

regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 1, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-803]

#### **Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the "Department") is conducting administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China ("PRC"). These reviews cover imports of subject merchandise from eighteen manufacturers and/or exporters. We preliminarily find that certain manufacturers and/or exporters sold subject merchandise at less than normal value ("NV") during the period of review ("POR"). We are preliminarily rescinding the reviews for all four orders for Shanghai Xinike Trading Company ("SXT"), for the order on hammers/sledges for Shandong Huarong Machinery Co., Ltd. ("Huarong") and Iron Bull Industrial Co., Ltd. ("Iron Bull"), and also for the order on picks/mattocks for Huarong and Iron Bull. In addition, we are preliminarily rescinding the review for Iron Bull with respect to the axes/adzes order. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. We will issue the final review results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** March 8, 2006.

#### **FOR FURTHER INFORMATION CONTACT:**

Matthew Renkey (Respondents Huarong and Tianjin Machinery Import & Export

Corporation ("TMC")), Cindy Robinson (Respondent Iron Bull), and Nicole Bankhead (Respondent Shandong Machinery Import & Export Company ("SMC")), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2312, (202) 482-3797 and (202) 482-9068, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Period of Review**

The POR is February 1, 2004, through January 31, 2005.

##### **Case History**

###### *General*

On February 19, 1991, the Department published in the **Federal Register** four antidumping duty orders on heavy forged hand tools ("HFHTs") from the PRC. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China*, 56 FR 6622 (February 19, 1991). Imports covered by these orders comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. *See* the "Scope of the Antidumping Duty Orders" section below for the complete description of subject merchandise.

On February 1, 2005, the Department published an opportunity to request a review on all four antidumping duty orders on HFHTs from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 70 FR 5136 (February 1, 2005). On February 25, 2005, the following companies requested an administrative review for certain orders: Huarong for the axes/adzes and bars/wedges order, SMC for bars/wedges and hammers/sledges, TMC for axes/adzes, hammers/sledges, and picks/mattocks, SXT for all four orders, and Iron Bull for all four orders. On February 28, 2005, the Petitioner requested administrative reviews of 16 companies,<sup>1</sup> covering all four

antidumping duty orders. On March 23, 2005, the Department initiated the 14th administrative review of HFHTs from the PRC, for twenty-one companies in the axes/adzes and bars/wedges orders, and twenty companies in the hammers/sledges and picks/mattocks orders. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part ("Initiation")*, 70 FR 14643 (March 23, 2005).

On June 9, 2005, the Department transferred certain documents from the 13th Administrative Review of HFHTs on to the record of this review. *See Memo to the File from Hallie Noel Zink, Case Analyst: Heavy Forged Hand Tools from the People's Republic of China—Document Transfer*, dated June 9, 2005. On June 28, 2005, the Department placed TMC's verification report from the 13th Administrative Review of HFHTs on to the record of the instant review. *See Memo to the File from Hallie Noel Zink, Case Analyst: Heavy Forged Hand Tools from the People's Republic of China—Document Transfer*, dated June 28, 2005.

On October 21, 2005, the Department extended the time limit for the preliminary results of the instant review on HFHTs from the PRC. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 70 FR 62095 (October 28, 2005).

##### *Duty Absorption*

On April 5, 2005, the Petitioner requested that the Department conduct a duty absorption review to determine whether all initiated companies have absorbed antidumping duties in accordance with 19 CFR 351.213(j)(2004). On May 31, 2005, the Department issued a memo to the file stating that because the antidumping duty orders on HFHTs from the PRC have been in effect since 1991, they are "transition orders" in accordance with section 751(c)(6)(C) of the Act, and therefore the Department cannot not make a duty absorption determination. *See Memo to the File, from Hallie Zink, Case Analyst, through Alex Villanueva, Program Manager, re: Duty Absorption Request*, dated May 18, 2005.

##### *Questionnaires and Responses*

On April 6, 2005, the Department issued Section A, C and D of the

<sup>1</sup> Lianing Machinery Import and Export Corp ("LMC"), LIMAC, Huarong, Shandong Jinma Industrial Group Company ("Jinma"), SMC, Tianjin Machinery Import and Export Corporation ("TMC"), Changzhou Light Industrial Tools, Laoling Pangu Tools, Leiling Zhengtai Tools Co., Ltd., Jiangsu Sany International Group Co., Ltd., Shanghai J.E. Tools, Shanxi Tianli Industries Co.,

Ltd. ("Shanxi Tianli"), Jafsam Metal Products ("Jafsam"), Suqian Foreign Trade Corp., Suqian Telee Tools, and Laiwu Zhongtai Forging.

antidumping duty questionnaire to all companies for which the Department initiated administrative reviews. On April 22, 2005, Shandong Jinma Industrial Group Co., Ltd. ("Jinma"), informed the Department that it had no shipments during the POR. Also on April 22, 2005, Jafsam, a company included in the *Initiation*, made an entry of appearance. On April 27, 2005, Shanxi Tianli faxed the Department a letter requesting an extension to respond to the Department's April 6, 2005, questionnaire. See *Memo to the File from Javier Barrientos, Case Analyst, Antidumping Duty Questionnaire Section A: Shanxi Tianli Industries Co., Ltd. Extension*, dated April 28, 2005, for more information regarding our attempts to contact Shanxi Tianli.

On May 2, 2005, the Department re-sent Section A, C and D of the antidumping questionnaire to all parties that had either not received the Department's first questionnaire or had not responded to the first questionnaire. See *Memo to the File from Irene Gorelik, case analyst, 14th Administrative Review of Heavy Forged Hand Tools from the PRC, 14th Administrative Review: Antidumping Duty Questionnaire*, dated May 4, 2005, for more information regarding the Department's re-sending of the antidumping duty questionnaire; see also *Memo to the File from Javier Barrientos, case analyst, 14th Review of Heavy Forged Hand Tools from the PRC: Initial Questionnaires Time Line*, dated July 1, 2005 ("14th AR Timeline"). On May 5, 2005, Respondents Huarong, SMC, and TMC stated that they are the same companies as those with slightly different names for which the Petitioner requested reviews. Thus, eighteen companies remained in the instant review. On May 10, 2005, Huarong, SMC, TMC, SXT, Iron Bull and Jafsam submitted copies of Chinese laws and regulations that relate to their separate rate status. On May 12, 2005, Shanxi Tianli, SXT and Jafsam withdrew from the instant review on HFHTs. Therefore, there were fifteen companies remaining, ten of which did not respond to the Department's questionnaire, one company, Jinma, that stated that it had no shipments during the POR, and four companies participating. See *14th AR Timeline* for further details on the companies that did not respond and the Jinma section below for further details regarding Jinma's statement that it had no shipments.

On May 13, 2005, the Department received Section A responses from SMC, TMC, Iron Bull and Huarong, collectively "Respondents." On May 27,

2005, the Department received Section C responses from SMC and TMC, and a Section C and D questionnaire response from Huarong. On June 3, 2005, the Department received Section D questionnaire responses from SMC and TMC, a Section C response from Iron Bull, and a response to Appendices V and VII from Huarong. On June 6, 2005, Iron Bull submitted its Section D response. On June 9, 2005, the Department requested that Iron Bull, SMC and TMC submit responses to Appendix VII of the initial questionnaire, issued on April 6, 2005, and that Iron Bull resubmit its Section C response. On June 16, 2005, Iron Bull, TMC and SMC submitted responses to Appendix VII of the Department's June 9, 2005, questionnaire. On June 9, 2005, the Department issued the first supplemental Section C questionnaire to Iron Bull, identifying numerous deficiencies. Iron Bull submitted its response on June 23, 2005. On June 22, 2005, the Department issued supplemental Section A questionnaires to TMC, SMC, Huarong and Iron Bull.

On July 1, 2005, the Department issued supplemental Section C and D questionnaires to TMC, SMC, Huarong and a second Section C supplemental questionnaire to Iron Bull. Between July 21, 2005, and July 27, 2005, SMC, Huarong, TMC and Iron Bull submitted their supplemental Section A questionnaire responses. On July 29, 2005, Huarong and SMC submitted their supplemental Section C and D questionnaire responses.

On August 3, 2005, Huarong and SMC submitted their Section C and D databases. On August 5, 2005, TMC submitted its supplemental Section C and D questionnaire response. On August 8, 2005, Iron Bull submitted its supplemental Section C and D database. On August 9, 2005, the Department sent Jinma a supplemental questionnaire concerning its April 22, 2005, letter. On August 11, 2005, the Department issued TMC a second supplemental Section A questionnaire. On August 19, 2005, the Department issued Iron Bull a second supplemental Section A questionnaire. On August 25, 2005, the Department issued Iron Bull a third supplemental Section C questionnaire, again outlining numerous deficiencies. On August 30, 2005, Jinma stated that it would no longer participate in the instant review.

On September 1, 2005, the Department issued TMC a supplemental Section C questionnaire, and TMC submitted its second supplemental Section A questionnaire response. On September 2, 2005, Iron Bull submitted its third supplemental Section C questionnaire response. On September

8, 2005, Iron Bull submitted an unsolicited Section C and D response. On September 27, 2005, the Department issued TMC a third supplemental Section A questionnaire along with a second supplemental Section D questionnaire.

On October 3, 2005, the Department issued Huarong a supplemental Section A, C and D supplemental questionnaire. On October 13, 2005, the Department sent Huarong additional questions. On October 17, 2005, the Department issued SMC an additional Section C and D questionnaire. On October 24, 2005, the Petitioner submitted deficiency comments on SMC and TMC's previous questionnaire responses. On October 25, 2005, TMC submitted its supplemental Section A and D responses and SMC submitted its supplemental Section A questionnaire response. On October 31, 2005, Huarong submitted its supplemental Section A, C and D questionnaire response.

On November 7, 2005, the Petitioner submitted deficiency comments on Iron Bull's previous questionnaire responses and also provided factual rebuttal information. SMC also submitted its supplemental Section C and D questionnaire response on November 7, 2005, and provided additional data on November 8, 2005. On November 9, 2005, the Petitioner submitted deficiency comments on Huarong's previous questionnaire responses. Also on November 9, 2005, SMC resubmitted its November 7, 2005, questionnaire responses correcting certain bracketing. On November 10, 2005, the Department sent an importer/customer in the instant review a questionnaire ("Customer A"). On November 14, 2005, Council Tool, an interested party, submitted deficiency comments on Iron Bull's previous questionnaire responses. On November 15, 2005, SMC submitted its supplemental Section A questionnaire response. On November 16, 2005, SMC submitted its ocean freight calculations. On November 21, 2005, the Department sent Huarong a supplemental Section A, C and D questionnaire. On November 23, 2005, SMC submitted its Section C and D questionnaire responses and the Department sent TMC a supplemental Section A, C and D questionnaire. On November 29, 2005, the Department received a response to the importer questionnaire from Importer A.

On December 5, 2005, SMC submitted its supplemental Section A questionnaire response. On December 6, 2005, Importer A provided supplemental information to its previous response. On December 12, 2005, Huarong submitted its supplemental Section A, C and D

questionnaire response and the Department sent SMC a supplemental questionnaire regarding its sales to third countries. On December 14, 2005, SMC submitted its supplemental Section C and D questionnaire response. On December 15, 2005, TMC submitted its supplemental Section A, C and D questionnaire response. On December 19, 2005, SMC submitted its response pertaining to third country sales. On December 21, 2005, TMC submitted its Section C and D database. On December 22, 2005, SMC submitted additional Section C and D data. On December 23, 2005, the Petitioner submitted deficiency comments regarding Importer A's response. On December 29, 2005, the Department sent SMC a supplemental Section A questionnaire requesting constructed export price ("CEP") information. On December 30, 2005, SMC submitted an updated factors of production ("FOP") database for Laiwu.

On January 5, 2006, the Department sent SMC a supplemental Section A questionnaire. On January 9, 2006, TMC submitted a supplemental Section C and Appendix VII questionnaire response. On January 17, 2006, the Petitioner submitted deficiency comments regarding TMC's questionnaire responses. On January 18, 2006, the Department sent SMC a letter requesting that it reconfigure its databases so they could be converted to SAS. On January 20, 2006, SMC submitted its supplemental Section A questionnaire response, its updated U.S. and FOP databases, and its CEP questionnaire response. On January 23, 2006, the Department issued Huarong and TMC supplemental Section A, C and D questionnaires. On January 25, 2006, the Department sent SMC a letter again requesting its CEP data and SMC also submitted additional Section A information. On January 26, 2006, the Department sent Huarong a letter requesting that it correct errors in its FOP database and SMC submitted hard copies of its updated databases submitted on January 20, 2006. On January 30, 2006, SMC submitted its second response to the Department's request for CEP data and the Petitioner submitted deficiency comments regarding SMC's previous questionnaire responses.

On February 3, 2006, Huarong and TMC submitted partial responses to the Department's January 23, 2006, supplemental questionnaires. On February 7, 2006, the Department issued SMC a supplemental Section A, C and D questionnaire and the Petitioner submitted provided comments on other case issues for the Department to

consider in its preliminary results. On February 9, 2006, the Department sent Iron Bull a letter regarding certain information the Department had obtained from CBP. On February 15, 2006, Huarong and TMC submitted the remainder of their responses to the Department's January 23, 2006, supplemental questionnaires and the Council Tool Company, a domestic interested party, submitted comments for the Department to consider in the preliminary results. On February 17, 2006, the Department sent a letter again requesting affiliated party sales information from SMC and also sent a questionnaire to Customer A, through its counsel, requesting its downstream sales data and information about its bankruptcy status. On February 21, 2006, Iron Bull submitted its response to the Department's February 9, 2006, letter. On February 22, 2006, Customer A requested an extension until March 6, 2006, to respond to the Department's February 17, 2006, questionnaire, which the Department granted on February 24, 2006. On February 23, 2006, SMC responded to the Department's February 17, 2006, questionnaire. On February 24, 2006, SMC submitted its response to the Department's February 7, 2006, questionnaire.

#### *Surrogate Values and Other Comments*

On February 7, 2006, the Petitioner submitted surrogate values. On February 14, 2006, the Department released its surrogate country selection memorandum, choosing India as the primary surrogate country. See *Memorandum from Matthew Renkey, Case Analyst, through James C. Doyle, Office Director, Office 9, to The File, 14th Administrative Review of Heavy Forged Hand Tools from the People's Republic of China ("PRC"): Selection of a Surrogate Country ("Surrogate Country Memo")*, dated February 14, 2006.

#### *Scope of the Antidumping Duty Orders*

The products covered by these orders are HFHTs from the PRC, comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds); (2) bars over 18 inches in length, track tools and wedges; (3) picks and mattocks; and (4) axes, adzes and similar hewing tools. HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting

wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System of the United States ("HTSUS") subheadings: 8205.20.60, 8205.59.30, 8201.30.00 and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

The Department has issued eight conclusive scope rulings regarding the merchandise covered by these orders: (1) On August 16, 1993, the Department found the "Max Multi-Purpose Axe," imported by the Forrest Tool Company, to be within the scope of the axes/adzes order; (2) on March 8, 2001, the Department found "18-inch" and "24-inch" pry bars, produced without dies, imported by Olympia Industrial, Inc. and SMC Pacific Tools, Inc., to be within the scope of the bars/wedges order; (3) on March 8, 2001, the Department found the "Pulaski" tool, produced without dies by TMC, to be within the scope of the axes/adzes order; (4) on March 8, 2001, the Department found the "skinning axe," imported by Import Traders, Inc., to be within the scope of the axes/adzes order; (5) on December 9, 2004, the Department found the "MUTT," imported by Olympia Industrial, Inc., under HTSUS 8205.59.5510, to be within the scope of the axes/adzes order; (6) on May 23, 2005, the Department found 8-inch by 8-inch and 10-inch by 10-inch cast tampers, imported by Olympia Industrial, Inc. to be outside the scope of the orders; (7) on September 22, 2005, following remand, the U.S. Court of International Trade affirmed the Department's determination that cast picks are outside the scope of the order; and (8) on October 14, 2005, the Department found the Mean Green Splitting Machine, imported by Avalanche Industries, under HTSUS 8201.40.60, to be within the scope of the bars/wedges order.

### Preliminary Partial Rescission

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the review of Huarong with respect to the hammers/sledges and picks/mattocks orders, and Iron Bull with respect to the hammers/sledges, axes/adzes, and picks/mattocks orders, since Huarong reported that they made no shipments of subject hammers/sledges and picks/mattocks, and Iron Bull reported that they made no shipments of hammers/sledges, axes/adzes, and picks/mattocks.

On February 9, 2006, based on entry records the Department obtained from CBP, the Department requested clarification from Iron Bull as to whether it exported subject merchandise under the axes/adzes and picks/mattocks orders.

On February 21, 2006, the Department received clarification from Iron Bull that the entry records obtained by the Department were for sales of non-subject merchandise during the POR. Therefore, for these preliminary results, the Department finds that Iron Bull did not make sales of subject merchandise during the POR for the axes/adzes and picks/mattocks orders. However, the Department intends to request additional information from Iron Bull to support its statements that these entry records are for non-subject merchandise.

Our examination of shipment data from CBP for Huarong confirmed that there were no entries for Huarong of hammers/sledges or picks/mattocks during the POR. Consequently, because there is no evidence on the record to indicate that Huarong and Iron Bull had sales of subject merchandise in these orders during the POR, we are preliminarily rescinding the reviews of these orders for Huarong and Iron Bull. In addition, we are also preliminarily rescinding the review of SXT in accordance with 19 CFR 351.213(d)(1) because it withdrew from the instant review within 90 days of when the *Initiation* was published. See SXT withdrawal, dated May 12, 2005.

### Separate Rates Determination

The Department has treated the PRC as a non-market economy ("NME") country in all previous antidumping cases. See, *i.e.*, *Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review*, 70 FR 54355 (September 14, 2005). It is the Department's policy to assign all exporters of the merchandise subject to review that are located in NME countries a single antidumping duty rate unless an exporter can demonstrate an

absence of governmental control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of governmental control to be entitled to a separate rate, the Department analyzes the exporter using the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified in the *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 the separate rates criteria established in these cases, the Department assigns separate rates to NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

### Absence of De Jure Control

Evidence supporting, though not requiring, a finding of the absence of *de jure* governmental control over export activities includes: (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. See *Sparklers* at 20589.

In previous reviews of the HFHTs orders, the Department granted separate rates to SMC, Huarong and TMC. See, *i.e.*, *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part*, 69 FR 55581 (September 15, 2004) ("*Final Results of the 12th Review*"); *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Notice of Amended Final Results of Antidumping Duty Administrative Reviews*, 69 FR 69892 (December 1, 2004) ("*Amended Final Results of the 12th Review*"). However, it is the Department's policy to evaluate separate rates questionnaire responses each time a Respondent makes a separate rates claim, regardless of whether the Respondent received a separate rate in the past. See, *e.g.*, *Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441 (March 13, 1998).

In the instant reviews, SMC, Huarong, TMC and Iron Bull each submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by these Respondents includes government laws and regulations on corporate ownership, business licences and narrative information regarding the companies' operations and selection of management. The evidence provided by SMC, Huarong, TMC, and Iron Bull supports a finding of a *de jure* absence of governmental control over their export activities because: (1) There are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

### Absence of De Facto Control

The absence of *de facto* governmental control over exports is based on whether the Respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; 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).

In their questionnaire responses, SMC, Huarong, TMC and Iron Bull submitted evidence indicating an absence of *de facto* governmental control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies use of export revenues.

Therefore, the Department has preliminarily found that SMC, Huarong, TMC and Iron Bull have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide and Sparklers*.

#### Affiliation

Based upon information on the record, the Department has preliminarily determined that SMC is affiliated with one of its United States customers, Customer A. Specifically, the Department finds that SMC and Customer A are affiliated through their joint ownership of another PRC company involved in the production and export of subject merchandise. See *Memorandum from Nicole Bankhead, Case Analyst, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Director, Office 9, 14th Administrative Review of the Antidumping Duty Order on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Affiliation*, dated February 28, 2006 ("SMC Affiliation Memo") for further details regarding this issue. Based on this affiliation, the Department requested that SMC report the downstream sales from its affiliate, Customer A, to the first unaffiliated customer. See SMC section below for further details regarding the reporting of CEP sales.

#### Use of Facts Available

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 subsection 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 administering authority 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 (as the case may be), 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." See also Statement of Administrative

Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316 at 870 (1994).

In the instant reviews, Jinma, SMC, Huarong, TMC and Iron Bull significantly impeded both our ability to complete the review of the bars/wedges order, the hammers/sledges order, the picks/mattocks and the axes/adzes order which we conducted pursuant to section 751 of the Act, and to impose the correct antidumping duties, as mandated by section 731 of the Act. As discussed below, although SMC, Huarong, TMC and Iron Bull are entitled to separate rates, we preliminarily find that their failure to cooperate with the Department to the best of their ability in responding to the Department's request for information warrant the use of AFA in determining dumping margins for their sales of merchandise subject to certain HFHTs orders.

#### SMC

##### 1. SMC's Unreported Sales of Axes/Adzes and Picks/Mattocks

Between May 13, 2005, and July 21, 2005, SMC reported that it only had sales of subject merchandise in the bars/wedges and hammers/sledges orders and thus only reported the sales and FOP data for these two orders. However, based on information in the Entry Summary CBP Form 7501s ("7501s") provided by SMC in its July 21, 2005, supplemental Section A questionnaire response, the Department asked SMC whether certain merchandise identified on its 7501s was subject merchandise classified in the picks/mattocks and/or axes/adzes orders. SMC responded that it was subject merchandise classified under the axes/adzes and picks/mattocks orders, which was purchased from another supplier and sold to the United States in very small quantities during the POR. SMC further explained that it had "determined to give up the opportunity for obtaining a low AD margin for these products." SMC provided the Q&V of its sales in the axes/adzes and picks/mattocks orders but not the sales and FOP data.

##### A. Use of Facts Available

Section 776(a)(2)(A) of the Act, provides that, if an interested party withholds information that has been requested by the Department, the Department may use facts otherwise available in making its determination. Similarly, section 776(a)(2)(C) of the Act states that the Department may, if an interested party "significantly impedes a proceeding" under the antidumping statute, use facts otherwise available in

reaching the applicable determination. In this case, SMC withheld its sales and FOP data with respect to its U.S. sales of axes/adzes and picks/mattocks. SMC's failure to provide such data has significantly impeded our ability to complete the administrative review, pursuant to section 751 of the Act, and calculate the correct antidumping duties, as required by section 731 of the Act. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, we find it appropriate to base SMC's dumping margin for axes/adzes and picks/mattocks on facts available.

##### B. Application of Adverse Inferences for Facts Available

In this case, an adverse inference is warranted because SMC originally stated that it did not have sales of either axes/adzes or picks/mattocks to the United States during the POR. Only after reviewing SMC's 7501s did the Department find that SMC did have sales of what appeared to be subject merchandise axes/adzes and picks/mattocks. SMC then refused to provide the relevant U.S. sales and FOP data. By not providing the Department with such data, SMC necessarily failed to cooperate to the best of its ability to respond to the Department's request for information. Moreover, section 776(b) of the Act indicates that an adverse inference may include reliance on information derived from the petition, the final determination in the less-than-fair-value ("LTFV") investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning to SMC's sales of axes/adzes the rate of 193.95 percent, a calculated rate from the instant review, and to its sales of picks/mattocks the PRC-wide rate of 98.77 percent, which was used in the most recently completed administrative review of this antidumping order. See *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005) ("Final Results of the 13th Review").

##### 2. SMC's Inability To Provide CEP Data for the Hammers/Sledges and Bars/Wedges Orders

For the reasons explained below, and pursuant to sections 776(a)(2)(A) and 776(a)(2)(B) of the Act, the Department has preliminarily determined that the use of partial facts available is warranted for SMC's affiliated party

sales to Customer A. On December 29, 2005, the Department issued SMC a questionnaire stating that the Department may find SMC affiliated with one of its United States customers, Customer A, and therefore requested that SMC report Customer A's sales to the first unaffiliated United States customer from Customer A and respond to the CEP section of the Department's original Section C questionnaire. See the Department's Supplemental questionnaire dated December 29, 2005 ("Dec. 29th Questionnaire"). On January 12, 2006, SMC requested an extension from January 17, 2006, until January 24, 2006, to respond to the Dec. 29th Questionnaire. The Department granted SMC a three-day extension until January 20, 2006, to provide the requested CEP data.

On January 20, 2006, SMC submitted its response to the Dec. 29th Questionnaire. SMC stated that it was unable to obtain information from Customer A because Customer A formally filed for Chapter 11 Bankruptcy on January 13, 2006, and was unable to respond to SMC's request. SMC noted that it tried to construct a CEP database based on available information, but was unsuccessful. SMC also provided the Chapter 11 Bankruptcy filing for Customer A.

On January 25, 2006, the Department sent SMC a letter again requesting the CEP data from Customer A in order for the Department to calculate accurate margins. The Department further requested that SMC provide documentation supporting its assertions regarding its attempts to contact Customer A and also proffer reasonable alternatives for establishing a CEP database if it was not provided.

SMC submitted its response to the Department's January 25, 2006, letter on January 30, 2006. According to SMC, it was unable to collect the requested data because, given the bankruptcy proceeding, Customer A could not respond to SMC's requests for data. SMC stated that it had been notified by Customer A that it had been advised by the U.S. trustee for the bankruptcy case that Customer A plans to completely liquidate its assets and put in permanent storage all materials by March 24, 2006. Accordingly, Customer A "cannot report the requested sales 'to the first unaffiliated customer.'" See SMC's January 30, 2006, second CEP questionnaire response. SMC further noted that it is unable to proffer a reasonable alternative for establishing a CEP database. Therefore, we preliminarily determined that the use of partial neutral facts available is appropriate for SMC's CEP sales through

Customer A in accordance with sections 776(a)(2)(A) and 776(a)(2)(B) of the Act.

#### A. Use of Facts Available

The Department preliminarily finds that SMC, along with its affiliated U.S. customer, has acted to the best of its ability, and therefore we have not used an adverse inference, as provided under section 776(b) of the Act, to SMC's CEP sales. Specifically, though SMC was unable to provide the requested downstream sale information from Customer A, SMC documented its multiple attempts to gather this information from Customer A via fax, email, telephone calls and certified letters. See SMC's January 30, 2006, second CEP questionnaire response. In addition, SMC stated that it attempted to construct a CEP database based on available information, but was unable to do so. Furthermore, SMC has responded to all of the Department's questionnaires in the instant review and has thus participated to the best of its ability. Therefore, as neutral facts available for the preliminary results, the Department is applying the weighted average margin calculated for SMC's sales to its unaffiliated customers for its sales to its affiliated customer, Customer A. See *Analysis for the Preliminary Results of Heavy Forged Hand Tools from the People's Republic of China: Shandong Machinery Import&Export Company*, dated February 28, 2006.

However, as stated above in the *Questionnaires and Responses* section, the Department has sought additional information from both SMC and Customer A regarding CEP sales and Customer A's bankruptcy. SMC submitted its response on February 23, 2006, but SMC was still unable to provide the requested CEP sales and provided no additional information regarding Customer A's bankruptcy status. Furthermore, Customer A requested an extension until March 6, 2006, which the Department granted, to respond to the Department's February 17, 2006, questionnaire. Therefore, the Department intends to revisit the application of facts available in the final results.

#### Huarong

During the instant POR, Huarong had an agreement with a PRC company under which the PRC company would act as an "agent" for the vast majority of Huarong's U.S. sales of bars/wedges. When making "agent" sales, Huarong conducted all of the negotiations with the U.S. customer regarding price and quantity, and arranged for the foreign inland freight, international freight and marine insurance associated with these

sales. However, Huarong used the "agent's" invoice for export/import purposes, with a commission paid to the "agent." Huarong's entries were thus identified to CBP as being from Huarong's "agent," entered at the "agent's" lower cash deposit rate, and would possibly have been liquidated at an assessment rate far less than would be appropriate for a sale made by Huarong. For a complete discussion of the Department's decision to apply AFA to Huarong for the bars/wedges order, see *Memorandum from Matt Renkey, case analyst, and Alex Villanueva, program manager, through James C. Doyle, Director, AD/CVD Operations, Office 9 to the File, 14th Administrative Review of Heavy Forged Hand Tools from the People's Republic of China: Application of Adverse Facts Available to Shandong Huarong Machinery Corporation Ltd.*, dated February 28, 2006 ("Huarong AFA Memo").

#### A. Use of Facts Available

Section 776(a)(2)(C) of the Act states that the Department may, if an interested party "significantly impedes a proceeding" under the antidumping statute, use facts otherwise available in reaching the applicable determination. In this case, Huarong's invoice scheme with its "agent" has impeded our ability to conduct the administrative review, pursuant to section 751 of the Act, and calculate the correct antidumping duties, as required by section 731 of the Act. Therefore, pursuant to section 776(a)(2)(C) of the Act, we find it appropriate to base Huarong's dumping margin for bars/wedges on facts available.

#### B. Application of Adverse Inferences for Facts Available

In this case, an adverse inference is warranted because: (1) Huarong misrepresented the nature of its arrangement with the "agent" by portraying that company as a bona fide agent for the vast majority of Huarong's sales of bars/wedges to the United States; and (2) Huarong participated in a scheme that would have resulted in circumvention of the antidumping duty order by evading payment of the applicable cash deposit rates and would have evaded payment of its assessment rates. By engaging in a scheme designed to avoid the Department's calculation, Huarong necessarily failed to cooperate to the best of its ability to respond to the Department's request for information. Moreover, section 776(b) of the Act indicates that an adverse inference may include reliance on information derived from the petition, the final determination in the LTFV



investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning to Huarong's sales of bars/wedges the rate of 139.31 percent, the highest rate applied to bars/wedges, which is also the PRC-wide rate, published in the most recently completed administrative review of this antidumping order. *See Final Results of the 13th Review; see also Huarong AFA Memo.*

#### TMC

During the instant period under review, TMC had agreements with several other PRC companies under which TMC would act as an "agent" for those companies' U.S. sales of bars/wedges, hammers/sledges and axes/adzes. Even though it was purportedly the "agent" for these sales, TMC neither negotiated the price and quantity with the U.S. customer, nor arranged the foreign inland freight, international freight and marine insurance associated with these sales, responsibilities an agent would perform. Rather, TMC performed nominal administrative tasks and permitted these companies simply to use TMC's invoices when exporting their subject bars/wedges, hammers/sledges and axes/adzes to the United States during the POR. Entries from these companies were thus identified to CBP as being from TMC, entered at TMC's lower cash deposit rate, and would have possibly been liquidated at an assessment rate far less than would be appropriate. For a complete discussion of the Department's decision to apply AFA to TMC for the bars/wedges, hammers/sledges, and axes/adzes orders, *see Memorandum from Matt Renkey, case analyst, and Alex Villanueva, program manager, through James C. Doyle, Director, AD/CVD Operations, Office 9 to the File, 14th Administrative Review of Heavy Forged Hand Tools from the People's Republic of China: Application of Adverse Facts Available to Tianjin Machinery Import & Export Corporation.*, dated February 28, 2006 ("TMC AFA Memo").

#### A. Use of Facts Available

Section 776(a)(2)(C) of the Act states that the Department may, if an interested party "significantly impedes a proceeding" under the antidumping statute, use facts otherwise available in reaching the applicable determination. In this case, TMC's participation in an invoice scheme with other companies has impeded our ability to conduct the administrative review, pursuant to section 751 of the Act, and to calculate the correct antidumping duties, as required by section 731 of the Act.

Therefore, pursuant to section 776(a)(2)(C) of the Act, we find it appropriate to base TMC's dumping margin for bars/wedges, hammers/sledges and axes/adzes on facts available.

#### B. Application of Adverse Inferences for Facts Available

Pursuant to section 776(b) of the Act, an adverse inference is warranted because: (1) TMC misrepresented the nature of its arrangement with these other companies by portraying itself as a *bona fide* sales agent for the majority of the other companies' sales of bars/wedges, hammers/sledges and axes/adzes to the United States; and (2) TMC participated in a scheme that would have resulted in circumvention of three antidumping duty orders. By engaging in a scheme designed to avoid the Department's calculation, TMC necessarily failed to cooperate to the best of its ability to respond to the Department's request for information. As a result, TMC participated in a scheme allowing other companies to evade payment of the accurate and applicable cash deposit rates and to evade the proper and applicable assessment rates. In accordance with Section 776(b) of the Act, as AFA, we are assigning an AFA rate of 139.31 percent to TMC's sales of merchandise covered by the antidumping duty order on bars/wedges, an AFA rate of 45.42 percent to TMC's sales of merchandise covered by the antidumping duty order on hammers/sledges and an AFA rate of 193.95 percent to TMC's sales of merchandise covered by the antidumping duty order on axes/adzes. *See Final Results of the 13th Review; see also TMC AFA Memo.*

#### Iron Bull

Between May and September 2005, Iron Bull was given four opportunities (including the original Section C questionnaire) to provide and revise its U.S. sales database. After reviewing Iron Bull's four Section C responses and its submitted U.S. sales database, we find that each one of Iron Bull's U.S. sales databases was unique and uncorrelated with its previously submitted U.S. sales database. We also find that all four of Iron Bull's responses were not clear and lacked narrative explanation, and all four of its U.S. sales databases contained numerous significant errors. Therefore, we have concluded that Iron Bull's responses and databases are unreliable and cannot be used to calculate an antidumping duty margin for its sales of bars/wedges for these preliminary results.

In addition, Iron Bull's own merchandise was claimed under other manufacturers' names on the CBP form 7501. Therefore, Iron Bull's U.S. sales database is incomplete, and Iron Bull and its affiliated U.S. importer appear to have used other manufacturers' IDs to avoid paying a higher dumping duty rate.

Moreover, we find that Iron Bull's agent sales scheme is mischaracterized and misrepresented and its agreement with its agent allowed its affiliated U.S. importer to evade paying the correct cash deposits, and potentially evade paying the correct amount of antidumping duties, thereby undermining the integrity of the antidumping duty administrative review process and impeding our ability to conduct the administrative review. For a complete discussion of the Department's decision to apply AFA to Iron Bull for the bars/wedges and other orders, *see Memorandum from Cindy Robinson, case analyst, and Alex Villanueva, program manager, through James C. Doyle, Director, AD/CVD Operations, Office 9 to the File, 14th Administrative Review of Heavy Forged Hand Tools from the People's Republic of China: Application of Adverse Facts Available to Iron Bull Industrial Co., Ltd.*, dated February 28, 2006 ("Iron Bull AFA Memo").

#### A. Use of Facts Available

Section 776(a)(2)(C) of the Act states that the Department may, if an interested party "significantly impedes a proceeding" under the antidumping statute, use facts otherwise available in reaching the applicable determination. In this case, Iron Bull also repeatedly failed to provide the requested information in the form or manner requested by the Department in accordance with section 776(a)(2)(B) of the Act. Pursuant to section 782(d) of the Act, the Department provided three additional opportunities for Iron Bull to correct its U.S. sales database since its original Section C submission, but Iron Bull continued to submit unclear, inconsistent, unreliable, and unusable information. In accordance with section 782(e) of the Act, the Department has determined to disregard all of Iron Bull's original and subsequent responses.

In addition, Iron Bull and its affiliated U.S. importer used other manufacturers' IDs and claimed the antidumping duty rates of those manufacturers for subject merchandise produced and sold by Iron Bull to avoid the cash deposit rates in effect during the POR and to circumvent the antidumping duty order. We find that Iron Bull and its U.S. affiliated

importer impeded our ability to complete this administrative review under section 751 of the Act and to impose the correct antidumping duties, as mandated by section 731 of the Act.

Finally, Iron Bull's invoice scheme with its "agent" has impeded our ability to conduct the administrative review, pursuant to section 751 of the Act, and calculate the correct antidumping duties, as required by section 731 of the Act. Therefore, pursuant to section 776(a)(2)(C) of the Act, we find it appropriate to base Iron Bull's dumping margin for bars/wedges on facts available.

#### *B. Application of Adverse Inferences for Facts Available*

In this case, an adverse inference is warranted because Iron Bull repeatedly failed to provide the requested information in the form or manner requested by the Department in accordance with section 776(a)(2)(B) of the Act, despite repeated and clear instructions from the Department. By not providing the Department a timely, clear, reliable, and usable U.S. sales database for bars and wedges, Iron Bull necessarily failed to cooperate to the best of its ability to respond to the Department's request for information.

Furthermore, as noted, Iron Bull and its affiliated U.S. importer used another manufacturer's ID and applied that manufacturer's lower cash deposit rate, and possibly lower assessment rates, to Iron Bull's self-produced bars and wedges. Iron Bull misrepresented the nature of its arrangement with the "agent" by portraying that company as a *bona fide* agent for certain Iron Bull's sales of bars/wedges to the United States. Iron Bull's participation in the "agent" sales scheme resulted in circumvention of the antidumping duty order. By engaging in a scheme designed to avoid the Department's calculation, Iron Bull necessarily failed to cooperate to the best of its ability to respond to the Department's request for information.

Moreover, section 776(b) of the Act indicates that an adverse inference may include reliance on information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning to Iron Bull's sales of bars/wedges the rate of 139.31 percent, the highest rate applied to bars/wedges, which is also the PRC-wide rate.

#### **PRC-Wide Entity and Non-Responding Companies<sup>2</sup>**

As mentioned in the "Case History" section above, the Department initiated these administrative reviews of the axes/adzes and bars/wedges orders for twenty-one PRC companies, and the hammers/sledges and picks/mattocks orders for twenty PRC companies. On April 6, 2005, the Department issued Section A, C and D of the antidumping duty questionnaires to all companies for which the Department initiated administrative reviews. *See Initiation*. Out of these companies, only SMC, TMC, Iron Bull, and Huarong, provided information demonstrating that they are entitled to a separate rate; therefore, the remaining companies are not entitled to a separate rate. Thus, we consider the thirteen companies that did not respond to the Department's questionnaires to be part of the PRC-wide entity. *See 14th AR Timeline*. In accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, we are assigning total AFA to the PRC-wide entity.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide the requested information but also to provide a full explanation as to why it cannot provide the information and suggest alternative forms in which it is able to submit the information. Because these companies did not establish their entitlement to a separate rate and failed to provide requested information, we find that, in accordance with sections 776(a)(2)(A) and (B) of the Act, it is appropriate to base the PRC-wide margin in these reviews on facts available. *See, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000).

Section 776(b) of the Act permits the Department to use as AFA information derived in the LTFV investigation or any prior review. In selecting an AFA rate, where warranted, the Department's practice has been to assign respondents who fail to cooperate with the Department's requests for information the highest margin determined for any party in the LTFV investigation or in any administrative review. *See, e.g., Stainless Steel Plate in Coils from Taiwan; Preliminary Results and*

<sup>2</sup> LMC, LIMAC, Jinma, Changzhou Light Industrial Tools, Laoling Pangu Tools, Leiling Zhengtai Tools Co., Ltd., Jiangsu Sainty International Group Co., Ltd., Shanghai J.E. Tools, Shanxi Tianli, Jafsam, Suqian Foreign Trade Corp., Suqian Teelee Tools, and Laiwu Zhongtai Forging, collectively "non-responding companies."

*Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002). As AFA, we are assigning to the PRC-wide entity's sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks the rates of 193.95, 139.31, 45.42, and 98.77 percent, respectively.

#### **Corroboration**

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See SAA at 870 and 19 CFR 351.308(d)*.

The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA at 870*. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The rate selected as AFA for bars/wedges was calculated, *i.e.*, derived from verified information provided by TMC during the 1998–1999 administrative review, and was corroborated and used as the PRC-wide and AFA rate in the previous administrative review. *Id.* The AFA rate we are applying for the order on hammers/sledges was applied as "best information available" (the predecessor to AFA) during the LTFV investigation for the sole respondent China National Machinery Import & Export Corporation, and was again corroborated and used as the PRC-wide and AFA rate in the 13th review. *Id.* The AFA rate we are applying for the order on picks/mattocks was calculated in the fifth review, became the PRC-wide and AFA rate in the seventh review, and has been used since. *See, e.g., Final Results of the 13th Review*. No information has been presented in the current review that calls into question the reliability of the information used for these AFA rates. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin



continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See *D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rates being used here. Moreover, the rates selected for axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks are the rates currently applicable to the PRC-wide entity. The Department assumes that if an uncooperative respondent could have demonstrated a lower rate, it would have cooperated. See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed. Cir. 1990); cf. *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841 (2000) (respondents should not benefit from failure to cooperate).

The information used in calculating these margins was based on sales and production data of respondents in the current review or a prior review, together with the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as gathered by the Department itself, or on "best information available" from the LTFV investigation. Furthermore, the calculations were subject to comment from interested parties in the proceeding. See *Final Results of the 13th Review*. Moreover, as there is no information on the record of this review that demonstrates that these rates are not appropriate to use as AFA, we determine that these rates have relevance. As these rates are both reliable and relevant, we determine that they have probative value. Accordingly, the selected rates of 193.95 percent for axes/adzes, 139.31 percent for bars/wedges, 45.42 percent for hammers/sledges, and 98.77 percent for picks/mattocks, the highest rates from any segment of this administrative proceeding (i.e., the calculated and

current PRC-wide rate for each order) have been corroborated, to the extent practicable and as necessary, in accordance with section 776(c) of the Act.

#### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" Section below.

As discussed in the "Separate Rates" section, the Department considers the PRC to be an NME country. The Department has treated the PRC as an NME country in all previous antidumping proceedings. In accordance with section 771(18)(C)(I) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. We have no evidence suggesting that this determination should be changed. Therefore, we treated the PRC as an NME country for purposes of these reviews and calculated NV by valuing the FOP in a surrogate country.

The Department determined that India, Indonesia, Sri Lanka, Philippines, and Egypt are countries comparable to the PRC in terms of economic development. See *Memorandum from Ron Lorentzen, Office of Policy, Acting Director, to Alex Villanueva, Program Manager: Antidumping Duty Administrative Review of Heavy Forged Hand Tools ("Hand Tools") from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated May 5, 2005. We select an appropriate surrogate country based on the availability and reliability of data from the countries. See *Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process ("Policy Bulletin")*, dated March 1, 2004. In this case, we have found that India is a significant exporter of comparable merchandise, merchandise classified under HTSUS subheadings

8205.20, 8205.59, 8201.30, and 8201.40, the subheadings applicable to subject hand tools, and is at a similar level of economic development pursuant to 773(c)(4) of the Act. See *Surrogate Country Memo*.

#### U.S. Price

The Department is calculating dumping margins for the picks/mattocks order for TMC, the axes/adzes order for Huarong, and the bars/wedges and hammers/sledges orders for SMC. There is no record evidence that these companies engaged in the "agent" sale scheme described above with respect to these sales. In accordance with section 772(a) of the Act, the Department calculated export prices ("EPs") for sales to the United States for the participating Respondents receiving calculated rates because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP ("CEP") was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, brokerage and handling, international freight, marine insurance, warehousing, and containerization. For the Respondents receiving calculated rates, each of these services was either provided by a NME vendor or paid for using a NME currency, with two exceptions. For international freight and marine insurance, provided by a market economy provider and paid in U.S. dollars, we used the actual cost per kilogram of the freight. We based the deduction for other movement charges on surrogate values. See *Memorandum from Matt Renkey, Case Analyst, through Alex Villanueva, Program Manager, Office 9, to the File, 14th Administrative Review of HFHTs from the People's Republic of China ("PRC"): Surrogate Values for the Preliminary Results*, dated February 28, 2006 ("Surrogate Values Memo") for details regarding the surrogate values for other movement expenses.

#### Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on factors of production ("FOP") reported by the Respondents for the POR. To calculate NV, we valued the reported FOP by multiplying the per-unit factor quantities by publicly available Indian surrogate values. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we

adjusted the value of material inputs to account for delivery costs. Where appropriate, we increased Indian surrogate values by surrogate inland freight costs. We calculated these inland freight costs using the shorter of the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed.Cir. 1997).

For those values not contemporaneous with the POR, we adjusted for inflation or deflation using data published in the IMF's *International Financial Statistics*. We excluded from the surrogate country import data used in our calculations imports from Korea, Thailand and Indonesia due to generally available export subsidies. See *China Nat'l Mach. Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004). Furthermore, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. We converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from Import Administration's Web site at <http://www.ia.ita.doc.gov/>. For further detail, see *Surrogate Values Memo*.

#### Preliminary Results of the Review

As a result of our reviews, we preliminarily find that the following margins exist for the period February 1, 2004, through January 31, 2005:

Manufacturer/exporter	Weighted-average margin (percent)
<b>Heavy Forged Hand Tools from the PRC: Axes/Adzes</b>	
TMC .....	193.95
Huarong .....	193.95
SMC .....	193.95
PRC-Wide Rate .....	193.95
<b>Heavy Forged Hand Tools from the PRC: Hammers/Sledges</b>	
TMC .....	45.42
SMC .....	13.29
PRC-Wide Rate .....	45.42

Manufacturer/exporter	Weighted-average margin (percent)
<b>Heavy Forged Hand Tools from the PRC: Picks/Mattocks</b>	
TMC .....	51.83
SMC .....	98.77
PRC-Wide Rate .....	98.77
<b>Heavy Forged Hand Tools from the PRC: Bars/Wedges</b>	
TMC .....	139.31
Huarong .....	139.31
SMC .....	36.15
Iron Bull .....	139.31
PRC-Wide Rate .....	139.31

The PRC-wide rate applies to the thirteen companies that did not respond to the Department's original questionnaires.

#### Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. See 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

#### Assessment Rates

Upon completion of these administrative reviews, the Department

will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for the Respondents receiving calculated dumping margins, we calculated importer-specific per-unit duty assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total quantity of those same sales. These importer-specific per-unit rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is *de minimis* (i.e., less than 0.5 percent *ad valorem*). Lastly, for the Respondents receiving dumping rates based upon AFA, the Department, upon completion of these reviews, will instruct CBP to liquidate entries according to the AFA *ad valorem* rate. The Department will issue appraisal instructions directly to CBP upon the completion of the final results of these administrative reviews.

#### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of these administrative reviews; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in these reviews, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of these proceedings; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of these reviews; and (4) the cash deposit rate for any non-PRC exporter of subject merchandise from the PRC who does not have its own rate will be the rate applicable to the PRC exporter that supplied the non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of

antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: February 28, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6-3296 Filed 3-7-06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-837]

#### **Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department has determined to apply an adverse facts available rate of 59.67 percent to Tokyo Kikai Seisakusho, Ltd. (TKS) in the 1997-1998 administrative review under section 776(b) of the Tariff Act of 1930, as amended (the Act), as a result of TKS' misconduct during this review. We are also rescinding the company-specific revocation with respect to TKS and reinstating the order with respect to TKS from September 1, 2000, through September 3, 2001, the day before the effective date of the sunset revocation. Upon the completion of this review, we will reopen for reconsideration the sunset review that resulted in revocation of this order.

**EFFECTIVE DATE:** March 8, 2006.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

#### **Background**

On May 10, 2005, the Department of Commerce (the Department) self-initiated a changed circumstances review of large newspaper printing

presses and components thereof, whether assembled or unassembled (LNPPs), from Japan, to consider information contained in a recent federal court decision, *Goss International Corp. v. Tokyo Kikai Seisakusho, Ltd.*, 321 F.Supp.2d 1039 (N.D. Iowa 2004) (*Goss Int'l*). See *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Initiation of Changed Circumstances Review*, 70 FR 24514 (May 10, 2005) (*Notice of Initiation*). As detailed in our *Notice of Initiation*, evidence was presented in that court proceeding demonstrating that TKS intentionally provided false information regarding its sale to the Dallas Morning News (DMN), the subject of the Department's 1997-1998 administrative review.

On September 13, 2005, the Department published a notice of preliminary results of changed circumstances review in which it preliminarily determined that it was appropriate to take the following course of action in order to protect the integrity of the Department's proceedings: (1) Revise TKS' margin for the 1997-1998 review to apply a rate of 59.67 percent based on adverse facts available, pursuant to section 776(b) of the Act; (2) rescind the company-specific revocation of the antidumping duty order for TKS because TKS no longer qualifies for revocation based on three consecutive administrative reviews resulting in zero dumping margins under 19 CFR 351.222(b); and (3) reconsider the sunset review which resulted in the revocation of the entire order, pursuant to section 751(c) of the Act. See *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Preliminary Results of Changed Circumstances Review*, 70 FR 54019, 54023 (September 13, 2005) (*Preliminary Results*).

The interested parties submitted case and rebuttal briefs on October 20 and 27, 2005, respectively. Also in October 2005, several parties submitted letters addressing the preliminary results, including newspaper publishers *The Washington Post* and North Jersey Media Group, Inc. A public hearing and a closed hearing were held on November 15, 2005.

On January 26, 2006, we invited comments on the decision of the U.S. Court of Appeals for the Eighth Circuit in *Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, No. 04-2604, 2006 U.S. App. LEXIS 1569 (8th Cir. Jan. 23, 2006), affirming the decision of the Iowa district court in *Goss Int'l*. *Goss International*

Corporation, TKS, and Mitsubishi Heavy Industries, Ltd. filed comments on January 31, 2006.

#### **Scope of the Changed Circumstances Review**

The products covered by this changed circumstances review are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the review includes the five press system components. They are: (1) A printing unit, which is any component that prints in monochrome, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, LNPP systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for LNPP systems, press additions, or press components, regardless of degree of