported by TMC as a discount in its original

submission, and included a copy of correspondence between TMC and its customer that purported to reflect this. Although it is not clear why the actual invoice for the sale was not submitted or why the reporting error was not corrected in electronic data submitted to the Department at the time of the February 6, 2002, submission, the submission of the essential information was timely. Nonetheless, the Department disagrees with TMC's interpretation of the information provided. The correspondence between TMC and the U.S. customer provided in the February 6, 2002, submission indicates that TMC made the sale in question at the discounted price reported to the Department, for reasons that are business proprietary. See Heavy Forged Hand Tools from China - TMC's Additional Response to the Department's December 6, 2001, Supplemental Questionnaire at 3, and Exhibit 4. However, no adjustment was made to this sale price after the sale was made for the final results. Therefore, the Department will delete the incorrect discount, which erroneously reduced the sale price to zero.

Comment 33: TMC Marine Insurance Charges

TMC states that the Department erroneously included marine insurance charges for two observations that were FOB sales.

The petitioner did not address this issue.

Department's Position:

The Department agrees with TMC and has appropriately corrected the marine insurance surrogate values. We note that, although TMC identified two sales which included the erroneous marine insurance charges, there were actually three sales where this mistake applied. The Department has corrected all three.

Comment 34: TMC Ocean Freight

TMC notes that for the preliminary determination, the Department used a surrogate value for ocean freight for TMC. TMC contends that this approach disregards the Department's policy of using actual market-based prices when the quantity of shipments on market economy carriers was more than "minimal". Citing Shakeproof, TMC argues that the Department should use TMC's average market value rate for ocean freight on market economy carriers.

TMC maintains that the record shows the quantity of subject merchandise that TMC shipped on market economy carriers for which it paid the corresponding freight invoice in U.S. dollars. TMC contends that it used the same method of allocating its ocean freight as in previous reviews where the Department has used TMC's actual ocean freight rates instead of surrogate values. According to TMC, section 773(c)(1) of the Act provides that the Department should use the best available information. TMC argues the same principle applies in valuing ocean freight and similar expenses. TMC claims that it paid for ocean freight in a market economy currency and the price paid reflects the best available information.

The petitioner maintains that the Department should use a surrogate value for ocean freight, as it did in the preliminary determination. According to the petitioner, less than one-third of TMC's sales are shipped by market economy carriers. The petitioner argues that this does not meet the definition of "significant" required by the Shakeproof rule.

Department's Position:

The Department agrees with TMC, but finds no error in the preliminary results. In the preliminary results, the Department did in fact apply the weighted average market economy ocean freight charges to TMC's NME carrier shipments pursuant to the Shakeproof case. See Comment 11. Therefore, there will be no change from the preliminary results.

Comment 35: TMC Steel Tool Handles and Steel Wedges

TMC states that there should be no freight cost associated with all TMC steel handle and steel wedge (the wedge driven into the top of handles to hold the handle in the eye of the hammer, axe or pick head) factors, because these are produced by TMC's direct suppliers.

The petitioner states that there is no evidence on the record to support this claim.

Department's Position:

The Department disagrees with TMC. In its May 25, 2001, section D response, TMC reported steel handles and steel wedges as separate FOPs, apart from the steel input FOP. This reporting did not change in subsequent submissions. The steel used for the handles and wedges is not included in the steel column. That being the case, the freight costs associated with transporting that steel to the factory are not included either. The steel for the steel handles and steel wedges must have been transported to the factory, and since that is true, there must be a freight cost associated with it. It would be an error for the Department to maintain steel handles and wedges as a separate factor of production without adding a freight cost. TMC may choose to consolidate all steel as a single factor of production in one column for products with steel handles and wedges in subsequent reviews. In such case, all steel factor freight costs would also be consolidated with the steel factor of production. The Department will make no change from the preliminary results with respect to steel handles and wedges.

Comment 36: TMC Revocation

TMC states that when the errors are corrected, the Department should revoke the dumping order with respect to both hammers/sledges and picks/mattocks for TMC. According to TMC, it has sold those two categories without margins for three consecutive reviews and TMC expressly requested the revocation.

The petitioner states that TMC does not qualify for revocation because it has failed to achieve de minimis margins in three consecutive annual reviews. Further, the petitioner maintains that

TMC's failure to report sales of hammers/sledges as well as picks/mattocks is grounds alone for establishing dumping margins based on FA.

Department's Position:

The Department disagrees with TMC. Because TMC has a dumping margin for each order being reviewed, it does not qualify for revocation pursuant to 19 CFR 351.222(b)(1).

Comment 37: TMC Minor Errors and Corrections Presented at Verification

The petitioner asserts that TMC incorrectly reported the U.S. sales price for observations 5 and 15, overstating the price to its advantage. Although TMC presented this as a minor correction on the first day of verification, the result (an overstatement of total bars/wedges sales) is not a minor correction. Further, the petitioner contends that TMC reported the incorrect manufacturer and distance, again mostly to its advantage. According to the petitioner, not only did TMC report the incorrect manufacturer for 5 observations and subsequently, the incorrect distance (which TMC reported as a minor correction), TMC also reported the incorrect distance for those manufacturers that it did correctly identify.

TMC argues that its errors in reporting gross unit prices for observations 5 and 15 were typographical errors. Regarding the misidentified manufacturer, TMC asserts that this error did not affect the calculations since the product code was correct and the Department uses the product code, not the manufacturer, to match the NV with the U.S. price. Furthermore, although the inland freight error resulted from the manufacturer error, the correct ports of exportation were reported. Thus, TMC claims that there was no intent to misreport in an effort to avoid dumping duties.

Department's Position:

The Department agrees with TMC. TMC has provided the Department with the correct price for observations 5 and 15, and the Department will correct the data used in its analysis to reflect these corrections. The Department recognizes that TMC's price correction for observations 5 and 15 was incorrectly reported to TMC's advantage. However, TMC fully cooperated with the Department by supplying the correct price at the start of verification. We did not see any other instance where TMC misreported the price of a U.S. sale of subject merchandise. Because the transposition of digits appears to be a clerical error, the Department will correct the errors for the final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final determination and the final weighted-average dumping margins in the Federal Register.

Agree _____ Disagree_____ Let's Discuss_____

_____
Faryar Shirzad
Assistant Secretary
for Import Administration

_____
Date