

January 6, 2010

MEMORANDUM TO: Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

FROM: John M. Andersen  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results in the  
Administrative Review of Floor-Standing, Metal-Top Ironing  
Tables and Certain Parts Thereof from the People's Republic of  
China

**SUMMARY:**

We have analyzed the comments and rebuttal comments of interested parties in the final results of the August 1 2007 through July 31, 2008, administrative review of the antidumping duty order covering floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China (PRC). Based upon our analysis of the comments received, our analysis in these final results is unchanged from the preliminary results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum.

Below is the complete list of the issues in this administrative review for which we received comments by parties:

Comment 1: Application of the PRC-wide rate to Foshan Shunde

Comment 2: Application of Total Adverse Facts Available (AFA) to Foshan Shunde

Comment 3: Whether Substantial Deficiencies exist in Foshan Shunde's Responses

Comment 4: Whether the Department Should Calculate a Separate Rate for Foshan Shunde

#### BACKGROUND:

On September 8, 2008, the Department published the *Preliminary Results* of this administrative review. See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 46083 (September 8, 2008) (*Preliminary Results*). The merchandise covered by the order is floor-standing, metal-top ironing tables and certain parts thereof from the PRC, as described in the "Scope of the Order" section of the *Federal Register* notice. The period of review (POR) is August 1, 2007 through July 31, 2008. This administrative review covers Foshan Shunde Yongjian Housewares & Hardware Co., Ltd (Foshan Shunde), which is part of the PRC-wide entity.

In the *Preliminary Results*, we invited parties to comment. In response, on October 8, 2009, the Department received case briefs from Foshan Shunde and from Polder, Inc. (Polder), an importer of the subject merchandise. On October 13, 2009 Home Products International (the Petitioner in this proceeding) submitted a rebuttal brief.

#### CHANGES FROM THE PRELIMINARY RESULTS

Based on the comments received from interested parties, we have made no changes to the analysis employed in the *Preliminary Results*.

#### DISCUSSION OF THE ISSUES

##### **Comment 1: Application of the PRC-wide rate to Foshan Shunde**

Foshan Shunde and Polder assert that in its *Preliminary Results*, the Department erroneously denied a separate rate to Foshan Shunde. Foshan Shunde notes that established Department policy is to assign an exporter a separate rate when that exporter establishes both *de jure* and *de facto* independence from state control. Foshan Shunde notes that in *Certain Iron Construction Castings from the PRC: Final Results of Antidumping Duty Administrative Review*, 57 FR 24,245, 24246 (June 8, 1992) the Department indicated that "once a Chinese company has demonstrated that it is entitled to a separate rate, unless there is an indication that its status may have changed, it is not necessary for that company to resubmit data supporting a separate rate during subsequent reviews."

Foshan Shunde contends it established its entitlement to a separate rate both in the instant review and in the first administrative review of this proceeding which covered the period February 3,

2004 through July 31, 2005. *See Floor Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 72 FR 13239 (March 21, 2007) (*Final Results of First Review*). Foshan Shunde contends there is no evidence suggesting a change in Foshan Shunde's separate-rate status since the first review. Foshan Shunde asserts that in denying it a separate rate in this proceeding, the Department "made an unjustified determination and abused its authority." *See Foshan Shunde Case Brief at 3.*

Polder cites to *Sigma Corp. v. United States*, 117 F. 3d 1401, 1404-05 (Fed. Cir. 1997), which establishes that when a respondent operates free of government control, it is entitled to a separate rate. Polder asserts that the 157.68 percent AFA rate assigned to Foshan Shunde in the instant review "presumes Chinese government control over Foshan Shunde's exports." *See Polder Case Brief at 3.* However, Polder asserts the information provided by Foshan Shunde in its November 18, 2008 Section A response establishes that Foshan Shunde operates free of *de jure* and *de facto* government control. Moreover, Polder argues the Department based its decision to proceed with AFA because of matters relating to Foshan Shunde's factors of production and matters affecting Foshan Shunde's U.S. sales database. Polder asserts that neither the Department nor the Petitioner have "raised any issues with respect to the accuracy or the correctness of the information Foshan Shunde submitted to the Department relating to Foshan Shunde's entitlement to a separate rate in this proceeding." *Id.*

Polder further argues that even where AFA is to be applied, application of the PRC wide margin to a company operating free of *de jure* and *de facto* control is unlawful. Polder cites to *Qingdao Taifa Group Co., Ltd. v. United States*, 33 CIT Slip Op. 09-83 at 13 (CIT 2009) (*Qingdao*); *Gerber Food (Yunnan) Co., Ltd. v. United States*, 31 CIT Slip Op. 07-85 at 37 (CIT 2007) (*Gerber Food I*); *Gerber Food (Yunnan) Co., Ltd. v. United States*, 387 F. Supp 2d 1270, 1287 (2005) (*Gerber Food II*); and *Shangdong Huarong General Group Corporation v. United States*, 27 CIT 1568, 1594-1596 (CIT 2003) (*Shangdong*) to support its assertion that application of the PRC-wide rate is inappropriate in instances where a respondent has demonstrated independence from *de jure* and *de facto* control.

Petitioner asserts that Foshan Shunde's status in this review has changed from that of a "previously cooperative and presumably credible respondent to one whose responses are so fraught with inconsistency and error as to be unreliable in all respects." *See Petitioner Rebuttal Brief at 32.* Petitioner further notes the Court of International Trade has upheld application of the PRC wide rate to a company that had previously qualified for separate rate status. *See Peer Bearing Company Changshan v. United States*, 587 F. Supp. 2d. 1319 (CIT 2008) (*Peer Bearing*). Petitioner argues that like the respondent in *Peer Bearing*, Foshan Shunde has failed to demonstrate that it qualifies for a separate rate because Foshan Shunde has failed to demonstrate that its responses were credible. Moreover, Petitioner asserts the cases cited by Polder (*Qingdao*, *Gerber Food I*, *Gerber Food II*, and *Shangdong*) are all inapposite because in each of those cases the Department "had accepted the data demonstrating the absence of government control for purposes of the preliminary determination and had successfully verified

the information provided.” *Id.* at 33. Petitioner notes that in the instant case “the Department has done neither.” *Id.*

Petitioner further asserts that if the Department chooses to accept Foshan Shunde’s claim that it qualified for a separate rate in the final results, the appropriate AFA rate for Foshan Shunde should still be 157.68 percent. Petitioner asserts the 157.68 percent rate is a calculated rate, is reliable, and is representative of the industry. Moreover, Petitioner notes the statute permits the Department to base AFA upon the following sources: (1) the petition, (2) a final determination in the investigation, (3) any previous review under 19 U.S.C. § 1675 or § 1675b, or (4) any other information placed on the record. Petitioner further notes that the Court has clarified that the AFA rate must have a “rational relationship to the party to whom it was applied.” Petitioner argues that the 157.68 percent rate fulfills all of the criteria for an AFA rate set forth by the Court. Petitioner cites to *Shanghai Taoan International Trade Co. Ltd. v. United States* 360 F. Supp. 2d 1339, 1347 (CIT 2005) wherein the Court determined that the 223.01 percent dumping margin calculated in a previous review was reasonably related to Shanghai Taoan “because the rate reflected recent commercial activity by a crawfish tail meat exporter (in a previous review, as opposed to the period of review at issue) and there was insufficient evidence on the record to suggest an alternative rate.” *Id.* at 34. Petitioner further notes that in *Kompass Food Trading International v. United States*, 24 CIT 678, 683-4 (CIT 2000), the Court upheld use of the highest previously calculated rate as AFA because there was no record evidence suggesting “the practices of SAICO (the company whose margin it was) differed from the rest of the industry and its inclusion in the ‘all others’ rate in the original investigation supported the position that SAICO was representative of the industry even though its margin was three years old.” *Id.*

Petitioner asserts the 157.68 percent margin calculated for Shunde Yongjian in the investigation is rationally related to Foshan Shunde, has been corroborated, is based upon numerous sales, and was subject to comment from interested parties. Moreover, Petitioner asserts that because Shunde Yongjian was affiliated with Foshan Shunde at the time in history of the antidumping duty order, Shunde Yongjian’s 157.68 margin “reflects commercial activity by a manufacturer of the subject merchandise and is rationally related to Foshan Shunde.” Petitioner Case Brief at 35. In contrast, Petitioner argues that the previous margin of 2.37 percent calculated for Foshan Shunde in the first review (*see Final Results of First Review*, 72 FR at 13421 ) and the 0.00 percent margin calculated for Forever Holdings in the third administrative review (which covered the period August 1, 2006 through July 31, 2007 (*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 11,085, 11086) were based on a “miniscule” number of sales and thus cannot reliably serve as the basis of an AFA margin. *Id.* at 34. Petitioner further argues that the 0.51 percent margin calculated for Since Hardware cannot serve as the basis of an AFA margin because “the Department has found that Since Hardware provided false information in the third review and that the information provided therein called into question the validity of Since Hardware’s margin in the previous reviews.” *Id.*

## Department's Position

The Department has determined to continue to consider Foshan Shunde as part of the PRC-wide entity for these *Final Results*. As noted in the *Preliminary Results*, when a respondent in an NME proceeding has failed to cooperate to the best of its ability with respect to all requests for information and has been assigned a margin based on total AFA, established Department practice is to determine that the respondent has failed to demonstrate that it operates free from government control. See *Preliminary Results*, 74 FR at 46085; 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) (where the Department revoked a respondent's separate rate status after the respondent refused to cooperate with the Department's administrative review).

As discussed *infra* in response to Comments 2 and 3, Foshan Shunde's conduct in this review has changed its status from that of a cooperative respondent to that of a respondent which we have determined to be uncooperative and to have impeded the conduct of this proceeding. Thus, through its actions in this review, Foshan Shunde has called into question its separate rate status. Indeed because of Foshan Shunde's own conduct as discussed *infra*, the Department is unable to ascertain which part, if any, of Foshan Shunde's submissions are credible and reliable. In response to Foshan Shunde's claim that it received a separate rate in a prior segment of this proceeding and is therefore entitled to one here, the Department notes that each segment of the proceeding is separate with separate administrative records. See *Norsk Hydro Can., Inc. v. United States*, 472 F. 3d 1347 (CAFC 2006); see also *Shangdong Huarong Mach. Co. v. United States*, 2005 WL 1105110 # 5 (CIT 2005). Thus, the Department properly analyzes in each segment whether the respondent demonstrated entitlement to a separate rate. The Court stated in *Peer Bearing* that, "each administrative review is a separate segment of its proceeding with its own unique facts." Foshan Shunde's receipt of a separate rate in the *Final Results of First Review* does not automatically convey separate rate status upon the company in this segment of the proceeding. Indeed, the Department regularly requires all separate rate companies to file certifications of separate rate with the Department in each segment of the proceeding. See, e.g., the Department's October 14, 2008 Antidumping Questionnaire to Foshan Shunde at section A-2.

Moreover, the facts in this instant case differ from those in *Qingdao*, *Gerber Food I*, *Gerber Food II*, and *Shangdong*. Each of those cases involved circumstances wherein the Department had verified the separate rate data provided by each respondent. The Department has conducted no such verification of the separate rate data submitted by Foshan Shunde because verification is not an opportunity for respondents to correct submissions where we found the company's responses to be, as here, unreliable *in toto*. Based upon the foregoing, we have, in these *Final Results* continued to treat Foshan Shunde as part of the PRC-wide entity based upon our finding that Foshan Shunde's responses are unreliable and cannot be used. Finally, we note that because we have continued to treat Foshan Shunde as a part of the PRC-wide entity, the question of what

AFA rate the Department would have assigned Foshan Shunde were Foshan Shunde to qualify for a separate rate is moot, and therefore no decision is necessary.

**Comment 2: Application of Total Adverse Facts Available to Foshan Shunde**

Foshan Shunde contends that in lieu of applying total AFA in its *Preliminary Results*, the Department should have used the data provided by the company to calculate a margin. Foshan Shunde asserts that its questionnaire responses filed throughout the course of this review demonstrate that it cooperated to the best of its ability, thus obviating the need for total AFA.

Foshan Shunde further asserts that in determining to apply total AFA to its sales, “the Department accepted unverified accusations” by the Petitioner. *See* Foshan Shunde Case Brief at 4. Foshan Shunde contends that the Department ignored “substantial evidence” which supported its response, and argues that the Department improperly declined to verify the data submitted in this review by both Foshan Shunde and the Petitioner. Foshan Shunde further asserts that any errors in its response are “isolated” and could be remedied through partial AFA rather than through total AFA. *Id.* at 5.

Foshan Shunde notes the Department outlined the basis of its AFA decision in an August 31, 2009 Memorandum from Richard Weible to John Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Foshan Shunde Yongjian Housewares and Hardware Co., Use of Adverse Facts Available and Corroboration of AFA Rate” (AFA Memorandum). Foshan Shunde disputes the conclusion reached in the AFA Memorandum that it provided “contradictory and irreconcilable information concerning its major inputs of hot-rolled and cold-rolled steel...” *See* AFA Memorandum at 1. Foshan Shunde also disputes the Department’s conclusion that it “failed to fully explain and detail the role which an affiliated company has played in the sale of the subject merchandise.” *Id.* Foshan Shunde asserts it has supplied “accurate responses to each of the Department’s questions and answers.” *See* Foshan Shunde Case Brief at 7-8.

Foshan Shunde also asserts that in resorting to total AFA in this case, the Department placed undue reliance on several cases cited by the Petitioner. Foshan Shunde asserts that the facts in *Final Determination of Sales at Less than Fair Value: Certain Artist Canvas from the People’s Republic of China*, 71 FR 16116 (March 30, 2006) (*Artist Canvas*), and *Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Final Results of 2005-2006 Annual Review*, 73 FR 43684 (July 28, 2008) (*Hand Trucks*) are inapposite to this case. Foshan Shunde argues that in *Artist Canvas*, the respondent failed to report all of its sales, certain “critical” factors of production, and an “unaffiliated producer’s factor consumption rate at verification.” Foshan Shunde Case Brief at 8. Similarly, in *Hand Trucks*, Foshan Shunde asserts “the respondent failed to report that it sold hand trucks with wheels in the U.S. to avoid paying antidumping duties, had not reported factors of production for the wheels, sought to change company records to hide the sale of wheels, and failed to support the ownership structure claimed.” *Id.* at 9. Foshan Shunde asserts that the deficiencies involving major inputs at issue in

*Artist Canvas* and *Hand Trucks* are not at issue in this case. Thus, Foshan Shunde asserts the Department should properly use the data Foshan Shunde provided to calculate a dumping margin.

Foshan Shunde further asserts that the Department improperly rejected its allocation methodology. Foshan Shunde disputes the conclusion reached in the AFA Memorandum that its “production notes” could have “furnished the Department with more specific costs and factors of production than that which it provided.” *See* AFA Memorandum at 5-6. Foshan Shunde contends it appropriately allocated its costs and fully explained the basis for its methodology and the weights used in the cost allocation submitted.” *See* Foshan Shunde Case Brief at 10. Foshan Shunde asserts that it does not maintain “specific source documents showing the weights used for allocation purposes or standard weights for production purposes or actual consumption and therefore, in determining weights to report in this administrative review, it weighed parts on the spot.” *Id.* Moreover, Foshan Shunde asserts that its production notes do not provide either standard or net weights and that its production notes are never “used to track input consumption or withdrawal on a product specific or workshop-specific basis.” *Id.* at 11. Moreover, Foshan Shunde asserts it does not use “production notes” in the ordinary course of business, and further asserts the Department should not penalize it for failing to submit product-specific documents which do not exist.

Foshan Shunde argues that Petitioner’s assertions concerning Foshan Shunde’s production notes place undue reliance upon the verification findings for a respondent in the investigation of certain kitchen appliance shelving and racks from the PRC: (*See Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36556, (July 24, 2009) (*Kitchen Appliance Shelving*). Foshan Shunde asserts that the situations in *Kitchen Appliance Shelving* and the instant case differ significantly. Foshan Shunde contends that unlike the respondent in *Kitchen Appliance Shelving*, Foshan Shunde “cannot know from its production notes the quantity of steel or rod needed to produce a product and thus, it cannot withdraw materials based on the production notes or some combination of bill of materials or production notes.” *See* Foshan Shunde Case Brief at 11-12. Moreover, Foshan Shunde notes that it and the respondent at issue in *Kitchen Appliance Shelving* operate differently and produce significantly different products. Further, Foshan Shunde claims it does not trace consumption on a product line basis, or the quantity of “material withdrawn to any weight recorded on the production notes.” *Id.* Foshan Shunde asserts the production notes “only perform as the document for production scheduling and on site management in various workshops. *Id.* at 13

Foshan Shunde further asserts the steel weights listed on the production notes do not permit the tracking of product specific steel costs. Rather, Foshan Shunde insists its “production notes” merely represent “the rough amount of requirement for steel materials during certain period, referred to which the purchase department can control the purchase quantity of each type of steel inputs and the production department can also schedule production orders at the steel splitting and tube making on a relatively reasonable basis.” *Id.* at 14. Moreover, Foshan Shunde asserts

that it does not track yield loss or material usage by model but rather tracks yield loss and material usage “by the monthly balance of the work in process on an overall basis.” *Id.* at 14-15. Foshan Shunde cites to its August 27, 2009 submission which it asserts demonstrates that when yield loss is tracked on an overall basis it yields the same result as would tracking yield loss and material loss through use of production notes. *Id.* at 15.

Foshan Shunde also disputes the conclusion reached in the Department’s AFA Memorandum which asserts that it “did not report model specific costs and also failed to provide any correspondence from its customers demonstrating that customers indeed specify the type and thickness of steel used.” *Id.* at 17. Foshan Shunde asserts that it has not withheld any production or cost data from the Department and that it has responded to the Department’s request for information to the best of its ability. Moreover, Foshan Shunde contends the Department may not assign “adverse facts available where a respondent’s inability to provide information is due, as is the case here, to the fact that the information does not exist.” *Id.* at 17. Foshan Shunde cites to *Olympia Adhesives, Inc. v. United States* 899 F.2d 1565, 1572 (Fed. Cir. 1990) (*Olympia*) and *Bowe Passat Reinigungs–Und Waschereitechnik GmbH v. United States* 20 CIT 1426, 1435-36 951 F. Supp. 231, 239 (1996) (*Bowe*) as analogous to the facts in this case. Analogous to the factual situation in *Olympia* and *Bowe*, Foshan Shunde asserts that the data requested by the Department does not exist. Foshan Shunde concludes that the Department’s application of total AFA is “overly punitive” because Foshan Shunde has fully cooperated in this proceeding. *Id.* Moreover, Foshan Shunde asserts that total AFA is impermissible in this proceeding because the Department would be obligated to determine “that Foshan Shunde has impeded the investigation in order to use an adverse inference and such is not the case here.” *Id.*

Finally, Foshan Shunde asserts that the Department’s rejection of its allocation constitutes an impermissible change in methodology from a prior review and is thus in conflict with the judicial standard set forth in *Shikoku Chems. Corp. v. United States*, 795 F. Supp. 417, 422 (CIT 1992) (*Shikoku*). Foshan Shunde insists it utilized the same reporting methodology in the first administrative review of this case as it has in this proceeding. Foshan Shunde notes the Department conducted a verification of its submitted first-review data and “found no discrepancies in comparison to the information submitted by Foshan Shunde in the course of that administrative review.” *Id.* at 18. Moreover, Foshan Shunde asserts that its manufacturing operations have not changed since the first administrative review. Foshan Shunde argues that the first administrative review constitutes “a regular practice” to which it could “reasonably expect the Department’s adherence absent any notification to the contrary.” *Id.* at 19. Foshan Shunde thus argues that the Department cannot now change its standards for accepting the reporting of Foshan Shunde’s production costs, factors of production, and affiliation issues given the Department’s acceptance of such a reporting methodology in the first administrative review.

Petitioner asserts that the Department’s application of total AFA to Foshan Shunde is warranted. Petitioner contends Foshan Shunde has failed to resolve “mutually exclusive statements by Foshan Shunde’s executive director concerning whether Shunde Junbang offered ironing tables for sale.” Specifically, Petitioner claims the statements made by Foshan Shunde’s executive

director Xie Jianmin, and the statements made by Xie Jianmin in the *Kitchen Appliance Shelving* proceeding are irreconcilable. Petitioner observes that in the instant proceeding, Xie Jianmin has certified that Foshan Shunde is unaffiliated with any other producer or exporter of the subject merchandise. However, in the *Kitchen Appliance Shelving* investigation, Petitioner notes that Xie Jianmin indicated that Shunde Junbang listed Foshan Shunde manufactured ironing tables on Shunde Junbang's website. Moreover, Petitioner asserts the "findings that Shunde Junbang was offering Foshan Shunde's ironing tables for sale were bolstered by the fact that the product codes offered by Shunde Junbang were extremely similar to those utilized by Foshan Shunde." See Petitioner Rebuttal Brief at 5.

Petitioner further asserts the Department found numerous discrepancies relating to Foshan Shunde's reporting of material inputs and factors of production. Petitioner notes that Foshan Shunde indicates in its May 1, 2009 letter that it's "customers decide the thickness and type of steel" to be used. Petitioner notes, however, that when the Department asked Foshan Shunde to provide examples of customers specifying the steel input, Foshan Shunde provided only one such photograph. Further, Petitioner notes that notwithstanding the Department's May 29, 2009 request for "any and all indications of the type and dimension of steel used in making each model" Foshan Shunde neglected to detail the existence of its production notes in its June 22, 2009 submission. *Id.* at 6. Petitioner notes that Foshan Shunde first acknowledged the existence of such production notes in its August 10, 2009 submission only after the Department asked for these notes by name.

Petitioner also disputes Foshan Shunde's assertion that it has no need to maintain product specific cost and factors of production records. Petitioner asserts that "every respondent must expect the need to maintain records to corroborate or substantiate its questionnaire responses." *Id.* at 7. Further, Petitioner argues that Foshan Shunde's "production notes" would have been "directly responsive" to the Department's request for model specific costs which the Department set forth in its May 22, 2009 questionnaire. *Id.* at 7. Moreover, Petitioner notes that in its March 18, 2009 submission Foshan Shunde indicated that it does not maintain model specific production records. *Id.* at 18. Petitioner further notes that in its May 1, 2009 submission Foshan Shunde indicated that it does maintain standard weights. *Id.* at 19. Petitioner insists that both of the claims that Foshan Shunde does not maintain (1) model specific costs and (2) standard weights are undercut by the existence of the "production notes" that Foshan Shunde provided in its August 10, 2009 submission.

Petitioner argues that Foshan Shunde's "production notes" establish that Foshan Shunde does maintain "specific source documents" and that Foshan Shunde does not weigh the merchandise on the spot as Foshan Shunde maintained in its March 18, 2009 submission. *Id.* at 24. Petitioner further assert that these "production notes" undercut Foshan Shunde's assertion that it does not maintain any records of the product's standard weight. *Id.* Petitioner argues that Foshan Shunde "would not have re-weighed products for which it already had the standard weights (weights identical to those used in the response) and the chance that every item would result in the identical weight to the standard weights it already maintained for production note purposes is

virtually non-existent.” *Id.* Moreover, Petitioner argues that Foshan Shunde’s claim that it uses production notes for production scheduling and to estimate the amount of steel to be utilized contradicts the assertion that Foshan Shunde made in its June 22, 2009 submission that it does not use “standard or net weight as the basis for material withdrawal, product manufacturing or sales transaction.” *Id.* at 25 (quoting Foshan Shunde’s June 22, 2009 submission at 13-14.)

Petitioner claims that Foshan Shunde’s submission of its production records was untimely and that those production notes contradicted much of what Foshan Shunde had previously said concerning its use of standard, actual, and net weights. Moreover, Petitioner asserts that notwithstanding the Department’s instruction to provide all of its production notes, Foshan Shunde only provided production notes for one model. Petitioner concludes that “(a)fter months of denying the existence of any such documents, Foshan Shunde’s partial response to the questionnaire submitted less than one month prior to the preliminary results can hardly be viewed as acting to the best of its ability.” *Id.* at 22.

Petitioner further asserts that Foshan Shunde’s production notes establish that “it was not reasonable to use an allocation methodology that assumed the same yield and consumption ratios for a kilogram of steel for every product produced during the POR.” *Id.* at 25. Moreover, Petitioner notes Foshan Shunde itself acknowledges in its August 27, 2009 submission that:

(B)ecause the yield loss ratios for different materials are different and the portions of each raw materials accounted for by different types of product are also different, the resulting consumption yield loss ratios are of course different for each product type...

*Id.* at 26 quoting from Foshan Shunde August 27, 2009 submission at 21-22.

Based upon the forgoing, Petitioner asserts that Foshan Shunde’s production notes establish that the variance between actual steel consumption and standard weight methodology is not uniform by product. Petitioner thus argues that Foshan Shunde’s allocation methodology is unreasonable and distortive.

Petitioner concludes that significant questions still remain concerning Foshan Shunde’s affiliation with Shunde Junbang, Shunde Junbang’s potential sale of Foshan Shunde ironing tables, the accuracy of Foshan Shunde’s reported factors of production, and Foshan Shunde’s allocation of costs. Petitioner asserts that these deficiencies “corrupt the entire record evidence”, demonstrate that Foshan Shunde has failed to cooperate to the best of its ability, and justify the use of total AFA. *Id.* at 29. Petitioner further notes that the Department has resorted to AFA “when a respondent has failed to disclose its ability to calculate more product- or CONNUM-specific factors of production.” *Id.* at 31. Petitioner cites to *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 2049 (January 14, 2009) and accompanying Issues and Decision Memorandum at Comment 3, and to *Kitchen Appliance*

*Shelving* at Comment 3 as instances where the Department applied total AFA to respondents who failed to disclose their ability to report more product specific costs.

Finally, Petitioner disputes the applicability of *Shikoku* to the instant case. Petitioner, citing to *Huvis Corp. v. United States*, Slip Op. 2008-83 (CIT 2008) (*Huvis*), asserts that to sustain a *Shikoku* claim, “a company must show detrimental reliance on past practice and that it was not on notice of the information required.” See Petitioner Case Brief at 31. Petitioner asserts that the Department may change its methodology when such a change is “designed to deliver more accurate results.” *Id.* Petitioner asserts that in this case the Department asked Foshan Shunde repeatedly for the information it required, based its decision on the information on the record, and considered whether a more accurate reporting of the raw materials and allocations than that provided by Foshan Shunde was possible. As such, Petitioners assert that the instant case is not a “*Shikoku* situation.” *Id.* at 32.

### **Department’s Position**

In these *Final Results*, we continue to determine that Foshan Shunde provided incomplete and unreliable information concerning its factors of production and the role which an affiliated party has played in the sale of the subject merchandise and, as a result, have applied total adverse facts available. Foshan Shunde’s conduct in this review establishes that Foshan Shunde has withheld information requested by the Department and has significantly impeded the conduct of this proceeding in accordance with section 776 of the Act. Such conduct is evinced by Foshan Shunde’s inaccurate reporting of steel inputs, its failure to completely provide “production notes” in a timely manner, and Foshan Shunde’s failure to adequately detail and explain the role which an affiliated party has played in the sale of the subject merchandise. Therefore, we have, in these *Final Results*, continued to base the PRC-wide entity’s margin on total AFA.

As noted in the AFA Memorandum to the Preliminary Results, section 776(a)(2) of the Tariff Act of 1930, as amended (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.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

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

As also noted in the AFA Memorandum to the Preliminary Results, and as discussed *infra*, substantial deficiencies exist in Foshan Shunde’s questionnaire responses. These deficiencies render the entirety of Foshan Shunde’s questionnaire responses an unsuitable basis for calculating a margin. In reporting its factors of production, Foshan Shunde used a weight-based allocation that assigned the same input cost for all types and models of subject merchandise. Moreover, as noted in the AFA Memorandum to the Preliminary Results, Foshan Shunde’s allocation “also reflects the manufacturing costs incurred on a range of non-subject merchandise.” *See* AFA Memorandum at 2. As Petitioner has noted, these non-subject products include “ash trays, ladders, trolleys, racks, trash cans, sleeve racks and other ironing board accessories.” *See* Petitioner Case Brief at 16. As also noted in the AFA Memorandum to the Preliminary Results, the broad range of products used by Foshan Shunde to calculate its factors of production indicates the company “has failed to provide the most specific calculation of its factors of production permitted by its accounting records.” *See* AFA Memorandum at 2. The Department, therefore, in supplemental questionnaires of February 10, 2009, April 16, 2009, May 29, 2009, and July 27, 2009, attempted to elicit information from Foshan Shunde that would enable the Department to calculate Foshan Shunde’s factors of production with as much specificity as possible. However, as set forth in the AFA Memorandum to the Preliminary Results, Foshan Shunde’s supplemental responses of March 18, 2009, May 1, 2009, June 22, 2009, August 10, 2009, and August 27, 2009, provided contradictory and irreconcilable information concerning Foshan Shunde’s factors of production and the role that an affiliated party played in sale of the subject merchandise. For example, Foshan Shunde in its May 1, 2009 response indicated:

Shunde’s customers decide the thickness and type of steel used. In the normal course of business, Shunde develops products and prepares the corresponding plant drawings according to samples or photographs provided by its customers. Then, Shunde makes its plant sample to be reviewed and approved by its customers. Upon acceptance by its customer, Shunde sets the plant drawing along

with the steel specification for each part of the product. Shunde does not require the steel to be of a certain type or thickness to achieve certain performance or other manufacturing characteristics nor does it perform any specific test to determine whether it achieved certain performance or manufacturing characteristics.

*See* Foshan Shunde May 1, 2009 response at 2.

When asked in a May 29, 2009 supplemental questionnaire to provide examples of such customer correspondence, Foshan Shunde provided a single photograph which it represented to be indicative of the correspondence it received from its customers concerning the steel inputs used in the manufacture of subject merchandise. *See* Foshan Shunde June 22, 2009 response at Exhibit 4. Moreover, in its June 22, 2009 submission, Foshan Shunde indicated that it “seldom keeps such correspondence documents after the plant sample is accepted by the customer...” *Id.* at 4. Thus, as noted in the AFA Memorandum to the Preliminary Results, “Foshan Shunde’s June 22, 2009 response failed to support the Foshan Shunde May 1, 2009 assertion that its customer’s determine the type of steel to be utilized in the production process.” *See* the AFA Memorandum at 4. Also, in response to further inquiry by the Department concerning the customer correspondence that it maintains, Foshun Shunde, in its August 10, 2009 submission, provided portions of customer e-mails without explaining why it kept those portions and not those the Department explicitly requested. *See* Foshan Shunde August 10, 2009 response at Exhibit 4.

Further, Foshan Shunde has failed to demonstrate that its weight-based allocation represents the most specific available basis to report its factors of production. Throughout this proceeding, Foshan Shunde has maintained that it was unable to report model specific costs because its accounting and production records do not maintain such product specific records. For example, in its March 18, 2009 response, Foshan Shunde stated that it “cannot trace the cost of raw materials, labor or energy consumed in the production of subject merchandise or any other product-specific basis because it keeps records on an overall basis only.” *See* Foshan Shunde March 18 2009 response at 14. However, in its August 10, 2009 submission, Foshan Shunde finally provided an example of a “production note.” As noted in the AFA Memorandum to the Preliminary Results, Foshan Shunde’s “production notes”:

...set forth model-specific usage rates for each of Foshan Shunde’s material inputs, including the critical inputs of flat-rolled steel. With these production notes, Foshan Shunde could have furnished the Department with more specific costs and factors of production than that which it provided.

*See* AFA memorandum at 6.

Foshan Shunde has failed to demonstrate that its “production notes” represent a less accurate method of reporting than the weight based allocation, and that the existence of such “production

notes” undercut the accuracy and reliability of previous Foshan Shunde submissions. For example, in its June 22, 2009 response, Foshan Shunde indicated that it “does not maintain any record concerning standard weight of finished product, nor does it use such standard or net weight as the basis of material withdrawal, product manufacturing process or sales transaction.” See Foshan Shunde June 22, 2009 submission at 13-14. As Petitioner has noted, the “production notes” indicate that contrary to previous assertions by the company, Foshan Shunde does maintain records listing standard weights of the product. See Petitioner Case Brief at 22. Moreover, as indicated previously, Foshan Shunde did not disclose the existence of such “production notes” until August 10, 2009 (less than one month before the fully extended statutory deadline for issuance of the *Preliminary Results*). Also, Foshan Shunde provided only a limited sample of its “production notes.” We, thus, continue to determine that Foshan Shunde’s partial disclosure of its “production notes” at a late point in this proceeding constitutes a failure on Foshan Shunde’s part to cooperate to the best of its ability and as significantly impeding this proceeding within the meaning of Section 776 of the Act.

Foshan Shunde also withheld information regarding its source of steel wire, another key input. As discussed in the AFA Memorandum to the Preliminary Results and *infra* in response to Comment 3, Foshan Shunde did not report the sale of production equipment relating to its wire drawing operation until August 13, 2009 and only then did so after repeated requests from the Department. Further, on August 27, 2009, at a point still later in the proceeding, Foshan Shunde provided other supporting documentation concerning the production and source of its long-wire products. (Such documentation included a “Decision Memorandum” and a VAT entry which Foshan Shunde contends to be associated with the sale of the production equipment). Foshan Shunde’s failure to disclose this information earlier in the proceeding has significantly impeded the Department’s analysis of Foshan Shunde’s long-wire inputs pursuant to Section 776 of the Act.

In addition to the difficulties previously discussed, Foshan Shunde has also provided inconsistent statements concerning the activities of an affiliated company. As set forth in the AFA Memorandum to the Preliminary Results, Foshan Shunde has maintained throughout this proceeding that a Wire King company, Shunde Junbang, did not produce or sell any Foshan Shunde ironing tables. However the statements made by Foshan Shunde in this proceeding are inconsistent with the statements made by Foshan Shunde in the *Kitchen Appliance Shelving* investigation. In the *Kitchen Appliance Shelving* investigation, Shunde Junbang personnel indicated that they list ironing boards on their web-site and forward customer inquiries directly to Foshan Shunde. See AFA Memorandum at 7. Foshan Shunde never fully or adequately addressed this contradictory information

Our application of AFA in this proceeding is based upon the inconsistencies and contradictions in Foshan Shunde’s submitted data rather than by “unsubstantiated” Petitioner allegations as Foshan Shunde contends in its brief. Moreover, we conclude that verification of Foshan Shunde and Petitioner’s data would be inappropriate. Section 19 CFR 351.307(b)(1)(iv) of the Department’s regulations establish that verification is not an opportunity for companies to

provide new information or substantially alter the response the company has already provided. To the contrary, the purpose of verification is to examine the accuracy of the response previously provided to the Department. Record evidence in this case establishes that large portions of Foshan Shunde's response are incomplete and unreliable. By providing inaccurate and contradictory statements concerning its factors of production and the activities of an affiliate party relating to the sale of subject merchandise, Foshan Shunde has significantly impeded this proceeding and obviated the need for verification.

Finally, we disagree with Foshan Shunde's assertion that the Department's rejection of its allocation methodology constitutes a change in methodology from a prior review and thus is at conflict with the judicial standard set forth in *Shikoku*. As Petitioner has noted, the Court has determined that the Department may change its methodology when such a change is "designed to deliver more accurate results." See e.g., *Fujian Mach. And Equip. Imp. & Exp. Corp. v. United States* 25 CIT 1150, 1169, 178 F. Supp. 2d 1305, 1307 (2001). The desire to accurately calculate Foshan Shunde's factors of production was the reason for the Department's February 10, 2009, April 16, 2009, May 29, 2009, and July 27, 2009 requests for supplementary information. Moreover, there is nothing in the *First Review Final Results* to indicate the Department's sanctioning and endorsing of unnecessarily broad allocations, imprecise reporting of factors of productions, or unresolved accounts of an affiliated party by Foshan Shunde.

Based upon the foregoing, we continue to determine, as in the *Preliminary Results*, that Foshan Shunde has failed to cooperate to the best of its ability and has impeded the conduct of this proceeding in accordance with section 776 of the Act. Accordingly, we have in these *Final Results* assigned a margin based upon application of adverse facts available of 157.68 percent to the PRC-wide entity of which Foshan Shunde is a part.

### **Comment 3: Whether Substantial Deficiencies Exist in Foshan Shunde's Responses**

Foshan Shunde asserts that there are no substantial deficiencies in its questionnaire responses that warrant application of total AFA. Foshan Shunde contends that it (1) accurately reported its steel inputs, (2) properly reported the source and disposition of a production input, and (3) reported information concerning its affiliation with a related party as precisely as possible.

Foshan Shunde disputes the conclusions reached in the AFA Memorandum to the Preliminary Results that there is "considerable ambiguity in Foshan Shunde's response concerning the mix of hot-rolled and cold-rolled steel which the company used in the manufacturing process." See AFA Memorandum at 6. Foshan Shunde asserts that in determining that Foshan Shunde inaccurately reported its steel inputs, the Department (1) incorrectly rejected Foshan Shunde's claim that it uses hot-rolled steel for the legs of the ironing tables and cold rolled steel for the tops of the ironing tables and (2) unjustifiably dismissed Foshan Shunde's drawings which the company contends demonstrate that Foshan Shunde used hot-rolled steel of 0.5 mm thickness in the production of subject merchandise.

Foshan Shunde further asserts that the Department relied upon “two inconclusive pieces of evidence” submitted by the Petitioner: (1) a 1990 report entitled “*ASM Committee on Carbon and Alloy Steels Metals Handbook*” (*ASM Report*), and (2) metallurgical research commissioned by Petitioner which concerned an ironing table purchased from a American retailer of ironing tables. Foshan Shunde notes the *ASM Report* is 19 years old and asserts the Department’s reliance on such an “out-of-date” report is “preposterous.” See Foshan Shunde Case Brief at 20. Foshan Shunde further asserts that the metallurgical analysis conducted by Petitioner constitutes “unsupportable conjecture.” *Id.* Foshan Shunde contends Petitioner’s metallurgical analysis does not confirm that the ironing table was manufactured by Foshan Shunde, or that it was manufactured during the POR. Moreover, Foshan Shunde asserts that Petitioner’s metallurgical analysis fails to conclusively establish that the ironing tables legs were made of cold-rolled steel rather than hot-rolled steel which Foshan Shunde claimed. Foshan Shunde notes the metallurgical report states only that the legs are “indicative of a cold rolled material.” *Id.* at 21. Foshan Shunde, thus, asserts that Petitioner’s metallurgical analysis falls short of establishing that the ironing tables legs are made of cold-rolled steel rather than hot-rolled steel.

Foshan Shunde further argues that it did indeed purchase hot-roll steel in thicknesses of less than 1.8 mm contrary to the Department’s conclusion in the *Preliminary Results*. However, regardless of the material that Foshan Shunde ultimately utilized in the manufacture of the subject merchandise, Foshan Shunde asserts that it “should not be faulted for relying on its supplier’s representation that the steel is hot-rolled”. See Foshan Shunde brief at 22. Foshan Shunde asserts that it accurately reported it’s consumption of steel inputs based upon information provided from its suppliers.

Foshan Shunde also disputes the conclusion in the AFA Memorandum to the Preliminary Results that it failed to adequately disclose the source and disposition of a production input. Foshan Shunde asserts that the Department based this conclusion upon two “unsubstantiated” arguments put forth by Petitioner. Specifically, these arguments are: (1) the findings of a verification report in the *Kitchen Appliance Shelving Final Determination*, and (2) the fact that Foshan Shunde failed to disclose the sale of the production equipment in question. Foshan Shunde contends that in reaching this determination, the Department “overlooked” that Foshan Shunde performed the same production operation during the first administrative review. Foshan Shunde notes that in the course of the first review, the Department verified the data submitted by Foshan Shunde. During that verification, Foshan Shunde further notes that the Department omitted any discussion of this production operation. Foshan Shunde speculates that this is because the input in question was not a major input “and the Department’s efforts were appropriately better directed elsewhere.” *Id.* at 24.

Foshan Shunde further suggests that the findings in the *Kitchen Appliance Shelving Final Determination* which indicated that Foshan Shunde performed no wire drawing are attributable to Foshan Shunde having sold the production equipment prior to the onset of the verification in April 2009. Foshan Shunde asserts that it submitted inventory documentation which support its steel wire rod purchases and consumption. Foshan Shunde also asserts that it submitted payroll

documentation concerning the personnel who operated the production equipment in question. Moreover, Foshan Shunde asserts the Department is free to verify that it operated the production equipment in question. Foshan Shunde contends that one of the two employees responsible for running the production equipment in question is still with the company. Foshan Shunde asserts that the Department could interview this employee and verify that Foshan Shunde did indeed conduct the production step in question.

Foshan Shunde insists it had no motivation to misrepresent the production step in question since that production step constitutes a "minor" part of the production cost. *Id.* at 26. Moreover, Foshan Shunde asserts that it documented the sale of the production equipment in its August 27, 2009 submission. Foshan Shunde claims that the submitted VAT purchase invoice, accounting ledgers, and bank slips establish that the production equipment in question was indeed sold. Foshan Shunde argues that its submitted production documents further establish that Foshan Shunde performed the production operation in question. Foshan Shunde contends that Petitioner's analysis arguing that Foshan Shunde did not produce the production input in question "merely confirms the unremarkable conclusion that Foshan Shunde also uses wire rod on its ironing boards." *Id.* at 28.

Finally, Foshan Shunde disputes the conclusion reached in the AFA Memorandum to the Preliminary Results that Foshan Shunde contradicted itself with respect to claims made about an affiliate in this review and the *Kitchen Appliance Shelving* investigation. Foshan Shunde contends that it has "reported the most up-to-date information available to the Department." *Id.* at 29. Foshan Shunde asserts that both in the present investigation and the *Kitchen Appliance Shelving* proceeding, "both companies appear to have provided the information they believed to be correct at the time the Department requested the information." *Id.* Moreover, Foshan Shunde asserts that the Department could verify the information in question concerning affiliation. Foshan Shunde further notes that during the first review, the affiliated company in question did not cooperate in the Department's verification. Finally, Foshan Shunde asserts that other Chinese producers use the same product codes as Foshan Shunde and the affiliated company in question. Therefore, that two firms may market ironing tables using similar product codes is, Foshan Shunde avers, unremarkable. Based upon the foregoing, Foshan Shunde concludes that there is no evidence to support the conclusion reached in the AFA Memorandum that affiliated companies may have sold Foshan Shunde manufactured ironing tables.

Petitioner notes that the AFA Memorandum to the Preliminary Results explained that there was "considerable ambiguity" in Foshan Shunde's reporting of steel inputs and asserts that the conclusion that Foshan Shunde's reporting of steel inputs was imprecise was "inescapable." *See* Petitioner Rebuttal Brief at 6. Petitioner cites to the AFA Memorandum to the Preliminary Results which notes that Foshan Shunde once asserted that its "customer's decide the thickness and type of steel to be used." Petitioner Rebuttal Brief at 6, quoting AFA Memorandum at 6. However, Petitioner asserts that Foshan Shunde's support for this assertion consists of a single photograph and that it is impossible to discern from that photograph the type or dimension of steel input used.

Petitioner further asserts that Foshan Shunde has offered “no authoritative refutation” of the *ASM Report*. *Id.* at 7. Moreover, Petitioner notes that in its May 1, 2009, letter, Foshan Shunde indicated it “does not require the steel to be of a certain type or thickness to achieve certain performance or other manufacturing characteristics nor does it perform any specific test to determine whether it achieved certain performance or manufacturing characteristics.” *Id.* at 6 quoting Foshan Shunde May 1, 2009 submission at 2. Petitioner asserts this statement suggests Foshan Shunde “would have little notion of changes, if any, in steel technology.” *See* Petitioner Rebuttal Brief at 8. Petitioner also notes that Foshan Shunde offers no metallurgical analysis of its own to rebut that Petitioner’s analysis. Petitioner asserts that Foshan Shunde’s limited attempt to rebut Petitioner’s metallurgical analysis only refutes Foshan Shunde’s “claimed ability to rely upon the surface appearance of the input material.” *Id.* Moreover, Petitioner contends that its metallurgical analysis was only “one element of a cumulative body of evidence” to indicate that Foshan Shunde provided “inconsistent and unsupported statements” concerning its steel input. *Id.*

Petitioner notes the Department “must analyze NME production from NME –sourced materials.” *Id.* at 10. Petitioner argues that while Foshan Shunde’s acquisition price for input materials is “irrelevant,” the quality of those materials is relevant. *Id.* Petitioner asserts “it is Foshan Shunde’s resistance to ascertain and report the true nature of its materials that has frustrated the Department’s efforts to obtain useable information.” *Id.*

Petitioner further argues that examination of record evidence provides “ample justification” to question the credibility of Foshan Shunde’s claims regarding whether it used wire rod as a production input. Petitioner Rebuttal Brief at 12. Moreover, Petitioner asserts that Foshan Shunde’s general manager understood that the questions addressed to him in the *Kitchen Appliance Shelving* investigation pertained to the period of investigation (POI) which extended from January 1, 2008 through June 30, 2008. Petitioner further notes that the *Kitchen Appliance Shelving* POI fell within the POR of the instant review. Based upon this overlap in time, Petitioner asserts that there is no credible explanation of how Foshan Shunde sold the production equipment in question subsequent to the POI, given that Foshan Shunde’s general manager was relating developments that pertained both during and after the POI.

Petitioner further asserts the information provided by Foshan Shunde in its August 27, 2009 submission is untimely. Petitioner asserts that Foshan Shunde’s August 27, 2009 comments were offered as “rebuttal comments.” However, Petitioner notes that Foshan Shunde’s August 27, 2009 comments were filed more than 10 days after Petitioner’s August 13, 2009 submission. Based upon the foregoing, Petitioner asserts “the factual information contained in Foshan Shunde’s August 27, 2009 submission constitutes untimely information that should be removed from the file, in accordance with Department practice and §351.301(c)(1) of the Department’s Regulations. Moreover, Foshan Shunde’s comments in its case brief referring to that factual information must necessarily be stricken from the record.” *See* Petitioner Rebuttal Brief at 2.

Petitioner maintains that in addition to being untimely filed, there are discrepancies in Foshan Shunde's August 27, 2009 submission. Petitioner asserts the VAT invoice submitted by Foshan Shunde lacks the validating VAT "chop" (a distinctive ink stamp) issued by the Chinese government. Moreover, Petitioner asserts that the putative reasons set forth in the Decision Memorandum by Foshan Shunde for selling the production equipment at issue would only serve to increase Foshan Shunde's need to procure finished production inputs. *Id.* at 15. Finally, Petitioner asserts that the larger dimensions of the finished product which Foshan Shunde claimed to maintain could well have gone into the production of non-subject merchandise and thus fail to demonstrate that Foshan Shunde manufactured its own wire during the POR.

Petitioner also argues that the Department correctly determined that Foshan Shunde had failed to respond accurately or completely to questions concerning potential sales by an affiliated party. Petitioner asserts that a Foshan Shunde executive has made "irreconcilable" statements concerning the activities of Foshan Shunde's sister company, Guangdong Wireking. *See* Petitioner Rebuttal Brief at 4. Petitioner argues Foshan Shunde has offered "nothing" to resolve unresolved questions concerning affiliation. Petitioner insists that the similarity in product codes between the merchandise sold by Foshan Shunde and the merchandise sold by an affiliated company "provides no insight whatsoever into the commonality of coding detected within the Shunde/Wire King family." *Id.* at 5.

### **Department's Position**

We determine that substantial deficiencies exist in Foshan Shunde's responses. Therefore our conclusion reached in the Preliminary Results and as fully explained in the AFA Memorandum to the *Preliminary Results* that Foshan Shunde provided incomplete and unreliable information concerning (1) its inputs of hot and cold rolled steel, (2) the source of wire used in the production of the subject merchandise, and (3) the role which the affiliated party Shunde Junbang played in the sale of subject merchandise, remains unchanged. Thus, we conclude that substantial deficiencies exist in Foshan Shunde's November 18, 2008, December 4, 2008, March 18, 2009, May 1, 2009, June 22, 2009, August 10, 2009, and August 27, 2009 questionnaire responses.

As noted in the AFA Memorandum to the Preliminary Results:

there are significant cost differences in the Indian surrogate values of the hot-rolled and cold-rolled steel inputs reported by Foshan Shunde. Using an exchange rate of 0.024827 rupees per dollar, the Indian surrogate value of hot-rolled steel is approximately \$0.68 per kilogram. (*See* Attachment 1 of this memorandum.) The POR Indian surrogate values for the cold-rolled steel inputs reported by Foshan Shunde range from approximately \$0.50 to approximately \$.81 per kilogram. *Id.* There is a still greater difference between the respective Indian surrogate values of steel wire rod and drawn wire. Steel wire rod (which is classifiable under HTS 7213.91.90) has a surrogate value of approximately \$0.63 per kilogram, while steel drawn wire (which is classifiable under Indian HTS 7217.10.10) has a surrogate value of approximately \$1.31 per kilogram. *Id.*

See AFA Memorandum at 2.

In analyzing Foshan Shunde's steel inputs, we have focused primarily upon the reliability of the information submitted by Foshan Shunde rather than upon the *ASM Report* submitted by Petitioner or other information concerning the overall state of the steel industry in China. Review of record evidence indicates that there are both (1) significant cost differences between the surrogate values of hot and cold rolled steel and (2) that Foshan Shunde has provided conflicting information concerning the type of steel that it utilizes in production of the subject merchandise. As noted in our response to Comment 2, Foshan Shunde indicated in its May 1, 2009 response that its customers "decide the thickness and type of steel used." See Foshan Shunde May 1, 2009 response at 2. However, when asked by the Department to provide examples of such customer correspondence, Foshan Shunde offered limited evidence in either its June 22, 2009 or August 10, 2009 submissions to support its assertion that its customers determine the type of steel to be used in the production process. See *AFA Memorandum* at 4. Specifically, Foshan Shunde provided a single photograph that it purported to be representative of such customer correspondence. See Foshan Shunde June 22, 2009 response at Exhibit 4. This constitutes insufficient evidence to support Foshan Shunde's assertion that its customers determine the type of steel employed in the production process.

As Petitioner has noted, the Department must base its NME analysis upon the type of input that Foshan Shunde actually utilized in the production process. See Section 773(c)(3) of the Act. Foshan Shunde has repeatedly impeded our analysis through its failure to specifically identify the steel inputs which actually employed in manufacturing the subject merchandise. As indicated in our response to Comment 2, until August 10, 2009, Foshan Shunde neglected to report the existence of "production notes" despite our repeated requests for all production related documents. Such "production notes" detail specific usage rates for steel inputs. In lieu of using such "production notes," Foshan Shunde, instead based its calculation of factors of production on a broad, weight-based allocation. As also noted in our response to Comment 2, Foshan Shunde culled its weight-based allocation from production experience that included a broad range of non-subject merchandise. Additionally, in that August 10, 2009 submission, Foshan Shunde merely provided samples of such "production notes." We thus continue to conclude that Foshan Shunde's failure to provide its "production notes" in a timely manner, its failure to completely report its "production notes" and its failure to adequately detail and explain the role which an affiliated party has played in the sale of the subject merchandise constitutes a substantial reporting omission and undermines the accuracy and reliability Foshan Shunde's reported factors of production.

We also continue to find considerable ambiguity concerning Foshan Shunde's utilization of wire rod. As noted in the AFA Memorandum to the Preliminary Results, while Foshan Shunde has consistently maintained that it used wire rod in this POR, Foshan Shunde's personnel provided a conflicting account of its usage of this production input in the *Kitchen Appliance Shelving* investigation, which overlapped in temporality. See *AFA Memorandum* at 6-7. Further, as

noted in our response to Comment 2, verification is not a venue for companies to provide new information or to substantially alter the response that the company has already provided. Thus, we continue to maintain that there is no merit to Foshan Shunde's suggestion that verification of its wire operation is warranted. We also note that Foshan Shunde did not provide information relating to the purported sale of the wire production equipment in question until August 27, 2009.<sup>1</sup> Foshan Shunde failed to mention the disposition of this equipment in its submissions of November 18, 2008, December 4, 2008, March 18, 2009, May 1, 2009, June 22, 2009, and August 10, 2009. Foshan Shunde's tardiness in providing documentation concerning the disposition of the wire production equipment precluded any analysis that the Department might have undertaken in the *Preliminary Results*.

Finally, we find nothing in Foshan Shunde's case brief to reconcile the conflicting accounts that Foshan Shunde has offered in this review concerning the role played by Shunde JunBang in the sale of subject merchandise. As noted in the AFA Memorandum to the Preliminary Results:

Foshun Shunde maintained throughout this proceeding that a Wire King company, Shunde Junbang, did not produce or sell any Foshun Shunde ironing boards. *See* Foshan Shunde November 18, 2008 response at A-2 which indicates "Shunde was not affiliated with any producers or exporters of the subject merchandise during the POR." *See also* Foshan Shunde June 22, 2009 letter at 2. However, the statements made by Foshan Shunde in this review are inconsistent with the statements made by Foshun Shunde personnel in the kitchen appliance shelving investigation. During the course of the KASR investigation, Shunde Junbang indicated that it listed ironing boards on its website and forwarded customer inquiries to Foshan Shunde. *See* Petitioner's June 30, 2009 letter at page 4.

*See* AFA Memorandum at 7.

Despite the opportunities afforded to the company to clarify the conflicting accounts played by Shunde Junbang in the sale of the subject merchandise, significant discrepancies remain between the account that Foshan Shunde rendered of Shunde Junbang activities in this proceeding and the account that Foshan Shunde offered in the *Kitchen Appliance Shelving* investigation. Moreover, we agree with Petitioner that the commonality of product codes between the merchandise sold by Foshan Shunde and the merchandise sold by Shunde Junbang indicates the latter may have in fact sold Foshan Shunde merchandise.

Based upon the foregoing, we continue to determine that Foshan Shunde has provided incomplete and unreliable information concerning (1) its inputs of hot and cold rolled steel, (2)

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<sup>1</sup> Foshan Shunde's August 27, 2009 submission relates to factors of production. Pursuant to 19 CFR 351.303 (c)(3)(ii), the deadline for filing information concerning such factors of production information is 20 days after the publication date of the *Preliminary Results*, which in this case is September 28, 2009. We therefore have determined that Foshan Shunde's August 27, 2009 submission is timely filed and have maintained this submission on the record of this proceeding.

the source of wire used in the production of the subject merchandise, and (3) the role which Shunde Junbang played in the sale of subject merchandise. We therefore conclude that substantial deficiencies exist in Foshan Shunde's November 18, 2008, December 4, 2008, March 18, 2009, May 1, 2009, June 22, 2009, August 10, 2009, and August 27, 2009 responses thereby necessitating the use of total AFA in accordance with section 776 of the Act for the PRC-wide entity, which includes Foshan Shunde, in this proceeding.

#### **Comment 4: Whether the Department Should Calculate a Separate Rate for Foshan Shunde**

Foshan Shunde insists that the Department should calculate a separate rate for the company based upon the data submitted by Foshan Shunde. Foshan Shunde claims that there "is abundant record evidence showing that all of the questions associated with the Department's decision to use AFA were either inadvertent or misunderstandings created by the Petitioner." See Foshan Shunde Case Brief at 30. Foshan Shunde asserts that questions concerning Foshan Shunde's production costs, factors of production, and affiliation are "isolated issues that may be remedied in the final phase of this proceeding or through application of partial AFA." Foshan Shunde asserts that in *Shangdong Huarong Mach. Co., v United States* 30 CIT 616, 624 (CIT 2006) (*Shangdong*) the Court determined that "Commerce generally may use an adverse inference only with respect to the specific information that a respondent failed to provide." *Id.* at 31. Foshan Shunde also cites to *Goldlink Indus. Co. v. United States* 30 CIT 616, 624 (CIT 2006) wherein the Court found unreasonable the application of total AFA to a respondent "when the Department had verified some, but not all, of the respondent's sales.

Petitioner notes that in *Shangdong* the Court upheld the use of AFA with respect to two companies because of their failure to provide the requested information until after numerous supplemental questionnaires. See Petitioner Rebuttal Brief at 23. Petitioner asserts that an analogous situation exists with Foshan Shunde in this case because "Foshan Shunde failed to provide information that was fully within its command in a timely manner and in so doing, substantially impeded the investigation." *Id.*

#### **Department's Position**

As noted in our responses in Comments 1 and 3, Foshan Shunde has provided incomplete and unreliable information. Specifically, Foshan Shunde's responses concerning its hot and cold rolled steel input, its source of the wire used in the production of the subject merchandise, and role played by Shunde Junbang in the sale of subject merchandise cannot be relied upon by the Department. These deficiencies are substantial and preclude use of the data submitted by Foshan Shunde for purposes of calculating a margin. Moreover, for the reasons noted in our response to Comment 2, we agree with Petitioners that Foshan Shunde has substantially impeded the conduct of this investigation in accordance with section 776 of the Act. The deficiencies in Foshan Shunde's responses are so pervasive and material they have rendered Foshan Shunde's submitted information (to include its separate rate information) unreliable. These deficiencies as discussed

herein are widespread and resulted through Foshan Shunde's own fault. Thus, the Department is unable to ascertain which parts, if any, of Foshan Shunde's responses are credible and upon which the Department may rely. Accordingly, we have not calculated a separate rate for Foshan Shunde in this proceeding.

#### RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the positions set

forth above. If these recommendations are accepted, we will publish the final results for the PRC-wide entity, which includes Foshan Shunde in the *Federal Register*.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

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Date