

December 07, 2009

MEMORANDUM TO: Carole A. Showers
Acting 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 of the
2007-2008 Administrative Review of Pure Magnesium from the
People's Republic of China

SUMMARY:

On June 8, 2009, the Department of Commerce ("the Department") published its preliminary results for the antidumping duty administrative review of pure magnesium from the People's Republic of China ("PRC").¹ The period of review ("POR") for the administrative review is May 1, 2007, through April 30, 2008. From July 6, 2009, through July 16, 2009, the Department conducted the verification of Tianjin Magnesium International, Ltd., ("TMI") and its two producers of pure magnesium, which are not affiliated with TMI ("P1" and "P2" or, collectively "Producers"). We have analyzed the case and rebuttal briefs of interested parties submitted by U.S. Magnesium LLC ("Petitioner" or "USM"), the respondent, TMI, and the rebuttal brief submitted by Alcoa, Inc ("Alcoa"), a U.S. consumer and industrial user of pure magnesium. As a result of our analysis, we have determined not to calculate a margin for the sole respondent, but to apply total facts available with adverse inferences. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments from interested parties:

Comment 1: Application of Facts Available with Adverse Inferences to TMI

Comment 2: Reconciliation of TMI's Financial Statements

Comment 3: Amended Preliminary Results based on Verification

Comment 4: Sulfur and Dolomite

¹ See *Pure Magnesium from the People's Republic of China: Preliminary Results of 2007-2008 Antidumping Duty Administrative Review*, 74 FR 27090 (June 8, 2009) ("*Preliminary Results*").

- Comment 5:** By-product Cement Clinker
- Comment 6:** By-product Waste Magnesium
- Comment 7:** Surrogate Values for No. 2 Flux
- Comment 8:** Surrogate Values for Coal
- Comment 9:** Surrogate Financial Statements
- Comment 10:** China Wage Rate

DISCUSSION OF THE ISSUES

Comment 1: Application of Facts Available with Adverse Inferences to TMI

USM argues that TMI's dumping margin should be based on total adverse facts available ("AFA"). According to USM, TMI failed the Department's verification as the Department was unable to verify the integrity of TMI's reported factors of production ("FOPs"). Referencing the Department's verification report,² USM highlights respondent's reporting discrepancies observed by the Department (*e.g.*, conflicting accounts amongst company officials, questionable data storage, and altered source documents), denied access to company records relevant to verification (*e.g.*, production and raw material consumption records), the observed alteration of company records during the verification process, and the premature termination of the verification by company officials. USM cites *Amended Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Carbon Quality Steel Pipe From the People's Republic of China*, 73 FR 22130 (April 24, 2008) to support its contention that the Department cannot rely on information submitted by a respondent once a falsehood has been communicated. Further, citing *Nippon Steel Corporation v. United States*, 337 F.3d 1337 (Fed. Cir. 2003), USM argues that adverse inferences are appropriate as TMI's Producers³ withheld information relevant to the verification process and/or fabricated information.

Accordingly, USM reasons that TMI should be assigned the AFA rate of 108.26 percent, the rate calculated in the preliminary determination of the original investigation and the highest rate in the instant antidumping case. First, USM argues that all four prongs of section 776(a)(2) of the Tariff Act of 1930, as amended ("the Act") are applicable to TMI and thus the use of facts available is appropriate. That is, TMI's producers withheld information relevant to the verification process and requested by the Department (section 776(a)(2)(A) of the Act), TMI's producers failed to provide information to the Department upon request (section 776(a)(2)(B) of the Act), TMI's producers openly impeded the Department's verification (*e.g.*, through document alteration and expressed falsehoods) (section 776(a)(2)(C) of the Act), and TMI's

² See Memorandum to Wendy J. Frankel, Verification of the Sales and Factors Responses of Tianjin Magnesium International, Ltd. in the 2007-2008 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China (November 4, 2009) ("Verification Report").

³ The producers names are considered business proprietary information, therefore for purposes of this memorandum we refer to them individually as "P1" and "P2" or collectively as "Producers."

Deputy General Manager's premature termination of the verification denied the Department the opportunity to verify TMI's submitted information (section 776(a)(2)(D) of the Act).

Second, USM argues that it is appropriate to apply AFA to TMI when its unaffiliated producers were noncompliant during the verification process.⁴

Third, USM argues that the application of total AFA by the Department is in order. USM cites Department determinations⁵ and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339 (Ct. Int'l Trade 2005) as instances where the Department applied total AFA because of unverifiable factual submissions or because the respondent has failed to cooperate, to the best of its ability, during the verification process.

In advocating for the AFA rate of 108.26 percent, USM argues that use of the highest rate on the record of any segment of a proceeding as AFA is the Department's normal practice.⁶ USM further argues that, because 108.26 percent is the highest calculated rate in any prior segment of this case, it is corroborated as it is both relevant and reliable. USM argues that the Department has discretion to presume that the highest rate calculated in a proceeding is reflective of the margin for a noncompliant respondent in a later proceeding and that the highest rate calculated in a proceeding is the most probative evidence of a current margin as respondents would otherwise produce current information demonstrating a lower rate.⁷ As to the reliability of the 108.26 percent, USM argues that it is similar to the 111.73 percent rate calculated for a respondent in the review prior to the instant administrative review. USM further argues that any previous rates calculated specifically for TMI are now suspect as a result of the findings during the instant

⁴ USM cites to *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 6, 2005); *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.*, 68 FR 75210 (December 30, 2003); and *Cf. KYD, Inc. v. United States*, 613 F. Supp. 2d 1371 (Cit. Int'l Trade 2009) in support of its contention.

⁵ *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of 2005-2006 Administrative Review*, 73 FR 43684 (July 28, 2008); *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007); *Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 24641 (April 26, 2006); *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 6, 2005); and *Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003).

⁶ USM cites *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 41374 (August 17, 2009); *Polyethylene Retail Carrier Bags from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 2511 (January 15, 2009); *Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52021 (September 8, 2008); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed. Cir 1990) and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004) in support.

⁷ USM cites *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed. Cir 1990) in support of its argument.

proceeding's verification. Conversely, Petitioner argues that the 108.26 percent was open to comments, accordingly scrutinized, and does not now bear the unreliable character of the rates previously calculated for TMI.

In its case brief, TMI argues that the application of facts available or AFA is unwarranted as the Department can utilize TMI's verified U.S. sales information, as well as the FOP information from the successfully completed portion of the cost verification. TMI concludes that it would be inappropriate to apply adverse inferences to TMI because TMI cooperated fully in this proceeding. Alternatively, TMI argues that if the Department determines to apply FA or AFA, it should do so using a combination rate for TMI and Producer, and leave in place the previous rate for TMI with regard to other producers.

TMI argues that, in the event the Department determines to apply facts available, it is constrained by court precedent to apply a rate that is probative of TMI's actual estimated rate, bears a reliable relationship to TMI's specific sales information, and is not punitive in nature.⁸ TMI suggests the Department use the benchmark rates of zero and 0.63 percent, TMI's assigned margins in the two previous administrative reviews in which it participated, in determining which rate to apply.⁹ Citing *Shandong Huarong Gen. Group Corp. v. United States*, Slip Op. 07-04 (Ct. Int'l Trade 2007), TMI argues that the Department can apply an "incentive multiplier" of 2.5 to this rate. Citing *Qingdao Taifa Group Co., Ltd. v. United States*, 637 F. Supp. 2d 1231, 33 CIT __ (2009), TMI further argues that the application of the AFA rate of 108.26 percent is inappropriate as the Department has not shown that TMI's operations are subject to government control.

In its rebuttal brief, USM argues that due to the Department's inability to verify TMI's factors of production, TMI's entire Section D response is unusable. As an extension, USM argues that TMI's sales responses are also unusable and that total AFA is thus necessary. USM also rebuts TMI's argument that the application of AFA is unwarranted by asserting that TMI has not provided statutory, judicial, or administrative authority to support its argument. Furthermore, citing court precedent,¹⁰ USM adds that it is the respondent's responsibility to create an accurate record such that both the sales and cost portions of the verification are satisfied. USM posits that TMI was, in fact, involved with the production portion of the verification as demonstrated by their participation in the minor corrections submission. Lastly, USM argues that the Department's determination to not apply adverse inferences due to the disconnect between TMI and its producers would have the unwanted effect of nullifying section 776(1)(2) of the Act

⁸ In support, TMI cites *F.LLi De Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330 (Fed. Cir. 2002); *Tianjin Mach. Imp. & Exp. Corp. v. United States*, Slip Op. 07-131 at 35 (Ct. Int'l Trade 2007); *Shandong Huarong Gen. Group Corp. v. United States*, Slip Op. 07-04 at 7 (Ct. Int'l Trade 2007); *Reiner Brach GmbH & Co. Kg v. United States*, 206 F. Supp. 2d 1323, 1339 (Ct. Int'l Trade 2002); *China Steel Corp. v. United States*, 306 F. Supp. 2d 1291, 1339-40, (Ct. Int'l Trade 2004).

⁹ In its original case brief, TMI posits the same arguments in a speculative manner. See Comment 3: Amended Preliminary Results based on Verification.

¹⁰ E.g., *Gallant Ocean Co., Ltd. v. United States*, 602 F. Supp. 2d 1337, 1352 (Ct. Int'l Trade 2009).

insofar as encouraging supplier shopping and prohibiting the Department from having the means to compel respondent cooperation.

USM expressed its concurrence with TMI's argument that combination rates are appropriate. However, USM disagrees with TMI's conclusion that an AFA rate applied specifically to TMI and Producers in the instant segment and still another rate applied specifically to TMI and other producers that were not part of this administrative review, is appropriate. USM argues that, consistent with *Separate Rates and Combination Rates in Antidumping Investigations Involving Non-Market Economy Cases*, Policy Bulletin 05.1 (April 5, 2005), the Department can assign only a single combination rate to an exporter and producer reviewed in the current segment. As such, the combination rate, in this case 108.26 percent as advocated by USM, would be applied to all exports by TMI until other producers can be formally reviewed by the Department. That is, the Department cannot assign separate combination rates to TMI and producers not verified by the Department.

In USM's rebuttal to TMI's case brief, USM argues that in its corroboration analysis, TMI neglects to address the prong of reliability.¹¹ USM holds that the use of the margins previously assigned to TMI are unreliable as a result of the verification, as discussed *supra*, and because TMI was not verified when the suggested margins were assigned. USM reiterates its argument for the appropriateness of an AFA rate of 108.26 percent. USM emphasizes that the AFA rate of 108.26 percent is the most reliable rate as both the instant preliminary rate and rate assigned in the 2006-2007 are questionable due to the outcome of the verification. USM adds that the AFA rate of 108.26 percent cannot be considered high as the Department has the discretion of a built-in increase to further deter noncompliance. In the alternative, USM argues that the Department should use the rate of 111.73 calculated for another respondent in the 2006-2007 review as this rate is reliable, calculated in an administrative proceeding, and has not been discredited.

As to TMI's argument that the applied AFA rate must bear a rational relation to the respondent, USM argues that the authority cited by TMI is misplaced and that the Department continues to have authority to select the highest rate in the proceeding, which does not necessarily have to be reflective of the respondent's specific margins. Similarly, USM argues that TMI's argument that the Department must apply a 2.5 multiplier is also misplaced and that TMI submits no authority in support of this contention.

Alcoa, a U.S. industrial user of pure magnesium, also argues that the rate of 108.26 percent is inappropriate for the reasons cited by TMI. Alcoa additionally argues that total AFA is unjustified because TMI cooperated with the Department and that the Department should therefore apply AFA only where information is lacking.¹² Lastly, Alcoa argues that, as the

¹¹ USM cites, for example, *F.LLi De Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) as standing for the proposition that the corroboration entails an analysis of whether the AFA rate is both reliable and bears a rational relationship.

¹² In differentiating the instant cases from those where total AFA is appropriate, Alcoa cites *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); *Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52021 (September 8, 2008); and *Notice of Final Determination of*

Department is not exclusively prohibited from considering the interests of U.S. industries in their AFA decision, the Department should consider the negative impact that the application of total AFA will have on Alcoa and similarly positioned U.S. industries.

Department's Position:

The Department finds that the information to calculate a reliable margin is not on the record, and that TMI's margin in this review should be based on total AFA. As the Department finds that necessary information is not on the record, and that TMI's Producers withheld information that had been requested, significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a)(1) and (2)(A), (C) and (D) of the of Tariff Act of 1930, as amended ("the Act"), the Department is using the facts otherwise available. Further, because the Department finds that TMI's Producers have failed to cooperate to the best of their ability, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying facts available in this review. In non-market economy cases, the Department calculates a dumping margin based on a factors of production methodology and therefore the Department is required to examine both the exporter and producer of subject merchandise pursuant to section 771(28) of the Act. Because the Department was unable to verify Producers' factors of production information at verification, the Department is calculating TMI's margin based on total adverse facts available. For a more detailed discussion of this issue, see Memorandum to the File regarding: Application of Adverse Facts Available for Tianjin Magnesium International, Ltd. in the Review of Pure Magnesium from the People's Republic of China (December 7, 2009) ("AFA Memo").

Verification

At verification, TMI's Producers described to the Department a three-party arrangement for the "sale" of by-products.¹³ In this arrangement, certain freight providers, to whom Producers owed money for past services, picked up the by-product from Producers and received a "receipt" for the by-product. Then the freight providers either accepted the by-product itself as payment, or took this receipt to the ultimate customer and received payment for the by-product from the customer. However, Producers were unable to show the receipt for payment in their accounting books and records, nor the discreet deduction from their accounting records coinciding with these payments in the amount that they owed the freight providers.¹⁴

Further, while examining accounting documentation of this three-party scheme in one of Producers' voucher books, Department Officials found that the relevant vouchers had been pasted into the books onto the stubs of vouchers that had been cut out. Producers gave contradictory explanations of their accounting process in an attempt to explain why the vouchers

Sales at Less Than Fair Value: Sodium Nitrite from the People's Republic of China, 73 FR 38984 (July 8, 2008). Alcoa argues that the Department should consider that TMI's producers and not TMI was/were responsible for the withheld information.

¹³ The three-party arrangement was not explained to the Department or identified at all in the respondent's original or supplemental questionnaire responses and this was the first time the Department was made aware of this situation.

¹⁴ See AFA Memo at 3, Verification Report at 37.

had been pasted into the voucher books in this fashion. When Department Officials attempted to verify the authenticity of the receipts, Producers locked Department Officials out of the accounting offices and threw requested voucher books out of the window of the accounting office in an attempt to keep them from the Department Officials. Department Officials subsequently gained access to the accounting office and found evidence that Producers were creating documents while the Department Officials were locked outside. Producers admitted that they were altering the voucher books by secretly pasting new vouchers in them with the receipts attached.¹⁵

While in the accounting office, Department Officials also found bags and a box stuffed with numerous accounting, payroll and other records and documents in various stages of alteration, *e.g.*, with invoice numbers, dates, values, etc., cut out and replaced. When Department Officials found such documents that Department Officials determined clearly related to the subject merchandise (specifically, an inventory book with tabs designating material inputs to the subject merchandise, and an inventory book with one of Producers' names and the POR month of July 2008 written on the cover), Producers prohibited Department Officials from examining them. Further, when Department Officials insisted that it was important to examine this documentation, to confirm the accuracy of Producer's contentions that they were not relevant to the verification, Department Officials were finally told by Producers' vice-president that they not only could not examine these specific records, but they could not examine any more documentation within the accounting offices.¹⁶

During the tour of P1's factory, when Department Officials sought to verify the factory records and documents kept by the factory statistician, Department Officials were told the statistician was not present, and that no one else in the plant could discuss or even gain access to the extensive records kept by the statistician. Consequently, Department Officials were unable to verify the vast majority of records at the plant. *See* Verification Report at 15-16. Further, at the P2 plant tour, Producers did provide access to the statistician and the computer purportedly used to compile factory data. However, upon examination of the computer it was evident from the creation and modification dates on the files that the data was not compiled by the statistician over a period of time, as claimed, but rather was downloaded only days before the verification.¹⁷ For a full discussion of the problems encountered at verification please see the full Verification Report.

Application of Fact Otherwise Available

Section 776(a)(1) and (a)(2)(A), (C) and (D) of the Act provides that the Department shall apply "facts otherwise available" if necessary information is not on the record, or if an interested party withholds information that has been requested by the Department, significantly impedes a proceeding under the antidumping statute, or provides information but the information cannot be

¹⁵ *See* AFA Memo at 3-7, Verification Report at 37-43.

¹⁶ *See* AFA Memo at 8-9, Verification Report at 43-44.

¹⁷ *See* AFA Memo at 9-12, Verification Report at 15-18.

verified. The determination to use facts otherwise available is subject to section 782(d) of the Act.

The Department determines that Producers withheld material information requested by the Department within the meaning of section 776(a)(2)(A) of the Act. As described above, Producers denied Department Officials access to source documents related to the subject merchandise: an inventory book with the tabs designating material inputs to the subject merchandise, and the inventory book found on the keyboard tray with one of Producers' names and the POR month of July 2008 written on the cover (both of which are key documents for verification of factors of production data). Producers also prohibited the Department Officials from examining any documentation found in the accounting office suite amidst altered documentation relating to subject merchandise. Producers withheld by-product "sales" information from the Department, even going to the extent of throwing accounting documents out of the window in an attempt to keep them away from Department Officials. Further, record evidence indicates that producers at both plants misled Department Officials about the plants' computerized production records, thereby withholding access to authentic production records at the plants.

The Department determines that Producers significantly impeded this proceeding, within the meaning of section 776(a)(2)(C) of the Act. At verification Producers admittedly provided the Department Officials with altered documentation, locked Department Officials out of the accounting office suite in order to prevent them from discovering documentation, hid documentation in a box under a tarp and on a keyboard tray while the Department Officials were locked out, forbade Department Officials to examine documentation found in the accounting office suite relating to the subject merchandise, did not provide access to factory records at the factory of P1, and provided implausible accounts of record keeping at the factory of P2. This behavior significantly impeded Department Officials' ability to verify information.

The Department also determines that Producers provided information that could not be verified by the Department within the meaning of section 776(a)(2)(D) of the Act. Specifically, they provided by-product sales data that was supported by documents that were found to be altered by Producers. Given the alteration of documents, the denial of access to source documentation, the misleading answers related to factory records, and the general obfuscation on the part of Producers, the Department cannot consider any of the production data verified in this review.¹⁸

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

¹⁸ See *Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 73 Fed. Reg. 43684 (July 28, 2008) (final results) ("*Hand Trucks*"), and accompanying Issues and Decision Memorandum at Comment 1 (determining that the respondent's behavior at verification of refusing to answer the Department's questions, withholding documents, altering documents, and preventing the Department from conducting a full verification warranted the application of total adverse facts available).

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.

The Department had no reason to think that the factors of production data provided were deficient until verification, so the Department was not able to identify any deficiencies beforehand and alert the respondent, pursuant to 782(d). Further, as described above, information regarding by-products and production could not be verified in accordance with section 782(e) because TMI’s Producers altered records, provided conflicting accounts of their data and record-keeping systems, withheld data, and refused to allow Department Officials to examine source documents. As such the Department is unable to rely on any factors of production data supplied by Producers, and thus there is no reasonable basis upon which to determine normal value (“NV”). Because it is not possible to determine NV using information on the record of this review in accordance with section 751(a)(2) of the Act, the Department is unable to perform any comparisons to U.S. prices. The Department’s practice in such situations is to resort to a total facts available methodology. See *Notice of Final Determination at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30329 (June 14, 1996).

Application of Adverse Inferences

In accordance with section 776(b) of the Act, the Department determines that Producers have failed to cooperate by not acting to the best of their ability to comply with our requests for information. To examine whether an interested party cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the interested party has hindered the calculation of accurate dumping margins.¹⁹ Compliance with the “best of its ability” standard is determined by assessing whether an interested party has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.²⁰ To conclude that an exporter or producer has not cooperated to the best of its ability and to draw an adverse inference under section 776(b) of the Act, the Department examines two factors: (1) that a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations; and (2) that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to respond fully is the result of the respondent’s lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.²¹

¹⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (February 4, 2000).

²⁰ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed.Cir. 2003).

²¹ *Id.*

While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element.²² The Department finds that Producers failed to cooperate to the best of their ability because they altered documentation, misled Department Officials when Department Officials tried to examine documentation, hid documentation, denied Department Officials access to source documentation and key company officials, and launched documentation out of windows in an effort to conceal it from Department Officials.

The Department disagrees with TMI's contention that the Department may not apply FA or AFA to TMI in this case. Section 771(28) defines "exporter or producer" as "both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with the production and sale of that merchandise." Thus, as both the exporter and its unaffiliated suppliers of subject merchandise are considered interested parties under the statute, the Department may apply an adverse inference for the failure of either party to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority. As noted above, Producers in this case failed to cooperate to the best of their ability by supplying unverifiable factors of production data. Accordingly, the fact that TMI's Producers are not affiliated with TMI does not prohibit the Department from applying total AFA in this case.^{23,24}

Additionally, the Department has specifically rejected the argument that AFA can only be applied to the unaffiliated supplier and not to the respondent,²⁵ and has applied total AFA because the factors of production data of the respondent's supplier were unverifiable.²⁶ Further, in light of the total failure of the verification of the cost of production, the Department does not agree with TMI that it would suffice to merely deny TMI's requested by-product offsets. Specifically, because there is no reasonable method for determining NV due to the absence of reliable factors of production data, it is not possible to perform any comparison to U.S. prices. Thus we find that the application of total AFA is warranted in this situation. Accordingly, the Department is applying the rate of 111.73 percent, the highest calculated rate on the record of the proceeding, to TMI as AFA.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and

²² *Id.*

²³ See *Final Determination of Sales at Less Than Fair Value: Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007) and accompanying Issues and Decision Memorandum at Comment 20; .

²⁴ *Fresh Garlic from the People's Republic of China: New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.*, 68 Fed. Reg. 55583, 55585 (Sept. 26, 2003) (preliminary results) (unchanged in final, 68 Fed. Reg. 75210) (determining that the application of adverse facts available was warranted because the factors of production response was inadequate due to failures of the supplier);

²⁵ *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom*, 73 Fed. Reg. 52823 (Sept. 11, 2008) (final results), and accompanying Issues and Decision Memorandum at Comment 15.

²⁶ *Hand Tools* and accompanying Issues and Decision Memorandum at Comment 9.

accurate information in a timely manner.”²⁷ The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁸ In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.”²⁹

Consistent with the Department’s practice and the purposes of section 776(b) of the Act, as AFA, the Department is applying the rate of 111.73 percent, the highest calculated rate from the proceeding, which is the rate determined for another respondent, Datuhe, in the recently completed administrative review of this order.³⁰ Among the possible sources upon which to calculate a margin for TMI are the rate calculated in the investigation of pure magnesium,³¹ TMI’s own antidumping duty margins calculated in the two prior segments of the proceeding, or calculated dumping margins for similarly situated companies as TMI. In selecting amongst the available data for which to calculate an AFA margin for TMI, the Department is mindful of the purposes of AFA as articulated by the SAA.

The Department does not agree that the AFA rate should be based upon TMI’s rate in the two most recent reviews in which it participated.³² Mindful of the intentions articulated in the SAA and as reaffirmed by the Courts, the Department will not rely on TMI’s previously submitted data to calculate an AFA margin. In those proceedings, the Department calculated margins of zero and 0.63 percent for TMI. If the Department were to use either margin to calculate a rate for TMI, the Department determines that these margins would reward TMI for failing to participate to the best of its ability in this segment of the proceeding because TMI’s previous margins do not fulfill the stated purpose of application of AFA.

²⁷ See *Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998) (“RAMS from Taiwan”).

²⁸ See Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316 at 890. See also *Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); See also *D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997) (“Shrimp from Brazil”).

²⁹ *Rhone Poulenc*, 899 F.2d at 1190.

³⁰ See *Pure Magnesium From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008 (“Pure Magnesium, 2006-2007 Final”).

³¹ This rate was calculated using petition data for U.S. price and respondent data for FOPs. See *LTFV Preliminary Determination*, 59 Fed. Reg. at 55426. After respondents failed verification, the Department used the preliminary margin as best information available for the final determination.

³² See *Pure Magnesium from the People’s Republic of China*, 71 Fed. Reg. 61019 (Oct. 17, 2008) (“Pure Magnesium 04-05”); and *Pure Magnesium from the People’s Republic of China*, 73 FR 76336 (December 16, 2008) (“Pure Magnesium 06-07”).

Corroboration

The Department does not agree with TMI that the rate of 108.26 percent calculated in the investigation cannot be corroborated, or for that matter that the 111.73 percent rate used herein for purposes of adverse facts available cannot be corroborated. Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on “secondary information,” the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as “{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” See SAA at 870. The SAA states that “corroborate” means to determine that the information used has probative value. The Department has determined that to have probative value information must be reliable and relevant. *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See *Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003); and, *Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005).

To be considered corroborated, information must be found to be both reliable and relevant. Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The information the Department is applying as AFA in the current review is a calculated rate from the most recently completed segment of this proceeding. While the Department recognizes that the calculated rate for Datuhe is secondary information as described by the SAA, this is the best available information in this proceeding. This is so because TMI's previously calculated margins do not fulfill the stated purpose of application of AFA which is to induce respondents to provide the Department with complete and accurate information in a timely manner. Datuhe's calculated rate indicates that pure magnesium continues to be dumped at rates up to 111.73 percent in the United States. Furthermore, no information has been presented in the current review that calls into question the reliability of the information upon which the AFA rate is based. Thus, the Department finds that the information is reliable.

As to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (the Department disregarded the highest margin in that case as adverse best information available (the

predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F. 3d 1220, 1221 (Fed Cir. 1997) (ruling that the Department will not use a margin that has been judicially invalidated).

The Court of Appeals for the Federal Circuit has stated that Congress “intended for an adverse facts available rate to be a reasonably accurate estimate of the respondent’s actual rate, albeit with some built-in increase intended as a deterrent to non-compliance.” *See F. Lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1034 (Fed. Cir. 2000). In applying this precedent, neither the Federal Circuit nor the Court of International Trade has required the Department to follow a formulaic approach. Section 776(c) of the Act requires that the Department corroborate secondary information used in calculating a margin “to the extent practicable.” Thus, the aspirational goal articulated by the Federal Circuit of what Congress intended must be balanced against the practicalities of the case and the evidence on the administrative record.

In this case, the Department cannot rely on any submitted data in calculating an antidumping duty margin, and instead is applying total AFA with respect to TMI. Further, there are no additional respondents in this review. In addition we do not believe it is appropriate to rely on previous margins assigned to TMI either for purposes of assigning an AFA margin or for purposes of determining relevance, based on the reasons noted above. We note, however, that the rate of 111.73 is a calculated rate from the most recently completed segment of the proceeding. This antidumping duty rate has not been judicially invalidated and indicates that pure magnesium is dumped in the United States at a rate of 111.73 percent. Accordingly, the Department finds that this rate is both reliable and relevant for use as the AFA rate in this review. TMI’s rate from the preliminary results of this case - the first verified rate calculated for TMI - on the other hand, was shown to be unreliable based, *inter alia*, upon the results of the verification, as discussed above. Furthermore, because the main issues arose with the Department’s attempt to verify information related to by-products in this review, the Department notes concern with using a prior margin calculated after the Department granted the by-product offsets requested by TMI. Accordingly, the Department finds that the prior calculated rates for TMI would not be a reliable basis to calculate an adverse facts available margin in this segment of the proceeding.

Accordingly, the Department determines that the information which is the most appropriate, from the available sources, to effectuate the purposes of AFA, is the highest rate previously calculated in any segment of this proceeding, 111.73 percent, the rate calculated for Datuhe in the most recently completed administrative review of this order.

The Department finds that the cases cited by TMI do not dictate that the Department cannot apply the highest calculated margin as AFA in the instant case. As noted by Petitioner, several facts in *F.lli de Cecco* distinguish it from the instant case. In *F.lli de Cecco*, the Federal Circuit found an AFA of rate of 46.67 percent to be uncorroborated, because the AFA rate (1) was based on a petition rate that had been “thoroughly discredited;” (2) was particularly unreasonable for

the respondent, which belonged to a group of “high-end producers” that typically had lower margins; and (3) was far above the highest rate of 24.31 percent that had previously been applied to any cooperating respondent.³³ In *World Finer Foods v. United States*, the court held that the Department could not use as an AFA rate an unreliable petition margin that greatly exceeded any rates calculated in that proceeding.³⁴ Additionally, in *Gerber Food (Yunan) Co. v. United States*, the court rejected the Department’s use of an AFA rate based on the petition without explaining how the highest rate stated in the petition was probative of the facts in that case.³⁵

In the instant case the rate selected by the Department is not a petition rate, but rather is a recently calculated rate based on a respondent’s data. Also, contrary to the facts in *F.lli de Cecco*, TMI is not a “high-end producer” nor is there any other similar material distinction between TMI’s circumstance and that of other respondents.

The Department also does not agree that *Qingdao Taifa* applies to the instant case as TMI suggests.³⁶ In that case, the Department found that information to construct a reliable margin was not on the record because the respondent failed to provide certain FOP data and did not act to the best of its ability to cooperate at verification. The court upheld the Department’s determination to apply total AFA to the respondent based on those facts. Additionally, in that case, the Department found that the respondent did not substantiate its claim for a separate rate, determined that the respondent was part of the PRC-entity, and thus applied the PRC-entity rate. The court held, however, that the Department incorrectly denied the respondent a separate rate. The court held that the Department could apply the PRC-wide rate as AFA only if there is evidence of government control, and remanded the case to the Department to determine whether a government entity exercised control over the respondent or, if it could not, to calculate a separate AFA rate for the respondent, and to corroborate that rate pursuant to 19 USC 1677(e).

In the instant case, the Department is granting TMI a separate rate and is therefore not considering TMI part of the PRC-wide entity nor applying the PRC-wide rate to TMI. Rather, the Department finds that TMI failed to cooperate to the best of its ability, and is applying the highest rate calculated in any segment of this proceeding as AFA. Further, as discussed above, the Department has corroborated this rate in accordance with section 776 of the Act, case law, and Department practice.

TMI cites *Shandong Huarang Gen. Group Corp. v. United States*, 2007 Ct. Int’l Trade LEXIS 3 Slip. Op. 2007-4 (Ct. Int’l Trade 2007) for the proposition that to determine an AFA rate for TMI the Department should apply a “multiplier” of 2.5 times to TMI’s “base rate” to ensure compliance. TMI does not provide a specific cite to the case, however, and the Department disagrees that the court applied “multipliers” or “base rates,” or any specific calculation for the application of AFA. Accordingly, we do not agree that this case is precedent for TMI’s proposed treatment of the AFA rate.

³³ See *F.lli de Cecco*, 216 F. 3d at 1032.

³⁴ See *World Finer Foods, Inc. v. United States*, 24 CIT 541, 548 (Ct. Int’l Trade 2000),

³⁵ *Gerber Food (Yunan) Co. v. United States*, 491 F. Supp. 2d 1326, 1353 (Ct. Int’l Trade 2007).

³⁶ See *Qingdao Taifa Group Co., Ltd. v. United States*, 637 F. Supp. 2d 1231 (Ct. Int’l Trade 2009).

Finally, the Department does not agree that this is a situation in which it would be appropriate to apply a combination rate for TMI and Producers, and another for TMI and unnamed “other companies.” First, it is the Department’s practice to assign combination rates in administrative reviews only when certain circumstances are present.³⁷ Further, combination rates are only appropriate for entities that have been examined, not for unnamed “other companies” as requested by TMI.³⁸

Comment 2: Reconciliation of TMI’s Financial Statements

As an alternative basis to the Department applying total AFA based on failure at the verification of cost of production, USM argues that total AFA is proper as TMI’s submitted financial statements do not reconcile to trial balances collected during the Department’s verification. USM states that these trial balances serve as the basis for the income statements, balance sheets, and retained earnings statements. USM demonstrates alleged discrepancies between the trial balances and the other financial statements documents (the information of which is business proprietary) and points out that the auditors’ notes have not been provided.

TMI rebuts USM’s allegations of the stated mismatching by arguing that USM has misread and mischaracterized TMI’s financial statements and trial balances. TMI argues that the record demonstrates that the documents do reconcile and that the Department’s verification did not uncover any discrepancies in TMI’s financial accounting.

Department’s Position:

We do not find that the TMI’s trial balance collected at the sales verification conducted at TMI and TMI’s submitted financial statements fail to reconcile. At verification, the Department reconciled TMI’s trial balance to its general ledger, and from there to its balance sheet and clearly articulated this in the verification report.³⁹ Because the Department has determined to assign to TMI a rate based on total AFA in this review, we find no need to address this comment further.

Comment 3: Amended Preliminary Results based on Verification

TMI argues that, in the speculative event that the Department relies on issues related to the verification of TMI, the Department should issue an amended preliminary results. TMI posits that the Department’s determination to use either facts available or AFA should be stated in

³⁷ See *Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran*, 70 FR 7470 (Feb. 14, 2005) (“*Pistachios from Iran*”).

³⁸ See “Separate Rates And Combination Rates In Antidumping Investigations Involving Non-Market Economy Countries,” Policy Bulletin 05.1 (Apr. 5, 2005).

³⁹ See Verification Report at 20.

advance, *i.e.*, in an amended preliminary results which would allow interested parties a fair opportunity to comment.⁴⁰

In USM's rebuttal to TMI's case brief, USM argues that the Department's regulations do not provide for an amended preliminary results for administrative reviews, that the Department routinely conducts verification post-preliminary results, and that TMI's submitted authority intended to advance its argument is misplaced, *i.e.*, the authority cited by TMI does not support the proposition that the Department must issue an amended preliminary determination.

Department's Position:

The Department has determined not to issue an amended preliminary results, notwithstanding the Department's determination to apply AFA for the final results based on the result of the instant verification. There is no requirement that the Department issue an amended preliminary results in an administrative review segment following a producer/exporter's verification failure. *Qingdao Taifa*, cited by TMI for this proposition, merely stated that the respondent had not exhausted its administrative remedies when it did not file case briefs where the preliminary results were favorable to Taifa.⁴¹ In fact, in that case, the Department applied total AFA to the respondent based on its failure of a post-preliminary results verification, similar to the instant case, and the court upheld the Department's application of AFA.

Comment 4: Sulfur and Dolomite

Petitioners argue that because the Department was not allowed to inspect inventory in-and-out documents for sulfur and dolomite at the verification, consumption rates for these factors must be based on AFA.

Petitioners also argue that if the Department declines to apply AFA to its dolomite factor of production, it should reconsider its selection of a surrogate value for this input and use WTA data for POR-contemporaneous Indian imports under item subheading 2518.10 as it is a much more accurate reflection of the material actually used by TMI's suppliers.

TMI argues that the dolomite surrogate value derived from Tata Sponge Iron Ltd. ("Tata Sponge") as recorded in Tata Sponge Iron's 2007-2008 financial statements selected by the Department for the *Preliminary Results* is not the best information because it reflects a subsidized product. Instead, TMI argues that the Department should value dolomite according to the price from Madras Cements Ltd. 2007-2008 financial statements as well as additional cement company data on the record of the POR. TMI states that this is data which is publicly available in India, is for the POR and which there is no subsidized product issue.

In rebuttal, Petitioner states that TMI's argument that the Department has a policy of treating captive production as a subsidy is unsupported. Petitioner argues that the Department does not

⁴⁰ TMI cites *Qingdao Taifa Group Co., Ltd. v. United States*, 637 F. Supp. 2d 1231 (Ct. Int'l Trade 2009) and *Saha Thai Steel Pipe Co. v. United States*, 828 F. Supp. 57, 59-60 (Ct. Int'l Trade 1993) in support of its argument.

⁴¹ See *Qingdao Taifa Group Co., Ltd. v. United States*, 637 F. Supp. 2d 1231, (Ct. Int'l Trade 2009)

make any statement that such captive consumption constitutes a subsidy and that TMI disregarded the Department's prior finding that Tata Sponge did not obtain its dolomite from captive mines, but it also ignored the Department's reasoning for rejecting the dolomite prices found in other companies' financial statements. Petitioner further argues that TMI has failed to address the issues raised by the Department in the *Preliminary Results* with respect to the value used to value the dolomite input, and it has failed to identify the problems associated with the additional cement company data it proffers. Petitioner maintains its argument that if the Department does not issue a margin based on total AFA, it should use the WTA data to value the dolomite in the final results.

In rebuttal, TMI argues that there is no indication in the Verification Report that the input usage of dolomite and sulfur was other than as reported and verified, and no discrepancies were noted. TMI further argues that Petitioners are incorrect in its claim that the WTA data is preferred for valuing factors of production. TMI argues that the Department's preference is for domestic values over imports.

Department's Position:

Because the Department has determined to assign to TMI a rate based on total AFA in this review, we find no need to address this comment further.

Comment 5: Byproduct Cement Clinker

Petitioner argues that because POR production and sales quantities, and payment for reported sales of cement clinker byproduct could not be verified, TMI's requested by-product offset should be denied.

TMI argues that domestically produced cement clinker is the best surrogate value information of record.

Petitioner further argues that because TMI's suppliers' accountants threw accounting records out a window in a crass attempt to avoid review; altered records; and refused to provide requested documents; it should be denied the requested byproduct offsets.

Department's Position:

Because the Department has determined to assign to TMI a rate based on total AFA in this review, we find no need to address this comment further.

Comment 6: Byproduct Waste Magnesium

Petitioner argues that because POR production and sales quantities, and payment for reported sales of this byproduct could not be verified, the requested offset must be denied. Alternatively, Petitioner argues that if the Department does decide to grant TMI the byproduct offset for waste magnesium, the appropriate classification for waste the magnesium byproduct is 2620.99.

Petitioner argues that in the *Preliminary Results* the Department's preliminary classification under 8104.20 is directly contrary to authoritative guidance under the Harmonized Tariff Schedule.

TMI argues that the Department should value waste magnesium using the Harmonized Tariff System of India as contains a specific provision for magnesium waste and scrap.

In rebuttal, Petitioner further argues that because TMI's supplier's accountants threw accounting records out a window in a crass attempt to avoid review; altered records; and refused to provide requested documents; it should be denied the requested byproduct offsets.

In rebuttal, TMI argues that that the Department verified that there is magnesium waste produced by the production process, and that this waste has value because it was in fact carried in the company's accounting records and sold. Therefore, TMI argues, it should be granted a byproduct offset for waste magnesium.

Department's Position:

Because the Department has determined to assign to TMI a rate based on total AFA in this review, we find no need to address this comment further.

Comment 7: Surrogate Values for No. 2 Flux

Petitioner argues that based on record information, the Chemical Weekly data are not acceptable, because they do not reflect actual sales transactions and are frequently reported by dealers who do not necessarily sell the chemicals on which they report prices. Petitioner argues that, accordingly, the Department should use the Indian import statistics on the record of this review to value the three components of flux (magnesium chloride, sodium chloride, and potassium chloride). Petitioner argues that these values are based upon country- and period-wide sales transactions and, as such, are more reliable sources for valuing factors of production.

TMI argues that the Department should continue to use Chemical Weekly data that is on the record of this review and not the import values submitted by the petitioner, as they are not contemporaneous with the POR.

Department's Position:

Because the Department has determined to assign to TMI a rate based on total AFA in this review, we find no need to address this comment further.

Comment 8: Surrogate Values for Coal

TMI states that the Department should continue to use TERI data selected for use in the *Preliminary Results*. No other party commented on this issue.

Department's Position:

Because the Department has determined to assign to TMI a rate based on total AFA in this review, we find no need to address this comment further.

Comment 9: Surrogate Financial Statements

Petitioner argues for the final results, the Department should reject the MALCO financial statement and instead use the Hindustan Zinc Ltd. ("HZL") financial statement. Petitioner argues that HZL's financial statements are contemporaneous with the POR, whereas MALCO's are not. In the alternative, Petitioner argues that if the Department continues to reply on the Madras Aluminum Company Ltd. ("MALCO") financial statements it should also use the HZL data, consistent with its previous practice.

TMI argues that the Department should not use MALCO's financial statements as they contain subsidized data. TMI argues that if the Department should determine to use subsidized data it should use an average of two companies, Hindalco and Malco, because these would represent the best subsidized information on the record, taking into account the quality, specificity and contemporaneity of the available financial statements.

In rebuttal, Petitioner argues that TMI's argument that the Department should reject the MALCO financial statements because MALCO's captive mining operations constitute a subsidy is a mischaracterization of the Department's findings.

TMI argues that the Department should continue to not use information from companies that have been shown to receive subsidies, which include HZL as well as MALCO, and use the other financial statements of Indian aluminum producers on the record of this review.

Department's Position:

Because the Department has determined to assign to TMI a rate based on total AFA in this review, we find no need to address this comment further.

Comment 10: China Wage Rate

Petitioner argues that the Department should apply the updated wage rates to all determinations immediately upon adoption of the finalized wage rates, given that the Department failed to update its NME wage rates in the prior year so the rates in use are unusually outdated. No party commented on this issue.

Department's Position:

Because the Department has determined to assign to TMI a rate based on total AFA in this review, we find no need to address this comment further.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this administrative review in the *Federal Register*.

Agree

Disagree

Carole A. Showers
Acting Deputy Assistant Secretary
for Import Administration

(date)