

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**

**SUMMARY**

The Department of Commerce (“the Department”) has prepared these final results of redetermination pursuant to the decision of the U.S. Court of Appeals for the Federal Circuit (“CAFC”) and remand order of the U.S. Court of International Trade (“CIT”) issued on April 12, 2011.<sup>1</sup> The CIT’s *Remand Order* concerns the second administrative review of *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China* (“PRC”).<sup>2</sup> The CIT’s *Remand Order* follows prior proceedings where the CAFC held that if a party to litigation presents “clear and convincing new evidence sufficient to establish a *prima facie* case that the agency proceedings under review were tainted by material fraud, . . . the [CIT] abuse[s] its discretion in refusing to order a remand to allow [the Department] to reconsider its decision in light of the new evidence.”<sup>3</sup> In accordance with the factors set forth in *Home Products*, the Department has weighed the factors and determined to re-open the closed *AR2 Final Results* in light of newly discovered evidence; and in doing so, the Department concludes that Since Hardware (Guangzhou) Co. Ltd. (“Since Hardware”), the respondent, provided unreliable, incomplete, and unverifiable information related to its factors of production (“FOP”) which necessarily impact its separate rate responses. Because Since Hardware failed to establish its entitlement to a separate rate, the Department treats Since Hardware as part of the PRC-wide

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<sup>1</sup> See *Home Prods. Intl, Inc. v. United States*, 633 F.3d 1369 (Fed. Cir. 2011) (“*Home Products*”) and *Remand Order* in *Home Products International v. United States*, Court No. 08-00094 (Apr. 12, 2011) (“*Remand Order*”).

<sup>2</sup> See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 14437 (Mar. 18, 2008) (“*AR2 Final Results*”) (review covering imports from August 1, 2005, through July 31, 2006).

<sup>3</sup> *Home Products*, 633 F.3d at 1381.

entity and assigns it the 157.68 percent rate assigned to the PRC-wide entity as an adverse facts available (“AFA”) margin.

On August 1, 2011, the Department released its *Draft Remand Results* further explaining the Department’s decision to reopen the closed *AR2 Final Results* and reconsider the calculation of Since Hardware’s antidumping duty rate. On August 9, 2011, the Department received comments on the *Draft Remand Results* from Since Hardware. The Department did not receive comments from Petitioner.

Based on the comments received from Since Hardware, and consistent with the Court’s instructions, we have reaffirmed the Department’s determination to reopen the *AR2 Final Results* and to treat Since Hardware as part of the PRC-wide entity, which was assigned a rate of 157.68 percent. Pursuant to section 776(b) of the Act, given that the PRC-wide entity, which includes Since Hardware, has failed to cooperate to the best of its ability (due to the documentation discrepancies), we recommend applying AFA to the PRC-wide entity. In responding to the Court’s Order and by reexamining the record evidence, we find that the Department’s practice and the administrative record of the *AR2 Final Results* support the decision to reopen this case and to address the newly discovered evidence.

## **BACKGROUND**

Home Products International, Inc. (“Home Products”), the domestic interested party, initiated an action in the CIT challenging the final results of the Department’s second administrative review.<sup>4</sup> While this challenge was pending before the CIT on other matters, the Department conducted its third administrative review of the same antidumping order.<sup>5</sup> During that administrative review, based on different arguments made by the parties, the Department

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<sup>4</sup> See *AR2 Final Results*.

<sup>5</sup> See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 11085 (Mar. 16, 2009) (“*AR3 Final Results*”).

determined that Since Hardware provided unreliable and incomplete documentation in support of its claimed market economy (“ME”) inputs.<sup>6</sup> Specifically, the Department determined that “numerous typographical errors and discrepancies appear in the documentation that Since Hardware submitted concerning its alleged purchases of inputs from ME suppliers.”<sup>7</sup> The Department found that “[t]he certificates submitted by Since Hardware relating to its claimed purchases of a steel input from a ME supplier are clearly not used by the regulatory agency responsible for certifying the origin of the input;” “identical typographical errors and other discrepancies appear on documentation submitted from multiple, independent, unaffiliated suppliers;” and “claimed purchases of a major steel input is not supported by trade data.”<sup>8</sup> With regard to the certificates of origin, the Department found: (1) that the certificates contained typographical errors that were inconsistent with genuine exemplar certificates of origin supplied by the certifying agency; (2) that the certificate numbers were in a different alpha-numeric format, as opposed to basic sequential numbering format; (3) that the date stamp lacked an official logo and used a different date format; and (4) that the certifying signature of the agency official was different than the genuine exemplar signature of the agency official.<sup>9</sup>

Accordingly, the Department revoked Since Hardware’s separate rate and incorporated Since Hardware into the PRC-wide entity. Subsequently, because of the PRC-wide entity’s failure to cooperate to the best of its ability, through Since Hardware, the Department applied AFA to determine the dumping margin for the PRC-wide entity. While the CIT affirmed the Department’s decision to calculate Since Hardware’s margin using AFA, the decision to revoke

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<sup>6</sup> See *AR3 Final Results* and accompanying Issues and Decision Memorandum at 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *Home Products*, 633 F.3d at 1373-74 (citing Adverse Facts Available Memorandum accompanying *AR3 Final Results*).

Since Hardware's separate rate was remanded to the Department and that remand redetermination is currently pending before the court.<sup>10</sup>

While Home Product's challenge to *AR2 Final Results* proceeded before the CIT, Home Products moved for remand and to amend its complaint in that case based upon the new information discovered and relied upon in *AR3 Final Results*. Before the CIT, the Department opposed Home Products' motion because it failed to demonstrate that the *AR2 Final Results*, of which it challenged, was not supported by substantial evidence based upon the *AR2 Final Results* administrative record. The CIT agreed with the Department, holding that Home Products had not demonstrated a basis for a remand to the Department where the proposed remand was based upon a determination in the third administrative review, and not based upon the administrative record of the second administrative review.<sup>11</sup>

Home Products appealed the CIT decision to the CAFC. Although finding that "generally, for a court reviewing an agency decision, the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court,"<sup>12</sup> and "the so-called 'record rule' is not without exceptions."<sup>13</sup> Accordingly, the CAFC recognized "an exception to the record rule where new evidence of material fraud has been brought to light, which calls into question the integrity of the agency's proceedings."<sup>14</sup> Thus, the CAFC held that although the Department did not make an express determination of fraud in the third administrative review, "Home Products submitted clear and convincing evidence which could support a finding that Since Hardware committed fraud in the third

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<sup>10</sup> See *Since Hardware (Guangzhou) Co., Ltd. v. United States*, Slip Op. 10-108 (CIT 2010).

<sup>11</sup> *Home Products International, Inc. v. United States*, 675 F. Supp. 2d 1192 (CIT 2009).

<sup>12</sup> *Home Products*, 633 F.3d at 1379 (internal citations omitted)

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 1380.

administrative review.”<sup>15</sup> Turning to *AR2 Final Results*, the Court held that because “Since Hardware’s certificates from the second administrative review clearly contain the same discrepancies [the Department] observed in certificates from the third administrative review, including the same typographical errors, different certificate numbering system, different date stamp, and noticeably different signatures,” “Home Products has presented clear and convincing new evidence, sufficient to establish a *prima facie* case that Since Hardware was guilty of fraud in the second administrative review.”<sup>16</sup> In remanding the matter to the Department, the CAFC “express[ed] no opinion as to whether [the Department] must exercise its authority to reopen.”<sup>17</sup>

### **ISSUE 1: Whether to Open a Closed Proceeding**

The CAFC instructed that, “[i]n deciding whether the proceeding should be reopened, [the Department] may appropriately consider the interests in finality, the extent of the inaccuracies in the second administrative review, whether fraud existed in the second administrative review, the strength of the evidence of fraud, the level of materiality, and other appropriate factors.”<sup>18</sup> We consider each of these enumerated factors below.

First, with regard to finality of the Department’s administrative proceedings, the Department has consistently explained, and the Court has agreed, that each administrative review results in a separate determination based upon the administrative record in that review.<sup>19</sup> Thus,

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, at 1380-81.

<sup>17</sup> *Id.*, at 1381.

<sup>18</sup> *Id.*

<sup>19</sup> See *Shandong Huarong Mach. Co. v. United States*, 29 C.I.T. 484, 491 (CIT 2005) (“As [the Department] points out ‘each administrative review is a separate segment of proceedings with its own unique facts.’”); see also *Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (Feb. 13, 2006) (“each administrative review of the order represents a separate administrative proceeding and stands on its own”); *Fresh Garlic From the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (Mar. 13, 2002) (“what transpired in previous reviews is not binding precedent in later reviews”).

the Department could reach a different conclusion from one administrative review to the next based upon a different analysis, but reconsideration generally would not be appropriate.

Because of the strict statutory timelines to conduct investigations and reviews, and the specified time period to correct errors in section 751(h) of the Tariff Act of 1930, as amended (“the Act”), the Department considers its determinations as final and conclusive on all parties, unless specific issues are challenged before the CIT. This approach provides all parties to the Department’s proceedings certainty in the amount of duties to be levied on entries of subject merchandise and certainty as to which issues remain open through litigation. Thus, the Department has consistently considered administrative reviews to be final and conclusive, except for the exceptional circumstances, where a separate administrative process or tribunal has concluded that the agency’s proceeding was tainted by fraud, collusion, or perjury, thereby calling into question the integrity of the agency’s decisions.<sup>20</sup> Because the CAFC affirmed the Department’s changed circumstances review in *TKS* by holding “administrative agencies possess inherent authority to reconsider their decisions, subject to certain limitations, regardless of whether they possess explicit statutory authority to do so,”<sup>21</sup> the Department adopted limits on reopening closed records and final decisions to those in which a court, like the district court in *TKS*, or other administrative authority, made a finding of fraud.

Balanced against finality of the Department’s decisions are the factors set forth by the CAFC; *i.e.*, the extent of the inaccuracies in the second administrative review, whether fraud existed in the second administrative review, the strength of the evidence of fraud, and the level of materiality. Beginning this section of the analysis of whether the Department should reopen the

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<sup>20</sup> See, e.g., *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1360-61 (CAFC 2005) (“reopening of the record is permissible through the use of a changed circumstances review to address claims of fraud in a closed segment of a proceeding”) (“*TKS*”).

<sup>21</sup> See *TKS*, 529 F.3d at 1361 (emphasis added).

*AR2 Final Results*, the Department is relying on the CAFC's conclusion of fact that Home Products presented clear and convincing new evidence sufficient to establish a *prima facie* case that the *AR2 Final Results* were tainted by fraud.<sup>22</sup> Further, the Department relies upon the CAFC's conclusion of fact that "the fraud, if it occurred, was also likely material because Since Hardware relied on certificates to show that it had purchased more than the requisite 33 percent threshold of certain steel inputs from [market economy] suppliers, thereby qualifying those inputs for valuations based on their [market economy] purchase prices rather than surrogate values."<sup>23</sup>

In reviewing the record of the *AR2 Final Results*, the Department finds that four certificates of origin were placed on the record of AR2 that contain similar irregularities to those found on the record of AR3.<sup>24</sup> During the course of AR3, Home Products placed on the record certain exemplar certificates of origin from the same country-of-origin as Since Hardware's purported steel purchases. We have placed this submission on the record of this remand and compared these exemplar certificates to the certificates Since Hardware submitted to qualify for ME input treatment.<sup>25</sup> Similar to our conclusion in *AR3 Final Results*, we find that the AR2 certificates of origin are also non-*bona fide* due to significant discrepancies between the exemplar documents and those Since Hardware submitted. These irregularities are discussed in detail below:

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<sup>22</sup> See *Home Products*, 633 F.3d at 1381.

<sup>23</sup> *Id.*

<sup>24</sup> See Since Hardware's July 30, 2007 response to the Department's Second Supplemental Questionnaire at Exhibit 11-A.

<sup>25</sup> See Memo to the File, from Steven Hampton, International Trade Compliance Analyst, regarding Placing Petitioner's Submission from the Third Administrative Review on the Remand Record: Second Administrative Review of Floor Standing, Metal Top Ironing Tables from the People's Republic of China, dated August 1, 2011.

## 1) **Typographical Errors Appearing in the Purported Certificates-of-Origin Submitted by Since Hardware**

The documentation provided by Since Hardware in its July 30, 2007, letter contained a number of typographical errors. First, in the purported certificate-of-origin forms submitted by Since Hardware, the name of the certifying government is clearly misspelled.<sup>26</sup> Second, the official version of the form shows a word in the lower left section of the form.<sup>27</sup> In contrast, the forms submitted by Since Hardware misprint this word.<sup>28</sup> Similarly, the official version of the form bears an expression in the lower left section of the form<sup>29</sup>, whereas the forms submitted by Since Hardware use a different variation of this expression. Finally, the official form uses an expression separated by a forward slash.<sup>30</sup> The forms provided by Since Hardware include this expression without the slash.<sup>31</sup>

## 2) **Certificate Numbers**

Each of the forms submitted by Since Hardware bear an alpha-numeric certificate number in the top right corner. These certificate numbers contain two letters.<sup>32</sup> . However, the certifying authority has indicated that it uses a six-digit sequential numbering system.<sup>33</sup> That is, the official form does not employ an alphanumeric numbering system. Rather, on its forms, the certifying authority uses no letters other than a single letter suffix to the six-digit number.<sup>34</sup>

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<sup>26</sup> See Memo to the File, from Steven Hampton, International Trade Compliance Analyst, regarding Placing Petitioner's Submission from the Third Administrative Review on the Remand Record: Second Administrative Review of Floor Standing, Metal Top Ironing Tables from the People's Republic of China, dated August 1, 2011 at Attachment 1 ("Attachment 1").

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*



### 3) Stamp

The official form contains a stamp from the certifying authority. This stamp is in the format of a two-cog logo stamp, bears the name of the certifying authority, and shows the signature date in a day/month/year format (*e.g.*, d/m/yy).<sup>35</sup> In contrast, the forms submitted by Since Hardware do not contain a cogged logo, and record the date in a four digit year/two digit month/two digit day format (*e.g.*, yyyy/mm/dd).<sup>36</sup>

### 4) Signature of the Authorizing Officer

On the forms submitted by Since Hardware, the signature of the authorizing officer is difficult to discern.<sup>37</sup> However, Home Products acquired a list of authorizing officers with their official signatures from the certifying authority.<sup>38</sup> After examination, the apparent signature on the forms submitted by Since Hardware most resembles that of a particular official. However, the purported signature appearing on the forms submitted by Since Hardware is far different from the copy of the official's signature that is kept on file by the certifying authority.<sup>39</sup>

Thus, the Department finds, consistent with the CAFC's finding of fact, that "Since Hardware's certificates from the second administrative review clearly contain the same discrepancies [the Department] observed in certificates from the third administrative review, including the same typographical errors, different certificate numbering system, different date stamp, and noticeably different signatures."<sup>40</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See Memo to the File, from Steven Hampton, International Trade Compliance Analyst, regarding Placing Petitioner's Submission from the Third Administrative Review on the Remand Record: Second Administrative Review of Floor Standing, Metal Top Ironing Tables from the People's Republic of China, dated August 1, 2011 at Attachment 2 ("Attachment 2").

<sup>39</sup> Compare Attachment 1 with Attachment 2.

<sup>40</sup> See *Home Products*, 633 F.3d at 1380.

Likewise, these discrepancies are material to the Department's calculation of Since Hardware's antidumping duty margin in the *AR2 Final Results*. Because dumping occurs when an exporter sells a product in the United States at a price lower than the product's normal value; the amount by which normal value exceeds the U.S. price is determined to be the dumping margin. *See* section 773(a) of the Act. In all cases involving a non-market economy ("NME") country, normal value is calculated based on a FOP analysis whereby each input is valued based upon data from a surrogate ME country.<sup>41</sup> However, if the NME exporter purchases a portion of a given input from a ME supplier and pays for it in ME currency, the Department will normally value that portion of the input according to the actual price paid.<sup>42</sup> Further, if the exporter purchases at least 33 percent of a given input, the Department will normally use the price paid to the ME supplier, rather than a surrogate value, to value all of the material for that given input, even if some is sourced within the NME.<sup>43</sup> As applied to this case, if the Department did not rely on Since Hardware's purported ME purchase information to value the cold-rolled and hot-rolled steel inputs, the Department would use surrogate values for each input pursuant to statute. Thus, by submitting ME purchase documentation, Since Hardware is able to control the price used by the Department in the calculation of its normal value rather than rely on public data from a surrogate country source.<sup>44</sup> Because these inputs are the primary steel inputs, the use of the

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<sup>41</sup> *See* section 773(c) of the Act.

<sup>42</sup> *See* 19 CFR 351.408(c)(1).

<sup>43</sup> *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-18 (Oct. 19, 2006).

<sup>44</sup> The Department applied a benchmarking methodology to test whether the input prices were above world market prices because of the supplier being majority owned by a Chinese entity. Pursuant to this methodology, the Department applied a surrogate value for cold-rolled steel which failed the benchmark test. *See AR2 Final Results* at Comment 3. Notwithstanding the decision to use a surrogate value for cold-rolled steel, Since Hardware's other inputs, including hot-rolled steel, received market economy input treatment. Although the purchase price was not used for cold-rolled steel, Since Hardware submitted unreliable market economy purchase documentation for this input.

purported ME purchase price would have a significant effect on the normal value calculation, and, consequently, the dumping margin.

Finally, we turn to additional factors that the Department may consider in its decision to reopen the record as opposed to the finality of a segment of the proceeding. As the Department determined in reconsidering a sunset determination of large newspaper printing presses,<sup>45</sup> the Department finds that reopening the *AR2 Final Results* also protects the integrity of our proceedings. The courts have held that agencies have this inherent authority.<sup>46</sup> Moreover, it is well established that “federal agencies have the power to reconsider their final determinations.”<sup>47</sup> In *LNPPs*, a federal district court concluded that the respondent and its former counsel falsified business records, destroyed documents, and “agreed to a fraudulent price increase to avoid a finding of dumping;” which occurred during the 1997-1998 administrative review of the antidumping duty order.<sup>48</sup> There, we found it reasonable to reconsider the sunset review to examine the likelihood of continued dumping, and to allow all parties an opportunity to participate. We found that such an examination is necessary because the respondent’s misconduct in the 1997-1998 administrative review was so egregious that it renders the results of the subsequent sunset review unreliable.<sup>49</sup> These same considerations are present here because of Since Hardware’s submission of the non-*bona fide* certificates of origin, which the

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<sup>45</sup> See *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Reconsideration of Sunset Review*, 73 FR 67131 (Nov. 13, 2008) at Issue 1 (“*LNPPs*”).

<sup>46</sup> See, e.g., *Tokyo Kikai Seisakusho, Ltd. et al. v. United States*, 529 F.3d 1352, 1360 (Fed. Cir. 2008); *Alberta Gas Chem. Ltd. v. Celanese Corp.*, 650 F.2d 9, 13-14 (2d Cir. 1981).

<sup>47</sup> *Elkem Metals Co. v. United States*, 193 F. Supp. 2d 1314, 1320 (CIT 2002) (citing *Trujillo v. Gen. Elec. Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980) (“Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider”).

<sup>48</sup> See *Goss Int'l Corp. v. Tokyo Kikai Seisakusho, Ltd.*, 321 F. Supp. 2d 1039 (N. D. Iowa 2004), *aff'd* by *Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 434 F.3d 1081 (8th Cir. 2006), *denied certiorari* by *Tokyo Kikai Seisakusho, Ltd. v. Goss Int'l Corp.*, 126 S. Ct. 2363 (2006).

<sup>49</sup> See *LNPPs*.

Department relied upon, which created unreliability in Since Hardware's calculated dumping margin.

Since Hardware controlled the prices used in the normal value equation by claiming ME purchase treatment. However, Since Hardware's certificates of origin are unreliable and inauthentic as compared to the exemplar certificates obtained from the certifying authority. The CAFC determined that Since Hardware provided fraudulent documentation, and we conclude that it renders the *AR2 Final Results* unreliable. Because these certificates resulted in Since Hardware's dumping margin being *de minimis*, the Department determines that the evidence of fraudulent documents and the materiality of those documents mitigate in favor of reopening the closed *AR2 Final Results* to determine "[i]f the foregoing evidence had been brought to light prior to the conclusion of the second administrative review," whether the Department "would have applied AFA to Since Hardware's input submissions and calculated a dumping margin greater than the *de minimis* margin of 0.34 percent."<sup>50</sup>

## **ISSUE 2: Separate Rate Eligibility for Since Hardware**

As explained above, Since Hardware has provided unreliable and incomplete documentation in support of its claimed purchases of ME inputs. In examining the effect of these certificates of origin on our determination had the exemplar certificates been brought to light prior to the conclusion of *AR2 Final Results*, we now determine that the nature of these unreliable submissions calls into question the reliability of the questionnaire responses submitted by Since Hardware in this review, including Since Hardware's claim of eligibility for separate rate status. Accordingly, we find that Since Hardware has not rebutted the presumption of government control and is, therefore, part of the PRC-wide entity.

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<sup>50</sup> See *Home Products*, 633 F.3d at 1381.

Section 776(a)(2) of the Act, provides that if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Furthermore, section 776(b) of the Act states 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 from the administering authority or the Commission, the administering authority or the Commission ... in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.”<sup>51</sup>

The steel inputs in question, which Since Hardware claimed to have sourced primarily from ME suppliers, constitute a major portion of the production inputs of the subject merchandise.<sup>52</sup> As discussed above, numerous typographical errors and discrepancies appear in the documentation that Since Hardware submitted concerning its alleged purchases of inputs from ME suppliers. Based on that finding and our examination of the evidence set forth, we are compelled to conclude that the purported ME purchases reported by Since Hardware result in serious deficiencies in Since Hardware's entire questionnaire responses. We therefore conclude that Since Hardware's questionnaire responses are no longer reliable for purposes of determining

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<sup>51</sup> See also Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreement Act, H.R. Rep. No. 103-316 at 870 (1994).

<sup>52</sup> See Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Home Products International, Inc. Case Brief at Page 4.

Since Hardware's margin of dumping in this administrative review because the FOPs are inherently unreliable.

In addition to the discrepancies in the certificates of origin, the records pertaining to ME purchases maintained in Since Hardware's own accounting system appear to be unreliable. Since Hardware provided copies of ledger entries that were purportedly associated with both its ME purchases of steel inputs and of another production input which Since Hardware claimed to have sourced from a ME supplier.<sup>53</sup> These copies of ledger entries are consistent with the now-discredited certificate of origin documentation submitted by Since Hardware. This suggests that the pervasive errors in the certificate of origin documents infect Since Hardware's own books and accounting records. Because Since Hardware's own accounting records reflect unreliable and inaccurate information, the Department is unable to trust the accuracy and validity of the data which Since Hardware retrieved from its accounting system.

The respondent's books and records, including accounting documentation, especially in those cases in which the respondent cites to its books and records to support its claimed independence from government control, are tied to the determination regarding separate rate eligibility. Pursuant to the Department's practice, in a NME administrative review, the Department starts with a rebuttable presumption that all companies within the NME are subject to government control and therefore, should be assigned a single antidumping duty rate. It is the Department's policy to assign all exporters this single rate unless an exporter demonstrates through verifiable evidence the absence of *de jure* and *de facto* government control.<sup>54</sup>

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<sup>53</sup> See Since Hardware's Section C&D Questionnaire Response at Exhibit D-5 (Attachment 3).

<sup>54</sup> See Policy Bulletin 05.1 Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April 5, 2005 ("Policy Bulletin") (citing *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996)).

Generally, the following *de jure* criteria are analyzed in establishing entitlement to a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.<sup>55</sup> Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions. They are: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>56</sup>

As the Department explained in the *AR2 Preliminary Results*, Since Hardware provided a copy of its business license issued by the Guangzhou Municipal Industrial and Commercial Administration, and relied upon the Foreign Trade Law that establishes a decentralization of government control over business operations.<sup>57</sup> There is no evidence that detracts from this evidence; although the Department expresses some skepticism in the veracity of purported government-produced documentation. That is, the Department and the CAFC determined that Since Hardware submitted altered government-produced documentation to support its claimed

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<sup>55</sup> See Policy Bulletin; see also *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 51781, 51782-83 (Sept. 11, 2007) ("AR2 Preliminary Results").

<sup>56</sup> See *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994); see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995); *AR2 Preliminary Results*, 72 FR at 51783.

<sup>57</sup> See *AR2 Preliminary Results*, 72 FR at 51782 (citing Since Hardware Section A Response at Exhibits A-2 and A-5).

ME purchases. Nonetheless, the Department finds that Since Hardware has established *de jure* independence from government control.

With respect to *de facto* government control, the Department finds a critical nexus between certain statements made by Since Hardware regarding its separate rate status and the company's books and records. Where the Department does not verify a company's responses, the Department accepts the statements as accurate statements of fact because such facts, when submitted, are subject to verification and considered verifiable. However, in the case in which the Department finds that the company's books and records are unreliable and based entirely on inauthentic documents, the submitted statements which rely on the books and records for support cannot be accepted as accurate factual statements. The Department finds that because Since Hardware relied on its books and records to answer the Department's questions regarding the first and fourth factors of the *de facto* analysis, the Department finds that Since Hardware failed to overcome the presumption of government control.

Specifically, for the first factor of the *de facto* analysis, the Department examines whether the company's exports are set by or subject to the approval of a government agency. In its Section A questionnaire response at A-6, Since Hardware explains that it "based prices for its direct U.S. sales and the U.S. sales through Best Unity on the production costs, taking into consideration overhead and administrative expenses, profit and other expenses incurred during the ordinary course of business." Because Since Hardware's Section A questionnaire response implicates its production costs and profit in making export pricing decisions, the Department examines certain accounting records. Here, Since Hardware's accounting documentation cannot be deemed reliable. As explained above, Since Hardware's own accounting records reflect unreliable and inaccurate information, and the Department is unable to rely on the accuracy and



validity of the data that Since Hardware retrieved from its accounting system. The separate rate response given by Since Hardware, however, cites to specific, accounting ledgers and implicates the production costs ledger in the accounting records. Under accounting principles, these ledger accounts must tie into the general ledger, which in turn ties into the financial records. Without reliable accounting ledgers, this separate rate response is unverifiable.

Likewise, regarding the fourth factor in the *de facto* section of the separate rate analysis, the Department's analysis involves examining how profits are calculated, whether the entity is entitled to retain profits and losses, and whether there are any restrictions on the entity's export sales profits. With regard to export revenues, Since Hardware indicated that it “deposit[s] export earnings into [its] respective bank accounts.”<sup>58</sup> Since Hardware further indicated that “the accounting department” controls and has access to the accounts.<sup>59</sup> With regard to how the profits are calculated, Since Hardware stated “[t]he formula to calculate export profits is as follows: Income from exports sales [minus] Production costs (for Since Hardware) or Purchase cost (for Best Unity of exported goods [minus] Operating expenditures [equals] Profit from export sales.”<sup>60</sup> Since Hardware also explained that it “use[s] foreign currency earned on the sale of subject merchandise to fund its operational expenses.”<sup>61</sup>

As discussed above with regard to the first *de facto* criterion, the submitted accounting ledgers are unreliable and have been invalidated in this review. This criterion requires a statement that is supported by complete accounting ledgers and documentation, and as the Department determined, these accounting ledgers include the unverifiable data related to production. Accounting principles require that a business maintain various accounts that

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<sup>58</sup> See Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Home Products International, Inc. Section A Questionnaire Response, at 8.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*, at 9.

<sup>61</sup> *Id.*, at 10.

collectively comprise the firm's general ledger which, in turn, flow into the firm's financial statements. The Department must be able to verify that the accounting system includes controls to ensure that all transactions are fully captured. However, because certain elements of Since Hardware's financial ledgers have been found invalid, there is no accurate means to reconcile the general ledger that includes profit and losses and the dispositions thereof. Therefore, the Department is unable to rely upon the statements concerning export proceeds in Since Hardware's separate rate application because such statements are unverifiable on the ground that they rest on Since Hardware's accounting documentation.

The separate rate analysis requires that the respondent provide evidence to rebut the Department's presumption of NME control over all exporters. Where a respondent is unable to overcome the presumption with verifiable statements, the Department will treat that respondent as part of the PRC-wide entity. Here, Since Hardware provided certain documents it claims to have been produced by the government of the PRC that establish *de jure* separation from the government. Since Hardware also provided documentation explaining that it selected its management and that it did not cooperate with any entity to set process or sell subject merchandise.<sup>62</sup> Nonetheless, Since Hardware's responses related to its export sales process and its disposition of export proceeds directly implicates its accounting system, which we have determined to be wholly unreliable.

Because of Since Hardware's inconsistent, unreliable, and unverifiable answers to the Department's questionnaires on the record of this administrative review, we find that necessary information is unavailable to support its eligibility for a separate rate. Therefore, the Department

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<sup>62</sup> See Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Home Products International, Inc. Section A Questionnaire Response, at 7.

finds that Since Hardware failed to cooperate to the best of its ability.<sup>63</sup> Accordingly, and as a result of Since Hardware's unverifiable responses related to its separate rate status, as AFA, the Department is finding that Since Hardware is part of the PRC-wide entity. As such, the PRC-wide entity, which includes Since Hardware, is now considered to be the respondent in the second administrative review.

### **ISSUE 3: Adverse Facts Available for the PRC-Wide Entity**

Accordingly, because the PRC-wide entity, including Since Hardware, did not cooperate to the best of its ability, pursuant to section 776(b) of the Act, the PRC-wide entity is assigned a dumping margin based upon AFA.<sup>64</sup> As AFA, we have used the highest dumping margin calculated for a respondent in prior segments of this proceeding. This dumping margin has been applied as the dumping margin for the PRC-wide entity throughout the history of this antidumping duty order.<sup>65</sup> The AFA dumping margin applied here to the PRC-wide entity, including Since Hardware, is the AFA rate calculated from the investigation and applied to the PRC-wide entity throughout this proceeding.<sup>66</sup> This rate was calculated based on information

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<sup>63</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (CAFC 2003) (“intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate”).

<sup>64</sup> In all NME cases, the Department imposes a rebuttable presumption that all exporters located in a NME country comprise a single exporter under common government control, referred to as the “NME entity” or, in cases involving the PRC, the “PRC-wide entity.” In conducting this investigation, the Department provided all known PRC exporters of floor-standing, metal-top ironing tables with the opportunity to respond to an initial questionnaire to provide evidence of each respondent's eligibility for a separate rate. Because certain known PRC companies did not respond to this questionnaire, the Department applied its presumption that these exporters constituted a single enterprise under common control by the PRC government. Further, because these companies did not respond, the Department applied adverse facts available in determining the single dumping margin for the PRC-wide entity. See *Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 35296, 35297 (June 24, 2004).

<sup>65</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (Aug. 6, 2004) (applying the highest calculated rate for Shunde Yongjian Housewares Co., Ltd. as the PRC-wide rate); see also, *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 883 (January 9, 2009) (the Department revoked a respondent's separate rate status and applied the PRC-wide rate to an entity as AFA).

<sup>66</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 35296 (June 24, 2004) (the Department is applying adverse facts available to determine the single antidumping duty rate, the PRC-wide rate, applicable to all

provided by Shunde Yongjian Housewares Co., Ltd.<sup>67</sup> No additional information has been presented in the current review which calls into question the reliability or relevance of the information. Therefore, the Department finds that the information continues to be reliable. In addition, this rate is currently in effect for the PRC-wide entity.

Furthermore, in *Watanabe v. United States* (Slip Op. 10-139 Court No. 09-00520) (CIT December 22, 2010), the CIT found that the Department need not corroborate the PRC-wide rate with regards to that specific respondent which the Department is now treating as part of the PRC-wide entity. Specifically, the CIT stated, “where Commerce has found the respondent part of the PRC-wide entity based on adverse inferences, Commerce need not corroborate the PRC-wide rate with respect to information specific to that respondent because there is ‘no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company.’”<sup>68</sup> The Department’s determination here that Since Hardware is part of the PRC-wide entity means that inquiring into Since Hardware’s separate sales behavior ceases to be meaningful or reliable.

### **COMMENTS FROM INTERESTED PARTIES**

On August 9, 2011, Since Hardware filed comments on the Department’s draft remand results.<sup>69</sup> Since Hardware’s comments focused upon two issues: (1) the Department’s application of the PRC-wide rate as AFA without properly addressing Since Hardware’s separate rate status; and (2) the Department’s application of total AFA, rather than partial facts available. We address those issues below.

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other PRC exporters comprising this single enterprise); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People’s Republic of China*, 69 FR 47868 (Aug. 6, 2004).

<sup>67</sup> *Id.*

<sup>68</sup> Slip Op. 10-139 at 9 (citing *Peer Bearing Co.-Changshan v. United States*, 587 F. Supp. 2d 1319, 1327 (CIT 2008); *Shandong Mach. Imp. & Exp. Co. v. United States*, Slip Op. 09-64, 2009 WL 2017042, (CIT June 24, 2009) (Commerce has no obligation to corroborate the PRC-wide rate as to an individual party where that party has failed to qualify for a separate rate)).

<sup>69</sup> See Comments on Draft Results of Redetermination Pursuant to Remand, filed August 9, 2011 (“Since Hardware Comments”).

1. *Since Hardware's Separate Rate Status.*

Since Hardware contends that the Department acted contrary to law by assigning Since Hardware the PRC-wide rate. Since Hardware claims that the administrative record establishes that Since Hardware operated free from government control.

For support, Since Hardware cites to *Qingdao Taifa* where it contends that the Court affirmed the Department's application of AFA with regard to U.S. sales and FOP data, but struck down the Department's selection of the PRC-wide rate as AFA.<sup>70</sup> Likewise, Since Hardware cites to *Gerber I* where the Court rejected the Department's application of the PRC-wide rate as total AFA based on the existence of an export agency agreement between two respondents to avoid dumping duties.<sup>71</sup> Similarly, Since Hardware cites to *Gerber II* where the Court reviewed and remanded the Department's remand determination from the *Gerber I* decision.<sup>72</sup> Since Hardware cites to *Gerber II's* holding that:

both Gerber and Green Fresh are free of government control. As the court noted in *Gerber I*, "Commerce acts unlawfully in imposing a rate that presumes government control, such as the PRC-wide rate applied in this case, when a respondent has been found to be independent of government control."<sup>73</sup>

Finally, Since Hardware cites *Shandong Huarong* where the Court reviewed the Department's application of AFA and the PRC-wide entity rate due to the submission of inadequate U.S. sales and FOP responses by the respondent.<sup>74</sup> Since Hardware cites to the Court's conclusion that "the findings that justified the use of facts available and a resort to AFA with respect to the Companies' sales data and factors of production, cannot be used to accord similar treatment to issues relating to the Companies' evidence of independence from state

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<sup>70</sup> *Qingdao Taifa Group Co., Ltd. v. United States*, 637 F. Supp. 2d 1231, 1241 (CIT 2009) ("*Qingdao Taifa*").

<sup>71</sup> *Gerber Food (Yunnan) Co., Ltd. v. United States*, 387 F. Supp. 2d 1270, 1287 (CIT 2005) ("*Gerber I*").

<sup>72</sup> *Gerber Food (Yunnan) Co., Ltd. v. United States*, 491 F. Supp. 2d 1326, 1350 (CIT 2007) ("*Gerber II*").

<sup>73</sup> *Gerber II*, 491 F. Supp. 2d at 150 (citations omitted).

<sup>74</sup> *Shandong Huarong General Group Corp. v. United States*, 27 C.I.T. 1568, 1594-95 (Oct. 22, 2003) ("*Shandong Huarong*").

control” for support of its position that the Department acted unlawfully in its draft remand results.<sup>75</sup>

Since Hardware argues that the Department is only authorized to resort to facts available with regard to Since Hardware’s ME purchase information. Therefore, Since Hardware claims that the above holdings are applicable to this case. Since Hardware argues that the Department’s remand results did not make any specific finding that the record information that Since Hardware had submitted as evidence of its independence from state control was in any way deficient or lacking. Accordingly, Since Hardware argues that the Department’s application of the PRC-wide rate as total AFA under the circumstances of this case is contrary to law.<sup>76</sup>

Turning to the facts, Since Hardware claims that the Department’s *Draft Remand Results* are based on the Department’s failure to reexamine the record and is thus unsupported by substantial evidence. Since Hardware contends that the Department determined that it cannot conduct a separate rate test with respect to two of the four *de facto* criteria as to whether Since Hardware is subject to government control of its exports: (A) whether the export prices are set by or are subject to approval of a government agency and (B) whether Since Hardware retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>77</sup> Since Hardware argues, however, that these two criteria are related to the setting of prices and the retention or disposition of sales proceeds. Accordingly, Since Hardware concludes, the substantial evidence on the record show that these two criteria are independent from the costs of production.<sup>78</sup>

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<sup>75</sup> Since Hardware Comments at 17-18.

<sup>76</sup> Since Hardware Comments at 18.

<sup>77</sup> Since Hardware Comments at 18-19.

<sup>78</sup> Since Hardware Comments at 19.

First, Since Hardware claims that it is independent from government control because it sets prices for exports based on negotiations with customers.<sup>79</sup> Since Hardware contends that these customer negotiations have been documented with substantial evidence on the record, and that in order to meet its burden of analyzing the *de facto* criteria, the Department has the obligation to examine the record that contains these negotiations.<sup>80</sup> Specifically, Since Hardware states that in setting its prices, production costs are only one part, with customer demand and market prices dictating its price negotiations with customers.<sup>81</sup>

Since Hardware contends that the Department determined that deficient cost information causes the whole accounting system to be deficient, because summary reports will contain the deficient cost information.<sup>82</sup> Since Hardware states however, that sales information is independent from cost information because sales information begins with a customer's purchase order, not FOP or ME prices. Since Hardware argues that the Department should analyze the substantial evidence in the separate sales sub-ledger and sales reconciliation reports, which show that the PRC government does not control Since Hardware's prices.

Second, Since Hardware argues that it is independent from PRC government control because it manages its own profits.<sup>83</sup> Since Hardware asserts that the Department did not examine the evidence to this effect and erroneously concluded that the reported amount of profits is incorrect. To the contrary, Since Hardware contends that the amount of profits is irrelevant to the criteria for *de facto* analysis. The *de facto* criteria is based on how profits are used, not the amount of profits.

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 20.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 21.

### Department's Position

First, with respect to Since Hardware's arguments that the Department acted unlawfully because Court precedent requires the Department to apply AFA only to the ME purchase information, we disagree. As we explained above, and again in this section, Since Hardware's responses were unreliable with respect to the factors of production information and its separate rate status. Accordingly, because Since Hardware provided unreliable responses with regard to two of the *de facto* criteria which are unable to be verified, Since Hardware failed to overcome the Department's presumption of government control. Because the Department is making a specific finding regarding Since Hardware's separate rate status, the cited case law is inapplicable in this case.

Regarding *de jure* government control, the Department explained in the *AR2 Preliminary Results* that Since Hardware provided a copy of its business license issued by the Guangzhou Municipal Industrial and Commercial Administration, and relied upon the Foreign Trade Law that establishes a decentralization of government control over business operations.<sup>84</sup> Even though the Department and the CAFC have determined that Since Hardware submitted altered government-produced documentation to support its claimed ME purchases, there is no evidence to detract from Since Hardware's claim of *de jure* independence from government control. Therefore, the Department determined that Since Hardware had established *de jure* independence from government control.

Regarding *de facto* government control, the Department disagrees with Since Hardware that it has overcome the presumption of government control. Rather, Since Hardware has submitted contradictory claims regarding its export prices and profits. For the first factor, the

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<sup>84</sup> See *AR2 Preliminary Results*, 72 FR at 51782 (citing Since Hardware Section A Response at Exhibits A-2 and A-5).



Department determines whether the export prices are set by or are subject to the approval of a governmental agency. In its Section A questionnaire response at Page A-6, Since Hardware explains that it “based prices for its direct U.S. sales ... on the production costs, taking into consideration overhead and administrative expenses, profit and other expenses incurred during the ordinary course of business.” This response necessarily requires the Department to examine Since Hardware’s accounting records because it implicates Since Hardware’s production costs and profit in making export-pricing decisions. However, the Department would never be able to verify this statement knowing the truth that Since Hardware’s accounting records include fabricated ME purchase information. Accordingly, the Department cannot rely on the accuracy and validity of the data that Since Hardware retrieved from its accounting system because its ledger entries are consistent with the discredited certificates of origin.

The separate rate response given by Since Hardware cites to specific accounting ledgers and implicates the production costs ledger in the accounting records. Under accounting principles, these ledger accounts must tie into the general ledger, which in turn ties into the financial records. Without reliable accounting ledgers, this separate rate response is unverifiable. Where the Department does not verify a company’s responses, the Department accepts the statements as accurate statements of fact because such facts, when submitted, are subject to verification and considered verifiable. However, in cases where the Department finds that the company’s books and records are unreliable and based on inauthentic documents, the submitted statements which rely on the books and records for support cannot be accepted as accurate factual statements.

Since Hardware claims that its price negotiations dictate that Since Hardware operated free from government control. But Since Hardware cites to no record evidence of negotiations

between it and its customers to support this contention. Rather, the evidence on the record refutes Since Hardware's claim that its factors of production dictate the price it sets for its export sales.<sup>85</sup> Accordingly, the Department does not find Since Hardware's contention persuasive.

For the fourth factor, the Department determines whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. As discussed previously, Since Hardware indicated that the company deposits its export earnings into its respective bank accounts and the accounting department controls and has access to these accounts.<sup>86</sup> With respect to how the profits are calculated, Since Hardware stated "[t]he formula to calculate export profits is as follows: Income from exports sales [minus] Production costs (for Since Hardware) or Purchase cost (for Best Unity of exported goods [minus] Operating expenditures [equals] Profit from export sales."<sup>87</sup> Since Hardware also explained that it "use[s] foreign currency earned on the sale of subject merchandise to fund its operational expenses."<sup>88</sup> As far as the retention of profits, Since Hardware did not cite to specific record evidence in its comments on the *Draft Remand Results* to overcome its own statement in its Section A Questionnaire response with respect to *how it calculates* the profits that it records in its ledger (*i.e.*, that such profits are ultimately based upon production costs). How it calculates its profits is one part of disposition of profits. Notwithstanding, because its own ledgers are invalid, the Department can conclude that its bank ledgers are also invalid and rely upon unreliable and fabricated documentation.

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<sup>85</sup> See Since Hardware's Section A Questionnaire Response at A-6 (dated November 8, 2006).

<sup>86</sup> See Since Hardware's Section A Questionnaire Response at 8.

<sup>87</sup> *Id.* at 9.

<sup>88</sup> *Id.* at 10.

2. *The Department's Application of Total Adverse Facts Available.*

Since Hardware contends that the Department overreached in applying total AFA. Rather, Since Hardware contends that the statute and judicial precedent require the application of partial AFA under the circumstances of this case.<sup>89</sup> Since Hardware contends that the passage of the Uruguay Round Agreements Act (“URAA”) and its amendments to the antidumping law had a significant impact on the permissible manner in which the Department could apply facts available. Furthermore, Since Hardware contends that the CIT has ruled that the “new statutory scheme is designed to prevent the unrestrained use of facts available...”<sup>90</sup> In addition, Since Hardware notes, the CAFC has made similar findings.<sup>91</sup> Moreover, Since Hardware claims that the Department’s application of total AFA under the present statutory scheme requires it to make subtle judgments that must be supported by substantial evidence.<sup>92</sup>

Since Hardware argues that the Department’s application of total AFA and the rejection of the totality of Since Hardware’s submissions, including information totally unrelated to Since Hardware’s reported purchases of ME inputs, was contrary to law pursuant to Section 776(a) and (b) of the Act. Accordingly, Since Hardware contends that the Department should have applied partial AFA impacting only the offending ME purchase information provided by Since Hardware for the purpose of valuing its reported FOPs.

Since Hardware cites to *Shandong Huarong* to contend that the Department’s application of total AFA here is contrary to law.<sup>93</sup> Specifically, Since Hardware contends that the Department is unable to apply total AFA and the PRC-wide rate where the respondent’s data

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<sup>89</sup> Since Hardware Comments at 2-8.

<sup>90</sup> *See Borden Inc. v. United States*, 4 F. Supp. 2d 1221, 1245 (CIT) 1998), *reversed on other grounds* by 7 Fed. Appx. 938 (Fed. Cir. March 12, 2011).

<sup>91</sup> Since Hardware Comments at 2-3 (citing *See F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)).

<sup>92</sup> Since Hardware Comments at 3 (citing *World Finer Foods, Inc. v. United States*, 24 C.I.T. 541, 545 n.3 (CIT 2000)).

<sup>93</sup> Since Hardware Comments at 5 (citing *Shandong Huarong*, 27 C.I.T. at 1595-6).

relating to its separate rate responses has been fully verified by the Department as accurate. Similarly, Since Hardware contends that even in cases where there was evidence of misconduct by respondent, the CIT has refused to affirm the Department's application of total AFA to information that the Department did not determine was deficient under Section 776 of the Act.<sup>94</sup>

Since Hardware claims that the application of AFA was "made solely with respect to Since Hardware's market economy purchases."<sup>95</sup> Accordingly, Since Hardware concludes that the Department is authorized to apply AFA only with respect to the ME purchase information.<sup>96</sup> Following this line of argument, Since Hardware argues the statutory scheme still requires the Department to incorporate Since Hardware's information relating to data other than its ME purchases in selecting AFA.<sup>97</sup> For support, Since Hardware cites to Section 782(e) of the Act to contend that it provided all requested information in a timely manner and any deficiencies were corrected such that AFA is not appropriate.<sup>98</sup>

Moreover, Since Hardware claims that the valuation of ME purchases are not essential to the calculation of Since Hardware's margin.<sup>99</sup> Since Hardware contends that ME purchase information, although often used in the calculation of normal value to value reported FOP when the requirements of 19 C.F.R. 351.408(c)(1) are met, cannot not be considered as "core" data that is essential to the calculation of respondents' antidumping margin.<sup>100</sup> Since Hardware explains that if ME purchase information is not submitted, or if submitted ME purchases information does not meet the requirements of 19 C.F.R. § 351.408(c)(1), or if submitted ME data is determined not to be reliable, and when complete "core" data regarding U.S. sales and complete FOP are

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<sup>94</sup> Since Hardware Comments at 6 (citing *Gerber I* and *Gerber II*).

<sup>95</sup> Since Hardware Comments at 7.

<sup>96</sup> Since Hardware Comments at 8.

<sup>97</sup> Since Hardware Comments at 8-9.

<sup>98</sup> Since Hardware Comments at 9-10.

<sup>99</sup> Since Hardware Comments at 10.

<sup>100</sup> *Id.*

present, then the Department can calculate a margin by valuing the reported FOP in accordance with 19 U.S.C. § 1677b(c)(4).<sup>101</sup> In this case, in the absence of reliable ME purchase information, the reported FOP should have been valued using record information relating to surrogate prices from India. Consequently, Since Hardware asserts the Department's determination that Since Hardware's ME information was "essential to the Department's analysis" is incorrect.

Since Hardware contends that the Department properly assigns total AFA equal to the PRC-wide margin to companies that fail to respond, or to respondents who respond to the Department's information requests but their entire responses (including their entitlement to a separate company rate) fail verification.<sup>102</sup> Since Hardware also explains that the Department properly assigns total AFA equal to the PRC-wide margin to companies, who do respond to the Department's information requests, but the submitted "core information" – data that is necessary in order for the Department to calculate a margin – is properly determined by the Department to be either unresponsive, incomplete, unverifiable or unreliable.<sup>103</sup> Since Hardware explains that core information is information necessary for the Department to have in order to calculate a margin for an individual respondent.<sup>104</sup> According to Since Hardware, in NME cases, "core data" would include the United States sales data and the FOP data.

Since Hardware explains that it reported ME purchases of cold-rolled steel, hot-rolled steel, wire rod, powder coating, cotton fabric, springs, bolts, center nail and nail heads, rivets, carton corrugated paper, and labels.<sup>105</sup> But Since Hardware contends that the Department's

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<sup>101</sup> Since Hardware Comments at 11-12.

<sup>102</sup> Since Hardware Comments at 11 (citing *Shandong Mach. Import & Export Co. v. United States*, 33 CIT \_\_, Slip Op. 09064 at 15 (June 24, 2009)).

<sup>103</sup> *Id.* (citing *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1348 n.13 (CIT 2005)).

<sup>104</sup> *Id.* (citing *PAM, S.p.A. v. United States* 582 F.3d 1336 (Fed. Cir. 2009)).

<sup>105</sup> Since Hardware Comments at 12 (citing *AR2 Preliminary Results*, 72 FR at 51784).

findings of irregularities are limited to cold-rolled steel, hot-rolled steel and corrugated paper. Accordingly, Since Hardware explains that the appropriate partial AFA in this case would be the rejection of Since Hardware's ME purchase claim, and calculate normal value using the Indian surrogate values for Since Hardware's reported FOPs.<sup>106</sup>

Finally, Since Hardware contends that the Department's precedent shows that deficiencies in documents regarding ME prices do not warrant the assignment of an AFA rate. Since Hardware claims that the Department was presented with a similar situation concerning unreliable ME purchase price information in a separate proceeding and found no impact on the accounting ledgers or accounting system.<sup>107</sup> In *Certain Cased Pencils from the People's Republic of China*, the respondent claimed to have purchased ME materials; the documentation for such could not be validated. Since Hardware explains that the Department in *Cased Pencils* applied facts available without an adverse inference.<sup>108</sup> In contrast to this case, Since Hardware argues that the Department does not explain why the unsubstantiated ME purchase values in *Cased Pencils* do not have the same affect on the accounting ledgers as in Since Hardware's case. To avoid taking an inconsistent position in two similar cases, Since Hardware contends that the Department should apply a partial facts available rate to Since Hardware.<sup>109</sup>

### **Department's Position**

As explained above, Since Hardware's responses to its separate rate questionnaire are invalidated, unsubstantiated, and unverifiable due to the inclusion of discredited ME purchase information into its books and records. Accordingly, the Department concluded that Since

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<sup>106</sup> Since Hardware Comments at 12-13.

<sup>107</sup> Since Hardware Comments at 14 (citing *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33406 (July 13, 2009) ("*Cased Pencils*") and accompanying Issues and Decision Memorandum at Comment 2).

<sup>108</sup> *Id.*

<sup>109</sup> Since Hardware Comments at 15.

Hardware failed to rebut the presumption of government control sufficient to justify a separate antidumping duty margin. As a result, Since Hardware is part of the PRC-wide entity and receives the same rate as the PRC-wide entity, which is based upon AFA, as discussed in detail above.

Notwithstanding, Since Hardware is mistaken that its ME purchase information which was included in its accounting documentation is not “core” information. Faced with identical facts, the Court held that “the missing information on production inputs goes to the core of the antidumping duty rate determination, *i.e.*, the inputs at issue are a “major portion of the production inputs of the subject merchandise.”<sup>110</sup> The Court explained that “the unsubstantiated market economy purchase prices were included in Since Hardware’s accounting ledgers, themselves found to reflect unreliable and inaccurate information.” Accordingly, the Court concluded that “[the Department] acted reasonably in determining it could not rely on any of the company’s financial information.”<sup>111</sup>

In contrast to the cases which Since Hardware cites for support that the Department should apply partial AFA, Since Hardware’s “forged and altered documents” pervaded Since Hardware’s questionnaire responses. The same data included in the certificates of origin was included in the accounting information. This accounting information was relied upon for Since Hardware’s separate rate responses and FOPs. Since Hardware’s unreliable documentation cannot be segregated because its responses all rely upon that information. Thus Since Hardware’s arguments that the Department should narrowly apply partial AFA are mistaken because Since Hardware’s information is not otherwise reliable.<sup>112</sup> Unlike the respondent in

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<sup>110</sup> Since Hardware (Guangzhou) Co. Ltd. V. United States, Slip Op. 10-108 \* 22.

<sup>111</sup> *Id.*

<sup>112</sup> Because Since Hardware’s margin is based on the Department’s conclusion that Since Hardware failed to rebut the presumption of government control with verifiable factual statements, we do not need to explain how using

*Shandong Huarong*, the Department did not verify Since Hardware's information in this administrative review, and Since Hardware's separate rate information relied on the unreliable FOP information. Likewise, in *Gerber I and Gerber II*, partial AFA was deemed appropriate because the problem with the respondent's submission was limited to one aspect of its response (further manufacturing and agency selling agreement). Here, Since Hardware's submissions for U.S. price, its separate rate status, and its factors of production were dependent upon data from the "forged and altered" certificates of origin. In such a case, partial AFA is not appropriate and cannot be applied because the unreliable information permeates the responses.

Since Hardware claims that the result in this case should be the same as in *Cased Pencils*<sup>113</sup>, wherein the Department determined not to apply total AFA when the respondent failed to provide reliable ME purchase documentation. Since Hardware is mistaken that the facts of this case are substantially similar to those in *Cased Pencils*. In *Cased Pencils*, the Department explained:

In our verification, we confirmed that Three Star's accounting records can be directly tied to Three Star's audited financial statements. Three Star was able to demonstrate, in turn, that individual revenue and expense accounts that we linked to the financial statements, are consistently and comprehensively supported by source documents such as sales invoices and stock-in slips. Given the consistency of Three Star's accounting and production records with its audited financial statements and financial statement notes, we find nothing to suggest that the flawed documentation Three Star submitted to support its market economy claims in any way compromised the integrity of Three Star's accounting and inventory records.

Unlike the facts here, where Since Hardware's ME purchase information has been found by a Court to be fraudulent, the Department fully verified a cooperative respondent in *Cased Pencils*. That is, "[o]n the particular issue of market economy inputs, Three Star sought the supporting

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Since Hardware's FOPs and calculating a margin using surrogate values would reward Since Hardware for providing fabricated documentation.

<sup>113</sup> See *Cased Pencils*, 74 FR at 33406 and accompanying Issues and Decision Memorandum at Comment 2.



information requested by the Department and when it was not able to obtain that information, the company acknowledged its inability to do so and withdrew its claim for use of the market economy input prices it had submitted.” In contrast, Since Hardware obtained a *de minimis* dumping margin and cash deposit rate by providing the Department with fabricated documents which directly linked to information included within its accounting ledgers. The distinctions between the two cases demonstrate was justified in finding the respondents information otherwise reliable in the case of *Cased Pencils* and is also justified in finding that Since Hardware’s information is not otherwise reliable.

### **CONCLUSION**

As a result of this redetermination on remand, we have reopened the closed *AR2 Final Results* and have re-considered the calculation of Since Hardware’s antidumping duty rate. Accordingly, because Since Hardware failed to overcome the presumption of government control necessary to obtain a separate rate, we are treating Since Hardware as part of the PRC-wide entity, which is assigned a rate of 157.68 percent. If the Court approves these final results of redetermination, the Department will issue liquidation instructions directly to U.S. Customs and Border Protection to liquidate appropriate entries for the period August 1, 2005, through July 31, 2006, at this rate.

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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Date