

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 30, 1999.

**Carol-Lee Hurley,**

Chief, Regional Programs Coordination Unit.

[FR Doc. 99-8892 Filed 4-8-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-810]

#### Chrome-Plated Lug Nuts From Taiwan; Final Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On October 7, 1998, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan. The review covers 18 manufacturers/exporters and the period September 1, 1996, through August 31, 1997. Based on our analysis of the comments received, the dumping margins have not changed from those presented in the preliminary results.

**EFFECTIVE DATE:** April 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ron Trentham or Thomas Futtner, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-6320 or 482-3814, respectively.

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1998).

#### Background

On October 7, 1998, the Department published the preliminary results (63 FR 53875) of its administrative review of the antidumping duty order on chrome-

plated lug nuts from Taiwan (September 20, 1991, 56 FR 47737). The Department has now completed this administrative review in accordance with section 751 of the Act.

#### Scope of the Review

The merchandise covered by this review is one-piece and two-piece chrome-plated lug nuts, finished or unfinished, which are more than  $1\frac{1}{16}$  inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least  $\frac{3}{4}$  inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus  $\frac{1}{16}$  of an inch (1.59 mm). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not within the scope of this review. Chrome-plated lock nuts are also not within the scope of this review.

During the period of review, chrome-plated lug nuts were provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive. This review covers the following firms: Gourmet Equipment (Taiwan) Corporation ("Gourmet"), Buxton International Corporation ("Buxton"), Chu Fong Metallic Electric Co. ("Chu Fong"), San Chien Industrial Works, Ltd. ("San Chien"), Anmax Industrial Co., Ltd. ("Anmax"), Hwen Hsin Enterprises Co., Ltd. ("Hwen Hsin"), San Shing Hardware Works Co. ("San Shing"), Trade Union International Inc./Top Line ("Trade Union"), Uniauto, Inc. ("Uniauto"), Wing Tang Electrical Manufacturing Company ("Wing Tang") and Multigrand Industries Inc. ("Multigrand"), and the period September 1, 1996, through August 31, 1997. Buxton, Chu Fong, San Chien, Anmax, Hwen Hsin, San Ching, Trade Union, Uniauto, Wing Tang and Multigrand failed to completely respond to the Department's questionnaire and therefore were assigned an adverse facts available rate of 10.67 percent. Questionnaires were sent to Transcend International, Kwan How Enterprises Co., Kwan Ta Enterprises Co., Ltd., Everspring Plastic Corporation, Gingen Metal Corp., Goldwanate Associates, Inc., Kuang Hong Industries Inc., but were returned as undeliverable. These firms therefore received the "all others" rate of 6.93 percent.

#### Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from one respondent, Gourmet, and rebuttal comments from petitioner, Consolidated International Automotive. Based on the comments received, we have not changed our determination with respect to Gourmet for the final results.

#### Comments

Respondent argues that it has cooperated fully and that the Department cannot require it to provide information that is impossible for Gourmet to provide, or in a form which Gourmet simply does not have. In such a situation, the Department must consider any other independent information which is sufficient to substantiate the sales and other data provided in Gourmet's submissions.

In this instance, because Gourmet does not have audited financial statements, Gourmet argues that the Department must rely on other forms of independent substantiation. Gourmet argues that the Department has a long-standing practice to accept whatever substantiation is available to satisfy itself that the data submitted can be relied upon. In this review, Gourmet submitted bank records as a means to independently substantiate its response. Gourmet points to the *Notice of Final Determination of Sales at less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51,427 (October 1, 1997), where the Department stated that where a respondent submitted sales and cost data based on unaudited financial statements, verification may be based on the respondent's "tax return or any other independent source."

Gourmet argues that the use of facts available is not warranted under section 776(a) of the Act (19 USC 1677e(a)) because the necessary information is on the record. Gourmet has responded to all of the Department's requests for information with the exception of one document, audited financial statements, which do not exist and therefore can not be withheld. Gourmet argues that, unlike the situation in previous reviews in this review where it stated that its data was unverifiable, its submitted data can and should be verified. Gourmet points to *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998) (*Borden*), where the court found that the Department is required to consider information submitted by a party even if that information does not precisely conform to the Department's request, as long as the party has cooperated to the best of its ability.

Gourmet acknowledges that section 776(a) of the Act may apply because the Department may take the position that Gourmet has failed to provide the requested information in the form and manner requested. However, Gourmet disagrees with its applicability for two reasons. First, while Gourmet failed to provide information in the form of audited financial statements, it provided the same information in the form of bank records. Second, the application of facts available pursuant to section 776(a)(2)(B) of the Act is conditional on an additional finding that the provisions set out in section 782(e) of the Act (19 U.S.C. 1677m(e)) have not been met. Gourmet points to *Borden*, where the court said section 782(e) of the Act requires that no matter how unsatisfactory the Department may find the information submitted, it must still use that information rather than facts available, so long as the criteria of that provision have been met.

Gourmet argues that its situation is similar to that in the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56,613 (October 22, 1998) (*Chile Mushrooms*). In that case, the Department concluded that resort to facts available was not required where independent auditors were unable to reconcile the respondent's books and records with its financial statements and were "otherwise unable to account for significant assets and liabilities," and where the respondent, like Gourmet, was not legally obligated to have audited financial statements. Gourmet states that the Department correctly concluded that the law would not permit rejection of the submitted data in its entirety because the respondent had met the five conditions of 782(e) of the Act (19 U.S.C. 1677m(e)).

Because Gourmet has provided such independent substantiation and has cooperated to the best of its ability, the Department may not decline to use Gourmet's submitted information in making its determination. Gourmet maintains that the information was submitted on time, can be verified, is complete and reliable, can be used without undue difficulty, and Gourmet has demonstrated that it has acted to the best of its ability in providing information.

Even if the Department does decline to use such information and resorts instead to "facts available," the Department must find that Gourmet has cooperated to the best of its ability and therefore that an adverse inference would be unwarranted. Gourmet claims that it has provided complete responses

to all of the Department's questionnaires. Gourmet undertook extraordinary efforts to produce alternative forms of records to satisfy the Department's requirement for independent substantiation of submitted information.

Gourmet asserts that the Department incorrectly concluded that its submissions could not be reconciled to its financial statements in this review, as it did in the fourth administrative review even though the facts are different. In this review, unlike the fourth, Gourmet does not admit its submission cannot be reconciled. On the contrary, Gourmet has submitted detailed reconciliation statements to its tax return and bank statements. Furthermore, the Department's requirements for verifiable submissions as discussed in a Memorandum from Thomas Futtner to Holly Kuga, Aug. 20, 1998, does not mandate the submission of audited financial statements.

If the Department finds the information that Gourmet submitted to be unverifiable, it does not follow that Gourmet has not acted to the best of its ability. The Department has failed to articulate any basis for finding that Gourmet failed to cooperate. In *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993) (*Allied-Signal*), the court held that where a respondent "supplied as much of the requested information as it could and offered to provide the remaining information in a simplified form, . . . [i]t was unreasonable for the ITA to have characterized respondent's behavior as a refusal to cooperate." The court went on to say that "the respondent failed to provide a complete response to the requested information because it was unable to, not because it refused to." The court made a similar distinction in *Borden* where it stated "Commerce has articulated no reason for finding the respondent's failure was an unwillingness, rather than simply an inability, to cooperate, other than vague hints that respondent was cooking the books."

Petitioner disagrees. As in previous reviews, Gourmet failed to submit verifiable information that would allow Commerce to tie the company's questionnaire response with its financial data. Petitioner argues that the problem is not simply the form of information, but rather its substance. Gourmet has been subject to previous reviews and has been well aware of the deficiencies in its previous submissions, yet Gourmet has made no showing of inability to prepare the requested information. Petitioner argues that Commerce was correct to apply facts

available to Gourmet when it submitted information that had already been found to be deficient.

Petitioner argues that the deficiencies in Gourmet's response justify the application of facts available under the statute. Under section 776(a)(2)(B) of the Act, Gourmet failed to provide requested information, not simply the form of the information, but the substance of the information. In terms of the statute, Gourmet's information is so incomplete that it cannot serve as a reliable basis for determining constructed value since Gourmet's financial information can not be reconciled with its questionnaire response and is, therefore, unverifiable.

Petitioner argues that Gourmet did not act to the best of its ability in providing the information and meeting the Department's requirements. Gourmet had participated in previous reviews where it provided similarly deficient information and was sanctioned for doing so. Petitioner argues that Gourmet could have corrected these deficiencies but rather chose to submit the same substantively incomplete and formally, nonconforming information.

Petitioner argues that *Borden* does not support Gourmet's position. *Borden* does not address the applicability of section 776(a)(2)(D) of the Act (19 U.S.C. 1677e(a)(2)(D)) to the deficient information provided; by contrast in this review, Commerce has found that the information submitted by Gourmet cannot be verified. *Borden* does not preclude Commerce from applying facts available to the deficient response, rather *Borden* requires Commerce to make the additional finding that the respondent failed to act to the best of its ability. This deficiency is not present in this review since Commerce expressly stated "that Gourmet has failed to cooperate by not acting to the best of its ability." In *Borden*, the court noted that the respondent had changed accounting methods and amended its questionnaire responses in attempting to respond to the questionnaires. This situation is plausible in an investigation, but not the sixth administrative review.

Petitioner also argues that *Allied-Signal* does not support Gourmet's position. Unlike the facts in *Allied-Signal*, Gourmet has not shown that it cannot provide the required information or that it would be unable to prepare the necessary information.

#### Department's Position

We agree with petitioner. The Department finds that the use of facts available is warranted under section 776(a) of the Act because the information in Gourmet's questionnaire

response cannot be verified. Moreover, we have used an adverse inference in applying the facts available, in accordance with section 776(b) of the Act, because Gourmet has failed to cooperate by not acting to the best of its ability in this case. For a more complete explanation of Gourmet's deficiencies (which include proprietary information) see Memorandum from Thomas Futtner to Holly Kuga, August 20, 1998 (Futtner Memo).

Gourmet has failed to demonstrate that the information which it placed on the record accurately reflects all of the relevant sales made by the company during the period of review and its cost of production. While Gourmet did possess relevant financial statements, it was not able to demonstrate that the information it reported to the Department agrees with those financial statements. Nor did it provide any evidence of factors beyond its control which caused such discrepancies or any reasonable basis for the Department to determine that its questionnaire response was accurate despite these discrepancies. Gourmet has been aware of, but has not corrected, deficiencies in its accounting system even though these deficiencies caused the Department to use facts available for the last several administrative reviews.

The Department does not reject questionnaire responses simply because the respondent does not have an audited financial statement. In such situations, the Department looks to other financial records, prepared for purposes independent of the antidumping proceeding, such as tax statements, which attest to the veracity of a respondent's accounting system and information submitted to the Department. (see, e.g., *Collated Roofing Nails from Taiwan*). In this case, Gourmet possesses relevant (albeit unaudited) financial statements. As Gourmet has acknowledged, however, the financial statements conflict with, and hence do not support, its questionnaire response. See Futtner Memo.

*Borden* does not support Gourmet's contention. Although in *Borden* the court noted that the Department must consider submitted information if that information meets the requirements of section 782(e) of the Act, Gourmet's information does not meet those requirements. Gourmet's submissions are not verifiable and therefore do not meet the requirements of section 782(e)(2). While these submissions are for the most part in the form requested by the Department, their content is unreliable. See Futtner Memo. Moreover, in *Borden*, the court

approved the Department's use of adverse facts available in that case.

Further, *Allied-Signal* is not relevant to this case. In *Allied-Signal*, where the Court held that the respondent had "supplied as much of the requested information as it could and offered to provide the remaining information in a simplified form,...[i]t was unreasonable for the ITA to have characterized respondent's behavior as a refusal to cooperate." That case did not involve evidence on the record indicating a fundamental discrepancy between information in the questionnaire response and the respondent's financial statements. Although Gourmet has participated in several antidumping administrative reviews and is thoroughly familiar with the Department's requirements, it has consistently failed to comply with the Department's standards by continuing to provide unverifiable data.

In addition, Gourmet's reliance on *Chile Mushrooms* is misplaced. *Chile Mushrooms* did not involve a fundamental disagreement between the questionnaire response and the respondent's financial records. Rather certain issues were raised by the findings of an independent audit of the respondent's records. We determined that these findings were either irrelevant for our purposes or could be adequately addressed by adjustments and the use of partial FA. In this case, we are not dealing the results of an independent audit or with information that may be rendered useful by the application of partial facts available.

Gourmet is incorrect that the Department is basing its facts available decision on the findings in previous reviews, where Gourmet admitted that its submissions could not be reconciled. The Department treats each administrative review separately. Based on the information on the record in the instant review, we have determined that Gourmet's accounting system and the information submitted to the Department are unreliable. *Id.* Reliance on the accounting system used for the preparation of the financial statements is a key and vital part of the Department's determination that a company's sales and constructed value data are credible. Section 776(a)(2)(D) of the Act states that the Department "shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title" if an interested party or any other person provides information but the information cannot be verified. Because Gourmet's submissions are not reconcilable to its financial statements and Gourmet has provided no

acceptable explanation and no reasonable alternative support for its submission, it is unverifiable.

Despite the admitted discrepancies between its financial statements and its questionnaire response, Gourmet argued that its questionnaire response nonetheless could be verified using other information, such as bank records. In attempting to demonstrate this, however, it became clear that the records that it was attempting to rely on could not adequately substantiate its response without requiring the Department essentially to perform a complete audit of Gourmet's financial records. This is not the purpose of a verification, which is fundamentally a spot check of selected data—not a detailed examination of a respondent's entire accounting system. We believe that Gourmet has had sufficient notice of the Department's requirements for verifiable submissions and ample opportunity to provide information that is amenable to verification. Yet Gourmet has continued to provide unverifiable data. Therefore, we determine that Gourmet has failed to cooperate by not acting to the best of its ability, and thus we are using an adverse inference in our application of facts available.

Section 776(b) of the Act provides that, in selecting from the facts available, adverse inferences may be used when an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is described in the Statement of Administrative Action (SAA) (at 870) 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."

The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent

practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See, e.g., Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR at 971 (January 7, 1997) and *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* 62 FR 2801 (January 15, 1997) (*AFBs 1997*).

As to the relevance of the margin used for adverse FA, the Department stated in *Tapered Roller Bearings from Japan: Final Results of Antidumping Duty Administrative Review*, 62 FR 47454 (September 9, 1997), that it will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin. *See also Fresh Cut Flowers from Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record that would indicate that the 10.67 percent rate, a rate calculated from the LTFV investigation, is irrelevant or inappropriate as an adverse facts available rate for the respondent in the instant review. Therefore, we have applied, as adverse FA, the highest margin for any firm in any segment of this proceeding, 10.67 percent, as the rate for Gourmet.

#### Final Results of Review

As a result of this review, we have determined that the following margins exist for the period September 1, 1996, through August 31, 1997.

Manufacturer/exporter	Percent margin
Gourmet Equipment (Taiwan) Corporation .....	10.67
Buxton International/Uniauto .....	10.67
Chu Fong Metallic Electric Co. ....	6.93
Transcend International .....	6.93
San Chien Industrial Works, Ltd. ..	10.67
Anmax Industrial Co., Ltd. ....	10.67
Everspring Plastic Corp. ....	6.93
Gingen Metal Corp. ....	6.93
Goldwanate Associates, Inc. ....	6.93
Hwen Hsin Enterprises Co., Ltd. ..	10.67
Kwan How Enterprises Co., Ltd. ..	6.93
Kwan Ta Enterprises Co., Ltd. ....	6.93
Kuang Hong Industries Ltd. ....	6.93
Multigrand Industries Inc. ....	6.93
San Shing Hardware Works Co., Ltd. ....	10.67
Trade Union International Inc./Top Line .....	10.67
Uniauto, Inc. ....	10.67
Wing Tang Electrical Manufacturing Company .....	10.67

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

We will assess antidumping duties on the above firms' entries at the same rate as their above stated dumping margins since the margins are not calculated rates, but are rates based upon facts available pursuant to section 776 of the Act.

Further, the following cash deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firms will be the rates indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 6.93%, the all others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the

final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1)(B) and 777(i)(1) of the Act.

Dated: April 5, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99-8922 Filed 4-8-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-844]

#### Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Japan

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

**EFFECTIVE DATE:** April 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jarrod Goldfeder or John Brinkmann at (202) 482-1784 or (202) 482-5288, respectively, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise