

UNITED STATES COURT OF INTERNATIONAL TRADE

SINCE HARDWARE (GUANGZHOU)	:	
CO., LTD.,	:	
	:	
Plaintiff,	:	Before: Richard K. Eaton, Judge
	:	
v.	:	Court No. 09-00123
	:	
	:	Public Version
UNITED STATES,	:	
	:	
Defendant,	:	
	:	
and	:	
	:	
HOME PRODUCTS INTERNATIONAL,	:	
LTD.,	:	
	:	
Def.-Int.	:	

OPINION AND ORDER

[Plaintiff's motion for judgment on the agency record sustained in part and remanded.]

Dated: September 27, 2010

Dorsey & Whitney LLP (William E. Perry) for plaintiff.

Tony West, Assistant Attorney General; Jeanne E. Davidson, Director, Patricia M. McCarthy, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (David S. Silverbrand and Carrie A. Dunsmore); Office of Chief Counsel for Import Administration, United States Department of Commerce (Thomas M. Beline), of counsel, for defendant.

Blank Rome LLP (Frederick L. Ikenson, Peggy A. Clarke, and Larry Hampel) for defendant-intervenor.

Eaton, Judge: Before the court is plaintiff's motion for judgment on the agency record challenging the final results of the administrative review of the antidumping order for Floor Standing Metal-Top Ironing Tables and Certain Parts Thereof from People's Republic of China ("PRC"), 74 Fed. Reg. 11,085 (Mar. 16, 2009) (final results) and accompanying Issues & Decision Memorandum ("Issues & Dec. Mem.") (collectively, "Final Results") for the period of review ("POR") August 1, 2006 through July 31, 2007. See Pl.'s Mem. Supp. Mot. J. Agency R. ("Pl.'s Mem."). This is the third administrative review of the order.

Using adverse facts available, the Department of Commerce ("Commerce" or the "Department") applied a PRC-wide rate of 157.68 percent to plaintiff's merchandise in the Final Results. By its motion, plaintiff asks the court to instruct Commerce "to treat Since Hardware as a company separate from [the] China-wide entity and calculate a margin specific to Since Hardware using the U.S. sales database and factors of production reported by Since Hardware, as was done in the preliminary results of this proceeding." Pl.'s Mem. 12-13. Defendant and defendant-intervenor oppose plaintiff's motion. See Def.'s Resp. Pl.'s Mot. J. Agency R. ("Def.'s Resp."); Br. Home Products Int'l, Inc. Opp. to Pl.'s Mot. J. Agency R. ("Def.-Int.'s Opp.").

The central question in this case is the lawfulness of Commerce's conclusion that the inaccuracies in plaintiff's

questionnaire responses provided a sufficient basis for finding that Since Hardware provided “‘unreliable and incomplete’ documentation in support of its claimed purchase of market economy materials” and that “the nature of the unreliable submission called into question the reliability of questionnaire responses submitted by Since Hardware in the review, including its claim of eligibility for separate rate status.” Def.’s Resp. 15 (citing Issues & Dec. Mem. at Comm. 1).

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(iii) (2006). For the reasons that follow, plaintiff’s motion is granted, in part, and the case is remanded for further consideration.

STANDARD OF REVIEW

When reviewing the final results of an antidumping duty review, the court “shall hold unlawful any determination, finding, or conclusion found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law” 19 U.S.C. § 1516a(b)(1)(B)(I).

DISCUSSION

I. Legal Framework

A. Presumption of State Control and Commerce's Preliminary Findings

Plaintiff operates in the PRC. As a result of the PRC's status as a non-market economy¹ country, its domestic companies are presumed to be part of the state-wide entity. See *Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997) ("[I]t was within Commerce's authority to employ a presumption of state control for exporters in a nonmarket economy, and to place the burden on the exporters to demonstrate an absence of central government control Moreover, because exporters have the best access to information pertinent to the 'state control' issue, Commerce is justified in placing on them the burden of showing a lack of state control." (citing *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993))). The

¹ A non-market economy includes "any foreign country that the administering authority [Commerce] determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise." 19 U.S.C. § 1677(18)(A); *Shandong Huarong Gen. Group Corp. v. United States*, 28 CIT 1624, 1625 n.1 (2004) (not reported in the Federal Supplement).

"Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority." 19 U.S.C. § 1677(18)(C)(i). The PRC has been determined to be an NME country. The Department has treated the PRC as a non-market economy country in all past antidumping investigations. *Zhejiang Native Produce & Animal By-Products Imp. and Exp. Corp. v. United States*, 27 CIT 1827, 1834 n.14, (not reported in the Federal Supplement) (citations omitted).

presumption, however, can be rebutted. See *id.* at 1405 (“[T]he Court of International Trade has ruled that an exporter in a nonmarket economy country must ‘affirmatively demonstrate’ its entitlement to a separate, company-specific margin by showing ‘an absence of central government control, both in law and in fact, with respect to exports.’ Absence of de jure government control can be demonstrated by reference to legislation and other governmental measures that decentralize control. Absence of de facto government control can be established by evidence that each exporter sets its prices independently of the government and of other exporters, and that each exporter keeps the proceeds of its sales.”) (internal citations omitted).

In this review, Since Hardware provided information relating both to its separate rate status and the price of its manufacturing inputs from claimed purchases from market economy sources. See Def.’s Resp. 3-4 (citing questionnaire responses). In the preliminary results, based on the company’s questionnaire responses, Commerce found that the company had demonstrated the absence of de jure and de facto government control over its activities, and thus was entitled to separate rate status. See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the PRC*, 73 Fed. Reg. 52,277, 52,279 (Dep’t of Commerce Sept. 9, 2008) (preliminary results) (“Preliminary Results”). Also in the Preliminary Results, the Department

calculated an antidumping duty rate of 1.53 percent, based, in part, on the prices from the claimed market economy purchases. Preliminary Results, 73 Fed. Reg. at 52,280-82.

B. Factors of Production

Because Commerce has found the PRC to be a non-market economy, 19 U.S.C § 1677(18) requires the Department, when calculating an antidumping duty margin,² to determine normal value on the basis of the factors of production used in producing the subject merchandise. 19 U.S.C. § 1677b(c)(1). To value the factors of production, Commerce generally uses prices or costs from a market economy country that is at a level of economic development comparable to that of the nonmarket economy country, and which is a significant producer of comparable merchandise. 19 U.S.C. § 1677b(c)(4). Accordingly, Commerce normally uses information and data from a surrogate market economy country to value the respondent's inputs used in the production of its merchandise.

Commerce does not use surrogate values, however, if a

² In antidumping investigations, Commerce must ultimately calculate or assign a dumping margin, *i.e.*, "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." 19 U.S.C. § 1677(35)(A). If the price of an item in the home market (normal value) is higher than the price for the same item in the United States (export price), then the dumping margin comparison produces a positive number that indicates dumping has occurred.

respondent purchases inputs from a market economy country at the market economy purchase price. See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 Fed. Reg. 61,716, 61,716-19 (Dep't of Commerce Oct. 19, 2006) (notice) ("Market Economy Inputs Methodology"). As to these purchases, Commerce has instituted a

rebuttable presumption that market economy input prices are the best available information for valuing an entire input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average market economy purchase price to value the entire input.

Market Economy Input Methodology, 71 Fed. Reg. at 61,717-18. In other words, Commerce's policy is to presume that market economy purchase prices are the best available information, and thus, where possible, to use them to value the total quantity of an input.

Here, in accordance with its policies, Commerce used the reported market economy purchase prices to value plaintiff's inputs of cold-rolled steel, hot-rolled steel, steel wire rod, powder coating, cotton fabric, springs, bolts, center nail and nail heads, rivets, cartons, corrugated paper, and labels.

Def.'s Resp. (citing Preliminary Results, 73 Fed. Reg. at 52,280). Home Products International ("HPI"), the petitioner and currently the defendant-intervenor, challenged Since Hardware's market economy purchases, as it had in each of the prior segments of this antidumping duty order. See Def.'s Resp. 4-5; Mem. to File Regarding July 15, 2008 and Aug. 7, 2008 Meetings with Fred Ikenson, dated Aug. 12, 2008, Public Record ("PR") 47.

Petitioner met with Commerce to discuss its concerns, and Commerce subsequently responded to this challenge by issuing five supplemental questionnaires.

As a result of these questionnaires, it came to light that the company had submitted false and fraudulent documentation regarding the country of origin and valuation of the claimed market economy purchases. See Def.'s Resp. 5-14 (citing to record). Commerce stated:

The certificates submitted by Since Hardware relating to its claimed purchases of a steel input from a market economy supplier are clearly not used by the regulatory agency responsible for certifying the origin of the input. These certificates constitute the entire basis for establishing that Since Hardware purchased the steel input from a market economy supplier. In its October 31, 2008 letter, the Department asked Since Hardware to explain the discrepancies detailed by Petitioner in the certificate of origin forms which Since Hardware submitted. However, Since Hardware failed to address the discrepancies

Issues & Dec. Mem. at Comm. 1. The discrepancies, which have to

do with the country of origin of various inputs, are further detailed in the Memorandum Regarding Since Hardware (Guangzhou) Co., Ltd.'s Claim Re: Market Economy Purchases, and Use of Adverse Facts Available, dated Mar. 9, 2009, Confidential Record ("CR") 870 ("AFA Memo").³ Further, Commerce found that the

³ The most serious issues related to Since Hardware's claimed market purchases of [[]] steel. AFA Memo at 3. Commerce noted:

Since Hardware's claim of [[]] steel purchases is inconsistent with World Trade Atlas [[]] export data for Harmonized Commodity Description and Coding System (HS) item [[]] ([[]] is the HS classification number for [[]] steel). Since Hardware claimed it purchased [[]] metric tons of [[]] steel from [[]] during calendar 2007. However, Petitioner noted that World Trade Atlas (WTA) data for these same twelve months for HS [[]] indicate a total of only [[]] tons of [[]] steel were exported from [[]] to Hong Kong. Further, Since Hardware claims all of its [[]] metric tons were purchased between the months of [[]]. That claim is not consistent with WTA data, which indicate [[]] shipments of just [[]] metric tons to Hong Kong in April 2007, with no shipments at all during [[]] or [[]] 2007. Further the data shows only [[]] metric tons in shipment of HS [[]] followed in [[]]

More importantly, Petitioner noted that major discrepancies exist between the documentation submitted by Since Hardware and the certificate of origin form employed by the [[]] licensing board, the [[]]

AFA Memo at 3. Moreover, the Department concluded, *inter alia*:

The [[]] certificates submitted by Since Hardware are clearly not forms used by the [[]]. These

identical typographical errors and other discrepancies appear on documentation submitted from multiple, independent, unaffiliated suppliers. Since Hardware has never explained the source of these typographical errors and discrepancies, and has provided no credible explanation as to why the same set of typographical errors appear in the documentation submitted from multiple independent, unaffiliated suppliers.

Issues & Dec. Mem. at Comm. 1. In other words, Commerce found the forms submitted by Since Hardware to substantiate its market economy purchases were fraudulent.

After the questionnaire responses revealed that the company's documentation of these inputs appeared to be false, Commerce asked for, among other things, mill certificates from

[[]] certificates constitute the entire basis for establishing that Since Hardware's [[]] steel was of [[]] origin. In its October 31, 2008, letter, the Department asked Since Hardware to explain the discrepancies detailed by Petitioners in the [[]] forms which it submitted. However, Since Hardware failed to address the discrepancies enumerated in Petitioners' September 2, 2008, letter and summarized above. These discrepancies include numerous and inexplicable errors including the misspelling of "[[]]"; an easily discernible discrepancy between the signature of the [[]] official and that official's actual signature; and unrecognizable [[]] signature/date stamp; and an alpha-numeric numbering protocol different from the sequential numbering employed by [[]]. In addition, one of the certificates on the record in the first administrative review was purportedly signed by a specific [[]] official long before she began her employment with the [[]].

AFA Memo at 11.

the input manufacturers in order to determine the origin of the inputs (e.g., the steel) used in the production of the subject merchandise. See Def.'s Resp. 12 (citing PR 73, CR 25). Since Hardware claimed it had no mill certificates to identify the type of steel it bought or, for that matter, to verify any of the other inputs it had purchased and used in its products. Def.'s Resp. 6 (citing PR 48, CR 14). It further insisted that it relied on its suppliers for country of origin information, and indeed, relied on its suppliers for all the documentation it submitted to Commerce. Def.'s Resp. 12-13 (citing PR 61; CR 21).

The company then provided ledger entries that it claimed documented its purchases. Def.'s Resp. 10 (citing PR 57; CR 19). The accounting ledgers included the disputed market economy purchases. AFA Memo at 11. With respect to these ledger entries, Commerce noted that they

were purportedly associated with its market economy purchases . . . which were consistent with "the now-discredited . . . documentation submitted by Since Hardware." Holding that "[t]his evinces that the pervasive errors in the . . . documents infect Since Hardware's own books and accounting records," and that Since Hardware's accounting records "reflect unreliable and inaccurate information" Commerce determined that it was unable to rely on the accuracy and validity of the data which Since Hardware retrieved from its accounting system.

Def.'s Resp. 16-17 (internal citation omitted).

When a respondent in an administrative review "significantly

impedes" the proceeding, Commerce is permitted to "fill [] gaps in the record" using facts otherwise available. See Statement of Administrative Action, Uruguay Round Agreements Act, accompanying H.R. Rep. No. 103-316, 656, 830-31 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4199; see also 19 U.S.C. § 1677e(a)(2)(C).⁴ Based on the submission of false questionnaire responses, "Commerce determined, pursuant to its statutory authority, to use facts otherwise available because Since Hardware withheld information requested by Commerce and significantly impeded the investigation." Def.'s Resp. 18 (citations omitted).

Once it has determined that the use of facts otherwise available is required, Commerce may make findings to determine if the "use [of] an inference that is adverse to the interests of [a respondent] in selecting from among the facts otherwise available," is authorized. Commerce may make an affirmative

⁴ If-

(1) necessary information is not available on the record, or

(2) an interested party or other person . . .

(C) significantly impedes a proceeding under this subtitle, . . .

the administering authority . . . shall, subject to section 1677m(d) of this title, use the facts otherwise available in reaching the applicable determination under this subtitle.

19 U.S.C. § 1677e(a)(C).

determination if it finds that the respondent "has failed to cooperate by not acting to the best of its ability to comply" with a request for information. *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003) ("*Nippon Steel*"); 19 U.S.C. § 1677e(b).⁵

Because it found that, as a result of its unreliable questionnaire responses, plaintiff "failed to cooperate to the best of its ability," Commerce applied adverse facts available ("AFA"), and assigned an antidumping duty rate to the company that was equal to the highest rate calculated for a respondent in prior segments of the proceeding. Def.'s Resp. 15 (citing Issues

⁵ Pursuant to 19 U.S.C. § 1677e(b):

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 ..., the administering authority ..., in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

- (1) the petition,
- (2) a final determination in the investigation under this subtitle,
- (3) any previous review under section 1675 of this title [periodic review] or determination under section 1675b of this title [countervailing duty injury investigations], or
- 4) any other information placed on the record.

& Dec. Mem. at Comm. 1). Commerce explained: "Since Hardware's conduct in this review . . . significantly impeded the proceeding" by producing false information for market economy purchases that "constitute a major portion of the production inputs of the subject merchandise" to the effect that the company's responses "are no longer reliable for purposes of determining Since Hardware's margin of dumping." AFA Memo at 10. Commerce then found:

We have determined that the documentation submitted by Since Hardware to support its claimed purchases of market economy inputs to be unreliable and inaccurate. The deficiencies in Since Hardware's response establish a pattern of behavior that undermines the reliability and credibility of Since Hardware's entire questionnaire response, including Since Hardware's claim of eligibility for separate rate status.

Issues & Dec. Mem. at Comm. 1. Commerce thus put aside the entirety of Since Hardware's submissions, including evidence relating to separate rate status, and assigned the PRC-wide entity antidumping duty rate of 157.68 percent. See Def.'s Resp. 15, 18.

In its motion for judgment on the agency record, plaintiff contends: (1) that Commerce should not have rescinded the separate rate status plaintiff was afforded in the Preliminary Results; and (2) that Commerce should have applied partial adverse facts available only to valuing the inputs found to be based on unreliable information, rather than total adverse facts

available.⁶ Pl.'s Mem. 11-13. In pleading its case, plaintiff does not contest the application of facts available, nor that partial adverse inferences should be applied. Pl.'s Mem. 11.

II. Analysis

A. Separate Rate Status

In the Final Results, Commerce concluded that the "unreliable and inaccurate" information regarding market economy purchases called into question all of Since Hardware's responses including the record evidence regarding state control. An examination of the record, however, reveals that none of the unreliable information submitted by the company is relevant to the question of government control. That is, while many of plaintiff's answers to questions dealing with market economy purchases were untrue, there is nothing to suggest that the company was other than truthful when answering questions relating to government control. Put another way, the evidence that the company was not controlled by the government (e.g., documentation

⁶ The term "total adverse facts available" is not referenced in either the statute or the agency's regulations. The phrase can be understood within the context of this case to be referring to Commerce's application of adverse facts available not only to the facts pertaining to market economy purchases for which false and fraudulent information was found to be provided, but also to the facts respecting all of Since Hardware's sales encompassed by the relevant antidumping duty order and evidence relating to separate rate status. See *Shandong Mach. Imp. & Exp. Corp. v. United States*, 33 CIT ___, Slip Op. 09-64 at 14 n.5 (2009) (not reported in Federal Supplement) (citation omitted).

substantiating its claims that it is a wholly foreign-owned enterprise registered in PRC— such as the “Foreign Trade Law of the People's Republic of China” and copies of its business licenses— and evidence regarding de facto control over its export activities) is far removed from questions relating to the origin of the factors of production and their cost. *See, e.g.,* Preliminary Results, 73 Fed. Reg. at 52,278-9.

This Court has previously faced a similar situation relating to questionnaire responses. In *Qingdao Taifa Group Co. v. United States*, 33 CIT ___, 637 F. Supp. 2d 1231 (2009) (“*Qingdao*”), the Court found:

Commerce may not apply the PRC-wide rate as the AFA rate where AFA is warranted for sales and [factors of production] data, but the respondent has established independence from government control.

33 CIT at ___, 647 F. Supp. 2d at 1240-41 (citation omitted).

In *Qingdao*, as here, Commerce found an absence of government control in the preliminary results, and subsequently discovered the respondent’s failure to report accurately factors of production data. The Court remanded the matter to Commerce to determine whether substantial evidence supported a finding of government control, and stated that if there was a sufficient link to the PRC, Commerce could apply the PRC-wide rate; if not, Commerce was directed to calculate a separate AFA rate for the respondent. *Qingdao*, 33 CIT at ___, 637 F. Supp. 2d at 1240-41,

1244; see *Gerber Food (Yunnan) Co., Ltd. v. United States*, 29 CIT 753, 772, 387 F. Supp. 2d 1270, 1287 (2005) ("Gerber") (finding application of adverse facts available unsupported by substantial evidence where Commerce imposed a rate that presumed government control when respondent was found to be independent of government control); *Shandong Huarong Gen. Group Corp. v. United States*, 27 CIT 1568, 1595-6 (2003) (not reported in Federal Supplement) (same).

Similarly, here, Commerce has found that Since Hardware's responses failed to report accurately information, such as prices and country of origin, for inputs purchased in market economy countries. The Department, however, made no specific finding that the responses concerning state control were inaccurate. When, as here, the use of AFA is justified, Commerce may "use an inference that is adverse to the interests of [a respondent] in selecting among the facts otherwise available." *Nippon Steel*, 337 F. 3d at 1381; 19 U.S.C. § 1677e(b). When making this selection, however, Commerce may not stray too far from the questionnaire responses that justified the use of AFA. Neither Commerce nor defendant-intervenor has presented any information tending to lead to the conclusion that Since Hardware's questionnaire responses relating to government control were other than truthful. Consequently, remand is warranted.

B. Adverse Facts Available Applied to Entirety of Since Hardware's Responses

As previously noted, by rejecting all of the company's questionnaire responses, Commerce applied inferences adverse to Since Hardware's interests in selecting from the facts available. Def.'s Resp. 15 (citing Issues & Dec. Mem. at Comm. 1). Since Hardware contends that it

is no[t] challenging either the Department's determination to apply facts available or the Department's determination to utilize an adverse inference as to Since Hardware in the application of facts available. Since Hardware is challenging only the manner in which the Department applied adverse facts available to Since Hardware.

Pl.'s Mem. 11. Specifically, the company contends that Commerce overreached by finding that its production information was unreliable not only as to the country of origin and cost of its factors of production, but also as to the identification of each factor and its quantity:

The record in this case established that the Department may have been correct in determining that it was appropriate for the Department to rely upon facts available and to make adverse inferences with respect to Since Hardware's reported market economy purchases. However, under the statutory scheme, the Department's application of adverse facts available should have been limited strictly to the offending information. The Department's application of total adverse facts available, and its rejection of all of Since Hardware's responses, overreached the manner in which the statute authorizes the application of adverse facts available.

Pl.'s Mem. 20. Therefore, while Since Hardware does not dispute that the information it submitted as to the country of origin and valuation of certain inputs was unreliable, it objects to Commerce extending its finding of unreliability to all of plaintiff's other factors of production responses. Accordingly, plaintiff argues, the court should "remand the action to the Department with instructions for the Department to apply partial adverse facts available and limit the impact of adverse facts available only to the offending information relating to Since Hardware's market economy purchases." Pl.'s Mem. 20. Plaintiff further contends that Commerce, rather than being permitted to assign a rate, should be instructed to use surrogate values to value Since Hardware's other reported factors of production and then calculate an individual rate for the company.

Commerce submits that its determinations are supported by substantial evidence.

Since Hardware submitted contradictory and unreliable information and these discrepancies permeated Since Hardware's responses. By including the discredited and unsubstantiated market economy purchase prices in its accounting ledgers, Since Hardware rendered its entire submission inaccurate. By failing to adequately explain the discrepancies in its supporting documentation to Commerce and provide requested alternative documentation, Since Hardware failed to cooperate with the administrative review. Accordingly, Commerce applied total adverse facts available to Since Hardware.

Def.'s Resp. 21. Further, Commerce found that the "problems with the market economy input purchases pervaded Since Hardware's entire responses." Def.'s Resp. 16 (citing AFA Memo at 11). Indeed, Commerce points out that after it questioned Since Hardware's early submission, the company

provided copies of ledger entries that were purportedly associated with its market economy purchases . . . , which were consistent with "the now-discredited . . . documentation submitted by Since Hardware." Holding that "[t]his evinces that the pervasive errors in the . . . documents infect Since Hardware's own books and accounting records," and that Since Hardware's accounting records "reflect unreliable and inaccurate information[,]" Commerce determined that it was unable to rely on the accuracy and validity of the data which Since Hardware retrieved from its accounting system.

Def.'s Resp. 16-17 (internal citations omitted). Consequently, Commerce insists that it cannot rely on Since Hardware's submission in its entirety.

The court finds that Commerce's use of AFA to assign a dumping rate to Since Hardware's merchandise is in accordance with law and supported by substantial evidence. First, it is clear that the Department acted reasonably in determining that it could not rely on the material the company placed on the record relating to the country of origin and valuation of the factors of production. Plaintiff submitted forged and altered documents on its market economy purchases. Then it submitted accounting

ledgers that contained information taken from the forged and altered documents. As Commerce stated:

Since Hardware submitted contradictory and unreliable information and these discrepancies permeated Since Hardware's responses. By including the discredited and unsubstantiated market economy purchase prices in its accounting ledgers, Since Hardware rendered its entire submission inaccurate. By failing to adequately explain the discrepancies in its supporting documentation to Commerce and provide requested alternative documentation, Since Hardware failed to cooperate with the administrative review.

Def.'s Resp. 21.

Here, Commerce's determination rests on credibility. This Court in *Shanghai Taoen Int'l Trading Co. v. United States*, 29 CIT 189, 360 F. Supp. 2d 1339 (2005) ("*Shanghai Taoen*"), upheld the application of adverse facts available to an entire submission in similar circumstances. The Court noted that the application of partial adverse facts available was not appropriate because

[t]his is not a case of partial gaps in the record. Commerce determined that [respondent] failed to provide a credible explanation for the inconsistencies between Customs' entry documents and [respondent's] questionnaire responses which concerned the identity of suppliers. Such information is core, not tangential, and there is little room for substitution of partial facts.

Shanghai Taoen, 29 CIT at 199 n.13, 360 F. Supp. 2d at 1348 n.13.

As in *Shanghai Taoen*, here the missing information on production

inputs goes to the core of the antidumping duty rate determination, *i.e.*, the inputs at issue are a "major portion of the production inputs of the subject merchandise." AFA Memo at 10. Since Hardware insists that its sales and factors of production data were not tainted by its market economy input purchases. However, the unsubstantiated market economy purchase prices were included in Since Hardware's accounting ledgers, themselves found to "reflect unreliable and inaccurate information." AFA Memo at 11. This being the case, it can hardly be said that Commerce was unreasonable in determining not to rely on these documents. Thus, the court finds that, given the pervasiveness of the inaccuracies in Since Hardware's questionnaire responses, Commerce acted reasonably in determining it could not rely on any of the company's financial information. Accordingly, Commerce's application of adverse facts available to all of plaintiff's input submissions is sustained.

CONCLUSION

For the foregoing reasons, the court grants plaintiff's motion, in part, and remands a portion of Commerce's determination. On remand Commerce shall reexamine the record to again determine if Since Hardware has produced evidence sufficient to qualify for application of a separate rate. In doing so, Commerce may not assume that the portion of the record

relating to independence from government control has been impacted by Since Hardware's questionnaire responses to unrelated matters. If the record supports application of a separate rate, Commerce must determine a separate AFA rate for Since Hardware; if not, Commerce may apply the PRC-wide rate. The remand results shall be due on January 27, 2011; comments to the remand results shall be due on February 28, 2011; and replies to such comments shall be due on March 14, 2011.

/s/ Richard K. Eaton

Richard K. Eaton

Dated: September 27, 2010
New York, New York

Errata

Since Hardware (Guangzhou) Co., Ltd. v. United States, Court No. 09-00123, Slip Op. 10-108 (Sept. 27, 2010)

Page 1, caption:

"HOME PRODUCTS INTERNATIONAL, LTD."
should read "HOME PRODUCTS
INTERNATIONAL, INC."