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Ninth Administrative Review
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MEMORANDUM TO: James J. Jochum
Assistant Secretary
Import Administration

THROUGH: Jeffrey May
Deputy Assistant Secretary
Import Administration, Group I

DATE: March 8, 2004

SUBJECT: **Issues and Decision Memorandum for the Final Results Administrative Review; Helical Spring Lock Washers from the People's Republic of China**

BACKGROUND

This is the ninth administrative review in this proceeding. The period of review ("POR") is October 1, 2001 through September 30, 2002.

On November 7, 2003, the Department published Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 68 FR 63060 ("Preliminary Results"), on which parties were invited to submit comments. Shakeproof Assembly Components Division of Illinois Tool Works, Inc. ("petitioner") and Hangzhou Spring Washer Co., Ltd. (previously known as Zhejiang Wanxin Group or ZWG) ("Hangzhou") submitted case briefs on January 5, 2004. The petitioner and Hangzhou submitted rebuttal briefs on January 12, 2004. We have analyzed the case and rebuttal briefs and, as a result, we have made changes to the Preliminary Results. We recommend that you approve the positions detailed in the "Discussion of Comments" section of this memorandum. Below is a complete list of the issues for which we received comments.

Comment 1. Rejection of Market Economy Steel Wire Rod Prices

Comment 2. Valuation of Steel Wire Rod
Comment 3. By-Product Offset
Comment 4. Valuation of Plating
Comment 5. Valuation of Hydrochloric Acid
Comment 6. Valuation of Overhead, SG&A and Profit
Comment 7. Use of Adverse Facts Available
Comment 8. Revocation of the Antidumping Duty Order

DISCUSSION OF ISSUES

Comment 1: Rejection of Market Economy Steel Wire Rod Prices

Petitioner's Argument: The petitioner contends that the Department should continue to disregard the prices Hangzhou paid for imported, market economy steel wire rod ("SWR") because there is substantial record evidence for the Department to believe or suspect that the prices are subsidized. In addition, the petitioner argues that the Department should disregard Hangzhou's import prices because they are aberrant, for a relatively insignificant quantity of SWR, and for SWR that is not comparable to the SWR Hangzhou purchases domestically.

Pursuant to 19 CFR 351.408(c)(1), the Secretary normally will use the price paid to the market economy supplier to value a factor of production (e.g., SWR) where that factor of production is purchased from a market economy supplier and paid for in a market economy currency. However, the petitioner argues, the use of market economy prices is discretionary and, under the Department's subsidy suspicion policy prescribed by Congress, the Department will "avoid using any prices which {the Department} has reason to believe or suspect may be dumped or subsidized prices." See Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompany H.R. 3, H. Report No. 100-578 at 590-91, 1988 U.S. Code and Adm. N. 1547, 1623 (1988) ("OTCA Legislative History").

Citing Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 57420 (November 15, 2001) and accompanying Issues and Decision Memorandum at Comment 1 ("TRBs XIII"), and other reviews in that proceeding, the petitioner argues that the Department has consistently rejected market economy prices where there was reason to believe or suspect that the market economy supplier's prices were

subsidized.[1] The petitioner contends that Department practice and the courts have established that the Department need not rely on the existence of formal countervailing duty ("CVD") findings to believe or suspect that prices are subsidized, and that generally available subsidies or export subsidies in a particular country are sufficient to cause the Department to reject prices from that country. In addition, the petitioner contends that the subsidy suspicion policy does not require a minimum level of subsidization for the Department to have reason to believe or suspect that prices are subsidized.

Given the record evidence regarding Hangzhou's SWR supplier, the petitioner argues that the Department must reject Hangzhou's market economy SWR prices, despite the Department's preference for market economy prices pursuant to 19 CFR 351.408 (c)(1). Citing Certain Cut-to-Length Carbon Steel Plate from Spain and the United Kingdom; Final Results of Expedited Sunset Reviews, 65 FR18056 (April 7, 2000), and accompanying Issues and Decision Memorandum ("CTL CVD Sunset Review"), the petitioner argues that the specific and general subsidy programs used by steel producers in the United Kingdom provide sufficient evidence for the Department to believe or suspect that Hangzhou's market economy SWR prices were subsidized. The petitioner further argues that the Department's findings in other proceedings provide additional reasons for the Department to disregard Hangzhou's import prices under the subsidy suspicion policy. See the March 8, 2004 memorandum to the case file entitled "Business Proprietary Information for the Final Results" ("BPI Memo"), at Petitioner's BPI 1, which contains the cases cited by the petitioner in support of this argument. (We cannot include the petitioner's case cites because they could reveal the name of Hangzhou's SWR supplier.) In addition, the petitioner claims that Hangzhou's market economy SWR supplier received subsidies in the form of energy tax discounts through 2002. See petitioner's case brief at 10 and petitioner's June 20, 2003 submission at Exhibit 1.

The petitioner argues that the Department must presume that steel from any European Union ("EU") country is subsidized because the EU has a wide range of programs that the Department has found countervailable. For example, the petitioner notes the European Regional Development Fund Aid and the European Coal and Steel Community's Article 54 Loans and Loan Guarantees. The petitioner also cites a CVD determination by the Department involving the United Kingdom and argues that Hangzhou's SWR supplier may have benefitted from the subsidies found in that determination. See BPI Memo at Petitioner's BPI 2.

The petitioner further argues that Hangzhou's market economy prices are aberrational and, therefore, should be rejected. In support of its argument, the petitioner compares Hangzhou's prices to price quotes it obtained from an affiliate of Hangzhou's supplier and from an Indian producer of spring quality

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[1]See also Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China, 67 FR 6482 (February 12, 2002) ("ARG Windshields"); and *Louyang Bearing Factory v. United States*, Slip Op. 03-141 (October 27, 2003) ("Louyang").

steel. The petitioner also argues that the Department should disregard Hangzhou's market economy prices because Hangzhou did not import a "meaningful" quantity of SWR, as defined by the Court in its ruling regarding the 1995-1996 administrative review of this order. See *Shakeproof Assembly Components v. United States*, 268 F.3d 1376, 1381-82 (Fed. Cir. 2001) ("Shakeproof"), where the Court stated that "although we recognize that the level of a 'meaningful' amount of imported merchandise must be determined on a case-by-case basis, we are persuaded that the steel imported from the United Kingdom in this case constitutes approximately one-third of all steel used by ZWG {(Hangzhou)} in manufacturing the washers." In addition, the petitioner argues that, unlike past administrative reviews, Hangzhou did not provide evidence showing that its imported SWR is physically identical to its domestically purchased SWR in this review and, therefore, the Department must disregard Hangzhou's market economy prices.

In its rebuttal brief, the petitioner contends that the Issues and Decision Memorandum for the Section 129 Determination: Final Results of Expedited Sunset Review of Cut-to-Length Carbon Steel Plate from the United Kingdom, dated October 24, 2003 ("Section 129 Determination"), and United States - Countervailing Duty Measures Concerning Certain Products from the European Communities, WT/DS212/AB/R (December 9, 2002); and United States - Countervailing Duty Measures Concerning Certain Products from the European Communities, WT/DS212/R (July 31, 2002) at 2.2 (collectively, "WTO rulings") do not demonstrate that Hangzhou's SWR supplier received no subsidies and that the CTL CVD Sunset Review satisfies the Department's believe/suspect standard under the subsidy suspicion policy. See BPI Memo at Petitioner's BPI 3. Lastly, the petitioner argues that the Department's application of the subsidy suspicion policy in this review is not a change in practice simply because the Department failed to apply the policy in prior reviews in this proceeding.

Hangzhou's Argument: Noting that the Department has used Hangzhou's market economy prices to value SWR inputs in the six most recently completed administrative reviews of this order, Hangzhou contends that the Department's rejection of the market economy prices for SWR is an arbitrary and unreasonable departure from past practice. According to Hangzhou, the Department cannot change its methodology regarding the valuation of SWR because the U.S. Court of International Trade ("CIT") deemed a similar change in methodology unreasonable and an abuse of discretion in *Shikoku Chemicals Corp. v. United States*, 16 CIT 382, 288-89, 795 F. Supp. 417 (1992) ("Shikoku").

Hangzhou argues that it relied on the Department's past practice regarding SWR valuations and adapted its business decisions accordingly. Hangzhou states that, in the Preliminary Results, the Department relied exclusively on the CTL CVD Sunset Review to form a reason to believe or suspect that Hangzhou's market economy prices were subsidized and, therefore, reject those prices. Hangzhou contends that the Department cannot rely on the CTL CVD Sunset Review in this administrative review, when that finding has been readily available for the Department to consider in prior administrative reviews. According to Hangzhou, the CTL CVD Sunset Review does not constitute new factual information that could justify the Department's change in practice.

Hangzhou acknowledges that it is Department practice to apply the subsidy suspicion policy to market economy prices paid by NME respondents. However, citing *Fuyao Glass Industry Group Co., Ltd. v. United States*, Slip Op. 03-169 (December 18, 2003) ("Fuyao"), Hangzhou states that the CIT requires "particular, specific and objective evidence" to uphold the Department's rejection of market economy prices based on a reason to believe or suspect that prices are subsidized. According to Hangzhou, the CTL CVD Sunset Review and the Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom, 58 FR 37393 (July 9, 1993) ("1993 CVD Determination") do not demonstrate that Hangzhou's market economy SWR supplier received countervailable subsidies. Therefore, Hangzhou contends that the record in this review lacks the "particular, specific and objective evidence" required by the CIT.

Hangzhou states that, in the CTL CVD Sunset Review, the Department reviewed six subsidy programs that were found in the 1993 CVD Determination. According to Hangzhou, based on the Department's findings in the 1993 CVD Determination and subsequent findings in other CVD proceedings involving steel producers in the United Kingdom, Hangzhou contends that the Department cannot rely on the 1993 CVD Determination or the CTL CVD Sunset Review to formulate a reason to believe or suspect that Hangzhou's SWR supplier benefitted from subsidies. See BPI Memo at Hangzhou's BPI 1.

Hangzhou further contends that the CTL CVD Sunset Review and the 1993 CVD Determination have been undermined by the WTO Rulings and the Department's subsequent Section 129 Determination regarding the CTL CVD Sunset Review. See BPI Memo at Hangzhou's BPI 2. Hangzhou states that, as a result of the WTO Rulings, the Department changed its policy regarding subsidy determinations where the alleged subsidies were provided to a respondent company prior to that company's privatization. See Notice of Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125, 37127 (June 23, 2003) ("Modification Notice").

According to Hangzhou, under the revised privatization policy, the Department will determine if a privatization extinguishes the countervailable subsidies received by an entity prior to its privatization, provided that it meets the Department's requirements. Hangzhou argues that, based on the Department's determination in another proceeding and the WTO rulings, the Department cannot rely on the 1993 CVD Determination or the CTL CVD Sunset Review to form a reason to believe or suspect that Hangzhou's SWR supplier has received subsidies, or that its SWR prices have been tainted by subsidies, particularly in light of the Modification Notice. See BPI Memo at Hangzhou's BPI 3.

In its rebuttal comments, Hangzhou argues that the petitioner's reference to the various Department findings in other proceedings are irrelevant to Hangzhou's SWR import prices because they do not involve subsidy findings, are for products other than SWR or involve steel produced in countries other than the United Kingdom. See BPI Memo at Hangzhou's BPI 4. According to Hangzhou, the Department noted that antidumping findings are relevant only to the specific product, importing country and exporting country. See Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Review, 67 FR 69717 (November 19, 2002), where the

Department accepted surrogate values, alleged by the petitioner to be dumped, because there was no antidumping finding on the material input being imported into the surrogate country.

In addition, Hangzhou argues that the Department's evidence fails to support the rejection of market economy prices because the CTL CVD Sunset Review and the 1993 CVD Determination pertain to cut-to-length carbon steel plate, which differs significantly from the SWR imported and consumed by Hangzhou, both in terms of product type and production process. Hangzhou contends that it is unreasonable to attribute a particular producer's countervailable subsidies which benefitted carbon steel plate production and sales to the same producer's production of steel sheet, wire rod, rebar or any other steel product. Hangzhou further contends that U.S. trade laws have historically treated wire rod and steel plate as distinct products. In support of its argument, Hangzhou notes that the United States International Trade Commission treated steel plate, bar, rebar and wire rod differently in its recent Section 201 investigation. In addition, Hangzhou notes that the United States excluded steel wire rod from the 2001 Global Safeguard Actions because there are separate safeguards in place for wire rod.[2]

Recognizing the low threshold for establishing a reason to believe or suspect that prices are subsidized, Hangzhou contends that speculation by the petitioner that Hangzhou's SWR supplier benefitted from additional subsidies does not meet the evidentiary requirements of the subsidy suspicion policy or for rejecting Hangzhou's SWR import prices. See BPI Memo at Hangzhou's BPI 5. Hangzhou contends that the Department rejected the petitioner's allegation of subsidized surrogate values and stated a preference for relying on formal subsidy findings by the United States or a third country in Barium Carbonate from the People's Republic of China, 68 FR 46577 (August 6, 2003) ("Barium Carbonate"). In addition, Hangzhou cites Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part, 67 FR 68990 (November 14, 2002), and accompanying Issues and Decision Memorandum at Comment 14 ("TRBs XIV"), in support of its argument that it is Department practice to rely on a U.S. or third country CVD finding to reject prices under the subsidy suspicion policy.

Hangzhou contends that the petitioner's SWR price quotes do not serve as an appropriate basis for rejecting Hangzhou's SWR import prices. According to Hangzhou, the Department's regulations and past practice in this proceeding demonstrate that the Department prefers to use market economy prices, regardless of whether the market economy prices are low, because they represent actual market economy transactions. Hangzhou notes that in the 1999-2000 administrative review of this order, the Department stated, "assuming for the sake of argument that the price paid by Hangzhou is low, we do not agree that this is a basis for rejecting the price... While the Department will examine surrogate

[2]Steel Inv. No. TA-201-73, USITC Pub. No. 3479 (December 2001) (Hangzhou's case brief at 19).

values to determine whether they are aberrational, we are not aware of, nor has the petitioner pointed to, any case where we have tested the actual price paid by the NME producer to a market economy supplier." See Helical Spring Lock Washers from the People's Republic; Final Results of Antidumping Duty Administrative Review, 67 FR 8520 (February 25, 2002) and accompanying Issues and Decision Memorandum at Comment 1 ("Seventh Review").

Hangzhou contends that, contrary to the petitioner's assertion, its market economy prices were for a meaningful quantity of SWR. Hangzhou further contends that the standard established in Shakeproof determines the significance of import quantities based not only on purchases, as the petitioner argues, but also on consumption. Hangzhou acknowledges that its POR purchases of imported SWR constitute a relatively small portion of total POR SWR purchases. However, Hangzhou argues, its POR consumption of imported SWR accounted for a significant portion of the total SWR consumption during the POR and, therefore, the market economy prices meet the standard established in Shakeproof and using the market economy prices is consistent with Department practice.

Hangzhou finally contends that the Department established the comparability of, and similarities between, Hangzhou's imported and domestically purchased SWR during verification. See Hangzhou Spring Lock Washers Co. Ltd. Verification Report, dated October 22, 2003 ("Verification Report") at 13. In addition, Hangzhou contends that the record lacks evidence of the similarities between the SWR for which the petitioner submitted price quotes and Hangzhou's imported or domestic SWR.

Department's Position: We disagree with Hangzhou's argument that our rejection of market economy SWR prices is an arbitrary departure from the Department's past practices in this proceeding. While we have indeed used Hangzhou's market economy prices to value SWR in the past six administrative reviews of this order, we have done so because there was no record evidence that the prices in question were dumped. See, e.g., Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 67 FR 69717 (November 19, 2002) and Accompanying Decision Memorandum at Comment 4. Furthermore, the record evidence in previous reviews of this order did not give the Department a reason to believe or suspect that Hangzhou's SWR prices may have been distorted by subsidies. However, this does not preclude a party from submitting new information, or calling the Department's attention to information not previously presented, in subsequent reviews to support the argument anew. The Department's past findings in this proceeding do not preclude the Department from considering such information and changing its treatment of Hangzhou's SWR prices based on that information in this administrative review.

In addition, we find that Hangzhou's reliance on Shikoku is misplaced, and that the Court's ruling in Shikoku does not preclude the Department from changing its treatment of Hangzhou's SWR prices. In Shikoku, the Court overturned the Department's determination that the respondent had an above *de minimis* rate for the period of review, and, therefore, the order would not be revoked. The Court

based its ruling on the fact that, for the period of review in question, the Department had employed a new methodology for calculating an adjustment for home market repackaging expenses. The Court found that the Department's new methodology was little more than a minor adjustment. In addition, the Court pointed out that there was record evidence, in the form of an affidavit, that Shikoku had relied on the Department's prior methodology and had adjusted its prices in accordance with that methodology. Id. at 420. The Court also observed that the Department did not argue that there was a new breakthrough in methodology which would reveal significant and heretofore undiscovered dumping. Id. at 421.

Unlike the facts in Shikoku, the Department's reliance on the OTCA Legislative History concerning its reason to believe or suspect that a particular input price may be subsidized is not a minor adjustment in the Department's methodology that is limited to this review. Indeed, the Department's concern about the use of potentially subsidized or dumped prices in calculating normal value pursuant to the nonmarket economy, factors of production methodology predates the initiation of this review. See, e.g., TRBs XIII. Further, the Department's subsidy suspicion policy is designed to reveal evidence of heretofore undiscovered prices that may be subsidized. And, unlike the facts in Shikoku, Hangzhou points to no record evidence indicating that it relied upon the Department's past use of the market economy SWR prices in formulating its business practices.

The Department has articulated its application of the OTCA Legislative History to reject market economy input prices that may be distorted by dumping or subsidies in several proceedings. See, e.g., TRBs XIII. In upholding the Department's practice, the Court has required "particular, specific and objective" evidence for the Department to reject market economy prices. The Court also has found that U.S. CVD findings meet this evidentiary standard. For example, in TRBs XIII, the Department rejected market economy prices citing U.S. CVD determinations relating to subsidies that were generally available to all exporters or were specific to and used by several steel exporters in the market economy country from which CMC, a NME producer, imported steel inputs. The CIT affirmed the Department's rejection of market economy prices stating that, "a company like CMC's supplier may have benefitted from a generally available subsidy program...by virtue of having engaged in foreign trade. Commerce specifically found that such a program existed and that companies like CMC's supplier did indeed use the {subsidy} program." See *China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003) ("China National").

In addition, we note that the Department's practice of relying on final subsidy findings to reject prices is evident in Barium Carbonate, in which the Department stated that "insofar as the Department has not made a finding or otherwise concluded that subsidies exist in the Indian barite ore industry, we did not disregard the Indian barite ore data as a potential source of surrogate values on the basis of the petitioner's subsidy allegation." See Barium Carbonate at Comment 1a. In other words, because the record in Barium Carbonate did not contain evidence of subsidies to the Indian barite ore industry, in the form of a formal CVD determination, the Department did not disregard the Indian barite ore data.

For the first time in this proceeding, the petitioner points to the 1993 CVD Determination and the CTL CVD Sunset Review in support of its argument that Hangzhou's SWR prices are distorted by subsidies. In the 1993 CVD Determination, the Department found several countervailable subsidies were received by steel producers in the United Kingdom. See BPI Memo at The Department's BPI 1. In addition, in the CTL CVD Sunset Review, the Department found that "revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a subsidy" at a countervailable rate of 12 percent for all but one U.K. steel producer. The Department also found that because "no evidence has been submitted to the Department demonstrating the termination of the countervailable programs, it is reasonable to assume that these programs continue to exist and are utilized." See CTL CVD Sunset Review at Comment 1. Most recently, in October 2003, the Department reaffirmed its CTL CVD Sunset Review findings in the Section 129 Determination, stating that "we continue to find likelihood of continuation or recurrence of a countervailable subsidy with respect to the order on CTL Plate from the United Kingdom." See Section 129 Determination at 9. (We note that the United States Trade Representative declined to instruct the Department to implement this determination. See Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Duty Measures Concerning Certain Steel Products from the European Communities, 68 FR 64858, 64859 (November 17, 2003).)

The U.S. CVD findings cited by the petitioner in this review, the 1993 CVD Determination and the CTL CVD Sunset Review, provide evidence of subsidies that were generally used by the U.K. steel industry (e.g., Canceled National Loan Funds Debt and Regional Development Grants). See BPI Memo at The Department's BPI 2. In addition, we note that none of the subsidies investigated in the 1993 CVD Determination or the CTL CVD Sunset Review were tied to a particular steel product, meaning they may have benefitted any steel product made in the United Kingdom. Therefore, we disagree with Hangzhou's contention that the subsidies investigated in the 1993 CVD Determination and CTL CVD Sunset Review do not provide a basis to believe or suspect that subsidies may distort SWR prices from the United Kingdom. Given the Court's requisite "particular, specific and objective" evidence of price distortions, we find that a countervailing duty order on steel products from the United Kingdom, which was in effect throughout the entire POR, provides the Department with sufficient evidence to believe or suspect that Hangzhou's SWR prices may be distorted by subsidies. See BPI Memo at The Department's BPI 3. Therefore, we continue to reject Hangzhou's market economy SWR prices.

We disagree with Hangzhou's argument that the Department's findings in other CVD proceedings, the WTO Rulings and the Section 129 Determination undermine the Department's findings in the 1993 CVD Determination and the CTL CVD Sunset Review. We also disagree that the Department should reconsider its findings in the 1993 CVD Determination and the CTL CVD Sunset Review. Nothing contained in these other proceedings alters the continued existence of affirmative CVD findings with regard to steel exports from the United Kingdom. Moreover, any attempt by the Department to reexamine those existing findings of subsidization in this proceeding would be tantamount to conducting a formal investigation, or re-investigation, of our past findings and in direct contradiction to the OTCA

Legislative History (Congress did "not intend for the Department to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intended for Commerce to base its decision on the information generally available to it at that time." H.R. Rep. No. 100-576 at 590-591 (1988)). Therefore, we find that the CVD proceedings cited by Hangzhou and the WTO Rulings are irrelevant to the question of whether the Department has a reason to believe or suspect that Hangzhou's SWR may be subsidized, particularly because the Department's determinations in the CTL CVD Sunset Review are still in effect.

Given our belief or suspicion that Hangzhou's market economy prices may be subsidized, we do not find it necessary to consider the petitioner's contention that Hangzhou's SWR supplier received subsidies in addition to those investigated in the 1993 CVD Determination and the CTL CVD Sunset Review. Nor do we find it necessary to consider the petitioner's additional arguments for rejecting Hangzhou's SWR prices.

Comment 2. Valuation of Steel Wire Rod

In the October 31, 2003 Memorandum to the file, "HTSUS Classification of the Steel Wire Rod Input" ("SWR Memo"), the Department stated that the most appropriate Harmonized Tariff Schedule of the United States ("HTSUS") product category for valuing the steel wire rod ("SWR") Hangzhou used to produce helical spring lock washers ("HSLWs") is 7213.91.45, "bars and rods, hot rolled in irregularly wound coils of iron or non alloy steel." Nevertheless, the Department used import data reported in the *Monthly Statistics of Foreign Trade of India* ("Indian import statistics") for HTSUS category 7213.91 because the Indian Import Statistics do not contain separate data for 7213.91.45. See Memorandum to the file, "Valuation of Factors of Production" ("FOP Memo"), dated October 31, 2003. Also, in accordance with the Department's subsidy suspicion policy, we excluded SWR import data for South Korea, Indonesia, Thailand, the United Kingdom, Belgium, Canada, France and Germany because the Department has made final affirmative CVD determinations on steel products from these countries. See Preliminary Results and FOP Memo.

Petitioner's Arguments: The petitioner contends that the Department should not use HTSUS category 7213.91 to value SWR because it includes sub-categories for steel other than spring quality steel. The petitioner contends that spring quality steel is the steel type used to make HSLWs. In addition, the petitioner argues that the Indian import statistics are aberrational because they differ from several price quotes on the record. Therefore, the petitioner argues, the Department should 1) use the Indian price quotes for spring quality steel; or 2) use Indian Import Statistics for spring quality steel only, which is classified under HTSUS sub-category 7214.99.01; or 3) average the Indian Import Statistics for HTSUS category 7213.91 and sub-category 7214.99.01. The petitioner states that the Department should adjust all Indian import statistics it may use in the final results, in accordance with its subsidy suspicion policy.

The petitioner argues that the Court did not overturn the Department's application of the subsidy

suspicion policy in Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China, 67 FR 6482 (February 12, 2002) ("ARG Windshields") but rather required additional evidence from the Department to support its rejection of certain data. See *Fuyao Glass Industry Group Co., Ltd. v. United States*, Slip Op. 03-169 (December 18, 2003) ("Fuyao") at 19-20. The petitioner further contends that the Department has consistently disregarded import data from South Korea, Thailand and Indonesia because of known, generally available subsidy programs in these countries. See petitioner's June 20, 2003 submission at 8-10 and Exhibit 9.

Hangzhou's Arguments: Hangzhou contends that the Department is obligated to review all data on the record to determine what constitutes the best available information or explain why certain data are not methodologically reliable. See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002) and accompanying Issues and Decision Memorandum at Comment 4 (quoting *Olympia Industrial, Inc. v. United States*, 7 F. Supp. 2d 997, 1001 (CIT 1998)). In addition, according to Hangzhou, the Department has a preference for market economy prices actually paid by the NME respondent because they are the best approximation of a material input's value. See, e.g., TRBs XIII and China National. Therefore, Hangzhou contends that the best available information for valuing SWR is Hangzhou's market economy SWR prices, and that the next best alternative is to adjust the market economy SWR prices upwards by the maximum subsidy rate found by the Department in the CTL CVD Sunset Review. In addition, Hangzhou argues that the Department should not use the petitioner's price quote to value SWR because it is unreliable, the record lacks evidence for the Department to test its comparability to the SWR that Hangzhou consumes, and because there is reliable, publicly available information on the record. Hangzhou states that the Department is obligated to explain how the use of a surrogate value is more appropriate than Hangzhou's actual or subsidy-adjusted market economy SWR prices, particularly given the Department's past practice of using Hangzhou's market economy SWR prices in this proceeding.

Hangzhou argues that, if the Department continues to value SWR using Indian Import Statistics, it should not exclude import data for Indonesia, South Korea and Thailand, but should exclude certain aberrational values from the Indian import statistics. According to Hangzhou, the CIT rejected the Department's determination in ARG Windshields that all exports from South Korea, Thailand and Indonesia must be presumed to be subsidized. See Fuyao, Slip Op. 03-169 at 20-22. Hangzhou contends that the record evidence in this review does not demonstrate the existence of broadly available, non-industry specific export subsidy programs in these three countries and, therefore, the Department does not have a reasonable basis on which to presume the import data are unusable. Hangzhou also contends that the Department should exclude import data for the United States and Sweden under HTSUS category 7214.99.01 because they are aberrational.

The Department's Position: For the reasons discussed in the SWR Memo, we continue to find that the SWR classified under HTSUS category 7213.91 is the most appropriate data to value the SWR

consumed by Hangzhou during the POR. In addition, we continue to find that the Indian Import Statistics are the best and most reliable surrogate information on the record because they are publicly available, representative of a range of prices, non-export values, and tax and tariff-exclusive. The price quotes provided by the petitioner were either U.S. prices obtained from a U.S. company or they were for spring quality steel, which the Department determined is not comparable to the SWR Hangzhou used to produce HSLWs. See SWR Memo. Therefore, we find that the price quotes are not the best representation of what SWR comparable to that used by Hangzhou during the POR would cost in India (i.e., the primary surrogate country). Furthermore, the two price quotes that fall within the POR are 4 to 10 percent higher than the surrogate value we used in the Preliminary Results. We find that the minor variations between the price quotes and the Indian import statistics fail to demonstrate that the Indian import statistics are aberrational. We also find that it is unreasonable to include import data under the HTSUS category for spring quality steel, as the petitioner suggests, because, as stated above, spring quality steel is not comparable to the SWR used by Hangzhou during the POR. Therefore, we need not address the issue of whether the Indian Import Statistics under HTSUS category 7214.99.01 contain aberrational data, which Hangzhou raised in its case briefs.

Hangzhou suggests that the Department create a value for SWR by increasing Hangzhou's market economy SWR prices by the highest countervailing duty rate in the CTL CVD Sunset Review (12 percent). As discussed in Comment 1, the Department has found sufficient evidence to believe or suspect that Hangzhou's market economy SWR prices may be subsidized. Therefore, we find that this approach would be inconsistent with the OTCA Legislative History because we would still be using prices that we believe are subsidized to value Hangzhou's SWR, which Congress specifically directs the Department to avoid using. Furthermore, we believe that if Congress intended for the Department to remedy the distortions created by subsidized or dumped prices as suggested by Hangzhou, it would have clearly stated so in the OTCA Legislative History, which it did not do.

We agree with the petitioner that it is the Department's practice to exclude import data from South Korea, Thailand and Indonesia from our surrogate value calculation because of known, generally available, non-industry specific export subsidy programs in these countries. In February 2002, the Department's Office of Policy articulated this policy in a memorandum to Deputy Assistant Secretary and Office Directors entitled, "NME investigations: procedures for disregarding subsidized factor input prices." The Department applied this policy in ARG Windshields, in which the Department relied on U.S. CVD determinations on broadly available, non-industry specific export subsidies maintained by South Korea, Thailand and Indonesia to form a reason to believe or suspect that export prices from these countries are distorted. See ARG Windshields Issues and Decision Memorandum at Comments 1, 2, and 5.

We also agree with the petitioner to the extent that the CIT did not reject the Department's application of the subsidy suspicion policy in ARG Windshields, but rather required the Department to provide additional evidence to sustain the Department's rejection of potentially subsidized prices. In fact, the CIT stated that, "in light of Commerce's broad discretion in selecting surrogate values for factors of

production....the Court finds that Commerce's decision to avoid subsidized prices is reasonable and, accordingly, defer[ed] to it." See Fuyao, Slip Op. 03-169 at 15-16 (the CIT ruling on ARG Windshields). In the Preliminary Results, we relied on our analyses and findings cited in ARG Windshields to form a reason to believe or suspect that steel prices from South Korea, Thailand and Indonesia may be subsidized. See Preliminary Results, 68 FR at 63062-36063. See also ARG Windshields at Comments 1, 2 and 5, in which the Department discusses several U.S. CVD determinations on various steel products from South Korea, Indonesia and Thailand. Therefore, we continue to find that there is substantial record evidence to exclude Indian import statistics for these three countries from our SWR surrogate value calculation, in accordance with our subsidy suspicion policy.

In the Preliminary Results, we also disregarded import data from the United Kingdom, Belgium, Canada, France and Germany. Contrary to Hangzhou's assertion, the record does contain evidence of subsidization in these countries. Specifically, the petitioner submitted a list of countries subject to U.S. CVD determinations, which includes South Korea, Indonesia, Thailand, Belgium, Canada, France, Germany and the United Kingdom. See the petitioner's June 20, 2003 submission at 8-10 and Exhibit 9. In its June 20, 2003 submission and in its case brief, the petitioner argues that U.S. CVD determinations on steel products from these countries provide sufficient reason for the Department to believe or suspect that steel prices in these countries are subsidized. Based on a review of U.S. CVD determinations involving these countries, we find that there is sufficient evidence to continue to exclude Indian import statistics for the United Kingdom, Belgium, Canada and Germany from our calculation, in accordance with the Department's subsidy suspicion policy.

In implementing the subsidy suspicion policy, we are mindful of the CIT's requirement that the Department demonstrate a clear nexus between subsidies in a particular country and the factor of production in question (i.e., SWR).[3] We have discussed the evidence of subsidized prices in the United Kingdom in Comment 1, above, which illustrates the nexus between subsidies in the United Kingdom and SWR from the United Kingdom In addition, we have relied on past U.S. CVD determinations as sufficient evidence to disregard import data from Belgium, Canada, and Germany for the purposes of calculating a surrogate value for SWR.

First, in Certain Cut-to-Length Carbon Steel Plate from Belgium; Notice of Final Results of Expedited Sunset Review, 65 FR 18066 (April 6, 2000) and accompanying Issues and Decision Memorandum ("Belgian CTL"), the Department stated that it found subsidies, such as cash grants and interest subsidies under the Economic Expansion Law of 1970, determined to be regionally specific and

[3] For example, in China National, the CIT stated that it will "affirm Commerce's actions if, given the entire record as a whole, there is substantial, specific, and objective evidence which could reasonably be interpreted to support a suspicion that prices CMC paid to its market economy supplier were distorted." China National, 293 F. Supp. 2d at 1335.

countervailable in the original CVD investigation. See Belgian CTL Issues and Decision Memorandum at 1-2. In Belgian CTL, the Department found that none of the countervailable subsidy programs from the original investigation, such as equity infusions, debt conversions and assumptions, and European Coal and Steel Community's Article 54 Loans and Loan Guarantees, all of which benefitted individual steel companies, were terminated. As a result, in Belgian CTL, the Department calculated CVD rates of 23.15 percent and 1.05 percent for two Belgian steel producers, and 5.29 percent for all other Belgian steel producers. In addition, we note that the countervailable subsidies in Belgian CTL were not tied to a particular product and, therefore, could benefit, and thereby could distort the prices of, any of the steel products made by the respondents, which include SWR.

Second, with respect to Canada and Germany, we note that the Department made final affirmative CVD determinations on SWR, the factor of production in question here, from these two countries in August 2002.[4] CVD rates applicable to individual respondents ranged from zero to 6.61 percent in Canadian SWR, and from 1.12 to 18.46 percent in German SWR.

With respect to France, after a review of the facts of several U.S. CVD determinations on French steel products, we do not find that there is a reason to believe that SWR from France was subsidized during the POR.[5] Therefore, unlike the Preliminary Results, we have included Indian import statistics for France in our calculation of the SWR surrogate value in the final results.

Comment 3. By-Product Offset

The Petitioner's Argument: Citing Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 10690 (March 6, 2003) ("2003 Hand Tools"), the petitioner argues that the Department will offset consumption figures only where the respondent demonstrates a direct link between the production of subject merchandise and the sales of scrap materials recovered from the production process. According to the petitioner, the Department cannot make a scrap offset in the final results margin calculations because the record evidence does not

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[4]See Notice of Final Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 55813 (August 30, 2002) ("Canadian SWR"); and Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 55808 (August 30, 2002) ("German SWR")

[5]See, e.g., Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review, 68 FR 53963 (September 15, 2003) and accompanying Issues and Decision Memorandum; and the Issues and Decision Memorandum for the Section 129 Determination: Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France, October 24, 2003.

demonstrate that Hangzhou's scrap sales are proportional to the production of subject merchandise. In addition, the petitioner contends that scrap sales figures could not be verified, yet another reason to deny Hangzhou a scrap offset.

Hangzhou's Argument: Hangzhou contends that the Department intended to offset Hangzhou's cost of manufacture ("COM") by the value of its steel scrap sales but the preliminary margin program inadvertently adds this value to COM.

In its rebuttal brief, Hangzhou contends that the Department fully verified the accuracy and reliability of its POR steel scrap sales and, therefore, the Department should grant the offset. See Verification Report at 16. In addition, Hangzhou notes that the difference between the reported and verified scrap sales quantities is negligible. See Hangzhou's rebuttal brief at 22.

Department's Position: We agree with Hangzhou that we should continue to grant an offset for its sales of steel scrap. As stated in the Verification Report at 16-17, we verified the quantity and value of steel scrap sales in March 2002 and tied those sales to the quantity of scrap recovered from the HSLW workshop. Therefore, we find that there is a sufficient link between the recovery and sale of steel scrap to make a scrap offset in accordance with the Department's practice described in 2003 Hand Tools. We also agree with Hangzhou that the margin calculation in the Preliminary Results incorrectly adds, instead of subtracts, by-product sales revenue to selling, general and administrative expenses ("SG&A") and the total cost of production. Therefore, we have revised the programming language proposed by Hangzhou in its case brief.

Comment 4. Valuation of Plating

Petitioner's Argument: The petitioner states that the Department correctly used a surrogate value for plating, instead of valuing the individual plating inputs used by Hangzhou's subcontractors, because it is the most accurate and best available information. The petitioner argues that the plating value, a price quote from an Indian electro-plater, was obtained from arm's-length contacts and is comparable to the build-up of the plating inputs the Department used in past administrative reviews. In addition, the petitioner contends that the price quote is preferable because it includes the financial expenses of a plating company. According to the petitioner, the Department would have to add overhead, SG&A and profit to the plating factors if the Department were to value the individual plating inputs. In its rebuttal brief, the petitioner states that it is unrelated to the plating company that provided the price quote. The petitioner also states that Hangzhou has not demonstrated that the price quote is unreasonable or significantly different from what Hangzhou actually pays for plating in the PRC.

Hangzhou's Argument: Hangzhou contends that the Department should not use the plating price quote as a surrogate value for plating services because the Department's practice is to value the factors of production used by Hangzhou's plating subcontractors. Hangzhou states that, in the Seventh Review, the Department rejected the petitioner's request to use a surrogate value for plating because

there was a risk of double-counting overhead, SG&A, and profit for the plating portion of the production process with a plating surrogate value. According to Hangzhou, nothing has changed since the Seventh Review. The Department is still using similar data to calculate surrogate overhead, SG&A and profit ratios, for which there is insufficient information to determine whether the companies comprising the data have cost structures that include plating, and Hangzhou still uses plating subcontractors. Hangzhou argues that, because the plating price quote already incorporates an amount for the source-company's financial expenses and profit, the Department runs the same risk of double-counting in this review. Hangzhou contends that, if the Department uses the surrogate value for plating, it will effectively treat Hangzhou's plating subcontractor as an independent producer by including separate overhead, SG&A and profit ratios for the plating operations. Hangzhou contends that 19 CFR 351.401(h) precludes the Department from treating Hangzhou's subcontractor as a separate producer because the Department found that Hangzhou controlled its subcontractors. Therefore, Hangzhou contends, the Department should treat Hangzhou and its platers as one entity and should value the subcontractor's material inputs.

Hangzhou also contends that the price quote obtained and provided by the petitioner is the antithesis of publicly available information required by Department practice and is the type of information the Department has consistently rejected. See Notice of Final Determinations of Sales at Less Than Fair Value; Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160, 9168 (February 28, 1997), where the Department stated, "we have relied on publicly available information instead of the private correspondence." See also Hangzhou's case brief at 28-29. Similarly, Hangzhou contends that in this review the Department has been presented with private correspondence between the petitioner and a purported Indian electro-plater which lacks credibility and is not publicly available information. Hangzhou states that the price quote received by the petitioner was not written on company letterhead, and provides no contact information (e.g., phone number, fax number, or e-mail address) that the Department or Hangzhou could use to judge the authenticity and reliability of the price quote. In addition, Hangzhou argues that the Department should verify the reliability of the price quote and the circumstances under which it was solicited because the petitioner neglected to submit earlier correspondence between the Indian plating company and an apparent Indian affiliate of the petitioner.

Hangzhou argues that, if the Department continues to use the price quote to value plating, then the Department should exclude Hangzhou's reported labor consumption for plating from the final margin calculations.

In its rebuttal brief, the petitioner states that it does not object to the Department revising the margin program to eliminate the alleged double-counting of plating labor.

Department's Position: In this review, unlike in past administrative reviews of this order, the Department has a choice between using a surrogate value for plating or the factors of production consumed by Hangzhou's unaffiliated plating subcontractors (i.e., plating build-up) because the

petitioner submitted a plating price quote from an independent surrogate plater. Given this new information, we reconsidered whether our past practice of using the plating build-up is warranted or whether the new plating information represents the best available information for this review.

In the Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances; Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision Memorandum ("Vietnam Fish"), the Department stated that, "our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise. If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process." See Vietnam Fish Issues and Decision Memorandum at Comment 3. In this particular case, the record shows that Hangzhou is not a fully integrated producer because it does not have the capacity to plate HSLWs. Therefore, pursuant to the Department's practice, we would not normally value the factors of production consumed by Hangzhou's plating subcontractors. However, in past reviews, including the Seventh Review, the platers' factors of production data were the only information available to the Department to value plating and, therefore, we were required to use that information. In this review, however, the record contains a surrogate value for plating, in addition to the subcontractors' factors of production.

In the Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003) and accompanying Issues and Decision Memorandum ("PVA from China"), the Department articulated its preference for using surrogate prices over a "build-up" approach where the respondent does not produce a material input for its own consumption. Specifically, the Department stated that the NME respondent "itself does not manufacture acetic acid, but rather purchases it from an NME supplier. Therefore, the acetic acid itself is the relevant factor of production to {the NME respondent} because it is the input introduced directly into {its} production process. As such, we have valued it using a surrogate value consistent with our practice." See PVA from China Issues and Decision Memorandum at Comment 1. Similarly, with respect to Hangzhou, we find that plating is the relevant factor of production, rather than the inputs used to plate HSLWs, because Hangzhou itself does not consume the plating inputs. Rather, Hangzhou's unaffiliated plating subcontractors consume the material inputs used for plating while Hangzhou simply pays its subcontractors a fee for plating the HSLWs that Hangzhou produces. Therefore, we find that using the plating price quote is consistent with our normal practice under section 773(c)(1)(B) of the Act. Furthermore, we find that the plating price quote is the best available information because it accurately reflects Hangzhou's business operations and the costs it incurs to produce plated HSLWs. In addition, because we have a surrogate value for plating on the record, we find that a deviation from our normal practice is unwarranted.

We also find that Hangzhou's argument to treat the subcontractors' factors of production as if they were Hangzhou's own mirrors SVW's argument in PVA from China, which the Department found was without legal justification. See PVA from China Issues and Decision Memorandum at Comment 1. In

this administrative review, Hangzhou essentially argues that the Department should, as with affiliated producers in a market economy case, treat Hangzhou and its subcontractors as a single entity for purposes of calculating dumping margins. However, as the Department stated in PVA from China, the Department's regulation on collapsing, 19 CFR 351.401(f), would not apply to this proceeding, even if this were a market economy case, because Hangzhou's plating subcontractors are not affiliated with Hangzhou, nor do they produce similar or identical merchandise. See PVA from China Issues and Decision Memorandum at Comment 1. See also Verification Report at 3, "Hangzhou explained that it is not affiliated with {its} platers."

Hangzhou contends that using the plating price quote creates the potential for the Department to overstate its overhead, SG&A and profit ratios for the plating portion of Hangzhou's production process. In the Preliminary Results, we treated the plating price quote the same as we treated all other material inputs used by Hangzhou and included the plating value in our calculations of the SG&A and profit ratios (however, unlike other material inputs, we excluded plating from our overhead calculation because Hangzhou does not incur overhead expenses for plating operations). We find that this is a reasonable and accurate calculation because, like all other material inputs used for producing HSLWs (e.g., SWR, caustic soda), Hangzhou incurs selling, general and administrative expenses to acquire plating services (or any other material input) through its subcontractors, and to sell plated HSLWs. (See Hangzhou's January 21, 2003 submission at page D-9 for a list of its material inputs.) In addition, the record contains no evidence demonstrating that the price Hangzhou pays for plating is different from the prices it pays for other material inputs, in terms of whether the prices include values for the supplier's material, labor, energy, overhead and SG&A expenses, and profit. Therefore, we do not find that using the plating surrogate price overstates Hangzhou's SG&A and profit ratios. In addition, we do not find it unreasonable or inaccurate to treat the plating surrogate price the same as we have treated the surrogate prices for other material inputs with respect to SG&A and profit.

Hangzhou also contends that we have used the plating build-up in past reviews because the surrogate information for overhead, SG&A, and profit provided limited information concerning the surrogate companies' cost structures. Indeed, in the Seventh Review, the Department stated that "there is no information on the record of this proceeding to indicate whether the Indian producers whose information is used to compute the overhead, SG&A, and profit ratios perform their own plating or subcontract for it. Without such information, the petitioner cannot claim that normal value is understated." See Seventh Review Issues and Decision Memorandum at Comment 2. Because this record contains surrogate value information for two different groups of companies, both of which lack company-specific information to enable us to determine whether their cost structures are similar to Hangzhou's (i.e., whether the companies are fully integrated or have the ability to plate their own HSLWs), we have not considered the surrogate overhead, SG&A, and profit data in our selection of the best available information for valuing plating. Instead, we have analyzed the record information pertaining to plating without regard to the surrogate overhead, SG&A and profit data, as discussed above.

We also find that Hangzhou's reliance on 19 CFR 351.401(h) in support of its argument that the Department should treat Hangzhou and its plating subcontractors as one entity is irrelevant to the question of whether the plating surrogate value is the best available information. Pursuant to 19 CFR 351.401(h), the Department "will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale, of the subject merchandise or foreign like product." We find Hangzhou's argument irrelevant to this issue because 19 CFR 351.401(h) relates to the question of whether a subcontractor should be treated as a producer of subject merchandise for which the Department might calculate a separate dumping margin. Contrary to Hangzhou's assertion, there is no record evidence indicating that Hangzhou controls its plating subcontractors, or that the subcontractors acquire ownership, or control the sales, of Hangzhou's HSLWs. Furthermore, no party has argued, and the record contains no information that would lead us to consider, on our own, whether the subcontractors should be treated as a producer under 19 CFR 351.401(h).

Hangzhou further contends that the price quote is unreliable, unverifiable and lacks credibility because it was obtained by the petitioner through private correspondence. The petitioner submitted the plating price quote on March 20, 2003 (at Exhibit 4, Attachment 5), along with a list of over 30 Indian plating companies and their contact information. Included in this list was the company from which the petitioner obtained the plating quote, its address, website, telephone and fax numbers, and a contact person. Therefore, we disagree with Hangzhou's contention that the price quote is unverifiable. In addition, we note that Hangzhou has not provided an alternative price quote or any other information that would suggest that the price quote is unreliable or inaccurate. Lastly, while price quotes, such as the one in question, might not satisfy the Department's goal of obtaining publicly available surrogate value information, we note that the Department has broad discretion in selecting surrogate values and is not limited to a particular type of or source for surrogates. See, e.g., *Shakeproof Assembly Components v. United States*, 268 F.3d 1376, 1381-82 (Fed. Cir. 2001); *Magnesium Corp. of America v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1992) (section 1677b(c)(A) of the Tariff Act of 1930, as amended, gives Commerce broad discretion in valuing the factors of production.) In this particular instance, we find that the price quote is the best available information to the Department.

Comment 5. Valuation of Hydrochloric Acid

Petitioner's Argument: The petitioner disagrees with the Department's preliminary finding that Indian import statistics for hydrochloric acid are aberrational, and contends that the Department should use the Indian Import Statistics in the final results. According to the petitioner, the fact that the Indian import statistics are different from U.S. import values does not prove them unreasonable or unreliable. The petitioner states that the Indian import statistics the Department used to value other factors of production in the Preliminary Results have low import quantities, similar to the Indian import statistics quantities for hydrochloric acid. Therefore, the petitioner contends, the Department should conclude that the hydrochloric acid data is not aberrational.

The petitioner also contends that the Department should disregard the Indonesian data submitted by Hangzhou on February 28, 2003, because the Department's practice is to use data from the primary surrogate country, exclusively.

Hangzhou's Argument: Hangzhou contends that the Department correctly determined that the Indian import statistics for hydrochloric acid were aberrational and that the petitioner failed to demonstrate that the *Indian Chemical Weekly* ("ICW") data is aberrational or unreliable. Therefore, Hangzhou states, the Department should continue to use ICW data to value hydrochloric acid.

Department's Position: In the FOP Memo, we noted that the average value for hydrochloric acid derived from the Indian Import Statistics was US$4.15 per kilogram and that the U.S. benchmark value, derived from U.S. import data, ranged from US$0.07 to US$0.09 per kilogram. In addition, the Department derived from ICW a value of US$ 0.068 per kilogram for hydrochloric acid. The Indian import statistics are clearly aberrational when compared to the U.S. benchmark data or the ICW data, which the Department used in the Preliminary Results. We note that we have used U.S. prices as benchmarks to test the reliability of a particular surrogate value in past cases, and that the courts have upheld this methodology. See *Timken Company v. United States*, 59 F. Supp 2d 1371, 1376 (CIT 1999). Furthermore, the ICW data provide a surrogate value that is (1) an average, non-export value; (2) representative of a range of prices within the POR; (3) product-specific; (4) tax and tariff-exclusive; (5) from the primary surrogate country, India. Therefore, we continue to find that the ICW data is the best information on the record to value hydrochloric acid.

Comment 6. Valuation of Overhead, SG&A, and Profit

Hangzhou's Argument: Hangzhou argues that the data the Department used to calculate surrogate overhead, SG&A and profit ratios in the Preliminary Results are overly broad and, therefore, are not representative of Hangzhou's operations.[6] According to Hangzhou, the record lacks information to determine if the 1,927 companies comprising the RBI data are manufacturers or service providers, or if the companies make products comparable to the products made by Hangzhou. Hangzhou contends that RBI Bulletin data for "Processing and Manufacturing: Metals, Chemicals, and Products Thereof" ("metals data"), which the Department has used to calculate surrogate financial ratios in all of the prior administrative reviews in this order, is more representative of Hangzhou's operations and, therefore, constitutes the best available information to the Department. Hangzhou further contends that the record lacks evidence demonstrating that the metals data are less probative or reliable than in past reviews. Citing the Notice of Final Determination of Sales at Less Than Fair Value; Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 54472, 54475 (October 24,

[6]The Department used data from the *Reserve Bank of India Bulletin* ("RBI Bulletin"), "Combined Income, Value of Production, Expenditure and Appropriations Accounts for the Selected 1,927 Public Limited Companies (2000-2001) ("RBI data") to calculate surrogate financial ratios.

1995) ("Drawers"), and Heavy Forged Hand Tools from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews, 62 FR 11813 (March 13, 1997) ("1997 Hand Tools"), Hangzhou also contends that the Department assigns a greater value to the comparability of surrogate companies' and respondents' operations than to the contemporaneity of the data it uses to calculate surrogate financial ratios. Therefore, Hangzhou urges the Department to use the metals data to calculate surrogate financial ratios even though the metals data is less contemporaneous than the data used in the Preliminary Results.

Petitioner's Argument: The petitioner argues that contemporaneity is an important consideration in selecting surrogate financial ratios because the Indian economy has been transforming quickly in the past few years. In addition, the petitioner contends that the metals data are skewed by the inclusion of chemical companies and that the broader data used in the Preliminary Results eliminates the potential for this type of skewing or bias in the data.

Department's Position: We agree with the petitioner that the RBI data is the best available information for valuing overhead, SG&A and profit. The metals data, while specific to the metals and chemicals industries, contain companies' financial information for 1992-1993, which are nine years prior to the beginning of the POR. The RBI data are not industry specific, but contain companies' financial information from 2000-2001, which are significantly more contemporaneous to the POR than the metals data. In those cases such as 1997 Hand Tools and Drawers, where the Department chose more product-specific data over more contemporaneous data, we note that the data differed by no more than two years and was no more than five years removed from the period of review. Specifically, in 1997 Hand Tools, the period of review was February 1, 1995 to January 31, 1996. In that review, the Department relied on industry-specific data from 1990, and declined to use less specific data from 1992, to value labor costs. See 1997 Hand Tools, 62 FR at 11815-11816. In Drawers, the Department used more specific data from January 1994, instead of less specific data from five of the six months in the period of investigation (June - October 1994) to value steel inputs. See Drawers, 60 FR at 54474.

However, in this particular instance, we do not have the luxury of choosing between data that are within five years of the POR or within two years of each other. The metals data are eight years older than the RBI data, and are much further removed from the POR than the data available to the Department in 1997 Hand Tools and Drawers. Therefore, in this instance, we have assigned a greater value to the contemporaneity of the RBI data and concluded that the RBI data provide a better surrogate value for overhead, SG&A and profit ratios during the POR than the metals data. We also find that the RBI data constitute the best available information on this record to value overhead, SG&A and profit. In doing so, we note that in Louyang, the CIT, citing Technoimportexport, 783 F. Supp. at 1406, found that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." See Louyang, Slip Op. 03-141 at 12.

Comment 7. Use of Adverse Facts Available

Petitioner's Argument: According to the petitioner, the use of adverse facts available is warranted for Hangzhou because Hangzhou's failure to fully explain discrepancies discovered during verification and reporting of incorrect information demonstrate Hangzhou's failure to cooperate to the best of its ability. For example, the petitioner states that the Department revised the reported weight of every packing material Hangzhou uses. The petitioner contends that the Department, under no circumstances, can accept adjustment to reported data based on verification and that verifications are not intended to provide respondents with the opportunity to change reported information. In addition, the petitioner contends that the record evidence does not support Hangzhou's assertion that it makes its own wooden pallets because Hangzhou did not report wood-fumigation expenses that it should have been incurred if Hangzhou made wooden pallets. See petitioner's Case Brief at 22 and Exhibit 2.

According to the petitioner, other examples of Hangzhou's failure to cooperate to the best of its ability involve a discrepancy between a U.S. sales invoice and the information reported for international freight. The petitioner states that this discrepancy was not addressed by Hangzhou, or the Department in the Verification Report. The third example noted by the petitioner is the lack of adjustments to the factors of production for the different product grades that Hangzhou identified in its pre-verification revisions. See Verification Report at 1.

Hangzhou's Comment: Hangzhou argues that accuracy is the primary objective of the Department's antidumping duty calculations and that the Department's practice is to accept minor corrections during verification. Hangzhou further argues that its over-reporting of packing costs does not give the Department any reason to find that Hangzhou did not act to the best of its ability. With respect to wooden pallets, Hangzhou contends that there is no record evidence suggesting that Hangzhou incurred, or should have incurred, fumigation expenses and that fumigated wood can be purchased. Regarding the discrepancy between a sales invoice and the information reported for international freight, Hangzhou notes that the Department did not find any such discrepancies in its review of Hangzhou's invoices during verification. Lastly, Hangzhou states that the petitioner failed to review the FOP database, which included the correct information for all product grades. Therefore, Hangzhou contends that the Department does not have reason to conclude that it did not cooperate to the best of its ability.

Department's Position: Contrary to the petitioner's contention, there is no reason to find that Hangzhou failed to cooperate to the best of its ability and, therefore, we find that the use of adverse facts available for Hangzhou is not appropriate. First, we note that Hangzhou over-reported the weight, and thereby consumption data, for all packing materials. The petitioner mistakenly argues that Hangzhou under-reported these data to lower the dumping margin when, in fact, Hangzhou over-reported packing data. In addition, we note that the Department did not discover any attempts by Hangzhou to mislead the Department or distort the sales or production information contained in its questionnaire responses ("QNRs"). In this particular case, Hangzhou's reporting errors, which the Department discovered and corrected at verification, do not rise to the level of a failure to cooperate to

the best of its ability.

Second, the Verification Report specifically states, "we confirmed that Hangzhou makes its own wood pallets." Therefore, we need not consider the petitioner's comments regarding the allegedly required wood fumigation expenses that Hangzhou should have incurred. Third, although the Department did not review the discrepancy contained in the U.S. sales invoice during verification, it did fully verify the information Hangzhou reported for international freight, particularly for the pre-selected sales observations listed in the Verification Report. "We reviewed this account for the POR to ensure that Hangzhou correctly reported all of the sales expenses related to its U.S. sales...We noted no discrepancies between the sales information provided in Hangzhou's QNRs and pre-verification revisions, and the information discussed and reviewed during verification." See Verification Report at 8-9. Therefore, we agree with Hangzhou that the discrepancy noted by the petitioner was nothing more than a typographical error on the sales invoice in question. Lastly, we note that the pre-verification changes regarding product grades pertain only to the product number, control number and weight for those products. We agree with Hangzhou that the factors of production data for the products in question were reported correctly. See Verification Report at 9.

Comment 8. Revocation of the Antidumping Duty Order

Petitioner's Argument: According to the petitioner, the Department did not apply the subsidy suspicion policy in previous reviews of this order and, therefore, the findings in those reviews were flawed and would have resulted in dumping margins significantly above *de minimis* had the Department applied the subsidy suspicion policy. Therefore, the petitioner contends, the Department should not revoke the dumping order, even if it calculates a *de minimis* or zero dumping margin for the final results. In its rebuttal brief, the petitioner contends that, regardless of the final margin in this review, the Department should not revoke this order because Hangzhou has not demonstrated that it can sell subject merchandise at non-dumped prices.

Hangzhou's Comment: Hangzhou argues that it qualifies for revocation of the antidumping duty order on HSLWs because Hangzhou has made sales of HSLWs in commercial quantities for at least the past three administrative reviews, including this review, and because the Department has found that Hangzhou did not sell subject merchandise at less than fair value in the past two administrative reviews. According to Hangzhou, the Department will find that Hangzhou did not sell subject merchandise at less than fair value during this POR if the Department uses the market economy prices Hangzhou paid for SWR in the final results. If the Department does make such a finding, Hangzhou contends that it will qualify for revocation, pursuant to 19 CFR 351.222(b)(2).

Department's Position: Pursuant to 19 CFR 351.222(b)(1), the Department will revoke an order with respect to a particular respondent if that respondent has sold subject merchandise at not less than normal value for a period of at least three consecutive years. Although Hangzhou has had two previous, consecutive PORs (October 1999 through September 2001) with *de minimis* margins, in the final results of this review, we find that Hangzhou sold subject merchandise at less than normal value

during the POR. Therefore, we find that Hangzhou does not qualify for revocation pursuant to the Department's regulations.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margins in the Federal Register.

Agree_____ Disagree_____

_____

James J. Jochum
Assistant Secretary
for Import Administration

_____

(Date)