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

SUMMARY

The Department of Commerce ("the Department") has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade ("the Court") in Shandong Huarong General Group Corporation and Liaoning Machinery Import & Export Corporation v. United States, Court No. 01-00858, Slip Op. 04-117 (September 13, 2004) ("Huarong II"). This remand pertains to the Department's application of adverse facts available ("AFA") to Shandong Huarong General Group Corporation ("Huarong") and Liaoning Machinery Import & Export Corporation ("LMC") because of their failure to provide information required for the Department's antidumping analysis. See Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 48026 (September 17, 2001) ("Final Results"). In Huarong II, the Court affirmed the Department's determination that Huarong and LMC were entitled to separate rates. However, the Court remanded the Department's decision to apply a rate of 139.31 percent as AFA, requiring the Department to revisit the evidence of the rate's relevance. Pursuant to the Court's order, the Department finds that the 139.31 percent rate is representative of the margins that we would have calculated for Huarong and LMC in the ninth review had they not received total AFA, with an increase to encourage cooperation.

BACKGROUND

In the Final Results, the Department determined that, due to the nature of Huarong's and LMC's verification failures and the inadequacy of their cooperation, the integrity of each respondents' reported data, on the whole, was compromised. Moreover, the Department determined that it was appropriate to rely upon AFA for purposes of determining the dumping margins for Huarong and LMC, pursuant to sections 776(a)(2)(A) and (C) of the Tariff Act of 1930, as amended ("the Act"). The Department therefore determined that Huarong and LMC had not adequately demonstrated their entitlement to rates separate from the government entity. As a consequence, the Department determined that Huarong and LMC should receive the PRC-wide entity's rate. See Final Results, 66 FR at 48028.

In Shandong Huarong General Group Corp. v. United States, Slip Op. 2003-135; 25 Int'l Trade Rep. (BNA) 2298 (Oct. 22, 2003) ("Huarong I"), the Court determined that the Department's use of AFA was justified with respect to Huarong's and LMC's sales and factors data, but remanded our decision to apply the PRC-wide entity's rate to Huarong and LMC. Pursuant to the Court's order, we reconsidered our determination that the verification failures called into question the separate rates information provided by Huarong and LMC during the course of the administrative review. Since the Department found no specific discrepancies with respect to the separate rates information, in our remand redetermination dated January 20, 2004, we determined that Huarong and LMC were entitled to separate rates. The Department further determined that the appropriate AFA rate for Huarong and LMC was 139.31 percent, which is the weighted-average dumping margin calculated for Tianjin Machinery Import & Export Corporation ("TMC") in the immediately preceding (eighth) administrative review for the bars/wedges order.[1] See Heavy Forged Hand Tools From the People's Republic of China: Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Reviews, 68 FR 37121 (June 23, 2003) ("Amended Results of 1998-1999 Review Pursuant to Court Decision"). This rate was, and continues to be, the highest dumping margin for the bars/wedges order that has not been judicially invalidated from any prior segment of the antidumping proceeding at issue.

In its September 13, 2004, opinion, the Court affirmed the Department's conclusion as to the companies' entitlement to separate rates. The Court also went on to find that the Department must choose an AFA rate that is a reasonably accurate estimate of each companies' actual rate, with some built-in increase intended to encourage cooperation. In its ruling, the Court stated that the Department failed to explain why it was more reasonable to utilize a rate calculated for a different company in the immediately preceding (eighth) review, rather than a rate derived from Huarong and LMC data for the same review. Further, the Court found the Department had failed to explain why a rate over 100 percentage points higher than the rates calculated for Huarong and LMC in the eighth review reasonably reflected Huarong and LMC's experience in the ninth review. Because the 139.31 percent rate represents a five-fold increase between the eighth and ninth reviews, the Court questioned whether the rate was aberrational and not supported by substantial evidence. The Court directed the Department to revisit the evidence cited for its decision to use the 139.31 percent rate. If the Department should continue to apply this rate, the Court directed the Department to explain its reasons for not choosing a previous antidumping duty rate calculated for Huarong and LMC themselves.

On December 13, 2004, we released our Draft Results of Redetermination to Ames True Temper ("Ames")[2] and to the respondents, Huarong and LMC, for comment. Ames submitted comments on December 30, 2004, and Huarong and LMC submitted comments on January 4, 2005. We have addressed the parties' comments below, and there are no substantive changes to the draft.

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

[2] Ames was the petitioner in the underlying review. See Final Results, 66 FR at 48027. Although Ames is not a party to this litigation, it has entered comments as a domestic interested party.

ANALYSIS

AFA Rate Selected

Pursuant to section 776(a)(2)(C) of the Act, the Department has determined that it is appropriate to base Huarong's and LMC's dumping margins for their sales of merchandise covered by the antidumping duty order on bars/wedges on facts available because Huarong and LMC significantly impeded the instant proceeding. In selecting from among facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Section 776(b) of the Act goes on to note that an adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information on the record. It is the Department's practice normally to select the highest margin determined in the proceeding, corroborate it to the extent practicable if it is secondary information, and apply it to uncooperative respondents. See Kompass Food Trading v. United States, 24 CIT 678 (2000) (using highest calculated margin from the investigation). Consistent with the January 20, 2004, remand redetermination and the Department's practice, the Department continues to find that the appropriate AFA rate for Huarong and LMC is 139.31 percent, a dumping margin calculated in the 1998-1999 administrative review of the antidumping duty order on bars/wedges.

Corroboration of the AFA Rate

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 103-316 at 870 (1994) and 19 CFR § 351.308(d).

The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. The courts have stated that "{b}y requiring corroboration of AFA rates, Congress clearly intended that such rates should be reasonable and have some basis in reality." See F.Lli De Cecco Di Filippo Fara S. Martino S.p.A., v. U.S., 216 F.3d 1027, 1034 (Fed. Cir. 2000) ("F.Lli De Cecco"). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

Concerning reliability, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total AFA a dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin. In the instant case, the rate selected as AFA, 139.31 percent, was calculated using verified information provided by TMC during the 1998-1999 administrative review of the bars/wedges order. See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China, 65 FR 43290, 43291 (July 13, 2000); and Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review, 65 FR 50499, 50500 (August 18, 2000) ("Amended Final Results of the Eighth Review"). Furthermore, this rate was not judicially invalidated and we have no new information that would lead us to reconsider the reliability of the rate being used in this case. Therefore, we consider this rate to be reliable.

The Court has upheld the Department's chosen AFA rates when the rates sought to be imposed are "relevant, and not outdated, or lacking a rational relationship." See Ferro Union, Inc. v. United States, 23 CIT 178, 205, 44 F. Supp.2d 1310, 1335 (1999) ("Ferro Union"). Further, the rate chosen must have some relationship to commercial practices in the particular industry. See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1340 (Fed. Cir., 2002) ("Ta Chen"). The Department selected as AFA a rate calculated for another PRC company, TMC, in the immediately preceding review. This rate therefore reflects recent commercial activity by Chinese exporters. See 1998-1999 Hand Tools Review. These facts alone establish that this rate has some relationship to commercial practices in the industry – indeed recent commercial practices – and are a strong indication of the relevance of this information.

In Huarong II, the Court ruled that, because the Department's chosen AFA rate represents a five-fold rate increase in the margins for Huarong and LMC between the eighth and ninth reviews, the Department failed to show how its chosen AFA rate bears a rational relationship to the actual sales data for Huarong and LMC. See Huarong II at 16. The Court relies in key part on statements in Ta Chen, 298 F.3d at 1339-40, that the AFA rate "must have some relationship to commercial practices in the particular industry" and that "Commerce acts within its discretion so long as the rate chosen has a relationship to the actual sales information available."

The Department notes that margins in the bars/wedges order have varied widely from year to year and company to company.[3] For example, Fujian Machinery & Equipment Import & Export Corporation ("FMEC") jumped from 1.05 percent in the 1994-1995 review to 36.76 percent in the 1995-1996 review, Huarong increased from 1.27 percent in the 1997-1998 review to 27.28 percent in the 1998-1999 review, LMC grew from zero percent in the 1997-1998 review to 27.18 percent in the 1998-1999 review, and TMC dropped from 139.31 percent in the 1998-1999 review to 0.56 percent in the 1999-2000 review. When looking at the rates for different companies within a particular review period, we found that rates ranged from 2.94 percent to 38.30 percent in the 1996-1997 review and from zero percent to 47.88 percent in the 1997-1998 review. As these examples clearly illustrate, margins in the bars/wedges order have experienced greater than 25-fold increases from review to review, and more than 19-fold differences between

[3] All cited margins are the final weighted-average margins calculated for the respondents after the conclusion of litigation.

companies in a particular review period. Thus, selecting a rate for Huarong and LMC as AFA that is a five-fold increase from the margins calculated in the previous review is consistent with the volatile nature of the rates for bars/wedges. TMC's recent dumping at 139.31 percent is evidence that companies in fact have dumped this class or kind of merchandise at such margins in the year immediately preceding this administrative review. Further, the change in Huarong's and LMC's rates is less than TMC's decrease from 139.31 percent to 0.56 percent in the ninth review. Given the history of rates in the bars/wedges order, it is reasonable to conclude that the rates for Huarong and LMC may have been substantially higher than in the eighth review and that these uncooperative companies may benefit at even 47.88 percent.

Consistent with the cited decisions of the Court, we also looked to the respondents in the contemporaneous (ninth) review in order to examine the relevance of the chosen AFA rate of 139.31 percent. In NSK Ltd. v. United States, Slip Op. 2004-105 (Ct. Int'l Trade, 2004) ("NSK Ltd.") at 39, the Department used transaction-specific margins from other respondents in a review to corroborate an AFA rate that originated from the investigation. In the ninth review of this proceeding, Huarong and LMC originally were denied separate rates and received total AFA for bars/wedges as part of the PRC-wide entity. (Huarong and LMC were granted separate rates in Huarong I.) In addition, FMEC failed to respond to the Department's questionnaire and therefore remained within the PRC-wide entity while Shandong Machinery Import & Export Corporation ("SMC") earned a separate rate, but received total AFA for bars/wedges. Given that Huarong, LMC, and SMC failed to cooperate and thus received total AFA, and FMEC remained within the PRC-wide entity (which also received total AFA), the only respondent left from the ninth review that could possibly serve as a basis of corroborating the rate selected as AFA is TMC. In the ninth review, TMC received a calculated, weighted-average margin of 0.56 percent for bars/wedges, which is nearly a *de minimis* margin under 19 CFR § 351.106(c)(1). TMC's information does not provide a suitable basis for corroborating the selected rate, nor do we consider this one cooperative respondent to represent the behavior of uncooperative respondents.

As there is no data available in the ninth review to use for the purpose of corroboration, we analyzed sales in the prior review, the eighth review, to demonstrate that the rate selected as AFA is relevant to Huarong and LMC. In the remand redetermination calculations pursuant to the Amended Results of 1998-1999 Review Pursuant to Court Decision, the Department calculated transaction-specific margins for Huarong and LMC. See Final Results of Redetermination Pursuant to Court Remand, Shandong Huarong General Corp. v. United States, dated September 20, 2001 (http://www.ia.ita.doc.gov/remands/01-88.htm), see also Memorandum from Jeff Pedersen, Financial Analyst, to the File, "Calculation of Redetermination," dated September 20, 2001. Several of these transaction-specific margins for both Huarong and LMC are well above 47.88 percent, which is the second highest margin ever calculated for bars/wedges. See Calculation of Redetermination and footnote 3 of this memorandum. In fact, a significant number of the transaction-specific margins are nearly as high as the 139.31 percent rate selected as AFA. For a discussion of these transaction-specific margins, please see the Memorandum from Mark Manning, Acting Program Manager, to Holly A. Kuga, Senior Office Director, "Corroboration of the Adverse Facts Available Rate Selected for the Ninth Review Redetermination," dated December 10, 2004 ("Redetermination Corroboration Memorandum").

We compared the transactions that approximate the proposed AFA rate of 139.31 percent to other U.S. sales of bars/wedges made by Huarong and LMC. The U.S. transactions corroborating the AFA rate do not appear to be aberrant or unusual in any way. They appear to be made in commercial quantities. Because we are making an adverse inference with regard to Huarong and LMC, we regard these transactions as representative of the margins we would have calculated for these companies in the ninth review (with a built-in incentive to encourage cooperation) had they not received total AFA. The number of U.S. transactions receiving a margin greater than 47.88 percent is a representative figure whether it is measured by the number of transactions, the value of the transactions, or the quantity of the transactions. See Redetermination Corroboration Memorandum. Because these transaction-specific margins for Huarong and LMC in the eighth review are nearly as high as the rate selected as AFA, and these margins were calculated for transactions involving the same class of merchandise sold in the same market, under similar demand and supply conditions, as the AFA rate, we find that they support the relevance of the rate selected as AFA.

Since the rate selected as AFA is a rate calculated for a cooperating respondent from data in the prior review and is consistent with certain transaction-specific margins for Huarong and LMC calculated in that prior review, the chosen rate is a "reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to noncompliance." See F. Lii de Cecco, 216 F.3d at 1032.

Moreover, the Department assumes that if an uncooperative respondent could have demonstrated that its dumping margin is lower than the highest prior margin it would have provided information showing the margin to be less. See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190-91 (Fed. Cir. 1990). Since the highest cash deposit rates for bars/wedges being collected by U.S. Customs and Border Protection ("CBP") during the period of the ninth review (i.e., from February 1, 1999, through January 31, 2000) for the PRC-wide entity were 66.32 percent and 47.88 percent,[4] and the Department assumes that a respondent will cooperate if its actual margin is less than such rate, it is reasonable to conclude that the actual margins for Huarong and LMC in the ninth review were greater than 47.88 percent.[5]

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[4] 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 (April 6, 1998) ("Final Results of the Sixth Review"); and see Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Reviews, 64 FR 43659 (August 11, 1999) ("Final Results of the Seventh Review").

[5] The rate 66.32 percent was calculated for FMEC in the final results of the 1992/1993 administrative review. On February 17, 1999, the Court upheld the Department's second redetermination on remand which reduced this rate to 47.88 percent. See Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews in Accordance with Court Decision, 65 FR 15615 (March 23, 2000).

The corroboration requirement for AFA rates should not allow respondents to benefit from refusing to provide information. This principle is set forth in the litigation history of Ta Chen. The respondent in Ta Chen argued before the Court that the Department could not select a rate for use as partial AFA that was calculated for only a *de minimis* number of its total sales. See Ta Chen Stainless Steel Pipe, Inc., v. United States, Slip-Op 2000-107, 24 CIT 841 (Ct. Intl. Trade 2000), at 24. The Court disagreed with the respondent on the grounds that, if the Court excluded the selected AFA rate on this basis and instead instructed the Department to use the rate advocated by the respondent as partial AFA, the Department would not apply an adverse inference to the respondent's sales data because the resulting weighted-average margin would be *de minimis*.

In addition, the Department's practice of selecting the highest margin assigned to any respondent in an antidumping proceeding and applying it to uncooperative respondents is also in accordance with law, as it has been upheld by the Court and affirmed by the CAFC. See Reiner Brach Gmbh & Co. KG v. United States, 206 F. Supp. 2d 1323 (Ct. Int'l Trade 2002) (noting that the Department may, but is not required to use, the highest rate imposed on a cooperating company, and affirming the Department's discretion to use the highest available margin, there the all-others rate); Cf. Branco Peres Citrus, S.A., v. United States, 173 F. Supp. 2d 1363, 1376 (Ct. Int'l Trade 2001) (affirming the Department's use of the highest transaction-specific dumping margin as respondent's facts available rate to ensure that the respondent did not obtain a more favorable rate by being uncooperative).

Accordingly, we have determined that the selected rate of 139.31 percent for bars/wedges is both reliable and relevant. Therefore, we have corroborated this rate, to the extent practicable, in accordance with section 776(c) of the Act.

Separate Rates for Huarong and LMC

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

Shandong Huarong General Group Corporation

bars/wedges... 139.31%

Liaoning Machinery Import & Export Corporation

bars/wedges... 139.31%

INTERESTED PARTIES COMMENTS

Comment 1: Ames concurs with the Department's selection of 139.31 percent as the AFA rate.

Ames concurs with the Department's Draft Results of Redetermination and believes that the Department's choice of 139.31 percent as the AFA rate was a reasonable one, and was fully supported by corroborated record evidence. Ames provides a list of the principal failures Huarong and LMC made during the underlying administrative review and states that both the Department and the Court recognized that Huarong and LMC significantly impeded the review. Given these failures, Ames reiterates its belief that the Department's application of AFA was supported by the record evidence. Ames continues by noting that the margins in the order have varied widely over the history of the proceeding. For example, Ames states that Huarong's margin increased twenty-two fold in the eighth review – from 1.27 percent to 27.28 percent – while LMC's margin increased twenty-seven fold – from 0.00 to 27.18 percent. Ames contends that these increases and variances alone are sufficient for corroborating the 139.31 percent margin. Ames also states that it agrees with the Department that transactions from the ninth review could not serve as a basis of corroboration, and that the Department was required to look at margins from the prior administrative review. Ames agrees with the Department that it is persuasive corroboration that several transaction-specific dumping margins from the prior review were well above 47.88 percent, and that a significant number of these margins were nearly as high as the chosen AFA rate. Since TMC, the respondent for which the 139.31 percent margin was calculated, is a producer of the same like product in the same country, selling through the same channels, Ames concludes that the Department's utilization of Huarong's and LMC's eighth review transaction-specific margins served as a valid basis for corroborating the 139.31 percent AFA margin.

Department's Position:

The Department agrees with Ames that the 139.31 percent rate selected as AFA is reasonable and supported by substantial evidence on the record.

Comment 2: The Department's chosen AFA rate is unfairly high compared to prior rates that Huarong and LMC have received.

Huarong and LMC argue that the AFA rate imposed by the Department is extremely high in comparison with their previous calculated antidumping margins, and is patently unfair. Huarong and LMC state that, aside from the AFA rate the Department assigned Huarong and LMC in the instant review, the highest margin for either company prior to the eighth administrative review were the rates assigned in the 1996-1997 (sixth) review: 34.00 percent for Huarong and 2.94 percent for LMC. Huarong and LMC contend that they have consistently participated in the administrative reviews of the order and that the Department has successfully verified the information they submitted. Despite this history of cooperation, Huarong and LMC argue that the Department unfairly imposed the rate of 139.31 percent, a rate more than three times the highest rate previously assessed by the Department.

Department's Position:

The Department disagrees with Huarong and LMC. The argument that the selected AFA rate is unfair in relation to previous rates calculated for Huarong and LMC is not compelling. As we stated in our analysis at page 4 above, margins in the bars/wedges order have experienced greater than 25-fold increases from review to review, and more than 19-fold differences between companies in a particular review period. Thus, selecting a rate for Huarong and LMC as AFA that is a five-fold increase from the margins calculated in the previous review is consistent with the volatile nature of the rates for bars/wedges. The 139.31 percent rate is only somewhat higher than some of Huarong's and LMC's calculated transaction-specific margins in the immediately preceding eighth administrative review. See page 6, above. Furthermore, as we stated in our analysis at page 5 above, the cash deposit rates in effect for bars/wedges for the PRC-wide entity during the period of the instant review were 66.32 percent and 47.88 percent. The Department assumes that a respondent will cooperate if its actual margin is less than these rates, since the respondent cannot hope to obtain a lower rate through non-cooperation. Since Huarong and LMC were not cooperative, it is reasonable to conclude that the actual margins for Huarong and LMC in the ninth review were greater than 47.88 percent. Therefore, the Department finds that, after considering the entire record of the proceeding, the selected AFA rate is reasonable.

Comment 3: The AFA rate of 139.31 percent includes a surrogate value for steel that is aberrational when compared to market economy purchase prices.

Huarong and LMC argue that the Department's use of the 139.31 percent rate is improper because this rate includes a steel bar surrogate value that is aberrational when compared to the market economy price paid for steel bar. Huarong and LMC argue that, in the eighth administrative review, a hammer/sledge producer purchased steel bar from a market-economy supplier for an average price of $281.53 per metric ton. Furthermore, Huarong and LMC note that the surrogate value for steel bar used by the Department in calculating the 139.31 percent rate for TMC was $906.52 per metric ton. The respondents argue that the Department used the surrogate value of $906.52 per metric ton even though it knew that the average price actually paid for steel during that period of review ("POR") was $281.53 per metric ton. Given the unreasonably high surrogate value for steel bar, Huarong and LMC contend that it is wrong to apply the 139.31 percent rate as AFA.

Department's Position:

The Department disagrees with Huarong and LMC that the chosen AFA rate is based upon a steel surrogate value that is aberrational or unreasonably high. During the underlying administrative review, the Department issued amended final results in which we reviewed the Indian import statistics for all direct materials, including the steel bar surrogate value, and excluded aberrational data from the surrogate value calculations. See Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews, 65 FR 50499, 50500 (August 18, 2000). Given that the Huarong and LMC acknowledge in their comments that the Department excluded aberrational data from the steel surrogate value calculation, we find that the respondents are attempting to reargue the eighth administrative review of the order, for which litigation has ended. Huarong and LMC presented arguments to the Department regarding the steel bar surrogate value during the eighth administrative review, which the Department considered. See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China, 65 FR 43290 (July 13, 2000) (Hand Tools Final Results 1998-1999), and the accompanying Issues and Decisions Memorandum at Comments 6, 7 and 8. The Court upheld the Department's surrogate value for steel in the eighth administrative review, after Huarong and LMC presented the same arguments in litigation. See Shandong Huarong Gen. Corp. v. United States, 159 F. Supp. 2d 714, 719-725 (Ct. Int'l Trade, 2001) ("Shandong Huarong I").

On October 31, 2001, the Court sustained the redetermination made by the Department in the eighth administrative review. See Shandong Huarong General Group Corp., Liaoning Machinery Import & Export Company, and Tianjin Machinery Import & Export Corp. v. United States, 177 F. Supp. 2d 1304 (Ct. Int'l Trade 2001). On June 23, 2003, the Department published its amended final results pursuant to final court decision, assigning TMC the rate of 139.31 percent. See Heavy Forged Hand Tools from the People's Republic of China: Notice of Final Court Decision and Amended Final Results of Antidumping Administrative Reviews, 68 FR 37121 (June 23, 2003) ("Hand Tools Amended Final Results 1998-1999"). Thus, the respondents' contentions that the Indian import statistics are aberrational, and that the use of the forged steel surrogate value is not supported by substantial evidence, have already been considered and rejected by the Court. As the court decision is final, the opportunity to challenge any aspects of the Department's rate calculations in the eighth administrative review period has passed.

Comment 4: The Department failed to address adequately the different product mixes used for the TMC rate from the eighth administrative review, and the Huarong and LMC product mixes during the instant review.

Huarong and LMC argue that the rate selected by the Department as AFA does not bear a rational relationship to the actual sales data Huarong and LMC reported in the ninth review because of the differences in the product mix between TMC and the respondents. The respondents note that, in the eighth review, TMC sold seven products in the bars/wedges order, two of which were bars. By quantity, TMC's sales of wedges accounted for roughly 99 percent of its total sales in the bars/wedges order. In calculating the 139.31 percent rate, the Department applied the forged steel bar surrogate value to all sales, of all seven products.

Huarong states that all of its sales in the eighth administrative review under the bars/wedges order were bars, and that the Department used the forged steel bar surrogate value for only two of the thirty-two types of bar products it sold. Likewise, LMC states that roughly 93 percent (by quantity) of its sales of bars/wedges in the eighth review were of bars. Furthermore, the Department used the forged steel bar surrogate value for only two of the twenty-two bar products LMC sold. The respondents observe that the transaction-specific margins the Department is using for corroboration of the AFA rate are sales of bar products that use the forged steel bar surrogate value. In contrast, Huarong and LMC argue that 99 percent (by quantity) of the bars/wedges sales used in the calculation of the AFA rate (TMC's bars/wedges sales) were of wedges.

Huarong and LMC contend that the Department's Draft Results of Redetermination leaves several questions unanswered. Specifically, the respondents ask if the Department has any record information that: (1) the wedges exported by LMC were made with forged steel; (2) Huarong used any forged steel to make bars; and (3) any producer of subject merchandise in China (besides the producer that reported a market-economy input in the eighth review) ever used forged steel to forge hand tools. In addition, Huarong and LMC ask if the Department evaluated the 1998 U.S. import data showing values for bars/wedges (for Harmonized Tariff Schedule subheading 8205.59.3000), which they state is less than the forged steel surrogate value used by the Department in calculating the 139.31 percent rate used as AFA.

Department's Position:

We disagree with Huarong and LMC that the differences in the product mix sold by the respondents and TMC renders the 139.31 percent rate unfit for use as AFA. Bars and wedges have always been considered the same class or kind of subject merchandise from the beginning of this proceeding. See Initiation of Antidumping Duty Investigations; Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China, 55 FR 18364 (May 2, 1990). The Department finds no reason to divide the order for the purpose of selecting an appropriate AFA rate. Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, a final investigation determination, a previous administrative review, or any other information placed on the record. The Department chose, consistent with section 776(b) of the Act, to select as AFA a rate calculated for the same class or kind of merchandise, pursuant to the same order, from the previous administrative review. Furthermore, as Huarong and LMC did not cooperate with the Department in the ninth administrative review, the Department cannot make a presumption about the types of product models that Huarong and LMC sold during the review period. Moreover, in NSK Ltd., the Court rejected a similar argument, where a respondent argued that a rate calculated for a manufacturer should not be applied as AFA to a reseller. See NSK Ltd. at 38. The Court recognized that the statute does not require the Department to exclude margins from its selection of AFA merely because a respondent can allegedly distinguish his business from that of another respondent company. It would be unworkable to limit the rates available for use as AFA to those which mirror the experience of particular respondents. As explained above, even here, where there is a long history, the rates available for use as AFA are limited. The Department cannot exclude rates based upon whether they were calculated for a producer or reseller, whether there is a model match between two companies, or whether there are similar production processes.

Similarly, nothing in the statute or the applicable regulation limits the Department's discretion to choose a rate based on the type of material inputs used in the rate's calculation. Accordingly, we find that the respondents' argument regarding the type of steel used to produce subject merchandise is not an appropriate consideration for selecting an AFA rate. Moreover, as Huarong and LMC did not cooperate in the ninth review, we cannot presume that the respondents manufactured their bar products using steel billet or steel scrap, instead of forged steel bar. Furthermore, since most respondent companies (such as LMC and TMC) in the heavy forged hand tools orders are trading companies, the type of steel used to make subject merchandise may vary as they source merchandise from different factories. Trading companies often have many suppliers and are capable of dropping and adding suppliers as business requires. Likewise, producers such as Huarong may change their production processes or material inputs. Because the type of steel used to produce subject merchandise may change between reviews, the type of steel used to produce subject merchandise is not pertinent to the selection of the AFA rate.

However, assuming *arguendo* that the type of steel used to produce subject merchandise is relevant to the Department's selection of AFA, we note that the Department used the forged steel bar surrogate value in calculating TMC's 139.31 percent rate, and in calculating the transaction-specific margins for Huarong and LMC in the eighth review. Since the transaction-specific margins from Huarong and LMC in the eighth review used the same type of steel as the products which constitute the 139.31 percent rate, also from the eighth review, we find that the comparison is appropriate as it is on an apples-to-apples basis.

Comment 5: The Department failed to address adequately the relevance of dumped and subsidized prices used to determine the surrogate values for the AFA rate.

Huarong and LMC contend that the Department is required to examine the calculation of the 139.31 percent rate to determine if the calculation includes dumped or subsidized prices from certain countries. Huarong and LMC state that the Department has interpreted the legislative history related to the 1988 amendments to the Omnibus Trade and Competitiveness Act, which added the NME methodology provisions, to require the Department to disregard market economy prices where there is reason to believe or suspect that the prices may be dumped or subsidized. Huarong and LMC state that the Court has upheld the Department's refusal to use surrogate prices when there was reason to believe or suspect that such prices may be dumped or subsidized, and the Department has expressly applied the prohibition against using subsidized prices to imported factor inputs. Huarong and LMC contend that the Department's policy is that as long as there are any generally available export subsidies in the country in question, the Department has sufficient basis to conclude there is reason to believe or suspect that the prices of goods provided by any supplier from that country may be subsidized. Huarong and LMC state that the Department has not limited its subsidy suspicion policy solely to U.S. countervailing duty determinations to show that there are generally available "export" subsidies in the country in question. Huarong and LMC also contend that the Department rejects prices where there were "generally available" subsidies, and that the Department's policy is supported by the legislative history. Where the facts of a U.S. or third-country finding are sufficient to allow the Department to infer that there are generally available subsidies, Huarong and LMC state that the Department will consider that it has particular and objective evidence and, hence, a reason to believe or suspect that prices of the input from that country are subsidized. Huarong and LMC state that in Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part, 69 FR 12119 (March 15, 2004), the Department determined that in addition to excluding Indian imports from South Korea, Indonesia, and Thailand, "there was sufficient evidence to continue to exclude Indian import statistics for the United Kingdom, Belgium, Canada and Germany from our calculations, in accordance with the Department's subsidy suspicion policy."

Huarong and LMC assert that the Department's Draft Results of Redetermination leaves several questions unanswered. Specifically, the respondents ask the following questions: (1) Did the Department use any Indian imports from South Korea, Indonesia, and Thailand to calculate any surrogate value used in the AFA rate of 139.31 percent; (2) If the Department followed its subsidy suspicion policy in calculating the 139.31 percent, which countries supplying steel to India are subject to U.S. AD or CVD orders; (3) Why did the Department include import statistics from those countries with generally available subsidies and subject to CVD orders; (4) Given that the World Trade Organization found that the U.S. subsidizes exports through the use of a special tax treatment for "Foreign Sales Corporations," why did the Department fail to exclude Indian imports from the United States when it calculated the surrogate values used in generating the AFA rate; and (5) Does the Department apply a *de minimis* standard to its subsidy suspicion policy?

Department's Position:

We disagree with Huarong and LMC that the Department is required to examine the calculation of the 139.31 percent rate to determine if the calculation includes dumped or subsidized prices from certain countries. We note that the opportunity to challenge the 139.31 percent rate for bars/wedges has passed. The Department calculated the 139.31 percent rate for bars/wedges in the eighth administrative review covering the period February 1, 1998, through January 31, 1999. Huarong and LMC were aware of the Department's policy regarding the exclusion of certain surrogate country import prices in valuing factors of production ("FOP"). The respondents challenged certain aspects of the Department's final results and amended final results for the 1998-1999 review period before the Court, but did not argue that the Department should have excluded from the Indian trade statistics imports that the respondents believe are subject to generally available subsidies. Having failed to raise the issue during either the administrative or judicial proceedings relating to the eighth review, the respondents cannot raise the issue now. On October 31, 2001, the Court sustained the redetermination made by the Department in the eighth administrative review. See Shandong Huarong General Group Corp., Liaoning Machinery Import & Export Company, and Tianjin Machinery Import & Export Corp. v. United States, 177 F. Supp. 2d 1304 (Ct. Int'l Trade 2001). On June 23, 2003, the Department published its amended final results pursuant to final court decision, assigning TMC the rate of 139.31 percent. See Heavy Forged Hand Tools from the People's Republic of China: Notice of Final Court Decision and Amended Final Results of Antidumping Administrative Reviews, 68 FR 37121 (June 23, 2003) (Hand Tools Amended Final Results 1998-1999). As this court decision is final, the opportunity to challenge any aspects of the Department's rate calculations in the eighth administrative review period has passed.

Comment 6: The Department failed to address adequately the verification used to validate the accuracy of the AFA rate.

Huarong and LMC state that the Department claims that the AFA rate was based on verified data. Huarong and LMC contend that the bars/wedges they exported used three types of steel, and there is an absence of evidence that the bar they used was "forged." The respondents contend that there was no need for a factory to use forged steel since the factories do the forging themselves. Huarong and LMC state that the Results of Redetermination leaves several questions unanswered. Specifically, the respondents ask the following questions: (1) Has the Department ever verified any TMC factory that used forged steel; (2) Has the Department verified any hand tools factory in China that made bars other than Huarong, and has the Department ever determined that any bar factory used forged steel to make subject bars; and (3) Has the Department considered any record evidence that Huarong actually used "merchant grade" steel in the production of subject merchandise.

Department's Position:

The Department disagrees with Huarong and LMC. As stated in the Department's position in comments 3, 4 and 5 above, Huarong and LMC are attempting to continue litigation for the eighth administrative review, using the same arguments that they previously presented and the Court rejected, after the end of litigation in that review. Furthermore, in regard to the respondents' ambiguous references to Department verification findings in various reviews with respect to steel FOP, the Court has repeatedly established that "verification is a spot check and is not intended to be an exhaustive examination of the respondent's business." See FAG Kugelfischer Georg Schafer AG v. United States, 131 F. Supp. 2d 104 (CIT 2001); Inland Steel Industries, Inc. v. United States, 967 F. Supp. 1338, 1369 (CIT 1997); Monsanto v. United States, 698 F. Supp 275, 281 (CIT 1988). The Department is not required to examine every document supporting a respondent's questionnaire response in order to conclude that the response has been verified. During the eighth administrative review, the Department selected and verified those items it considered important in determining the accuracy and completeness of TMC's submitted data. The Court examined the record evidence supporting the Department's finding that Huarong, LMC, and TMC used steel bar to make subject merchandise and upheld the Department's finding. See Shandong Huarong Gen. Corp. v. United States, 159 F. Supp. 2d 714, 719-725 (Ct. Int'l Trade, 2001).

FINAL RESULTS OF REMAND REDETERMINATION

Upon a final and conclusive court decision, the Department will issue amended final review results and liquidation instructions to CBP identifying an antidumping duty rate of 139.31 percent for Huarong's and LMC's exports of merchandise subject to the antidumping duty order on bars/wedges for the period February 1, 1999, through January 31, 2000.

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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Date