

69 FR 60980, October 14, 2004

A-570-891  
Investigation  
Public Document  
Off 1: SCho/ART/Alexy

October 6, 2004

**MEMORANDUM TO:** James J. Jochum  
Assistant Secretary  
for Import Administration

**FROM:** Jeffrey A. May  
Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Investigation of Hand Trucks and Certain Parts Thereof from the  
People's Republic of China

---

## SUMMARY

We have analyzed the consolidated case brief submitted by Qingdao Huatian Hand Truck Co., Ltd. ("Huatian"), Qingdao Taifa Group Co., Ltd. ("Taifa"), and True Potential Co., Ltd. ("True Potential") and the consolidated rebuttal brief submitted by Huatian, Qingdao Future Tool Inc. ("Future Tool"), Taifa, and True Potential; the consolidated case brief and consolidated rebuttal brief submitted by Gleason Industrial Products, Inc., and Precision Products Inc. (collectively, "the petitioners"); and the case brief submitted by Qingdao Zhenhua Industrial Group Corporation ("Zhenhua") for the investigation of hand trucks and certain parts thereof ("hand trucks") from the People's Republic of China ("PRC"). We have also analyzed supplemental case and rebuttal briefs submitted by Taifa and the petitioners on whether Taifa's July 30, 2004, submission should be considered as new factual information. As a result of our analysis, we have made changes to the margin calculations from the Preliminary Determination. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is a complete list of the issues in this investigation for which we received comments by the respondents and petitioners:

### Company Specific Issues

Comment 1: The Department Should Apply Facts Available to Huatian, Taifa, True Potential, and Xinghua.

### Huatian

- Comment 2: The Department Should Revise Huatian's FOP Data to Account for Purchased Bearings.
- Comment 3: The Department Should Assign an Appropriate Surrogate Value for Axle Rods for Huatian.
- Comment 4: The Department Should Apply Facts Available to Value Steel Plate for Huatian.
- Comment 5: The Department Should Treat Huatian's Hand Truck Samples as a Quantity Discount.
- Comment 6: The Department Should Not Adjust Huatian's Sales Transactions with a Negative Net United States Price.

### Taifa

- Comment 7: The Department Should Accept Taifa's July 30, 2004, Submission.
- Comment 8: The Department Should Disregard Taifa's Market Economy Purchases.
- Comment 9: The Department Should Consider the Role Played by Taifa Import & Export Company in Calculating the Selling, General and Administrative Expenses for Taifa.
- Comment 10: The Department Should Adjust Taifa's Sales Database to Reflect Customer Discounts.
- Comment 11: The Department Should Revise Taifa's FOP Database to Account for Packing Materials.

### True Potential

- Comment 12: The Department Should Add Trading Company Factors for SG&A and Profit in Calculating True Potential's Normal Value.

### Separate Rates

- Comment 13: The Department Should Deny Separate-Rates Treatment for All Respondents.
- Comment 14: The Department Should Not Calculate a Separate Rate for True Potential.

Comment 15: The Department Should Calculate a Separate Rate for Zhenhua.

Comment 16: The Department Should Not Calculate Separate Rates for Future Tool and Shangdong.

#### General Issues

Comment 17: The Department Should Not Use the Indian Electricity Tariff Because it is Aberrational.

Comment 18: The Department Miscalculated SG&A and Profit Amounts.

Comment 19: The Department Should Not Use Aberrational Financial Data to Value Factory Overhead, SG&A Expenses, and Profit.

Comment 20: The Department Should Include the Cost of Packing Materials and Labor in Calculating Factory Overhead and SG&A.

Comment 21: The Department Should Include Financial Data from An Indian Hand Truck Producer in Calculating Financial Ratios.

Comment 22: The Department Should Revise the Profit Rate for the Final Calculation.

#### **BACKGROUND**

On May 17, 2004, the Department of Commerce (“the Department”) issued the preliminary determination of this investigation of hand trucks from the PRC. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 29509 (May 24, 2004) (“Preliminary Determination”).

On July 30, 2004, Huatian and Taifa submitted revised U.S. sales and factors of production (“FOP”) databases incorporating minor error corrections reported to the Department at the opening of each company’s verification. Taifa’s July 30, 2004, submission contained additional corrections regarding allocated inputs that the Department was not able to verify. On August 9, 2004, the petitioners filed objections to Taifa’s submission. On September 3, 2004, the Department rejected Taifa’s July 30, 2004, submission because the additional corrections constituted as unsolicited new factual information. See the Department’s September 3, 2004, letter to Taifa. The Department further requested that Taifa remove these corrections, and resubmit its FOP database without the new factual information.

On September 8, 2004, Department officials met with Taifa’s counsel who argued that Taifa’s July 30, 2004, submission did not contain any new factual information. See Memorandum to File; Re: Ex-parte Meeting–Qingdao Taifa Group Co. Ltd, September 8, 2004. On September 9, 2004, the Department

requested Taifa to resubmit its July 30, 2004, submission, and further invited all parties to comment on whether the corrections contained in Taifa's July 30, 2004, submission should be considered new factual information. See Memorandum to File; Re: Briefing Schedule—Rejection of Taifa's July 30, 2004 Submission, September 9, 2004. On September 13, 2004, we received comments from Taifa. On September 15, 2004, the petitioners submitted their reply comments.

On September 10, 2004, we received case briefs from the petitioners, Huatian, Taifa, and True Potential, and Zhenhua, and, on September 15, 2004, rebuttal briefs from the petitioners, Huatian, Future Tool, Taifa, and True Potential. On September 17, 2004, the Department rejected certain information from the petitioners' September 10, 2004, case brief as untimely, unsolicited new factual information. As a result, the Department returned the petitioners' case brief in its entirety, and requested the petitioners to revise and resubmit their case brief without the new factual content. The petitioners resubmitted their case brief on September 21, 2004. The Department held a public hearing on September 17, 2004, at the request of the petitioners, Huatian, Taifa, True Potential, Xinghua, and Zhenhua.

The period of investigation ("POI") is April 1, 2003 - September 30, 2003.

## **MARGIN CALCULATIONS**

In the Preliminary Determination, we applied facts available to address inconsistencies in the reported weights of completed hand trucks and parts, and the weights of the factors used to produce the completed hand trucks and parts. For the final determination, we are using the reported and verified factors of production, except for Taifa and Xinghua as discussed in our responses to Comments 1 and 7.

Additionally, we have made the following changes since the Preliminary Determination:

- We added a separate input field for bearings in Huatian's FOP database. See Comment 2.
- For Huatian, we used a surrogate value instead of the market economy price actually paid by Huatian to value hot-rolled steel plate. See Comment 4.
- For one sale by Huatian, we reclassified sample hand trucks as merchandise sold. See Comment 5.
- For Taifa, we used a surrogate value instead of the market economy price actually paid by Taifa to value cold-rolled steel plate. See Comment 8.
- We reclassified certain of Taifa's raw materials as packing materials in the calculation of a margin. See Comment 11.

- We calculated the factory overhead and SG&A surrogate ratios as a percentage of direct materials, energy and labor. See Comment 18.
- We revised the profit ratio from 6.02 percent to 6.42 percent. See Comment 22.

## DISCUSSION OF ISSUES

### Company Specific Issues

#### **Comment 1: The Department Should Apply Facts Available to Huatian, Taifa, True Potential, and Xinghua.**

*Petitioners' Argument:* Petitioners argue that adverse facts available should be used to calculate dumping margins for Huatian, Taifa, True Potential, and Xinghua.

#### Huatian

The petitioners argue that throughout the investigation, Huatian has been an uncooperative respondent. Specifically, the petitioners contend that Huatian attempted to manipulate the record of the investigation by submitting unverified data on the record after verification; repeatedly provided incomplete and inconsistent responses to requests for information from the Department; under-reported its FOP data; and intentionally withheld financial data from the Department.

First, the petitioners argue that Huatian's July 30, 2004, FOP database was improperly filed fifteen days after completion of Huatian's verification. Further, the petitioners maintain that Huatian revised its FOP database beyond the scope of opening verification corrections. The petitioners note that they cannot connect a significant percentage of the revised "data points" to the corrections presented to the Department at the start of verification. Furthermore, the petitioners argue that Huatian's change in allocation methodology reported to the Department at verification should not be considered a simple "error" that can be viewed as a minor correction.

Second, the petitioners argue that Huatian has repeatedly and consistently provided incomplete and inconsistent responses to requests for information from the Department during the course of this investigation. Specifically, the petitioners note that throughout the investigation, Huatian has filed six versions of its FOP database. The petitioners also note that Huatian inaccurately reported that it used a steel raw material as an input, a claim that was later retracted, despite the fact that Huatian officials certified the completeness and accuracy of Huatian's earlier submissions.

Third, the petitioners state that record evidence indicates a problem with Huatian's under-reporting of

FOP weight. Specifically, the petitioners submit that Huatian hand trucks sold in the United States weighed substantially more than Huatian's reported FOP. Additionally, the petitioners insist that inconsistencies between FOP weights and those published in Huatian's brochure, website, and packing lists demonstrate a lack of cooperation with the Department's investigation.

Finally, according to the petitioners, Huatian intentionally withheld its audited financial statements from the record of this investigation until verification. The petitioners further argue that Huatian misrepresented the fact that the statements were audited by an outside auditor. The petitioners also claim that the audited financial statements appear to be incomplete.

The petitioners argue that in the event the Department does not apply adverse facts available in calculating Huatian's dumping margin, the Department should alternatively make adjustments to the unverified factors, using the highest reported factor value in each field, to all models as partial facts available.

### Taifa

The petitioners argue that throughout the investigation, Taifa has been an uncooperative respondent. Specifically, the petitioners contend that Taifa prevented the Department from conducting a "meaningful" verification; repeatedly provided incomplete and inconsistent responses to requests for information from the Department; provided FOP data that was not verifiable; and intentionally withheld financial data from the Department.

The petitioners claim that the events of Taifa's verification, as described in the Department's verification report, reflect a deliberate attempt by Taifa to obstruct the Department from conducting a thorough verification of Taifa's questionnaire responses. According to the petitioners, Taifa was aware that the issue of under-reported factors was critical to the Department's final determination, and nevertheless improperly failed to notify the Department that Taifa would not be producing hand trucks at the time of verification. The petitioners claim that had Taifa informed the Department of this in advance of verification, the Department could have made appropriate adjustments to the verification process. Specifically, the petitioners suggest that the Department might have supplemented the on-site verification at Taifa with on-site verifications of Taifa's U.S. customer locations, or that the Department could have requested "specific information" to corroborate Taifa's claims that it was not producing hand trucks for an extended time prior to verification. The petitioners also argue that Taifa's initial failure to produce non-pre-selected hand truck models for inspection at verification was another attempt by Taifa to obstruct the Department from conducting a thorough verification of Taifa's questionnaire response. The initial absence of non-pre-selected sample hand trucks at verification, the petitioners maintain, is suspicious in light of Taifa's June 21, 2004 submission, wherein Taifa states that it "...physically weighed a sample of each model that is currently available..."

The petitioners contend that throughout the investigation, Taifa has repeatedly and consistently provided

incomplete and inconsistent responses to requests for information from the Department. Specifically, the petitioners argue that Taifa's repeated revisions of its FOP database during the course of the investigation indicate that Taifa did not act to the best of its ability to provide accurate data to the Department. According to the petitioners, Taifa has submitted six versions of the FOP database, where most of the changes were made without explanation, with the goal being to lower normal value. The petitioners also note that material changes were made to the FOP database even after Taifa officials certified that the response was complete and accurate.

The petitioners argue that the diminution of Taifa's FOP weight is highly suspect because record evidence indicates that the reported FOP weights are too low. Specifically, the petitioners contend that they weighed certain models of Taifa's hand trucks which they purchased in the United States, and submitted their results to the Department. According to the petitioners, Taifa's FOP weights are significantly understated when compared to the actual weights of certain models of Taifa's hand trucks which the petitioners purchased in the United States. The petitioners also note that a significant percentage of weights on Taifa's packing list exceeded the FOP weights. Additionally, the petitioners maintain that the Department found significant weight discrepancies between the non pre-selected hand truck models examined at verification and the reported FOP. This evidence, according to the petitioners, indicates systematic under-reporting of FOP. Furthermore, the petitioners argue that Taifa was unable to support its FOP data, and therefore adverse facts available should be employed in calculating Taifa's dumping margin.

In addition, according to the petitioners, Taifa's reported FOP was deficient and, therefore, could not be verified. Specifically, the petitioners maintain that at verification, the three components of FOP data, *i.e.*, per-unit consumption amounts for certain raw materials, labor, and energy, could not be verified by the Department due to allocation errors. The petitioners argue that regardless of whether the Department verified "major" inputs, a significant percentage of factor input fields was not verified.

Finally, according to the petitioners, Taifa deliberately withheld its audited financial statements from the record of this investigation as part of a willful manipulation of the investigation. Specifically, the petitioners note that Taifa initially failed to submit complete, audited statements, and in response to the Department's inquiry, reported that its statements were audited by the tax authorities, not a third-party accounting firm. The petitioners insist that Taifa's withholding of audited statements until verification evidences Taifa's lack of cooperation during the investigation.

In the event that the Department does not employ total facts available in determining Taifa's dumping margin, the petitioners argue that the Department should, at a minimum, apply partial facts available to all factor fields that the Department was unable to verify. Specifically, the petitioners recommend that the Department assign the maximum reported factor value contained in each factor field to every hand truck model.

#### True Potential

The petitioners argue that since True Potential is a trading company that purchases its hand trucks from respondent producers in this investigation, any facts available or other revisions applied by the Department to the normal value calculation for these producers should carry forward to normal value calculated for True Potential for hand trucks it obtained from these suppliers.

### Xinghua

The petitioners argue that the Department should apply adverse facts available to calculate Xinghua's dumping margin. Specifically, the petitioners assert that the Tariff Act of 1930, as amended (the "Act") requires the application of facts available where a respondent provides information, but the information cannot be verified. According to the petitioners, the Department could verify neither the production nor sales data submitted by Xinghua.

With regard to the FOP database, the petitioners assert that material inputs could not be verified because Xinghua did not present material input documents such as purchase, inventory, production, or accounting worksheets at verification. With respect to energy inputs, the petitioners maintain that Xinghua did not have documents such as meter readings or accounting worksheets prepared in advance. Finally, with respect to labor inputs, the petitioners indicate that Xinghua did not present completed workshop production reports, attendance sheets, or payroll records at verification. As such, according to the petitioners, the entire FOP database remains unverified.

With regard to the sales database, the petitioners note that 82 percent of the invoices that the Department examined during verification did not match the submitted database. The petitioners submit that these were not reporting "errors" but rather evidence of a deliberate effort by Xinghua to unlawfully manipulate the database in order to minimize its dumping margin.

In conclusion, the petitioners argue that Xinghua's refusal to provide the Department with the documentation necessary to conduct verification constitutes a failure to cooperate to the best of its ability. Thus, the petitioners argue, the Department should make adverse inferences in calculating Xinghua's dumping margin.

*Respondents' Argument:* Respondents Huatian, Taifa, and True Potential ("respondents") jointly assert that in the Preliminary Determination the Department applied partial facts available in the calculation of normal value for each of the respondents based on its incorrect conclusion that the FOP reported by Taifa and Huatian were understated. Respondents claim that the partial facts available applied by the Department resulted in the significant overstatement of the respondents' preliminary dumping margins. Respondents argue that the conclusion was based on petitioners' allegation that the respondents' FOP data was understated because there were apparent differences between the weight range code reported in the respondents' U.S. sales databases and the sum of input weights reported in their FOP databases. Respondents cite to the May 13, 2004, submission, which notes that because the weight of the finished hand trucks is neither important to their customers nor used for shipping



purposes, the companies do not maintain the weight of the finished hand truck in the normal course of business. Therefore, respondents contend that there were some errors in the weight range code supplied in the U.S. sales databases because they were based on estimated or outdated information.

Respondents point out that since the Preliminary Determination, they have submitted revised U.S. sales databases correcting all errors in the weight range code to reflect weights determined by weighing actual samples of finished hand trucks. Furthermore, respondents argue that the Department confirmed the accuracy of the respondents' reported FOP data and weight information during the on-site verification by weighing actual hand trucks after verifying the accuracy of the scale. See "Huatian Verification Report" and "Taifa Verification Report." Also, respondents point out that the Department verified that the reported FOP data and the U.S. sales data for each company were accurate and complete, with virtually no discrepancies. In conclusion, the respondents assert that the Department should calculate the respondents' margins based on their submitted and verified U.S. and FOP data.

In rebuttal to the petitioners' arguments, the respondents provided the following specific arguments:

#### Huatian

Huatian argues that the Department fully verified all data contained in Huatian's submission, including all supporting worksheets and the methodology used to derive the consolidated per-unit FOP data. Additionally, Huatian argues that a comparison of the July 30, 2004, first-level supporting worksheets with the verified worksheets included in the verification exhibits demonstrates that the data is identical. Huatian further contends that the Department has tested the accuracy of the methodology by randomly checking the calculation of numerous factors.

Huatian asserts that its submissions of corrections and clarifications were timely and do not support application of facts available. Huatian notes that it submitted timely responses to the original questionnaire and supplemental questionnaires, and that Huatian acted to the best of its ability to provide complete and accurate information. Additionally, Huatian notes that it is a first-time respondent and therefore, faced a steep learning curve in completing this task. Huatian maintains that it corrected inadvertent errors as soon as it became aware of such errors.

According to Huatian, the Department's extensive verification has confirmed Huatian's FOP data to be accurate and complete. Huatian explains that its submitted weight range codes in its earlier questionnaire responses were based on estimated and outdated information because Huatian's sales documents, such as the packing list and brochure, do not record the actual measured weight of each hand truck. Huatian argues that its data has been fully verified, and therefore, there is no need to resort to application of facts available.

Finally, Huatian argues that it properly submitted its 2003 financial statements at verification. Huatian further argues that Department officials reviewed these statements, reconciling the data with numerous

accounting records at verification.

### Taifa

Taifa contends that it has been fully cooperative throughout the investigation, and has submitted all requested information within the established time limits and in the format requested. Additionally, Taifa argues that the Department's verification confirmed that Taifa's reported data is accurate and complete, with virtually no discrepancies.

Taifa insists that the fact that it was not producing hand trucks during verification has nothing to do with the accuracy or completeness of Taifa's reported data, or the legitimacy of the verification. Additionally, Taifa notes that it manufactures hand trucks on a per-order basis, and that there was no production of hand trucks simply because there were no customer orders at the time.

Taifa also notes that the petitioners erroneously claim that the only hand truck samples presented to the Department officials at verification were pre-selected hand trucks. In fact, Taifa indicates that its showroom contained samples of all hand trucks and non-subject merchandise produced by Taifa, and that Department officials examined non-pre-selected models.

Taifa notes that its weight range codes reported in the earlier questionnaire responses were based on estimated and outdated information because its sales documents, including the packing list and product brochure, do not reflect the actual weight of hand trucks produced during the POI. Taifa maintains that the Department examined and weighed both pre-selected and non-pre-selected hand trucks, and found the weights and physical characteristics to be consistent with the reported data. According to Taifa, the minor errors in the reported physical characteristics noted by the Department for a few models do not affect the FOP data, as the parts list supported the accuracy of the reported type and consumption of the raw materials. Taifa contends that the petitioners improperly failed to serve Taifa with the hand truck models that the petitioners purchased and weighed prior to verification, thus depriving Taifa of the opportunity to comment on such information. Taifa argues that there is no information on the record that supports the accuracy of the scales used by the petitioners, or that the hand trucks were manufactured by Taifa.

Taifa argues that its submissions of corrections and clarifications were timely and do not support application of facts available. Taifa notes that it submitted timely responses to the original questionnaire and supplemental questionnaires, and that Taifa acted to the best of its ability to provide complete and accurate information. Additionally, Taifa notes that it is a first-time respondent, and therefore, faced a steep learning curve in completing this task. Taifa maintains that it corrected inadvertent errors as soon as it became aware of such errors.

Taifa also argues that the verification report confirms that all of Taifa's reported FOP data has been verified as complete and accurate, with virtually no discrepancies. Specifically, Taifa maintains that the

Department verified the consumption of all raw materials, labor, and energy, as well as the methodology used to report and allocate all inputs. According to Taifa, the only exception noted in the verification report was the inadvertent clerical error in the Excel spreadsheets used to allocate inputs such as labor and electricity. This error, according to Taifa, does not affect the accuracy of the reported factors it submitted to the Department as post-verification minor error corrections.

Regarding the audited financial statements, Taifa contends that it properly submitted its financial statements as part of the verification exhibits, and that they were examined by Department officials at verification.

### True Potential

True Potential argues that because there is no reason to apply facts available or adjust the data of True Potential's suppliers, the Department should not use any facts available or make any adjustments in calculating True Potential's normal value.

### Xinghua

The Department did not receive any comments from Xinghua.

*Department's Position:* The Department disagrees with the petitioners that total adverse facts available should be applied to Huatian, Taifa, and True Potential. However, we agree with the petitioners that total adverse facts available should be applied to Xinghua.

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

## Huatian

We disagree with the petitioners that Huatian has been uncooperative throughout the investigation, and that the Department should apply total adverse facts available to Huatian. Specifically, Huatian submitted its questionnaire responses in a timely manner, provided FOP data that the Department verified, cooperated with the Department during the verification of its questionnaire responses, and did not purposely withhold financial data from the Department. We find that the evidence on the record does not support the application of total adverse facts available.

Regarding Huatian's July 30, 2004, submission, we disagree with the petitioners that it was improperly filed because it was submitted 15 days after verification. Pursuant to 19 CFR 351.301(b)(1), factual information is due no later than seven days before the date on which verification is scheduled to commence, except that factual information requested by the verifying officials will normally be due no later than seven days after the date on which the verification is completed. At verification, we requested Huatian to submit its revised U.S. sales and FOP databases with the minor corrections reported at the opening of verification. We did not set a deadline for such submission. Although Huatian's verification concluded on July 15, 2004, Huatian's counsel, who is also the counsel for Taifa, had to stay in China for the Department's verification of Taifa. Taifa's verification ended on July 23, 2004. Huatian submitted its revised databases with the minor corrections on July 30, 2004. In these circumstances and because we believe the petitioners have not been prejudiced by the timing of Huatian's submission, we are accepting Huatian's July 30, 2004, submission as timely filed.

We agree with the petitioners that Huatian's July 30, 2004, submission included revisions that were not related to reported minor corrections or other corrections identified at verification. We have treated these revisions as untimely filed, unsolicited information and have not used them in this final determination. Instead, for these factors we have relied upon the information from the verified response of July 1, 2004. See Memorandum from Jeffrey May, Deputy Assistant Secretary, for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, "Analysis of Qingdao Huatian Hand Truck Co. Ltd.'s July 30, 2004, Submission," October 6, 2004 ("Huatian Analysis Memo").

We also disagree with the petitioners that Huatian repeatedly and consistently provided incomplete and inconsistent responses. We note that Huatian's FOP response is complex and contains numerous inputs derived from a number of production workshops. Although Huatian did submit several questionnaire responses containing corrected data, they were filed in response to the Department's requests for supplemental information and all questionnaire responses were filed in a timely manner. Moreover, despite the complexity of Huatian's factors data, the Department was able to verify Huatian's questionnaire responses to its satisfaction.

The petitioners' argument that the reported FOP weights do not correlate with Huatian hand truck models reportedly purchased by the petitioners in the United States is not supported. The petitioners

link certain hand trucks purchased from U.S. retailers with Huatian, but provide no basis for the linkage.

We disagree with the petitioners that Huatian's change in allocation methodology cannot be considered a minor correction. The number of inputs affected by the change was not large and the changes were easily verified.

Regarding the discrepancies between the FOP weights and the weights of the completed hand trucks in Huatian's catalog and shipping documents, we weighed various hand truck models at verification, and are satisfied that the shipping weights reported in Huatian's catalogs and shipping documents are not reflective of the weights of the actual products. Instead, the weights we verified are consistent with those reported in the July 1, 2004, response.

Finally, with regard to Huatian's failure to provide audited financial statements until verification, we determine that this omission does not serve as evidence of a "willful manipulation" of the record as the petitioners suggest. We find that this omission has a negligible impact on this investigation since the Department does not rely on the data from a nonmarket economy ("NME") producer's financial statements. We also find that the petitioners have not been prejudiced by this omission.

#### Taifa

We disagree with the petitioners that Taifa has been uncooperative throughout the investigation, and that the Department should apply total adverse facts available to Taifa. Specifically, Taifa submitted all questionnaire responses in a timely manner; provided FOP data that, with a few exceptions, the Department verified; cooperated with the Department in the verification of its questionnaire responses; and did not purposely withhold financial data from the Department. We find that the evidence on the record does not support the application of total adverse facts available.

We disagree with the petitioners' argument that Taifa was obligated to inform the Department that it would not be manufacturing hand trucks during the verification. Nothing in the record suggests that Taifa's hand truck production ceased for any reason other than legitimate business considerations. Furthermore, contrary to the petitioners' suggestion, Taifa did make a wide range of its hand truck models available for inspection by the Department in its showroom. See Taifa Verification Report at 14-17.

The petitioners' assertion that Taifa repeatedly and consistently provided incomplete and inconsistent responses is not supported by the record. Although Taifa did submit several questionnaire responses, they were submitted in response to the Department's requests for supplemental information and all questionnaire responses were timely.

The petitioners' argument that the reported FOP weights do not correlate with Taifa hand truck models

reportedly purchased by the petitioners in the United States is not supported. The petitioners link certain hand trucks purchased from U.S. retailers with Taifa, but provide no basis for the linkage.

With respect to Taifa's weight range codes, Taifa explains that the weight range codes it submitted in its earlier responses were based on estimated and outdated information because Taifa's sales documents, such as packing list and brochure, do not record the actual measured weight of each hand truck. Taifa states that since the Preliminary Determination, Taifa has submitted a revised U.S. sales response correcting all errors in the weight range code to reflect weights determined by weighing actual samples of finished hand trucks. Having weighed various hand truck models at verification, we are satisfied that the shipping weights reported in Taifa's catalogs and shipping documents are not reflective of the weights of the actual products.

With regard to weight discrepancies between the reported FOP and hand trucks weighed at verification, we note that for the hand truck models we selected at verification, the percentage differences between the scale weights at verification and the reported FOP weights were small for all models, except two. Small differences are to be expected because variables such as unrecoverable scrap and waste are allocated across models. Also, we note that the factor weights sometimes exceed the weight of the complete hand truck, and for other models, the factor weights are less. Thus, it cannot be said that factors are consistently under-reported. For the two models with large differences, one has a factor weight that exceeds the model weight by 23 percent; for the other, the model weight is 32 percent greater than the factor weight. We note that the model that weighs more than its factors accounts for a minuscule portion of sales to the United States. Moreover, although we cannot explain these particular results, the Department verified the major raw materials consumed in the production of hand trucks to its satisfaction. See Taifa Verification Report at 17-19.

We agree with the petitioners that a certain portion of Taifa's reported FOP was deficient and could not be verified, but we disagree with the petitioners that this flaw rendered the entire FOP database unverified. As noted in Taifa's verification report, due to an error in allocating inputs such as labor, electricity, scrap, and minor material inputs, we could not verify the final per-unit consumption of these inputs for each hand truck model. See id. Except for its allocated inputs, the information in Taifa's response was verified. For the unverified data, as noted in Comment 7 below, we are applying adverse facts available to plug into those data fields that have been rejected.

Finally, with regard to Taifa's failure to provide audited financial statements until verification, we determine that this omission does not serve as evidence of a "willful manipulation" of the record as the petitioners suggest. We find that this omission has a negligible impact on this investigation since the Department does not rely on the data from an NME producer's financial statements. We also find that the petitioners have not been prejudiced by this omission.

## True Potential

We agree with the petitioners that True Potential's margin calculation must take into account adjustments made to the FOP information related to any hand truck models True Potential purchased from its suppliers.

## Xinghua

The Department determines that the use of total facts available is warranted because Xinghua withheld certain information that had been requested by the Department, failed to provide certain information by both the Department's deadlines and statutory deadlines, and in the form and manner requested, significantly impeded the verification, and failed to provide certain information that could be verified pursuant to section 776(a)(2)(A), (B), (C) and (D) of the Act. As a result of Xinghua's failure, the Department does not have sufficient information on the record to make its determination.

The Department submitted its verification outline to Xinghua on June 24, 2004, approximately a month prior to the commencement of verification. See Xinghua's Verification Outline, dated June 24, 2004 ("Xinghua Verification Outline"). The purpose of submitting a verification outline to respondents is to give them sufficient notice about the types of source documents that the Department will seek to examine during verification, and to afford respondents sufficient time to compile source documents and prepare them as verification exhibits. Despite this, on the first day of Xinghua's FOP verification, the Department discovered that Xinghua had few source documents prepared for review and no evidentiary packages to submit to the Department as verification exhibits, despite the specific instructions given in the verification outline. The Department found it necessary to help Xinghua compile a verification record by requesting Xinghua to provide certain source documents individually. See Xinghua Verification Report at 14. Many times during Xinghua's verification, the Department requested certain source documents and waited significant amounts of time for Xinghua officials to search for the requested documents in their business files. Upon retrieving the documents, Xinghua officials also spent a considerable amount of time identifying the relevant data to present to the Department pursuant to its request. Because Xinghua was unprepared for verification and Xinghua used much of the time allotted for verification to retrieve and review source documentation, the Department was not able to complete Xinghua's FOP verification.

Similarly, at verification, we found numerous discrepancies in Xinghua's reported sales data. See Xinghua Verification Report at 7. Because of these discrepancies, we were not able to verify Xinghua's reported quantity and value of sales to the United States.

As evidenced by the above, Xinghua was unprepared for verification and its unpreparedness significantly impeded the verification process. The Department afforded Xinghua sufficient opportunity to present its documents for a full and complete verification by submitting the verification outline to Xinghua, approximately a month prior to the commencement of

verification. At no time prior to verification did Xinghua contact the Department with questions about verification procedures, documents to prepare for verification, or the verification outline, nor did the company indicate that the time allocated for the verification was insufficient.

The Department finds that, because Xinghua was unable to explain discrepancies in its reported sales data and it was unable to provide source documentation for and explain the reported factors for production for its hand trucks, Xinghua failed to act to the best of its ability. Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. In accordance with sections 776(a)(2)(A), (B), (C), and (D), as well as section 776(b) of the Act, we are applying total adverse facts available to Xinghua. As adverse facts available, we are assigning Xinghua the rate of 386.75 percent, which is also the PRC-wide rate, the highest margin listed in the notice of initiation and adjusted as described in the October 6, 2004, corroboration of facts available memorandum. See Memorandum from John Brinkmann to the File regarding calculation of the adverse facts available margins dated October 6, 2004.

### **Huatian**

#### **Comment 2: The Department Should Revise Huatian's FOP Data to Account for Purchased Bearings.**

*Petitioners' Argument:* The petitioners argue that since Huatian purchased its bearings, Huatian should report bearing consumption in a separate input field in its FOP database to facilitate the assignment of a surrogate value. The petitioners further argue that the "steel standard parts" field in Huatian's FOP database, which Huatian claims is where bearing consumption is reported, should not be reduced by the weight of bearings if a bearings field is added to account for the purchased bearings. Specifically, the petitioners note that the weights of bearings for several hand truck models exceed the weight reported in the "steel standard parts" field in the database. Thus, despite the fact that this was not the case for one hand truck model examined by the Department at verification, the petitioners contend that evidence on the record does not support Huatian's claim that bearing consumption has been reported in the "steel standard parts" field. Additionally, the petitioners argue that the Department should reconsider its valuation for steel standard parts, since the current surrogate value is derived as a simple average value for three distinct commodities.

*Respondent's Argument:* Huatian claims that the weight of bearings is included in the "steel parts" field in the FOP database, not "steel standard parts" as noted in the verification report, which is another field that does not include bearings. Accordingly, Huatian argues, there is no need to add bearing consumption as a separate field to the reported FOP. However, should the Department decide to create a separate input field for bearings, Huatian urges the Department to deduct the corresponding weight of bearings from the steel parts field.

*Department's Position:* We agree with Huatian that the verification report's reference to bearings



being included in the “standard steel parts” FOP field is incorrect and that the record indicates that the verification writeup on bearings should have referred to “steel parts” rather than “standard steel parts.” Therefore, this discussion will only refer to the “steel parts” FOP field.

Although the verification report states that we verified that Huatian included bearing weight in the “steel parts” category, we have determined that the report is wrong. At verification, the Department confirmed that bearings were reported in the master parts list for a particular model. We further confirmed that the data field that Huatian stated included bearings had a weight which exceeded the weight of the bearings. We did not specifically verify that the weight of the bearings used was actually included in the field or that the weight of the bearings was reflected in the aggregated “steel parts” field.

We agree with the petitioners that the Department should create a separate FOP field to account for Huatian’s purchased bearings. “Steel parts” are being valued using a flat-rolled steel price. Because bearings are purchased finished, and not produced internally, it is appropriate to value bearings using a surrogate value for finished bearings. For the final determination, using information obtained from verification (See, verification Exhibit 25), we have created an FOP field which reflects the number of bearings in each hand truck model and have valued that FOP field using a surrogate value for finished bearings.

With respect to Huatian’s claim that it is appropriate to deduct the bearing weight from the “steel parts” FOP field if a separate input field is created for finished bearings, we disagree. First, as indicated above, the Department did not specifically verify that the “steel parts” field actually included the weight of the bearings. Second, a comparison of the weight of the bearings to the weight of the “steel parts” field does not support Huatian’s assertion that bearings are included in the “steel parts” field. For several hand truck models, subtracting the weight of the bearings reported by Huatian from the “steel parts” field results in a negative weight in the “steel parts” FOP field. See Huatian Verification Exhibit 25. Furthermore, while Huatian’s sales response database indicates that certain hand truck models incorporated bearings, and verification Exhibit 25 confirms this fact, the reported “steel parts” field for those models shows a zero amount for “steel parts.” This indicates that bearings are unlikely to be included in “steel parts” because the weights reported in this field are insufficient to cover both bearings and other steel parts included in this field. Therefore, because information on the record does not support Huatian’s claim that the weight of the bearings was consistently included in the “steel parts” field, we have not removed the weight of the bearings from the “steel parts” field.

**Comment 3: The Department Should Assign an Appropriate Surrogate Value for Axle Rods for Huatian.**

*Petitioners’ Argument:* The petitioners state that at verification the Department noted that Huatian purchased finished axle rods instead of steel rod, as was reported by Huatian prior to verification, for use as the axle for hand trucks. The petitioners argue the Department should apply the appropriate surrogate value for finished axle rods.

*Respondent's Argument:* According to Huatian, axle rods are essentially steel rods. Huatian argues that the cutting and hole-punching add negligible value to the steel rod. Huatian also states that the petitioners did not suggest any alternative surrogate value for axle rods.

*Department's Position:* We disagree with petitioners that Huatian did not report its purchases of completed axle rods prior to verification. In its March 23, 2004, submission, Exhibit D-2, Huatian states that axles are purchased from the "outside." However, none of the parties to this proceeding has suggested an alternative to the surrogate value used by the Department in the Preliminary Determination, nor have we been able to find a value that is more specific to axle rod. Further, there is no information on the record to indicate that axle rods would not be included in the steel rod surrogate value we used in the Preliminary Determination. Therefore, we have continued to use the same surrogate value for axles as was used in the Preliminary Determination.

**Comment 4: The Department Should Apply Facts Available to Value Steel Plate for Huatian.**

*Petitioners' Argument:* The petitioners argue that the Department verified that Huatian purchased market economy steel plate during the POI, but was not able to verify or establish Huatian's claim that it did not actually use the market economy steel plate in the production of hand trucks. Nor did the Department verify that Huatian used only domestically sourced steel plate to produce hand trucks during the POI. The petitioners also note that Huatian failed to report a FOP field for cold-rolled steel even though it reported purchases of this input and all other respondents reported usage of this input. As such, the petitioners argue that as facts available, the Department should calculate the value of Huatian's steel plate based on the higher of Huatian's market economy price or available surrogate values.

*Respondent's Argument:* Huatian argues that it reported all of its information, including data concerning its market economy purchases, for the purpose of accuracy and completeness. Huatian also argues that the Department fully verified all reported information concerning steel, including the fact that cold-rolled steel was not used in the production of the subject merchandise, and that imported steel was resold in the domestic market. Furthermore, Huatian maintains that it accurately reported the detailed specifications of steel used in the production of hand trucks. As such, Huatian insists there is no reason to apply facts available.

*Department's Position:* Huatian did at first state that it used cold-rolled steel in the production of hand trucks. In the May 6, 2004, response, however, it clarified that while it imported cold-rolled steel during the POI, none of that steel was used to produce the subject merchandise during the POI. Therefore, cold-rolled steel should not be included as an FOP.

We verified that Huatian had market economy purchases of steel plate during the POI. We further learned that Huatian resold the purchased steel plate in the domestic market and did not use any of the

market economy steel plate in the production of its hand trucks. When a supplier purchases a factor from a market economy country and pays for it in a market economy currency, it is the Department's practice to value the factor using the price paid to the market economy supplier. See 19 CFR § 351.408(c)(1). Normally, market economy inputs provide more accurate values. However, the Department will not employ actual, market economy prices over surrogate values when the market economy price does not reflect the true cost of an input. See China National Machinery v. United States, 264 F.Supp.2d 1229, 1237 (CIT, 2003), citing Lasko, 43 F.3d 1442, 1446 (Fed. Cir. 1994).

It is not the Department's normal practice to examine whether a particular market economy input is actually used in the production of the subject merchandise. In this instance, however, the record evidence is clear that the market economy steel plate purchased by Huatian was resold, and never used in production. Therefore, we do not find the price paid by Huatian for its market economy steel plate to be representative of the price of the steel it used in its production of hand trucks. Accordingly, we have not used the market economy price to value the steel plate, but instead find that a surrogate value for this factor will result in a more accurate dumping calculation.

**Comment 5: The Department Should Treat Huatian's Hand Truck Samples as a Quantity Discount.**

*Petitioners' Argument:* The petitioners argue that the Department should treat certain hand truck samples provided by Huatian to one of its U.S. customers as quantity discounts. Specifically, the petitioners point to a Huatian invoice where the customer purchased a large quantity of certain hand truck models and received a significant number of the same hand truck models free of charge. The petitioners argue that these so-called samples are, in fact, nothing more than quantity discounts and that the unit prices of the hand trucks actually purchased by the customer should be reduced by the value of the free hand trucks.

*Respondent's Argument:* Huatian argues that there is no evidence on the record to indicate that the samples were not actually samples. According to Huatian, the invoice clearly indicates that certain hand trucks were samples, provided free of charge.

*Department's Position:* We agree with petitioners. The "sample" hand trucks on the Huatian invoice were actually labeled as "free of charge." Further, the "free of charge" hand trucks are identical to the hand truck models being purchased on the invoice by Huatian's customer, and the quantities are not insignificant. In its April 26, 2004, response, Huatian stated that

“{p}hysical samples are sometimes first sent by the customers to Huatian so that Huatian can produce models that are consistent with the model requested by the customer. In return, customers generally request that samples of the hand truck produced from the customer's sample be sent to the customer to check the quality and specifications.” See Huatian's April 26, 2004, submission at 3.

However, we find that providing a significant number of hand trucks allegedly free of charge at the

same time the customer purchases a large quantity of the same hand truck indicates that these hand trucks are not free test samples but rather are quantity discounts. Therefore, for the “free of charge” hand trucks, we recalculated the prices by model based on the total quantity and applied that value to all quantities of the appropriate models in that invoice to determine the revised price of the hand trucks for that sale.

**Comment 6: The Department Should Not Adjust Huatian’s Sales Transactions with a Negative Net U.S. Price.**

*Petitioners’ Argument:* The petitioners argue that the Department improperly adjusted sales transactions with negative net U.S. prices. According to the petitioners, sales with negative prices are dumped sales, indicating that total expenses incurred and deducted on the sale exceed the total revenue collected on the sale. Accordingly, the petitioners insist that the Department erred when it assigned a value of USD \$0.00001 per hand truck for these transactions.

*Respondent’s Argument:* Huatian did not comment on this issue.

*Department’s Position:* In the Preliminary Determination, the Department set any negative net U.S. prices to \$0.00001. See Huatian’s Calculation Memo dated May 17, 2004. Due to the revised data the Department has received since the Preliminary Determination, there are no negative net U.S. prices and the petitioners’ argument is moot.

**Taifa**

**Comment 7: The Department Should Accept Taifa’s July 30, 2004, Submission.**

*Respondent’s Argument:* Taifa argues that its July 30, 2004 submission does not contain any new factual information, and should be accepted by the Department in its entirety as verified, correct data, and be used to calculate Taifa’s dumping margin. Taifa asserts that all information pertinent to the allocation of inputs was fully verified by the Department. Taifa cites to the September 2, 2004, Taifa Verification Report in arguing that the Department verified the consumption of all major materials without any discrepancies. Taifa also notes that the Department verified the total consumption of allocable materials. Taifa further asserts that it explained the methodology used to allocate these allocable inputs to hand trucks on a per-unit basis. This allocation methodology is based on the consumption of major materials in each workshop. Taifa claims that it was only during the presentation of the allocation formulae embedded in the spreadsheets, that it realized that a clerical error had occurred in the spreadsheets which affected the proper calculation of the allocations. Taifa argues that since the Department successfully verified the amount of total steel inputs (the model-specific steel inputs which form the basis of the allocation), the total amount of the allocable inputs consumed, and the methodology used to allocate the inputs to each hand truck model, all components of the allocation were fully verified. Thus, Taifa contends that the verification of the mathematical result

of the allocation is superfluous and does not require review of any new or unverified factual information.

Taifa claims that its July 30, 2004 submission included only the minor error corrections presented to the Department at verification and that the subsequent correction of the allocation error does not constitute new factual information because all FOP data, save for the minor corrections, had already been submitted for the record in all of Taifa's previous questionnaire responses and verified by the Department. Taifa asserts that the fact that the Department did not have time to review the result of the allocation recalculation does not render the verified source information as incorrect or unverified. Furthermore, Taifa argues that it would have had time to present the corrected allocation if the verification had not been shortened by one day because of logistical problems incurred by the Department's verification personnel.

Taifa further argues that the Department has the discretion to accept information (i.e., the allocation recalculation) at any time during the proceeding and extend any time limit established based on 19 CFR 351.301(c)(2)(I) and 19 CFR 351-301(b)(2). Taifa cites Steel Concrete Reinforcing Bar from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19399 (April 13, 2004) ("Steel Rebar from Korea") (where the Department accepted revised U.S. sales data with additional U.S. sales which had been previously rejected as untimely), as an example. Furthermore, Taifa argues that the courts have instructed the Department to accept the correction of clerical errors, even in cases where the correction involved presentation of new factual information, as in NTN Bearing Corporation v. United States, 74 F.3d 1204, 1208 (Fed. Cir. 1995) ("NTN Bearings") (where the U.S. Court of Appeals for the Federal Circuit held that the Department's refusal to accept the respondent's correction of a clerical error was an abuse of discretion and ruled that the Department should have corrected the respondent's inadvertent typographical error, even though the correction of the error involved "untimely" submission of the corrective information).

Finally, Taifa argues that, as a result of NTN Bearings, the Department established a six-part test, stating that it will accept corrections of clerical errors when the following conditions are met: "(1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgement, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification." See Certain Fresh Cut Flowers from Colombia: Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833 (August 19, 1996). Taifa also cites the Issues and Decision Memorandum for Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part: Canned Pineapple Fruit from Thailand, 66 FR 52744 (October 17, 2001) (where the Department accepted

corrections to gross unit price resulting from error in conversion factor); Final Results of Antidumping Duty Administrative Review of Certain Cold-Rolled Carbon Steel Flat Products From Netherlands, 64 FR 11825 (March 10, 1999) (where the Department accepted correction to date of sale for one quarter of a customer's contracts); Timken U.S. Corporation v. United States, 318 F. Supp. 2d 171 (Court of International Trade 2204) (where the court held that error should have been corrected although not clerical in nature); World Finer Foods, Inc. v. United States, No. 99-03-00138, slip op. 00-72, 2000 WL 897752, \*8 (Court of International Trade 2000) (where the court held that the Department should have made the correction where "a simple adjustment in the assessment program is all that was required...."); and Maui Pineapple Company, Ltd. v. United States, 264 F. Supp. 2d 1244 (Court of International Trade 2003) (where the court affirmed acceptance of new sales data).

Taifa argues that each of the above six conditions is met in this case and Taifa fully satisfies the test for accepting the correction of the clerical error. Taifa argues that, as in NTN Bearings, the correction of the error entailed only a mathematical adjustment. Therefore, Taifa contends that the rejection of the submission of Taifa's verified information would constitute a clear abuse of discretion and violate the Department's mandate to calculate the dumping margin as accurately as possible.

*Petitioners' Argument:* The petitioners argue that the Department should reject Taifa's July 30 submission in its entirety. The petitioners cite the June 24, 2004, "Qingdao Taifa Group Co., Ltd. Verification Outline" which states that corrections to the submissions must be filed within two business days of the commencement of verification. Therefore, the petitioners argue that Taifa's July 30 submission is untimely filed. Petitioners also cite sections 1677m(e)(1) and 1677e(a)(2)(B) of the antidumping statute as well as the Court of International Trade case Reiner Brach GmbH & Co. Kg v. United States, 206 F. Supp. 2d 1323 (2002) to bolster their argument that the Department has the right to set deadlines and to reject data submitted after those deadlines.

As an alternative, if the Department does not reject the submission in its entirety, the petitioners argue that the Department should reject those portions that contain new factual information. Petitioners cite to the Department's September 3, 2004 letter to Taifa rejecting the new information as their reasons for continuing to reject the new information.

In rebuttal to Taifa's supplemental case brief, the petitioners argue that the Department should reject Taifa's July 30, 2004, submission in its entirety. The petitioners state that it is clear that Taifa has taken liberties to revise data in a manner well beyond the minor corrections disclosed at verification. The petitioners cite Taifa's September 13, 2004, supplemental case brief to note that Taifa itself has acknowledged this fact. The petitioners assert that Taifa's July 30, 2004, submission contained such a high percentage of changes to the data points of the entire FOP database that these corrections do not appear to be "minor" in nature. The petitioners point out that these changes in the latest FOP database do not tie to a specific field noted as a "minor" correction by Taifa. The petitioners additionally note that the new FOP data has a number of cases where the reported control number or model has been changed. In each case, the petitioners state that they could find no reference to these

changes in the minor corrections submitted by Taifa at verification.

The petitioners argue that Taifa's explanation of the nature of the revisions to the data is overly simplistic. The petitioners assert that Taifa's explanation to the Department that the unverified data revisions it submitted are the result of simple, mechanical allocations on the basis of steel inputs consumed for a given model and for all models of the workshop is inaccurate. The petitioners cite Taifa's September 13, 2004, supplemental case brief at 3, to note that Taifa claims that these changes are needed to account for revisions to the steel inputs for each hand truck. The petitioners maintain that Taifa also claims that the revised allocations relate to certain factor inputs between hand trucks and products other than subject merchandise. The petitioners argue that there is no evidence on the record that the Department verified the distribution of factors across all of Taifa's product lines, or if this allocation resulted in the inappropriate amount of factors reflected between the subject hand trucks and non-subject merchandise.

The petitioners believe that Taifa was not fully prepared for the verification of its FOP database and cite the Department's verification agenda, at page 1, to note that respondents are advised to "be completely prepared for all items on the agenda." The petitioners claim that if Taifa had been properly prepared, it would have been aware of its errors in the FOP database. The petitioners note that Taifa did not notify the Department of these errors until the last day of verification. Additionally, the petitioners counter that Taifa had three extra days of preparation time for verification because the starting date of the verification was postponed from July 16 to July 19. Therefore, the petitioners dismiss Taifa's claim that because verification started one business day late, it did not have sufficient time to present its corrected worksheets. The petitioners counter that Taifa had plenty of additional time to find the errors in advance of verification and even submit them as opening day corrections.

The petitioners assert that the underlying issue with Taifa's data relates to the allocation of "minor" materials to specific models. The petitioners note that this same general issue was involved in Huatian's opening corrections to verification. The petitioners counter that Taifa's counsel, the same as Huatian's, should have been aware of the allocation issues, specifically how the allocation of minor materials is linked with "major" materials.

The petitioners also argue that Taifa's September 13, 2004, supplemental case brief should be rejected in its entirety because it also attempts to add facts not already on the record. The petitioners cite 19 C.F.R. 351.301(b)(1), that factual information must be submitted no later than seven days before the date on which verification is scheduled to begin, except that factual information requested by the verifying officials will be accepted no later than seven days from the conclusion of verification. The petitioners note that the Department's regulation, 19 C.F.R 351.302(d)(1), clearly states that it will not consider or accept unsolicited information. The petitioners maintain that Taifa was granted an opportunity to resubmit a revised FOP response with supporting worksheets, but was instructed not to submit new factual content.

The petitioners contend that Taifa's September 13, 2004, supplemental case brief makes references to electronic spreadsheets presented to the Department at verification. However, according to the petitioners, they were not served a copy of the spreadsheets and thus, did not have the opportunity to analyze them. Accordingly, the petitioners argue that the electronic spreadsheets should not be treated as part of the official record.

Lastly, the petitioners dismiss Taifa's claim that all information pertinent to the allocation of inputs was fully verified. The petitioners challenge this claim noting that the Department's verification report states that "because of inaccuracies in the data for the allocated inputs in the electronic spreadsheets provided by Taifa, we were unable to verify all allocation of these inputs into the second and third level spreadsheets, and the reported per-unit consumption of these inputs for any of the selected models." See Taifa Verification Report at 18.

*Department's Position:* We find that Taifa's July 30, 2004, submission contains unsolicited, new factual information. Because much of the information relating to the analysis of this issue is proprietary, we have separately prepared a memorandum to support our determination. See Memorandum from Jeffrey May, Deputy Assistant Secretary, Import Administration to James J. Jochum, Assistant Secretary for Import Administration, "Analysis of Qingdao Taifa Group Co. Ltd.'s July 30, 2004, Submission," October 6, 2004.

Pursuant to 19 CFR 351.301(b)(1), factual information is due no later than seven days before the date on which verification is scheduled to commence, except that factual information requested by the verifying officials will normally be due no later than seven days after the date on which the verification is completed. The Secretary will not consider or retain unsolicited information. 19 CFR 351.302(d)(1). Furthermore, 19 CFR 351.302(d)(2) provides that the Secretary will return unsolicited factual information to the submitter with an explanation of the reasons for the return of such material.

The verification of Taifa's responses concluded on July 23, 2004, and accordingly, the deadline for submitting factual information requested by the verifying officials was July 30, 2004. The information requested by the Department related only to the minor corrections identified at the outset of the verification, *i.e.*, Taifa was asked to submit a new database reflecting those minor corrections. Upon review of Taifa's July 30, 2004 submission, we have determined that the submission also includes unsolicited, new factual information. Among the new pieces of information are the amount of allocated inputs. The Department was made aware at verification that the per-unit amounts of the allocated inputs had been miscalculated and that the miscalculation was due to an error in the allocation formula used by Taifa. See Taifa Verification Report at 17. We did not, however, request corrected information on allocated inputs from Taifa and the amounts that were reported by Taifa were not verified. As the Department stated in the verification report: "...because of inaccuracies in the data for the allocated inputs in the electronic spreadsheets provided by Taifa, we were unable to verify the allocation of these inputs into the second and third level spreadsheets, and the reported per-unit



consumption of these inputs for any of the selected models.”

Under 19 CFR 351.302(d), the Department would normally reject Taifa’s July 30, 2004, submission in its entirety and request that Taifa revise its data and resubmit only the requested data. On September 3, 2004, the Department did return Taifa’s July 30, 2004, submission, asking Taifa to resubmit a revised FOP response that contains the verified data for the major and other inputs and the latest data for allocated inputs reported to the Department prior to verification. In response to concerns raised by Taifa, the Department indicated a willingness to reconsider whether this information was, in fact, new. Interested parties were asked to comment on the issue. Although the Department has ultimately reaffirmed its decision that the information is new and unsolicited, the process of allowing parties to submit arguments on this point has made it impossible for the Department to follow its normal process of rejecting the submission in its entirety and asking Taifa to resubmit the requested information. Because of the late date of this comment period, and given the relevant statutory deadline for our decision, we are not able to follow this normal process. If we were to reject Taifa’s July 30, 2004, submission, we would also be rejecting the information (including the minor corrections) that was verified and is properly used in making our determination. Therefore, we have retained Taifa’s July 30, 2004 submission, but are not relying on the information in that submission which we have determined is new, unsolicited information.

Citing Steel Rebar from Korea, Taifa argues that the Department has the discretion to accept untimely filed information. See Steel Rebar from Korea, 69 FR at 19399. We agree that such discretion exists, but as Steel Rebar from Korea makes clear the Department will decide whether to exercise its discretion on a case-by-case basis after examining the facts. See id. In this case, the Department believes that the error should have been presented as a minor correction at the beginning of verification, as was the case with the change in Huatian’s allocation of inputs. Further, the Department was unable to verify the corrected information because the Department was not made aware of the error until the last day of verification.

Taifa has argued that it is incumbent upon the Department to accept the corrected information regarding the allocated inputs as a clerical error, as required by NTN Bearings. Following NTN Bearings, the Department established a six-part test, indicating that it will accept corrections of clerical errors when the following conditions are met:

- (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgement, or a substantive error;
- (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable;
- (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error;
- (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent’s administrative case brief;
- (5) the clerical error must not entail a substantial revision of the response; and
- (6) the respondent’s corrective documentation must not contradict information previously determined to be accurate at verification. See Certain Fresh Cut Flowers from Colombia: Final Results of

Antidumping Duty Administrative Reviews, 61 FR 42833, 42834 (August 19, 1996).

In order for the Department to accept a clerical error late in the proceeding, all of the six conditions must be met. We determine that Taifa's allocation error does not meet two of the six conditions.

Under this test, the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable. As the Department noted in Taifa's verification report, the Department was unable to verify the reliability of the error with source documentation. Specifically, the Department stated in the verification report that "...because of inaccuracies in the data for the allocated inputs in the electronic spreadsheets provided by Taifa, we were unable to verify the allocation of these inputs into the second and third level spreadsheets, and the reported per-unit consumption of these inputs for any of the selected models." See Taifa Verification Report at 18. Thus, as a result of the error, the Department could not verify (1) whether the correction submitted to the Department was accurate; or (2) any of Taifa's allocated inputs because the allocation formula given at verification was incorrect. Because the Department could not verify the corrected error, it cannot be satisfied that the corrected error is reliable, and therefore, the second prong of the Department's test is not met.

In addition, the error submitted by Taifa fails the fifth prong of the Department's test, *i.e.*, correction of this clerical error must not entail a substantial revision of the response. Specifically, the error affected the usage rates of a significant number of inputs for every model sold in the United States. Given that Taifa produced hand trucks or inputs to hand trucks in many workshops, that monthly data was compiled for each workshop over the six-month POI, and that Taifa reported factors of production for a large number of hand truck models or parts, the error in Taifa's allocation formula affected thousands of pieces of information that went into the calculation of normal value. Although we cannot know the correct amount that these allocated inputs account for relative to the total normal value (because we do not know the correct amount of the allocated inputs), based on the amounts used in Taifa's July 2, 2004, submission, these inputs account for approximately 25 percent of the total value of the hand truck or hand truck part. Based on this, we determine that the correction proffered by Taifa would be a substantial revision of the company's response.

Because we could not verify the reported amounts of allocated inputs by model in Taifa's July 2, 2004, submission, we need to select other values for these inputs. Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department.

Section 776(b) of the Act provides that, if the Department finds that an interested party “has failed to cooperate by not acting to the best of its ability to comply with a request for information,” the Department may use information that is adverse to the interests of that party as facts otherwise available. Such adverse inference may include reliance on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review under section 751 or determination under 753; or (4) any other information placed on the record. See section 776(b) of Act.

The allocated input data submitted in Taifa’s July 2, 2004 response is the data that the Department sought to verify. That data, as described above, was incorrect because of the error in the formula allocating these inputs to particular models. Because Taifa failed to provide the Department with information in the form or manner requested, and the July 2, 2004 data could not be verified, we determine that the usage rates for the allocated inputs must be based on facts otherwise available, in accordance with section 776(a)(2). We further determine that Taifa failed to cooperate by not acting to the best of its ability. Specifically, Taifa was not fully prepared for the verification of its FOP database. If Taifa had been fully prepared, it would have detected the allocation error during the preparation for verification, rather than the last day of verification. Thus, we have applied an adverse inference in selecting the usage information for the allocated inputs.

In our questionnaire in this investigation, we requested Taifa to assign each hand truck model/part into one of 12 designated weight range categories based on the shipping weight of the hand truck/part. As adverse facts available, we have selected the highest reported amount for each allocated input for hand trucks/parts within a given weight range reported in Taifa’s July 2, 2004, response and assigned that value to all hand trucks/parts in that weight range.

In addition, as part of our analysis of Taifa’s July 30, 2004, submission, we compared Taifa’s July 30, 2004, submission with its July 2, 2004, submission. For each data point in these databases, we determined whether the data has changed, and found that a significant number of data points have changed for certain factor fields. Our review of Taifa’s minor error corrections reported to the Department at the beginning of the FOP verification provides possible explanations for the changes in some factor fields. However, for the other factor fields, we do not understand why there are changes. Specifically, Taifa had not identified any minor error corrections in these fields nor did the Department identify any errors in these fields during verification.

Therefore, we are treating these changes as untimely, unsolicited information. As explained above, since we are so close to our final determination deadline, we are not able to return this data to Taifa and ask Taifa to resubmit a database with this information redacted. Therefore, we intend to not rely on this data and to use instead the verified information from Taifa’s July 2, 2004, response.

**Comment 8: The Department Should Disregard Taifa’s Market Economy Purchases.**

*Petitioners’ Argument:* The petitioners argue that there is no evidence on the record that any market

economy input was used by Taifa in the production of hand trucks. Specifically, the petitioners note that the ratios of market economy and NME purchases reported by Taifa do not relate to any particular Taifa product or particular production run of a specific product. The petitioners contend that the Department, despite its review of Taifa's raw material import ledger, was not able to verify that market economy purchases comprised a sufficient portion of all purchases to justify the use of market values for valuing the relevant factors. Therefore, according to the petitioners, the Department should base all factor values on surrogate values.

The petitioners also argue that the Department must avoid using input prices which it has reason to believe or suspect may reflect dumped or subsidized prices. The petitioners note that Huatian and Taifa have purchased certain inputs from Japan and Russia where there is an outstanding antidumping order on imports of these countries' products into the United States. This, according to the petitioners, serves as reason for the Department to believe or suspect that prices of materials from these supplier countries are not "the best available information" and, thus, should be disregarded.

Finally, the petitioners argue that if the Department accepts Taifa's market economy purchases, the value for natural rubber should be adjusted from the Preliminary Determination.

*Respondent's Argument:* Taifa argues that the Department verified the type, quantity, and price of Taifa's imported inputs. Additionally, Taifa maintains that it is not the Department's practice to require a respondent to tie the use of market economy purchased materials to specific production runs. Taifa argues that once it is shown that at least a portion of the type of materials used in the production of the subject merchandise was purchased from a market economy, the Department relies on the price of the imported material as the surrogate value for that factor. Huatian and Taifa argue that the referenced dumping orders pertain to sales of merchandise to the United States, and that there is no evidence showing that foreign producers in Japan and Russia sold their product at dumped prices to the respondent companies in China.

*Department's Position:* With respect to using market economy input prices to value input factors, we agree with Taifa that it is not the Department's practice to require a respondent to tie the use of materials purchased from market economies to the actual production of subject merchandise. Section 351.408(c)(1) provides that "where a factor is purchased from a market economy supplier and paid for in market economy currency, the Secretary normally will use the price paid to the market economy supplier" to value the factors of production. Thus, when a respondent demonstrates that it has purchased a meaningful amount of its input from a market economy country, and has paid for the input in market economy currency, the Department will infer that the price paid to the market economy supplier accurately reflects the cost of the input. See Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27366. (One exception is where the evidence nevertheless clearly demonstrates that the market economy input was never used in production of the subject merchandise. See Comment 4 above.)

The Department has consistently recognized, however, the congressional intent to avoid using any prices that it has reason to believe or suspect may be dumped or subsidized. See Notice of Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts From the People's Republic of China, 68 FR 20373, and accompanying issues and decisions memo at comment 2 (April 25, 2003)(“Fence Posts”); citing Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R., Conf. Rep. No 100-576 at 590-91. An outstanding antidumping order issued by the United States on inputs from Russia and Japan, however, is insufficient evidence of dumping in China. The Department has a reason to believe an input is dumped only when the importing country has a dumping finding on the input in question. See id., see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From People's Republic of China: Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, and accompanying issues and decision memorandum at comment 1 (November 15, 2001). Dumping findings are market specific because the analyses typically compare the prices of imports in the investigating country with the home market prices in the country being investigated. See id. Accordingly, a dumping order in the United States does not indicate the same products are dumped in China. As a result, the Department has not disregarded market economy input prices on this basis.

The Department has become aware during the course of this investigation that there was a Chinese antidumping finding on cold-rolled steel products from Russia in place during the POI. See the Department's Letter to Taifa, October 1, 2004.<sup>1</sup> This finding indicates that cold-rolled steel sheet, cold-rolled steel sheet in coil, and cold-rolled steel strip were being dumped into China. The Department finds that this evidence provides a reason to believe or suspect that cold-rolled steel plate may be dumped into China. Therefore, we find that the use of a surrogate value instead of a market economy price for cold-rolled steel plate will result in the calculation of a more accurate dumping margin.

**Comment 9: The Department Should Consider the Role Played by Taifa Import & Export Company in Calculating the Selling, General and Administrative Expenses for Taifa.**

---

<sup>1</sup> On October 1, 2004, the Department sent a letter to all interested parties in this investigation informing them that the Department discovered a current antidumping duty order in China on specific cold-rolled steel products from Russia. Further, the Department requested the parties to comment on whether the Department should use the price of cold-rolled steel that Taifa purchased from Russia. Taifa did not provide any comments on this issue. However, in their response, the petitioners contend that the prices of cold-rolled steel from Russia reflect dumping, and are distorted. The petitioners maintain that the Department's discovery of the antidumping duty order underscores that the prices for the subject inputs from Russia are not representative of actual market-economy prices. Therefore, the petitioners argue that the Department should use surrogate prices to value Taifa's cold-rolled steel.

*Petitioners' Argument:* The petitioners argue that Taifa Import & Export Company (“Taifa I & E”) plays a significant role in the acquisition of raw materials and the sale of finished products for Taifa and that this type of activity is a contribution in addition to the selling, general and administrative (“SG&A”)-type of activities incurred internally by Taifa. Therefore, the petitioners argue that both of these SG&A-type activities should be accounted in the Department’s surrogate values for SG&A.

*Respondent's Argument:* Taifa argues that applying the SG&A and profit ratio to account for Taifa I&E’s activities, in addition to the SG&A and profit ratio applied to Taifa would lead to double-counting. According to Taifa, Taifa I&E, which conducts all sales activities, functions as a division of the Taifa Group, rather than as a separate company. Taifa argues that the surrogate ratios for SG&A and profit include components attributable to sales activities, and thus must only be applied to the entire Taifa Group once.

*Department's Position:* We have not applied the SG&A ratio twice, as requested by the petitioners to account for possible selling activities undertaken by both Taifa and Taifa I&E. There is no information in their financial statements to indicate that the selling activities undertaken by the Indian companies being used as surrogates differ from the selling activities undertaken by Taifa (including Taifa I&E) so as to support the calculation requested by the petitioners.

**Comment 10: The Department Should Adjust Taifa’s Sales Database to Reflect Customer Discounts.**

*Petitioners' Argument:* The petitioner argues that the Department should ensure that all sales to one of Taifa’s customers are adjusted to account for discounts. Specifically, the petitioner notes that Taifa failed to report these discounts in latest sales database.

*Respondent's Argument:* Taifa did not comment on this issue.

*Department's Position:* We have adjusted Taifa’s sales database to account for the discount, which was a minor correction from verification. See Taifa Verification Report.

**Comment 11: The Department Should Revise Taifa’s FOP Database to Account for Packing Materials.**

*Petitioners' Argument:* The petitioners argue that the Department should revise Taifa’s FOP data to include packing materials for all models. Specifically, the petitioners argue that Taifa failed to report packing materials in its FOP database, and therefore, the Department should add the weight of a competitor’s plastic packing bag as neutral facts available.

*Respondent's Argument:* Taifa argues that the Department verified that Taifa manufactures its own

plastic bags used to pack the subject merchandise. According to Taifa, the materials used to manufacture these plastic bags have been reported in the FOP database.

*Department's Position:* In the Preliminary Determination, we improperly accounted for Taifa's packing materials as a raw material input in the calculation of normal value. However, for the final determination, we have reclassified Taifa's packing materials and included them in the packing section of the normal value calculation.

### **True Potential**

#### **Comment 12: The Department Should Add Trading Company Factors for SG&A and Profit in Calculating True Potential's Normal Value**

*Petitioners' Argument:* The petitioners argue that the manufacturers from whom True Potential purchases hand trucks incurred SG&A expenses and enjoyed profits associated with the sale of hand trucks to True Potential. According to the petitioners, True Potential, strictly a trading company, incurred additional SG&A expenses and enjoyed its own profits associated with the sale of hand trucks to its customers. Thus, the petitioners argue that, in addition to the calculated SG&A and profit surrogate ratios for producers, the Department should include SG&A and profit ratios using Indian trading company surrogates in calculating a margin for True Potential.

*Respondent's Argument:* True Potential argues that it is not the Department's practice to include additional SG&A and profit surrogate ratios in NME cases involving sales through trading companies. Furthermore, True Potential maintains that it is reasonable to assume that since it was responsible for making export sales, its suppliers did not perform any selling activities. Thus, True Potential's SG&A expenses and profit was incurred in place of expenses and profit that its suppliers would otherwise incur. According to True Potential, applying the additional SG&A and profit ratios to True Potential would result in double-counting.

*Department's Position:* As with Taifa and Taifa I&E (see Comment 9 above), without knowing the selling activities undertaken by the Indian producers whose information is being used to calculate an SG&A ratio, we cannot say whether or to what extent they differ from the selling activities of True Potential and its suppliers. Therefore, we have no basis to apply the SG&A ratio twice as requested by the petitioners.

### **Separate Rates**

#### **Comment 13: The Department Should Deny Separate-Rates Treatment for All Respondents**

*Petitioners' Argument:* The petitioners argue that the Department's Preliminary Determination failed to take into account the PRC government control over market conditions and the impact of those

controls on export activities. According to the petitioners, it is difficult if not impossible to draw a line between the considerable control exercised by the PRC government over companies, and the impact of that control over export activities. The petitioners argue that China does not have “companies” in the American sense, due to the heavy influence of state agencies and policies. The petitioners also maintain that infrastructure services in China are dominated by the government, and that the government controls land access, transportation, and the banking sector. According to the petitioners, the PRC government directs credit activities toward favored business sectors. Additionally, the petitioners claim that the PRC government maintains price controls on certain products and services via mandated pricing or pricing guidelines. Furthermore, the petitioners argue that the PRC government controls which factories are permitted to export, and which factories must supply the domestic market. Lastly, the petitioners argue that the “privatization” of China’s companies does not equate to market freedom; the main goal is not to reduce state control over the economy, but instead is to make government control more efficient.

According to the petitioners, the Department’s current separate-rates test considers variables that reflect American concepts of corporate control, *e.g.*, controlling contract prices, business management, and export licenses. Instead, according to the petitioners, the Department should implement a privatization-rules test, which recognizes that a government can manipulate economic conditions to give rise to market-price illusions. Thus, according to the petitioners, the Department should implement a broader market-distortion test distinct from the separate-rates test, and issue a questionnaire to the PRC government seeking information on government control over the relevant industry. This addition to the current separate-rates test would seek to determine whether the current separate-rates test is meaningful.

The petitioners argue that record evidence demonstrates that the PRC government has a controlling influence over the hand truck industry. As a preliminary matter, the petitioners maintain that it is the Department’s current practice to issue separate rates to companies which submit basic, boilerplate requests. Next, the petitioners argue that the PRC hand truck companies are clustered in a very specific geographical region of China, and conclude that there is no explanation for this other than that the PRC government drew up plans and directed the placement of these companies at the same location. The petitioners also note that the investigated hand truck companies all incorporated within a two-year period. Finally, the petitioners maintain that the local government favors Taifa as a “Big Exporter” and that Qingdao provides defense support for antidumping actions.

Finally, the petitioners maintain that the respondent companies have failed to place any information on the record that their export activities operate freely of China’s market distortions. Specifically, the petitioners argue that the respondents have not rebutted arguments about Chinese government control, and failed to rebut the petitioners’ arguments that government treatment does not affect their export activities. The petitioners also note that Taifa failed to inform the Department about its status as a “Big Exporter,” receiving preferential treatment from the Qingdao government.



*Respondents' Argument:* The respondents argue that the Department correctly addressed the petitioners' arguments concerning the separate rates issue in the Preliminary Determination. Specifically, the respondents note that the Department's separate rates test does not examine the types of government control alleged by the petitioners. The respondents argue that the actions allegedly undertaken by the Chinese central, provincial, and municipal governments are indica that the PRC is a non-market economy, a point which is not contested in this case. According to the respondents, the petitioners have provided no evidence that would warrant a reconsideration of the Department's preliminary decision in this regard, and therefore, the Department should continue to grant separate rates to the respondents.

*Department's Position:* We disagree with the petitioners that we should deny separate-rates treatment for all respondents in this investigation. To establish whether a respondent operating in an NME country is sufficiently independent to be eligible for a separate rate, the respondent must establish an absence of governmental control on both a *de jure* and a *de facto* basis. In determining whether a respondent meets this requirement, the Department analyzes each exporting entity under the test established in Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), and Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. See Silicon Carbide.

In determining whether there is an absence of *de jure* government control, the Department considers the following: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies. *Id.* In this case, the mandatory respondents Huatian, Taifa, True Potential, and Xinghua provided evidence on the record that indicates that their export activities are not controlled by the government. See Verification Reports for these respondents. In addition, evidence on the record indicates that the export activities of Future Tool and Shandong are also not controlled by the government.

Further, the Department typically considers the following four factors in evaluating whether a company is subject to *de facto* governmental control of its export functions: (1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *Id.* With respect to the absence of *de facto* government control over the export activities of the respondents, evidence on the record indicates that the government has no involvement in their determination of export prices, profit distribution, marketing strategy, and contract negotiations; nor is the government involved in the daily

operations or the selection of management for these companies. In addition, we found that these companies' pricing and export strategy decisions are not subject to any governmental review or approval and that there are no governmental policy directives that affect these decisions. See Verification Reports for Huatian, Taifa, True Potential, and Xinghua.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the export activities of Future Tool, Huatian, Shandong, Taifa, True Potential, and Xinghua, we determine that these companies have met the requirements for receiving a separate rate for purposes of this investigation.

The Department is currently soliciting public comments on its separate rates policy and practice and on options for changes. See Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries, 69 FR 24119 (May 3, 2004) and 69 FR 56188 (September 20, 2004). The general comments offered by the petitioners on the Department's separate rates policy are of the sort that were requested under these notices. The petitioners may wish to continue to pursue their concerns by offering comments in that process.

In the present investigation, the Department has applied its current separate rates test and is satisfied that the entities receiving separate rates have adequately demonstrated the absence of both *de jure* and *de facto* governmental control over their export activities. Therefore, we have determined that Future Tool, Huatian, Shandong, Taifa, True Potential, and Xinghua are entitled to separate rates for the purposes of this investigation.

**Comment 14: The Department Should Not Calculate a Separate Rate for True Potential.**

*Petitioners' Argument:* The petitioners argue that the Department should not calculate a separate rate for True Potential. Specifically, the petitioners maintain that True Potential, which is a trading company, is not the appropriate party to be investigated with respect to its reported sales of hand trucks. Citing 19 U.S.C. § 1677a(a), the petitioners claim that the party with knowledge of the sales' destination is the appropriate party to be reviewed. The petitioners argue that True Potential failed to demonstrate that its hand truck suppliers had no knowledge that the hand trucks they manufactured were not bound for the United States. In fact, the petitioners argue that True Potential admitted on the record that its suppliers may have been aware that the hand trucks they manufactured were to be exported to the United States. The petitioners note that in some instances, the manufacturers directly received pallets from the United States importer, and thus, have knowledge of the destination of True Potential's sales. As such, the petitioners argue that the Department should not calculate a separate rate for True Potential.

*Respondent's Argument:* True Potential argues that in cases involving non-market economy countries, the knowledge of the ultimate destination between parties located within the NME is not relevant to identifying the appropriate respondent. True Potential cites the Notice of Final

Determination of Sales at Less than Fair Value: Creatine Monohydrate from the People's Republic of China, 64 FR 71104 (December 20, 1999) at Comment 3 which states, “{the Department’s} knowledge test ‘is restricted with regard to NME cases, since we will not base export price on internal transactions between two companies located in the NME country.’...Whether {the producer} knew the merchandise was destined for the United States is irrelevant in this instance, as the appropriate starting point for the application of the knowledge test is the first transaction with a market based entity (i.e., {the trading company’s} transaction with the U.S. customer.)” True Potential argues that its first market-based transaction occurs between itself and its U.S. customers.

*Department’s Position:* As mentioned in Comment 13 above, under the Department’s current separate-rates test, the Department has determined that True Potential is entitled to receive a separate rate. We agree with True Potential that in NME cases, an NME exporter that sets the price to the first unaffiliated party in the U.S. does not have an obligation to establish that its NME suppliers had no knowledge of the final destination of the subject merchandise. In this case, True Potential sells to the first unaffiliated customer in the United States and has demonstrated that it qualifies for a separate rate. Therefore, the Department has continued to calculate a separate rate for True Potential.

**Comment 15: The Department Should Calculate a Separate Rate for Zhenhua.**

*Respondent’s Argument:* Zhenhua argues that the Department should reverse its Preliminary Determination finding that Zhenhua did not export the subject merchandise in the period of investigation and did not qualify for a separate rate. Zhenhua asserts that it provided substantial evidence to support that it exported subject merchandise in the POI. Zhenhua argues that it sold directly to a PRC trading company in U.S. dollars, that at the time of the sale it knew the name of the U.S. buyer, and that the final destination was the United States. Also, Zhenhua claims that it was the official exporter of record and provided an official Chinese government export declaration in the March 17, 2004, response to support its claim. Zhenhua cites section 731(2)(B) of the Act which states that antidumping duties will be imposed “...by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation...” Therefore, Zhenhua argues that it meets the requirements of the antidumping statute because its sales of subject merchandise were “for importation” into the United States.

Alternatively, Zhenhua argues that the Department must still give Zhenhua its own dumping margin, even if the Department continues to find that Zhenhua is not the exporter. Zhenhua cites section 777A(c)(1) of the Act which states that “the administering authority shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise.” Zhenhua argues that the Department must calculate a separate rate for Zhenhua because it is a producer, it fully participated in the investigation, and it fully answered the Department’s questionnaires.

*Petitioners’ Argument:* The petitioners argue that Zhenhua is not entitled to a separate rate because

it admitted that it does not set the terms of sale, nor negotiate with the U.S. purchaser. The petitioners assert that the Department was correct to conclude that Zhenhua's sales were to a PRC trading company, and not directly to the United States.

Citing the statutory requirements of section 782(I)(1) of the Act, the petitioners also contend that Zhenhua should not receive a separate rate because the factual information submitted in the Section A response has not been verified, and therefore, cannot be relied upon for the final determination. Finally, the petitioners assert that because Zhenhua did not submit Section C and D responses to the Department, Zhenhua is ineligible to receive a separate rate.

*Department's Position:* We disagree with the petitioners that Zhenhua is ineligible to receive a separate rate because it only responded to Section A of the Department's antidumping questionnaire. The Department notified Zhenhua on February 12, 2004 that it was eligible to be considered for a separate rate if it responded to Section A of the antidumping questionnaire. However, we find that the evidence on the record does not support Zhenhua's claim that it exported subject merchandise in the POI.

Under the Department's separate rates test, it is insufficient for Zhenhua to claim that it sold directly to a PRC trading company in U.S. dollars, that at the time of the sale it knew the name of the U.S. buyer, that it is the official exporter of record, and that the final destination was the United States. Rather to be entitled to a separate rate, a respondent must establish that it is an exporter of the subject merchandise and that there is an absence of both *de jure* and *de facto* government control over its export activities. As part of this test to determine whether an entity is entitled to separate rate, the Department looks to factors such as whether the entity negotiates and sets the export prices with its U.S. customers for the U.S. sales. In the instant case, Zhenhua could not demonstrate that it negotiates and sets the export prices with its U.S. customers for the U.S. sales in the POI. Therefore, the Department continues to find that Zhenhua should not receive a separate rate.

**Comment 16: The Department Should Not Calculate Separate Rates for Future Tool and Shangdong.**

*Petitioners' Argument:* The petitioners note that the Department has not verified the Section A responses for Future Tool and Shangdong. Therefore, according to the petitioners, the Department cannot rely upon the companies' Section A responses to determine the absence of *de jure* or *de facto* government control for the purposes of calculating a separate rate. The petitioners also argue that these companies have failed to comply with the Act because they did not submit Section C and D questionnaire responses to the Department.

*Respondent's Argument:* Future Tool argues that it is normal Department practice to accept only a Section A response from those companies who wish to qualify for separate rates, but does not wish to become a voluntary respondent. Future Tool contends that the Department does not normally

conduct verification of Section A respondents, and, since it was the Department's decision not to verify, Future Tool should not be unfairly penalized.

*Department's Position:* It is the Department's decision to verify or not the Section A responses of these separate-rate companies. We chose not to verify Future Tool and Shandong in this investigation. Moreover, the Department does not require companies applying for a separate rate to submit responses to Sections C and D of the Department's questionnaire. See, e.g., the Department's February 12, 2004, letter to Shandong. Future Tool and Shandong timely filed the required responses to the Department's Section A questionnaire. Moreover, their Section A responses demonstrated they were entitled to separate rates under the Department's test. Therefore, we find that Future Tool and Shandong cooperated fully with the Department, and we will continue to calculate a separate rate for them in the final determination.

### **General Issues**

#### **Comment 17: The Department Should Not Use the Indian Electricity Tariff Because it is Aberrational.**

*Respondents' Argument:* The respondents argue that the Indian electricity surrogate value is distorted and aberrational, and should not be used in the final determination. In support of their argument, the respondents cite to an article from [www.IndiaInfoline.com](http://www.IndiaInfoline.com) in their April 8, 2004, surrogate value submission at Exhibit 2, which states that the Indian power sector is characterized by high tariffs for the industrial sector, which are intended to cross-subsidize low domestic and agricultural tariffs. According to the respondents, the report also shows that the electricity tariff for the industrial sector in India is grossly aberrational when compared to other developing countries, and even in comparison with developed countries. Specifically, the article notes that India's tariff in 2000 was four times that of Indonesia, twice that of the Philippines, more than 80% greater than Malaysian tariffs, and 150% greater than South Africa. Also, the article notes that Indian power tariffs are more than 40% higher than the U.S. tariff during the same period. Therefore, respondents argue that Indian electricity prices are aberrational and should not be used in the final determination.

As an alternative surrogate value, the respondents have placed a 2002 Indonesian electricity tariff from the ASEAN Centre for Energy ([www.aseanenergy.org](http://www.aseanenergy.org)) on the record at Exhibit 3 of the April 8, 2004, surrogate value submission. The respondents argue that Indonesia was identified by the Department as being economically comparable with the PRC in the March 9, 2004, Memorandum from Ron Lorentzen to Susan Kuhbach, and the Indonesian value provided by the respondents is (1) more contemporaneous with the POI, (2) is obtained from a public source, (3) represents a value from a country that is economically comparable, and (4) is not aberrational.

*Petitioners' Argument:* The petitioners argue that the Department should continue to use Indian electricity data because India is the surrogate country properly selected by the Department in this

investigation. The petitioners cite the Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine 62 FR 61754 (November 19, 1997), where the Department stated that, “to the extent possible it is the Department’s preference and practice to rely on information from the first choice surrogate country to value all factors for which such information is available.” Therefore, the petitioners argue that the available Indian surrogate data should continue to be used for the final determination.

*Department’s Position:* After reviewing the information on the record, the Department finds no reason to reject industrial electricity rates in India as distorted or aberrational. The information submitted by the respondents is insufficient in several respects, including not specifically relating to the period of investigation. As the sector report submitted by respondents indicates, electricity tariffs vary widely across market economies providing a broad spectrum of benchmarks. The benchmarks presented in the sector report do not state the period of time the tariffs relate to nor whether the tariffs are inclusive or exclusive of taxes and are therefore unsuitable as benchmarks. Further, certain tariffs cited in the sector report deviate from tariffs published by the International Energy Agency in its quarterly report entitled Energy Prices & Taxes. This data discrepancy gives the Department reason to believe that the benchmark tariffs cited in the sector report may be incorrect or possibly mischaracterized. Finally, the information submitted fails to provide a comprehensive overview of such benchmarks and excludes countries where electricity prices are much higher, such as Japan. Given these reasons, we do not believe there is sufficient information to warrant deviating from our normal practice of using the electricity rate from the selected surrogate country.

**Comment 18: The Department Miscalculated SG&A and Profit Amounts.**

*Respondents’ Argument:* The respondents argue that the Department should correct a clerical error in its calculation of the SG&A expense and profit. The respondents note that in the Preliminary Determination, the Department calculated the SG&A ratio as a percentage of direct materials and energy, but in the margin calculation the SG&A ratio was applied to the sum of direct materials, energy and overhead. As a result, the respondents claim that the SG&A ratio was not applied consistently, and therefore, the respondents’ SG&A expense was overstated. Furthermore, the respondents argue that the SG&A expense was included in the cost of production calculation and used to calculate profit, thereby overstating profit as well. Therefore, the respondents argue that the Department should either (1) determine the SG&A ratio as a percentage of direct materials, energy and overhead, or (2) apply the SG&A ratio to only direct materials and energy.

*Petitioners’ Argument:* The petitioners disagree with the respondents that the Department miscalculated the surrogate profit ratio. The petitioners state that the Department correctly calculated and applied the profit ratio as a percentage of total cost of production, inclusive of direct materials, energy, labor, factory overhead, and SG&A expenses. Therefore, the petitioners argue that no revision is required for the surrogate profit ratio. However, the petitioners agree with the respondents that the Department should apply the SG&A ratio to an amount that excludes factory overhead. The

petitioners note, however, that the Department should be basing the calculation on adverse facts available, thereby rendering the financial ratios moot.

*Department's Position:* We agree with the respondents, and have not applied the SG&A ratio to factory overhead. Moreover, we have amended our calculation by taking the ratio of SG&A expenses to direct materials, energy and labor and applied that ratio to respondents' direct materials, energy and labor. Factory overhead has been calculated in the same manner. See FOP memo at 11.

**Comment 19: The Department Should Not Use Aberrational Financial Data to Value Factory Overhead, SG&A Expenses, and Profit.**

*Respondents' Argument:* The respondents argue that the financial data obtained from the financial statements of Rexello Castors Private Limited ("Rexello") is aberrational and should not be used to calculate surrogate financial ratios. The respondents specifically note that the Rexello SG&A expense ratio of 56.40% is aberrationally high when compared to the 37.69% SG&A expense calculated by the Department from the financial statements of Jay Equipment and Systems Private Limited ("Jay"), and 25.58% for Nagori Engineers Private Limited ("Nagori"). The respondents assert that the Department's practice in determining surrogate financial ratios is to rely on the financial data of a company from the surrogate country of the same or similar industry that is representative of the experiences of the respondents, and to disregard surrogate values that are aberrational. See 19 CFR 351.408(c)(4). Respondents maintain that Rexello's SG&A expense ratio is extraordinarily high, especially for an industry like hand trucks which employs basic technologies and production processes, and has limited selling activities.

The respondents also argue that Rexello's financial statements reveal that the SG&A expense ratio calculated by the Department is not based on correct expenses. The Rexello income statement includes salaries, wages and bonuses under the category "Personnel" and labor charges under the category "Management Expenses," resulting in management expenses that are 52% greater than the direct labor expense. In comparison, Jay's SG&A labor is comparable to its direct labor expense and Nagori's SG&A labor is only 39% of its direct labor expense. The respondents argue that while Jay and Nagori reported the SG&A labor expense as "Director's Remuneration," Rexello's use of the term "Labor Charges," coupled with the large difference in cost, indicates that at least a portion of Rexello's SG&A labor charges must reflect direct labor expenses. As a result, the respondents argue that Rexello's SG&A labor charges are aberrationally high and therefore, unreliable and not representative of the financial experiences of Taifa and Huatian. The respondents assert that, for the aforementioned reasons, the Department should disregard Rexello's financial data in calculating the surrogate financial ratios in the final determination. As an alternative, the respondents argue that the Department should recalculate Rexello's surrogate ratios by including a substantial portion of Rexello's so-called SG&A labor charges in the direct labor expense.

*Petitioners' Argument:* The petitioners argue that the Department should continue to use all three

financial statements to calculate the surrogate financial ratios, claiming that the respondents' argument is entirely results oriented. The petitioners contend that it is the Department's practice to rely on the financial data of "producers of identical or comparable merchandise in the surrogate country," citing 19 CFR 351.408(c)(4), and that there is no requirement that the companies be "representative of the experience of the respondents," as respondents claim.

Further, the petitioners argue that Rexello's SG&A expense ratio is not aberrational, and that the record supports the argument that the hand truck industry does have extensive selling activities. The petitioners note that the Rexello financial statement also includes a clean, unqualified auditors report. The petitioners also argue that the respondents' attempts to contrast the experience of Rexello with Jay and Nagori are not probative because they compare their SG&A findings on Rexello to the conservative SG&A ratios calculated by the Department for Jay and Nagori. The petitioners point to several line items in the Jay and Nagori income statements which arguably should have been included by the Department that would have resulted in ratios similar to those calculated by the Department for Rexello. The Department has rejected similar arguments that SG&A data was aberrational made by respondents in other cases such as Notice of Final Determination of Sales at Less than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 61 FR 14057 (March 29, 1996), and 2000-2001 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic Of China; Final Results, at Comment 5 of the accompanying Issues and Decision Memorandum (November 14, 2002).

*Department's Position:* We disagree with the respondents that we should not use the publicly-available financial data of Rexello's in our calculation of surrogate financial ratios. In their comparison of personnel expenses and management expenses, the respondents only included salaries, wages, and bonuses in calculating personnel expenses. A review of Rexello's income statement shows that personnel expenses include gratuities, pension fund and other fund contributions and staff welfare expenses in addition to salaries, wages and bonuses. The total value of the personnel expenses is 3,920,623 Rupees. Therefore, the management labor expenses (*i.e.*, 4,831,473 Rupees) are 23.23% greater than the direct labor expense, not 52% as claimed by the respondents. In regard to the comparison of Rexello's SG&A labor to Jay's and Nagori's, we note that both Jay's and Rexello's SG&A labor exceed their direct labor costs. Only Nagori's SG&A labor is less than its direct labor expense.

The separation of the labor charges between the categories "Personnel" and "Management Expenses" on the face of the income statement typically indicates that these expenses are different in nature. Otherwise these expenses would normally be grouped in the same category (*i.e.*, all direct labor expenses are typically grouped as direct labor expenses). We note that there were no expenses reported on Rexello's income statement under the subheading "Directors' Remuneration." Therefore, we cannot conclude that all of the labor expenses are direct labor expenses and do not relate to directors' remuneration. The respondents' evidence of the difference between the terminology and the value of SG&A labor expenses between the three companies simply does not support the conclusion



that Rexello reported direct labor expenses in its management labor expenses. Further, we note that Rexello's income statement was audited by an outside party and there was no evidence in the auditor's report that Rexello's management labor expenses were reported incorrectly. The salaries paid to the directors is the decision of the company. As long as the payments were made and reported properly, as evidenced by the lack of a finding in the auditor's report, the Department relies on the audited financial statements of the company. In regard to the respondents' suggestion that alternatively some of the management labor costs be allocated to direct labor expense, we find no compelling reason to reclassify these expenses. Further, we note that the respondents failed to provide an allocation methodology to make such an allocation. Therefore, we will continue to use Rexello's financial statements in our calculation of surrogate financial ratios.

**Comment 20: The Department Should Include the Cost of Packing Materials and Labor in Calculating Factory Overhead and SG&A.**

*Petitioners' Argument:* The petitioners argue that the Department should include packing costs when applying the surrogate financial ratios for Huatian, Taifa and True Potential. For example, packing materials should be included in the calculation basis for overhead and SG&A, and packing materials and packing labor should be included in the calculation basis for profit.

*Respondents' Argument:* The respondents argue that the cost of packing is properly excluded because there is no evidence showing that packing expense was included as a direct material cost in the surrogate Indian producers' financial data.

*Department's Position:* We agree with the respondents that there is no evidence that packing expense was included as a direct material cost in the Indian financial data. Therefore, we have properly excluded the cost of packing in calculating factory overhead and SG&A.

**Comment 21: The Department Should Include Financial Data from An Indian Hand Truck Producer in Calculating Financial Ratios.**

*Petitioners' Argument:* According to the petitioners, evidence on the record indicates that Excellent Engineering & Allied Services Private Limited ("Excellent") is a producer of hand trucks. As such, the petitioners argue that the company's financial data should be incorporated into the calculation of the final surrogate financial ratios.

*Respondents' Argument:* The respondents argue that the Department should continue to exclude financial data for Excellent in deriving surrogate financial ratios since there is no information on the record that rebuts the Department's conclusion that Excellent is not a hand truck producer.

*Department's Position:* In the initiation of this investigation, we found that there is inadequate evidence on the record that Excellent is a producer of hand trucks because: 1) it is not included in the

list of producers of hand trucks submitted by the Indian researcher; 2) its financial statements do not indicate that it is a manufacturer of hand trucks; 3) its direct material costs are lower than the other companies; and 4) its financial statements refer to raw materials as “trading materials.” Therefore, in the initiation, we did not use the financial data of Excellent in our calculation of normal value. On April 8, 2004, the petitioners placed on the record an e-mail from the chairman of the board of directors of Excellent, indicating that Excellent is a private company with the necessary infrastructure to manufacture hand trucks, as further evidence to support petitioners’ claim that Excellent is a producer of hand trucks. We do not find this information to be sufficient evidence to overcome our four reasons for rejecting Excellent’s financial data from our calculation of normal value. While Excellent may be capable of producing hand trucks, we see no reason to include its information when we have information from companies that do produce hand trucks. Therefore, we have continued to exclude Excellent’s financial statements in calculating our surrogate financial ratios.

**Comment 22: The Department Should Revise the Profit Rate for the Final Calculation.**

*Petitioners’ Argument:* The petitioners argue that the Department applied an incorrect profit rate in deriving the normal value when corroborating the “petition rate” for the Preliminary Determination. Specifically, the Department assigned a profit margin of 6.02 percent instead of 6.42 for the Preliminary Determination. The petitioners assert that the Department should correct this error in its final determination.

*Respondents’ Argument:* The respondents did not comment on this issue.

*Department’s Position:* We agree with the petitioners that we made a clerical error in assigning the profit ratio, and have corrected this error in our final determination.

**RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination of this investigation and the final dumping margins for Future Tool, Huatian, Shandong, Taifa, True Potential, and Xinghua in the Federal Register.

AGREE \_\_\_\_\_

DISAGREE \_\_\_\_\_

\_\_\_\_\_  
James J. Jochum  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date