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

FROM: Paul Piquado
Deputy Assistant Secretary
for AD/CVD Policy and Negotiations

SUBJECT: Issues and Decision Memorandum for the 2007-2008 Administrative Review of Certain Helical Spring Lock Washers From the People's Republic of China

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on certain helical spring lock washers ("lock washers") from the People's Republic of China. As a result of our analysis, we have made certain changes in the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we received comments and rebuttal comments by parties:

Comment 1: Use of Sterling Tools Ltd.'s Financial Statements
Comment 2: Use of Sundram Fasteners Ltd.'s Financial Statements
Comment 3: Wire Rod Surrogate Value
Comment 4 Weighted Average vs. Simple Average for JPC Prices
Comment 5: Surrogate Values for Certain Chemical Factors of Production: *Chemical Weekly* Pricing Data Versus Indian Import Statistics
Comment 6: Surrogate Values for Brokerage and Handling
Comment 7: Correction of Ministerial Calculation Error

BACKGROUND

On November 9, 2009, the Department of Commerce ("Department") published the preliminary results of this review in the *Federal Register*.[1] The following events occurred after the Department published the *Preliminary Results*. On November 12, 2009, the Department sent a supplemental questionnaire to Hang Zhou Spring Washer Co., Ltd. ("HSW"), and received a response from HSW on November 19, 2009. HSW and Shakeproof Assembly Components Division of Illinois Tool Works, Inc. ("Shakeproof" or "Petitioner") submitted surrogate value comments on December 28, 2009.

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[1] *See Certain Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 57653 (November 9, 2009) ("*Preliminary Results*").

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received, we made the following changes in calculating dumping margins: (1) we revised our calculation of the surrogate financial ratios and are now including two additional Indian companies; (2) we valued HSW's barium carbonate, nitric acid, and zinc chloride factors of production ("FOP") using prices from *Chemical Weekly* in place of the World Trade Atlas ("WTA") data we used in the *Preliminary Results*; (3) for nitric acid and zinc chloride, we adjusted the average prices reported in *Chemical Weekly* to account for the differences between the concentration levels for the chemicals reported in *Chemical Weekly* and those used by HSW (the barium carbonate concentration level of sales reported in *Chemical Weekly* is identical to that reported by HSW); (4) we valued brokerage and handling costs using as a source, the World Bank Group's *Doing Business 2009* ("*Doing Business 2009*"), which reports average brokerage and handling costs in India based on a broad survey; and (5) we corrected a clerical error identified by HSW. *See* Comments 1, 5, 6 and 7 below. For further details on how these changes were applied in the calculation, *see* "Analysis for the Final Results of Antidumping Duty Administrative Review of Helical Spring Lock Washers from the People's Republic of China: Hangzhou Spring Washer Co. Ltd.," dated May 17, 2010.

DISCUSSION OF THE ISSUES

Comment 1: Use of Sterling Tools Ltd.'s Financial Statements

In the *Preliminary Results*, the Department calculated the surrogate financial ratios using the financial statements of two Indian producers, Sterling Tools, Ltd. ("Sterling") and M/S Shivalik Wires Pvt. Ltd. ("Shivalik"). Both companies produced merchandise comparable to lock washers and, based on their use of wire rod as an input, the Department reasoned that they had similar production processes to HSW. *See Preliminary Results* at 57657.

HSW's Affirmative Comments:
HSW argues that the Department should not use Sterling's information for the final results because the company's financial statement does not indicate the amount of wire rod consumed by Sterling in its production process. HSW notes that the Department disregarded other companies that used minimal amounts of wire rod in their production and it cannot simply assume that wire rod is a significant input for Sterling. HSW further notes that although Sterling produces a wide variety of fasteners (nuts, bolts, and screws), there is no indication that wire rod is a predominant input for these products. Instead, according to HSW, information from Sterling's website suggests that Sterling primarily uses bar rather than wire rod in its production of fasteners.

HSW next argues that Sterling's production process differs significantly from that of HSW. HSW bases its claim on the fact that Sterling uses cold head quality ("CHQ") wire rod, an input used to make high quality industrial fasteners, in contrast to HSW, which only uses regular grade carbon steel wire rod. This leads HSW to assert that because Sterling produces more sophisticated products, it experiences overhead ratios that are not in line with those of producers like HSW that manufacture simpler products. HSW compares Sterling to other firms in the industry (including firms the Department has used to calculate surrogate financial ratios in previous administrative reviews of this case) with respect to the following ratios: direct materials to total revenue, direct materials to total expense, consumable stores to direct material and overhead to total revenue. For example, HSW argues that direct materials represent a lower percentage of total revenues for companies that produce higher value-added products, like Sterling, than it does for companies that produce low or moderate value-added products, like HSW. Thus, HSW argues that using Sterling's financial ratios would be distortive, as they represent significant costs not incurred by producers of low or moderate value-added products, like HSW.

Finally, HSW points to information from Sterling's website that indicates Sterling's high value-added products require additional production processes, which HSW does not require. HSW claims that these additional processes require the use of more sophisticated, complex, and expensive equipment, which HSW asserts, further differentiates Sterling's production process from HSW's and leads to higher depreciation expenses. Therefore, HSW concludes that Sterling should not be used as a surrogate for financial ratios in this administrative review.

Petitioner's Rebuttal:
Petitioner argues that there is no evidence indicating that Sterling's consumption of wire rod represents a small fraction of the company's total raw materials. Petitioner notes that in *KASR from the PRC,* the Department stated that steel wire rod and steel wire account for a significant portion of Sterling's raw materials.[2] Petitioner further notes that for the two companies the Department did not consider because of wire rod usage, Bansidhar Granites Pvt. Ltd. ("Bansidhar") and Nasco Steels Private Limited, the Department had definitive evidence that showed these companies not only did not use wire rod as their primary raw material input, but instead used side cuttings and hot-rolled sheet, respectively. Petitioner argues that neither of these inputs is similar to the long products used by both Sterling and HSW.

In response to HSW's claim that Sterling uses bar rather than wire rod in its production of fasteners, Petitioner argues that HSW's claim is based upon pictures from Sterling's website and that it is not possible to judge the thickness of the fasteners from the pictures, nor can one assume that the thicker fasteners are made from bar rather than wire rod. Petitioner further maintains that both HSW and Sterling produce fasteners in a variety of sizes and that most are made from wire rod. Petitioner similarly disputes HSW's claim that Sterling uses CHQ steel exclusively, contending instead that Sterling's wire rod input is not CHQ. Petitioner also contends that even if Sterling did use CHQ wire rod, the production process would still be comparable as the U.S. International Trade Commission has found that there are "similar manufacturing processes for industrial quality wire rod and CHQ."[3] Therefore, Petitioner asserts that HSW's claims that Sterling's production process is significantly different, and the claims that Sterling produced higher value-added products because of its possible use of CHQ inputs,

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[2] *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination fo Stales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009), and accompanying Issues and Decision Memorandum at Comment 10 ("*KASR from the PRC*").

[3] *See Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad, and Tobago, Turkey, and Ukraine*, Inv. Nos. 701-TA-417-421 and 731-TA-953-954, 956-959, 961-962 (Final), USITC Pub. 3546 at n.52, 2002 ITC LEXIS 721 at *28 (October 1, 2002).

are not factually sound.

Petitioner next argues that because both the primary raw material input and the production processes used by Sterling and HSW are comparable, HSW's claims that Sterling's overhead ratios are distortive are unsubstantiated. Petitioner asserts that two producers with similar inputs and outputs can still experience different overhead ratios and simply because one company has a higher ratio than another, it does not necessarily mean that the overhead ratio is distortive. Further, Petitioner notes that HSW's comparisons between Sterling and other fastener producers are based on non-contemporaneous financial statements from prior reviews and are, therefore, irrelevant to this administrative review. Petitioner argues that HSW's addition of information from Sterling's website should be considered new factual information and requests that the information, and HSW's arguments regarding them, be removed from the record. Using the new factual information placed on the record by HSW, Petitioner illustrates that many of the processes HSW claims to be more complex, are actually similar to, or the same as, many of the processes HSW identified in its own production process.[4]

Finally, Petitioner argues that the Department should continue to use Sterling's financial statements to calculate surrogate financial ratios for HSW in the final results because it would be consistent with the Department's stated preference for using multiple financial statements in order to obtain a broader industry representation.[5]

Department's Position:
HSW's January 7, 2010, case brief, contained new factual information. This new information related to Sterling's production process and its products, and was obtained from Sterling's website.

While the information was placed on the record after the deadline established for submissions containing new information, the Department has determined to accept this new factual information under its discretionary authority to extend any time limit for good cause, pursuant to 19 CFR 351.302(b). *See also Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part*, 74 FR 44819 (August 31, 2009) and accompanying Issues and Decision Memorandum at Comment 7.[6] The Department determines that there is good cause for accepting the new factual information submitted in HSW's case brief, because this information brings into question one of the key assumptions we made in the *Preliminary Results* regarding the comparability of the production processes of HSW and various Indian producers whose financial data

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[4] *See* HSW's Section D Questionnaire Response, dated February 9, 2009 at Exhibit D-2.

[5] *See e.g., Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1; *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 51788 (September 5, 2008)("*Austenitic Prelim*").

[6] However, the Department has also not accepted untimely filed new information which consisted of substantial revisions to a respondent's FOPs database. *See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049 (January 14, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

we considered using to calculate surrogate financial ratios. We also note that our acceptance of this information does not otherwise prejudice any of the parties to this proceeding, as Petitioner, while objecting to the new information, used this information in providing a detailed rebuttal to HSW's arguments.

In selecting surrogate values for FOPs, section 773(c)(1) of the Tariff Act of 1930, as amended ("Act") instructs the Department to use "the best available information" from the appropriate market-economy country. In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[7] Similarity of production processes can be an important determinant in selecting the companies to be used for calculating surrogate financial ratios because it can be an indication that the surrogate company is comparable to the respondent.[8] Indeed, the Department has rejected financial statements of surrogate producers whose production processes were not comparable to the respondent's production processes.[9] Recognizing this, we reasonably assumed for the *Preliminary Results* that Indian fastener producers that used inputs similar to those used by HSW would have production processes that were similar to HSW's. However, the information submitted by HSW regarding Sterling has raised serious questions about this assumption. First, based on the same factual information, HSW and Petitioner reach opposite conclusions about the extent to which HSW's and Sterling's production processes are similar. HSW points to allegedly complex and additional production steps taken by Sterling, while Petitioner equates the production steps of the two companies.

Second, and more importantly, the only information submitted on production processes relates to Sterling and HSW. While HSW has submitted various ratios for Indian companies whose financial information has been used in past segments of this proceeding, we agree with Petitioner that those ratios are irrelevant. Not only do they relate to a different time period than our POR, they simply show that Sterling is different from those companies in terms of those particular ratios, not in terms of production processes. Instead, for the Department to make an informed decision about production processes and the linkage between particular inputs and the production process, and in light of the conflicting evidence provided in this proceeding, we need information on the production processes of other fasteners producers. In this case, we have only two data points, HSW and Sterling, and they do not provide a sufficient basis to make such a determination.

Finally, as HSW has pointed out, we do not know what percentage of Sterling's total inputs are wire rod. Without this information it is difficult to link inputs and production process. Petitioner has pointed to the Department's finding in *KASR from the PRC* that steel wire rod and steel wire

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[7] *Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010)("*CTL Carbon from the PRC*"), and accompanying Issues and Decision Memorandum at Comment 8.

[8] *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183, 22193 (May 3, 2001) and *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001) (unchanged in final); and *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

[9] *Id.*

account for a significant portion of Sterling's raw materials. However, the record in this proceeding does not support such a conclusion.

Based on the above, we do not find support for the assumption relied upon in the *Preliminary Results* that similarity of inputs results in similarity of production processes based on evidence on this record. Moreover, we agree with Petitioner that the Department prefers relying on multiple financial statements to derive surrogate ratios in order to obtain broader industry representation.[10] Therefore, for these final results, we have selected the Indian companies to be used in calculating the surrogate ratios based on whether they produce comparable merchandise, fasteners, without regard to the particular inputs used to produce that merchandise. Specifically, we have relied on the financial statements of Sterling, Shivalik, Bansidhar, and Hardwin Fasteners Pvt. Ltd.[11] For each of these companies, fasteners comprise their total output or account for a significant portion of their total output and none of the companies' financial statements showed any evidence of subsidies. We have also determined, consistent with our practice, that these financial statements are contemporaneous with the POR, complete and publicly available. Therefore, we have determined to rely on the financial statements of these four Indian companies in calculating the surrogate financial ratios because they represent the best available information on the record.

<u>Comment 2: Use of Sundram Fasteners Ltd.'s Financial Statements</u>

In the *Preliminary Results*, the Department did not use Sundram Fasteners, Ltd.'s ("Sundram") financial statements to calculate surrogate ratios based on evidence that it received subsidies during the POR.

Petitioner's Affirmative Comments:
Petitioner argues that the Department should use Sundram's financial statements because the Department relied on these same 2007-2008 financial statements in a recent initiation covering steel fasteners, a similar product whose primary input is also wire rod.[12] Petitioner further points out that, in *Steel Fasteners*, the Department did not identify that Sundram received subsidies.

HSW's Rebuttal:
HSW argues that the Department should continue to exclude Sundram in calculating surrogate ratios because there is evidence that the company received subsidies which the Department has found to be countervailable. HSW notes that Petitioner does not even contest the fact that Sundram's financial statement reflects the receipt of funds from subsidy programs.

HSW further argues that the use of Sundram's financial statements in initiating another case is irrelevant as to whether they are an appropriate source for surrogate ratios in this administrative review. According to HSW, there is a higher standard of corroboration for evidence relied upon

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[10] *See Final Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 45006 (August 27, 2001), and accompanying Issues and Decision Memorandum at Comment 1; and *Austenitic Prelim*, 73 FR 51788.
[11] Hardwin Fasteners Pvt. Ltd.'s financial statements were placed on the record in HSW's July 10, 2010, submission.
[12] *See Certain Standard Steel Fasteners From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations*, 74 FR 54537 (October 22, 2009) ("*Steel Fasteners*").

in preliminary and final results than for initiations.[13] HSW also states that, in initiations, the Department relies on information submitted by Petitioners as the best available information and suggests that the Department may not have had sufficient time to fully review the nature of Sundram's production process and whether it received any subsidies. Therefore, the Department's findings based upon analysis of Sundram's financial statements on the record in this review should take precedence over findings in an unrelated initiation proceeding.

Department's Position:
The Department has determined not to use Sundram's financial statements in the calculation of surrogate financial ratios. As discussed above, the Department is directed to value FOP using the "best available information." *See* Section 773(c)(1) of the Act. Moreover, in valuing such factors, Congress directed Commerce to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."[14] Therefore, in selecting companies to be used for calculating surrogate ratios, it is the Department's practice to disregard a company's financial statements where there is reason to suspect that the company has received countervailable subsidies, and where there is other usable data on the record.[15] The Department finds that there is, indeed, evidence on the record in this proceeding showing that Sundram received subsidies, which the Department has found to be countervailable.[16] The Department agrees with HSW that the use of Sundram's financial statements in the initiation of the investigation of *Steel Fasteners* is irrelevant to this review. Therefore, in keeping with the Department's practice, we have continued to reject Sundram's financial statements from the calculation of surrogate ratios for the final results.

Comment 3: Wire Rod Surrogate Value

HSW's Affirmative Comments

HSW contends that the Department strayed from its long-standing practice of rejecting surrogate values if there is evidence the prices may be subsidized when it relied on Indian domestic steel prices reported by the Joint Plant Committee ("JPC") to value steel wire rod in the *Preliminary Results*.

HSW asserts that the Department has long disregarded prices that it has reason to believe or suspect are subsidized even if the evidence of such subsidization, *e.g.*, a U.S. countervailing duty ("CVD") finding, does not apply to the specific input, but only to a more general category that encompasses the input in question. To support its contention, HSW points to the 2001-2002 lock

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[13] *See Notice of Final Determination of Sales at Less than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia*, 71 FR 47171 (August 16, 2006), and accompanying Issues and Decision Memorandum at Comment 10.
[14] Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 76 100th Cong., 2nd Session (1988) ("*OCTA 1988*") at 590.
[15] *See KASR from the PRC* at Comment 10; *see also Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 17A.
[16] *See* Memorandum to File: Factors-of-Production Valuation for Preliminary Results (November 2, 2009) ("Preliminary Factor Valuation Memo") at 10.

washers administrative review and the 13th administrative review of tapered roller bearings and parts thereof, finished and unfinished, both from the People's Republic of China.[17]

HSW states that in *Lockwashers 01-02,* the Department rejected market economy purchases of wire rod from the United Kingdom ("UK") based on the existence of a CVD determination on other steel products in the UK.[18] In particular, according to HSW, the Department specifically rejected arguments that the subsidies found by the Department on cut-to-length carbon steel plate from the UK should not be attributed to wire rod. Instead, HSW asserts that the Department took the position that the subsidies found in its cited CVD determinations were generally used by the UK steel industry and were not tied to specific steel products. Therefore, the Department concluded that although the referenced CVD determinations involved products other than wire rod, they still provided a valid basis to believe or suspect that wire rod in the UK might also be subsidized.

HSW contends that, in *TRBs XIII,* the Department found a basis to believe or suspect that a respondent's supplier of hot-rolled steel bar was subsidized even though the supplier was never specifically investigated in a CVD investigation. HSW argues that the U.S. Court of International Trade ("CIT") affirmed the Department's position in *TRBs XIII,* when it found that the hot-rolled steel bar supplier in question was "'a member of a subsidized industry' and 'could have benefitted' from subsidies generally available in the exporting country for exporters of steel products, regardless of the type of product or company."[19]

HSW asserts that the JPC data used in the *Preliminary Results* include prices from Indian steel producers which the Department has found to receive countervailable subsidies. As evidence that JPC prices may be distorted by subsidies, HSW cites to the final determination and three final results for certain hot-rolled steel flat products from India.[20]

HSW points to the Department's use of JPC data in *KASR* and argues that it was an "unexplained

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[17] *Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order, in Part*, 69 FR 12119 (March 15, 2004) and accompanying Issues and Decision Memorandum at Comment 1 ("*Lockwashers 01-02*"); and *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*")

[18] In *Lockwashers 01-02,* parties cited findings in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993) ("*1993 CVD Determination*"); *Certain Cut-to-Length Carbon Steel Plate From Spain and the United Kingdom; Final Results of Expedited Sunset Reviews,* 65 FR 18056 (April 6, 2000) ("*CTL CVD Sunset Review*"); *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*"). "Certain Steel Products" covered hot-rolled carbon steel flat products, cold-rolled carbon steel flat products; CORE flat products; and certain cut-to-length plate.

[19] *China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1337 (CIT 2003).

[20] *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India,* 66 FR 49635 (September 28, 2001); *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 71 FR 28665 (May 17, 2006); *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009).

departure" from prior practice. Moreover, HSW asserts that the Department did not explain in *KASR* how the specificity of the JPC prices to the input trumped the distortions caused by the subsidies. HSW points out that the CIT has ruled that when the Department departs from a prior decision, the Department must provide a reasoned explanation.[21] HSW contends that the Department failed to provide such an explanation in *KASR*.

With regard to alternative surrogate value sources for wire rod, HSW argues that the Department should reject the JPC data and use Indian import statistics from the WTA in the final results. HSW notes that in the 2005-2006 lock washers administrative review, the Department addressed the issue of whether WTA or JPC data were preferable and chose WTA data.[22] HSW acknowledges that the Department stated in that review that it does not have an automatic preference for Indian import data and must consider both JPC and WTA data to determine which are the best available information.[23] However, HSW contends that having already considered the relative merits of JPC and WTA data and finding WTA to be superior, it is incumbent upon the Department to explain why it now finds the JPC data superior.

HSW contends that even without a presumption in favor of using WTA data, the Department should not use JPC data because this data source is more flawed than the alternative. HSW asserts that the Department's only rationale for using JPC data in the *Preliminary Results* was that "WTA data are not limited exclusively to {the} steel wire rod input used by HSW to produce lock washers because the HTS classification in the WTA includes bar/hot rolled steel and cover a range of diameter sizes."[24] HSW claims that the JPC data are equally over-inclusive. In this regard, HSW observes that the JPC prices for the 12 mm and 16 mm sizes are for "rounds" and not steel wire rod. HSW notes that there is no indication that JPC prices are for carbon steel products only and exclude stainless steel. HSW states that even assuming JPC 6 mm and 8 mm wire rod are limited to carbon steel, there is no information in the JPC data on the quality of the steel.

In addition, HSW argues that while WTA import data are clearly tax-exclusive, the Department must rely on an imputed tax rates to adjust JPC data because they are originally tax-inclusive. HSW also argues that the Department is unable to determine whether the prices in the JPC data reflect sales at commercial quantities because the JPC does not provide the quantity of sales associated with the price. HSW notes that WTA data is better in this regard as it includes quantities which reflect commercial quantities and indicate that the data are not aberrational in any way.

HSW contends that JPC data are also more limited than WTA data in the coverage of the exact sizes of wire rod used by HSW.[25]

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[21] *Allegheny Lundlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1147-1148 (CIT 2000) ; *Hussey Cooper, Ltd. v. United States*, 834 F. Supp. 2d 413, 419 (CIT 1993)

[22] *Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008) and accompanying Issues and Decision Memorandum at Comment 2 ("*Lockwashers 05-06*")

[23] *See id.*

[24] *See* Preliminary Factor Valuation Memo at 9.

[25] *See* Memorandum to File: Final Results Discussion of Issues Involving Business Proprietary Information ("BPI Memo")

Finally, HSW argues that JPC data also suffers in comparison to WTA data because they are less grade-specific than WTA data. HSW notes that in this regard, the Department found in its 1993-1994 administrative review of lock washers that "the grade of steel is a more important consideration for the Department than its size" in choosing the best data.[26]

Petitioner's Rebuttal

Petitioner asserts that HSW has failed to provide any valid reason not to use JPC data to value wire rod. Petitioner argues that the JPC prices are specific to the input used by HSW to produce lock washers, are publicly available and reflect POR prices of wire rod in the Indian market. Petitioner cites the Department's *KASR* decision for a discussion of the relative merits of JPC and WTA data. There, the Department found that the JPC data was more specific on the sizes, reliable and credible as an official publication, and representative of the Indian steel market.[27] Petitioner also notes that the *KASR* decision on JPC data accorded with the earlier *Nails* and *Hangers* decisions.[28]

Petitioner disputes HSW's position that the Department should reject JPC data because the Indian steel industry has been subsidized. Petitioner asserts that the Department considered and rejected this line of argument in *KASR*, concluding:

> While respondents raise the issue of subsidies affecting the domestic Indian price of steel wire rod, specific information as to how any subsidy may potentially influence the price data for steel wire rod is absent. All of the CVD proceedings to which respondents cite relate to products other than steel wire rod. Finally, we note that the Department has no CVD order on steel wire rod from India.[29]

Petitioner specifically takes issue with HSW's assertion that the Department did not explain why specificity was more important than subsidy distortions of prices in the *KASR* decision. Petitioner argues that while the Department chose to use JPC data in *KASR* in part because the data were more specific to the wire rod input, the Department additionally found no merit in the subsidization claims because it found no specific information on how any subsidy in India might have potentially influenced the domestic price data for wire rod. Thus, Petitioner argues, contrary to HSW's claim that there were "undisputed subsidy distortions of prices," the Department found no subsidy distortions and HSW has not provided any information in this case to change that conclusion.

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[26] *See Certain Helical Spring Lock Washers From The People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 61 FR 41994, 41997 (August 13, 1996) ("*Lockwashers 93-94*").
[27] *See KASR* and accompanying Issues and Decision Memorandum at Comment 6.
[28] *See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008), and accompanying Issues and Decision Memorandum at Comment 10 ("*Nails*"); *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 4 ("*Hangers*").
[29] *See KASR* and accompanying Issues and Decision Memorandum at Comment 6.

Petitioner rejects HSW's assertion that the Department's decision to use WTA data, rather than JPC data in *Lockwashers 05-06*, favors the use of WTA data in this review.[30] First, Petitioner argues critical distinctions should be drawn between the JPC data available on the respective records of *Lockwashers 05-06* and this review. Petitioner notes that in *Lockwashers 05-06* the Department had only two months of JPC data whereas in this review Petitioner provided JPC data for all 12 months of the POR. In addition, Petitioner notes that in *Lockwashers 05-06*, the Department found that HSW used a range of wire rod sizes whereas in this review period, HSW's own information indicates that a large portion of the carbon steel wire rod used by HSW is covered by dimensions included in the JPC data.[31] Petitioner argues that based on the position taken by the Department in *KASR*, and consistent with decisions in *Laminated Woven Sacks* and *Retail Carrier Bags*, HSW has not met its burden in this review to show that JPC data are not specific to HSW's wire rod input.[32]

Petitioner then addresses the alleged flaws in the JPC data. First, Petitioner disputes HSW's contention that the JPC data are less specific and over inclusive, pointing again to the fact that a large portion of the carbon steel wire rod used by HSW is covered by dimensions included in the JPC data. Petitioner does not dispute HSW's contention that the 12 mm and 16 mm steel rounds covered by some of the JPC data used in the *Preliminary Results* are different from wire rod used by HSW. Petitioner also cites to the Department's finding in *Lockwashers 05-06* that steel rounds may not provide the best surrogate values.[33] However, Petitioner argues that, based on the common sizes covered by the JPC data for 6 mm and 8 mm wire rod, the JPC data still provides a more accurate surrogate value than the basket harmonized tariff system ("HTS") category available in the WTA.[34] Moreover, citing the Department's position in addressing this issue in *KASR*, Petitioner notes that the relevant HTS category includes other products, none of which are used to produce the subject merchandise.[35]

Petitioner also argues that the inclusion of steel bar prices in the WTA HTS category significantly distorts the overall wire rod value derived from that source and refers to Infodrive India product-specific import statistics to support this point. Petitioner contends that Infodrive India data on the record establishes that steel bar made up 38 percent of the Indian imports during the period while wire rod in dimensions ranging from 5.5 mm to 14 mm made up 35 percent.[36] Petitioner claims that the Infodrive India data show that there is different pricing for wire rod and steel bar. Petitioner notes that where the total value of imports reported in the WTA and Infodrive come close to matching, Infodrive India data indicate that large percentages of the imports are products other than wire rod in dimensions ranging from 5.5 mm to 14 mm.

[30] *Lockwashers 05-06* and accompanying Issues and Decision Memorandum at Comment 2.
[31] *See* BPI Memo.
[32] *See KASR* and accompanying Issues and Decision Memorandum at Comment 6. *See also* BPI Memo for additional discussion of Petitioner's arguments on specificity. *See also Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 35646 (June 24, 2008) ("*Laminated Woven Sacks*"), and accompanying Issues and Decision Memorandum at Comment 2; *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 73 FR 14216 (March 17, 2008)("*Retail Carrier Bags*"), and accompanying Issues and Decision Memorandum at Comment 6.
[33] *Lockwashers 2005-2006* Issues and Decision Memorandum at Comment 2.
[34] *See* BPI Memo
[35] *See KASR* Issues and Decision Memorandum at Comment 6.
[36] *See* Petitioner's Submission, October 2, 2009 at 10 and Attachment 2.

Additionally, Petitioner claims that the Indian average unit value ("AUV") of USD $0.64 submitted by HSW for HTS 7213.91 is "plainly distortive" when compared to the equivalent AUVs for other potential surrogate countries which have a combined simple average of USD $0.85. This average compares favorably to JPC's AUVs for 6 mm and 8 mm at USD $0.81 and USD $0.80.

Petitioner argues that to the extent the JPC data lacks prices for the larger diameter wire rod, the Department has previously found other product characteristics such as surface quality, deoxidation, maximum total residual content, and heat treatment, to be more important than diameter size.[37]

Petitioner dismisses HSW's concern that JPC data are tax-inclusive, noting that HSW acknowledged that the Department accounted for this in the *Preliminary Results* by deducting taxes based on known tax rates. Regarding the quantities (or lack thereof) associated with the JPC prices, Petitioner points to record evidence indicating that the prices were "compiled on the basis of {the} average of Main & Secondary producers' prices," and that "Prices are indicative."[38] Moreover, according to Petitioner, the Department has already dismissed this alleged flaw in *KASR* and *Hangers.*[39]

Finally, regarding HSW's contentions about the lack of specific steel grade information in the JPC price data, Petitioner contends that HSW has provided no evidence to support its assertion. Moreover, according to Petitioner, HSW's reliance on the Department's findings in *Lockwashers 93-94* is misplaced because JPC data was not even on the record for consideration.

Department's Position:

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. The Department's criteria for selecting surrogate value information are normally based on the use of publicly available information ("PAI"), and the Department considers several factors when choosing the most appropriate PAI, including the quality, specificity, and contemporaneity of the data.[40] Moreover, in valuing such factors, Congress further directed the Department to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."[41]

Additionally, it is the Department's precedent to carefully consider the available evidence in

[37] *See, e.g., Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 65833, 65835 (November 5, 2008).
[38] *See id.*
[39] *See KASR* Issues and Decision Memorandum at Comment 6 and *Hangers* Issues and Decision Memorandum at Comment 4.
[40] *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 3.
[41] *See OTCA 1988* at 590; and *see, e.g., Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) ("*Shrimp-PRC 9/10/09*") IDM at Comment 3b.

light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis.[42] As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" available surrogate value is for each input.[43]

Accordingly, in light of the parties' arguments, the Department has re-examined the JPC and WTA data available on the record for purposes of identifying the best available information to value HSW's factor for carbon steel wire rod. We find that, of the options available on the record, the JPC data best satisfies the Department's surrogate value criteria as described below:

Quality

The JPC price data have an official nature, in that they represent national-level steel monitoring by a joint government/industry board. In past cases, we have found government publications to be reliable and credible sources of information.[44] Additionally, the price data reflect the overall market price and are maintained on a regular basis (*i.e.*, the data represent monthly price information collected by the JPC from the steel industry).[45] The Department finds that the JPC data are, therefore, representative of the Indian market, in that they contain data points for four different markets in India (Kolkata, Delhi, Mumbai and Chennai) covering all monthly price reports during the POR.

WTA data also have an official nature and represent actual transactions in the India-wide market for imported steel products covered by the particular tariff classifications. WTA data have the added advantage of including the aggregated quantities of the transactions. For these reasons, we often find the WTA import data to provide the best quality of surrogate value data in our NME AD proceedings.

Specificity: Identical/Comparable Merchandise

While HSW contends that the WTA data are as specific as the JPC data, we note that significant differences exist. Specifically, the JPC data offer data for two gauges of wire rod (6 mm and 8 mm) that very closely match a significant portion of the input used by respondent. In fact, we find that HSW's specific wire rod consumption data adds considerable weight to the argument that using the JPC data is more specific than the WTA data as a surrogate value source.[46] Unlike the JPC data, the narrative descriptions for Indian HTS categories 7213.91 and 7213.99, which

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[42] *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1, *see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.
[43] *Id*.
[44] *Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 69 FR 75303 (December 16, 2004) and accompanying Issues and Decision Memorandum at Comment 1.
[45] *Id.*, at Exhibit 6; http://www.jpcindiansteel.nic.in/.
[46] *See* BPI Memo for additional discussion of the linkage between JPC data and HSW's actual consumption.

HSW advocates using, is “Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel” (and “Of circular cross-section measuring less than 14mm in diameter” for 7213.91 and “Other” for 7213.99), Thus, these HTS categories represent non-specific basket categories that include not only iron products (both bar and rod), but also steel bars which are not used by HSW in its production of the subject merchandise. We, therefore, find that specificity is a compelling reason that supports using the JPC data to value the steel wire rod input.

With respect to HSW’s contention that the 12 mm and 16 mm steel rounds covered by some of the JPC data are different from wire rod used by HSW, the Department disagrees with HSW’s claim and finds that there is no evidence on the record to indicate these diameters of rounds are not simply larger diameters of steel wire rod, comparable to those used by HSW. As such, the Department will continue to use the 12mm and 16mm rounds data in its calculations for the final results.

With respect to using Infodrive India either as a corroborative tool or price benchmark, the Department’s reservations are well-established.[47] Furthermore, in this case, unlike in other cases where we have found Infodrive India to be useful as a corroborative tool, we find that Petitioner’s submission of information confirms the Department’s concerns about the inherent problems in using WTA data when the relevant tariff classification numbers are basket categories.

The Department agrees with HSW that the grade or chemistry is an important factor in determining the end use of a product. However, HSW’s claim that the WTA data is more grade specific is not factually supported. The HTS categories 7213.91 and 7213.99 do not provide detailed grade specific information. Rather, these categories are broken into “bars and rod, hot rolled, in irregularly wound coils, of iron or non-alloy steel” as stated above. Even if the WTA data did provide specific grade data for the corresponding HTS categories, HSW’s reported product characteristics do not provide specific grade information which might allow the Department to make appropriate matches or adjustments based on grade. Therefore, as the Department lacks the ability to make grade specific matches for the wire rod used by HSW to either the WTA or the JPC data, it has relied on the diameter size for specificity.

Contemporaneity

Both the JPC and WTA data are wholly contemporaneous with the POR.

Subsidies

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of rejecting surrogate values if there is sufficient evidence the source data may be subsidized.[48] We disagree with HSW that our reliance on JPC data to value steel wire rod in the *Preliminary Results* is a departure from this practice. We have reviewed record

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[47] *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review for First Administrative Review*, 74 FR 57995 (November 10, 2009) (“*Activated Carbon from the PRC*”) and accompanying Issues and Decision Memorandum at Comment 3(c) and (g).
[48] *OTCA 1988* at 590.

information about JPC data, existing subsidy findings in India, and identified Indian steel wire rod producers and find insufficient evidence to support HSW's contention that there is a basis to believe or suspect that the wire rod price data may be subsidized.

HSW cited our decisions in *TRBs XIII* and *Lockwashers 01-02,* issued in 2001 and 2004, respectively, as setting the standard for determining if there is sufficient evidence to believe or suspect a source may be subsidized.[49] In those two decisions, the Department rejected market economy prices because it found a basis to believe or suspect those prices may be subsidized. In both cases, the Department decided that the availability of subsidies specific to the domestic steel industry, and thus potentially available to all steel producers, in the exporting countries provided sufficient evidence to believe or suspect the prices may be subsidized. In *Lockwashers 01-02,* the Department determined that affirmative CVD findings on certain steel products and certain cut-to-length steel plate provided "evidence of subsidies that were generally used by the U.K. steel industry might also benefit HSW's purchases of steel wire rod from the U.K."[50] HSW contrasts these earlier decisions with our decisions in *KASR* and this review to use the JPC data as our wire rod surrogate value source and raises a concern that our recent decisions to use JPC data represent an "unexplained departure" for our earlier practice with regard to the evidentiary standard for believing or suspecting source prices may be subsidized.

In *KASR*, the Department explained that it had no basis to consider that the domestic prices listed in the JPC may be subsidized because all of the CVD proceedings to which respondents cited in *KASR* relate to products other than steel wire rod under consideration and also noted that the Department has no CVD order on steel wire rod from India.[51] We took an identical position in the 2008 *Nails* decision regarding claims that JPC data reflected subsidies.[52]

We recognize that the Department's determinations in *KASR* and 2008 *Nails* require further explanation in light of the basis for our determination in *Lockwashers 01-02.* Specifically, in this review as well as in the *KASR* and *Nails* cases, the Department stated that it required more specific or particular information regarding domestic subsidies to the steel industry to establish that the surrogate value data source for a specific steel product, which in these cases is wire rod, may be subsidized.

The referenced *HR from India* CVD findings on the record of the current review would provide a sufficient basis to disregard steel prices from the investigated companies Steel Authority of India, TATA Iron and Steel Co., Ltd. and Rashtriya Ispat Nigam Limited/Visakhapatnam Steel Plant. However, in this case we are not considering company-specific prices as a source for potential surrogate values. Instead, the Department has to determine if there is a basis to believe or suspect that the much broader source of JPC pricing data may be subsidized. The nature of the JPC data -- average prices based on a general market survey which we understand to involve

[49] *See Lockwashers 01-02* and accompanying Issues and Decision Memorandum at Comment 1, and *TRBs XIII* and accompanying Issues and Decision Memorandum at Comment 1

[50] *See Lockwashers 01-02* and accompanying Issues and Decision Memorandum at Comment 1. The Department and parties cited findings in *1993 CVD Determination*; *CTL CVD Sunset Review*; *Section 129 Determination*. "Certain Steel Products" covered hot-rolled carbon steel flat products, cold-rolled carbon steel flat products; CORE flat products; and, certain cut-to-length plate.

[51] *See KASR* and accompanying Issues and Decision Memorandum at Comment 6.

[52] *See Nails from the PRC* and accompanying Issues and Decision Memorandum at Comment 10.

multiple companies and many transactions in the POR -- make it more difficult to determine if there is a basis to believe or suspect that the prices from this source may be subsidized. As such, in this case where we are relying on a broad based source for pricing data, the existence of a CVD order on another steel product is not a sufficient basis to disregard that source. For these reasons, in this review we do not find a basis to believe or suspect that the JPC pricing data may be subsidized.

Based on the foregoing factors and our analysis of the evidence on the record, we have determined that JPC data represent the best available information for valuing steel wire rod.

Comment 4: Weighted Average vs. Simple Average for JPC Prices

In the *Preliminary Results*, the Department used a simple average of monthly JPC prices for each diameter to calculate the surrogate value for wire rod.

HSW's Affirmative Comments:
HSW argues that because the JPC prices for wire rod and rounds increased significantly over the POR and HSW's actual consumption rates fluctuated during the same period, a simple average misrepresents the cost for HSW of its wire rod input. HSW states it would be preferable for the Department to use the actual purchase quantities associated with the JPC prices, but since JPC does not provide quantities, HSW suggests that the Department use HSW's consumption data (based on records of inventory-out) as a proxy weighting factor to calculate a weighted-average price for each diameter. HSW cites to two previous decisions in which it claims that the Department indicated a preference for weighted-average prices.[53]

Petitioner's Rebuttal:
Petitioner maintains that the Department should continue to use the simple average of JPC prices to calculate the surrogate value for wire rod, asserting that this is the Department's normal practice. In addition, Petitioner claims that no record information exists that would allow the Department to weight the JPC monthly prices by HSW's own monthly consumption. Finally, Petitioner argues that HSW has failed to demonstrate that the JPC POR-average prices would be accurate if weighted by HSW consumption quantities because HSW has not shown that monthly consumption is consistent with the monthly quantities that underlie the JPC data.

Department's Position:
We have continued to rely on a simple average of the monthly JPC prices for these final results because the proxy weighting factor suggested by HSW (its consumption data) would not yield a more accurate surrogate value. First, HSW's data is not linked to JPC market economy prices in India so it bears no particular relationship to the correct weighting factor, Indian purchase quantities. Second, HSW's data reflects consumption, not purchases of wire rod, so again there is no particular connection to the correct weighting factor, Indian purchase quantities. Therefore,

[53] *See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 67 FR 46173, (July 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1("*Mushrooms NSR and AR 3")*; *see also Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada,* 67 FR 8781 (February 26, 2002) and accompanying Issues and Decision Memorandum at Comment 7.

weighting JPC prices by HSW's consumption (quantities purchased in a non-market economy ("NME")) would yield a result unrelated to the result that would occur with a properly weighted value and, hence, cannot be viewed as increasing the accuracy of the Department's calculations.

HSW's reliance on *Mushrooms NSR and AR 3* and *Tomatoes from Canada* is misplaced. In *Mushrooms NSR and AR3*, the Department used a simple average of published prices, as we are doing in these final results, because it did not have a proper weighting factor. In *Tomatoes from Canada*, we weighted the suppliers' costs by the volumes of the products sold, *i.e.*, we were able to calculate weights using information related to the values being weighted.

Regarding Petitioner's argument that no information exists to implement HSW's proposal, we agree that HSW did not provide this information <u>for each CONNUM</u> on a month-by-month basis. However, HSW did provide its monthly wire rod consumption data for the POR on a diameter-specific basis as measured by its inventory-out records.[54] Thus, it was possible to calculate the weights proposed by HSW, but the Department has decided not to do so for the reasons explained above.

<u>Comment 5: Surrogate Values for Certain Chemical Factors of Production: *Chemical Weekly* Pricing Data Versus Indian Import Statistics</u>

HSW's Affirmative Comments:
HSW argues that the Department should use prices from *Chemical Weekly* to value the company's barium carbonate, nitric acid, and zinc chloride FOP rather than the WTA data used in the *Preliminary Results*. According to HSW, the Department rejected *Chemical Weekly* prices because the concentration (purity) levels of the chemicals were unknown. This has been remedied, however, because subsequent to the *Preliminary Results*, HSW obtained concentration levels for these chemical inputs from *Chemical Weekly* and submitted this information to the Department.[55] HSW contends that, as a result, the *Chemical Weekly* data is now more accurate than the WTA data (which does not list specific concentration levels). Therefore, HSW argues that the *Chemical Weekly* prices are the best information available and the Department should use them to value the company's barium carbonate, nitric acid, and zinc chloride inputs, adjusting for the concentration levels, as necessary.

HSW also disputes the Department's rationale for preferring WTA data to *Chemical Weekly* data, *i.e.*, that the WTA data is more representative of the Indian market because, "WTA represents a value from the whole of India, whereas the *Chemical Weekly* value is derived in just three of India's major markets for barium carbonate, two of India's major markets of nitric acid, and three of India's major markets for zinc chloride."[56] HSW maintains that the number of cities that comprise the markets in *Chemical Weekly* is irrelevant because those cities are in fact the major markets for each of these chemicals. Therefore, HSW contends that the prices reflect Indian market prices as a whole, throughout the country. In contrast, HSW points out that the Department has no information on the number of entry points represented by the WTA data.

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[54] *See* HSW's September 29, 2009 submission at Attachment SSD-1.
[55] *See* HSW's December 28, 2009 submission. In this submission, HSW provided an email from a *Chemical Weekly* special correspondent with the concentrations of each of the chemicals.
[56] *See Preliminary Results* at 57656.

Finally, HSW argues that the WTA data for zinc chloride is flawed because it covers only two months of the POR and, hence, cannot be considered representative of Indian prices for this chemical during the POR.

Petitioner's Rebuttal:
Petitioner urges the Department to continue using WTA data to value barium carbonate, nitric acid, and zinc chloride. Petitioner points out that HSW did not argue that the WTA data is flawed, except possibly for zinc chloride. With respect to the concentration levels, Petitioner argues that despite HSW's submission of information from an alleged *Chemical Weekly* "special correspondent," the original price quotes from *Chemical Weekly* do not indicate the specific purity level of these three chemicals. Petitioner maintains, moreover, that the WTA data represents a value from the whole of India, whereas the *Chemical Weekly* values are derived from prices in a limited number of markets. Based on the totality of record evidence, Petitioner claims that the WTA data is the best available information for valuing these chemical inputs.

Department's Position: It is the Department's practice, when selecting the best available information for valuing FOPs and in accordance with section 773(c)(1) of the Act, to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR.[57] We continue to find that the *Chemical Weekly* prices are reliable, comparable, public, and contemporaneous with the POR. We have also determined that the *Chemical Weekly* prices are representative of a broad market average.[58] Regarding the specificity of the inputs, we have determined that to value hydrochloric acid, barium carbonate, nitric acid, and zinc chloride using the *Chemical Weekly* prices for the reasons discussed below.

In applying the Department's surrogate value selection criteria, the Department has found in numerous NME cases that import data from WTA have represented the best information available for valuation purposes because the WTA data are publicly-available, contemporaneous with the POR, tax-exclusive, product-specific, and broad market averages.[59] Likewise, the Department has determined that price data from the Indian publication *Chemical Weekly* constituted the best available information to value certain inputs in various NME cases.[60] As stated in *Activated Carbon from the PRC* and accompanying Issues and Decision Memorandum

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[57] *See, e.g., Activated Carbon from the PRC* and accompanying Issues and Decision Memorandum at Comment 3d.
[58] *See id.*
[59] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) and accompanying Issues and Decision Memorandum at Comment 2; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 66087 (December 14, 2009) and accompanying Issues and Decision Memorandum at Comments 1 and 4 ("*Chlorinated Isocyanurates from the PRC")*; and *Activated Carbon from the PRC* and accompanying Issues and Decision Memorandum at Comments 3c and 3f.
[60] *See, e.g., Activated Carbon from the PRC* and accompanying Issues and Decision Memorandum at Comment 3d; *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009) and accompanying Issues and Decision Memorandum at Comment 3 ("*Glycine from the PRC"*); and *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 27104, 27107 (June 8, 2009), unchanged in *Chlorinated Isocyanurates from the PRC.*

at Comment 3d, the Department has found *Chemical Weekly* data to be reliable for valuation purposes because these data represent multiple prices over time, are representative of prices during the POR in India, are product-specific, and can be made tax-exclusive.

Thus, the Department considers both WTA and *Chemical Weekly* to be reliable data sources. In determining whether to use Indian import statistics from WTA or price data from *Chemical Weekly*, the Department examines the specific facts of each case and, based upon those facts, selects the best available information so that surrogate values are specific to the input and contemporaneous with the POR.[61] As explained below, however, the Department has recently clarified its practice with respect to using *Chemical Weekly*.

In the past, the Department has treated the *Chemical Weekly* prices of chemicals in liquid form as reflecting a 100 percent concentration level, unless *Chemical Weekly* specified otherwise.[62] Hence, when a respondent reported the concentration level of a chemical in liquid form, the Department would adjust the *Chemical Weekly* price by the concentration level reported by the respondent to derive a surrogate value specific to the concentration level of the chemical consumed by the respondent.[63] However, as explained in the *Preliminary Results*, the Department recently learned that the prices reported in *Chemical Weekly* may not reflect chemicals at a 100 percent purity level.[64] Therefore, as stated in the *Preliminary Results*, "unless the price quotes from *Chemical Weekly* indicate the purity level, the Department will treat the purity level of chemicals sold in either liquid or solid form as unknown."[65] Consequently, the Department would no longer adjust these unknown concentration levels to the concentration level of the chemical FOP used by the respondents.

The Department further clarified its position regarding the use of *Chemical Weekly* data in *Activated Carbon from the PRC*[66] stating that when a respondent has identified the concentration level of a chemical input and when the WTA HTS category is not a direct match to the chemical input, the Department will normally rely upon *Chemical Weekly* prices. In that case, the concentration level of the chemical input as reported in *Chemical Weekly* was known, making the *Chemical Weekly* value more specific to the input in question.

Thus, when (1) a respondent reports the concentration level of its chemical input, (2) the WTA HTS category does not directly match the concentration level of that input, and (3) the concentration level is known for the prices reported for that chemical in *Chemical Weekly*, the Department will generally rely upon the *Chemical Weekly* prices to value the input. Moreover, because the concentration levels are known, the Department is able, when necessary, to adjust the *Chemical Weekly* value using a ratio of the respondent's concentration level to the concentration level in *Chemical Weekly* to achieve a surrogate value that is specific to the chemical input in question. For example, if the *Chemical Weekly* concentration level is 90% and

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[61] *See Activated Carbon from the PRC* and accompanying Issues and Decision Memorandum at Comment 3d

[62] *See, e.g.*, *Synthetic Indigo From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 53711 (September 12, 2003) and accompanying Issues and Decision Memorandum at Comment 5.

[63] *See, e.g.*, *Glycine from the PRC* and accompanying Issues and Decision Memorandum at Comment 3.

[64] *See Preliminary Results* at 57656; *see Preliminary Factor Valuation Memo* at Attachment 3.

[65] *See Preliminary Results* at 57656.

[66] *See Activated Carbon from the PRC.*

the respondent's concentration level is 70%, we will multiply the *Chemical Weekly* value by 0.777 (or 70% divided by 90%) to compute the surrogate value. Where both the respondent and *Chemical Weekly* report the same concentration level or where the concentration levels are within the same range, the Department will not adjust the *Chemical Weekly* prices as the *Chemical Weekly* prices are already input-specific.

In this review, we have information on the concentration levels of the barium carbonate, nitric acid, and zinc chloride used by HSW and the concentration levels reflected in the *Chemical Weekly* prices for these inputs. Moreover, the HTS categories for these chemicals are not specific to the inputs used by HSW. Therefore, consistent with the practice described above, we have relied on the *Chemical Weekly* prices to value these inputs. Because the concentration levels of the nitric acid and zinc chloride used by the HSW differ from the concentration levels for the prices reported in *Chemical Weekly*, we have adjusted the *Chemical Weekly* prices to derive product-specific surrogate values for these factors.

Petitioner challenges the information submitted by HSW regarding the concentration levels reflected in the *Chemical Weekly* prices because the information is not directly from *Chemical Weekly*. However, the Department relied on this same information source in determining the concentration levels of hydrochloric acid in the *Preliminary Results* and in *Activated Carbon from the PRC*, and are satisfied that the concentration levels reported are reliable. Regarding the relative representativeness of the *Chemical Weekly* and WTA data, nothing on the record of this review indicates the concentration levels reported are inaccurate. Therefore, we have been able to use the *Chemical Weekly* data to calculate specific values for the inputs used by HSW and we find that it represents the best available information on the record. Nonetheless, the Department generally considers WTA data to reflect market information for the whole of India, so where more specific information is not available from other sources (*e.g.*, *Chemical Weekly* and JPC), we disagree that WTA data is less representative than *Chemical Weekly*.

Comment 6: Surrogate Values for Brokerage and Handling

Petitioner's Affirmative Comments:
Petitioner proposes that the Department use a survey of brokerage costs in India included in the World Bank/International Finance Corporation ("World Bank Group") publication "Doing Business 2009" as our surrogate value source for brokerage and handling instead of the brokerage and handling costs of the three Indian companies used in the *Preliminary Results*. [67] Petitioner argues that the information in *Doing Business 2009* is more accurate, complete and contemporaneous than the information on which the Department preliminarily relied. Specifically, Petitioner asserts that:

- the data for the three companies used in the Department's current surrogate value are internally contradictory in that the reported costs for these companies vary widely;

- the data for only one of the three companies is contemporaneous with the POR; and

[67] *See* Petitioner's December 28, 2009 submission at 2 and Attachment 2.

the data for only one of the three companies (Navneet Publications (India) Ltd. ("Navneet")) appear to report all brokerage and handling charges.

In contrast, according to Petitioner, the data published in *Doing Business 2009* are extensively documented, contemporaneous and cover all aspects of brokerage and handling services. Moreover, Petitioner states that the Department relied on *Doing Business 2009* in previous cases.[68] Petitioner calculates a surrogate value amount U.S. $ 0.0310 based on the *Doing Business 2009* data. [69]

HSW Rebuttal:
HSW disputes Petitioner's claim that brokerage and handling costs of the three companies are contradictory simply because they vary from company to company. HSW states that these costs were verified by the Department in other proceedings and claims that the variance in costs is addressed by averaging them. HSW further disputes Petitioner's assertion that the brokerage and handling charges reported by two of the companies are incomplete. HSW asserts that those companies' costs were not reported in as much detail, but they are complete. Also, HSW argues that contemporaneity is not an overriding factor as Petitioner has suggested because it is only one of several factors that the Department considers in selecting it surrogate value sources and the Department has a longstanding practice of adjusting non-contemporaneous source data for inflation which it has done in the *Preliminary Results*.

HSW claims that data from *Doing Business 2009* are flawed because there is insufficient information in *Doing Business 2009* about the types of companies that incurred the brokerage and handling charges, the type of products being shipped, and the locations from which and to which the products are shipped. HSW states that the Department's practice in selecting surrogate values is to select data that is the most representative of the specific experience of the NME respondent. In HSW's view, the company-specific information used in the *Preliminary Results* is more specific and this specificity is reinforced by the Department's extensive prior review and verification of the three companies' data in other proceedings.

HSW rebuts Petitioner's argument that the Department's prior use of *Doing Business 2009* data in the initiation of *Retail Carrier Bags* is evidence that the data are reliable, arguing that there is a higher applicable standard of corroboration for evidence in preliminary and final results than in initiations. [70]

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[68] *See, e.g., Polyethylene Retail Carrier Bags From Indonesia, Taiwan and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 74 FR 19049 (April 27, 2009), Initiation Checklist (for Vietnam) at 8.
[69] *See* Petitioner's December 28, 2009 submission at 2 and Attachment 2, at 1 (Statistics section from the *Doing Business 2009* report entitled "Trading Across Borders in India Details" for brokerage and handling charges, and, at 43 (Steinecker.Containerhandel, 2.6 Ratings for maximum kilogram payload of 20 foot container, the unit on which the reported charges in *Doing Business 2009* are based).
[70] *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia*, 71 FR 47171 and accompanying Issues and Decision Memorandum at Comment 10 (August 16, 2006). *See also Statement of Administrative Action* accompanying the *Uruguay Round Agreements Act*, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

Department's Position:
We agree with Petitioner that, of the options available on the record, *Doing Business 2009* is the best available source for valuing respondent's brokerage and handling costs. The data from *Doing Business 2009* are publicly available, contemporaneous, are specific to the costs in question and represent a broad market average. As discussed in more detail above in the Department's position for Comment 4, in valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country.[71] Additionally, as also discussed in our position for Comment 4, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis.

We agree with Petitioner that the *Doing Business 2009* data are more specific in identifying the types of brokerage and handling costs they cover than the data from three companies used in the *Preliminary Results*. The "Trading Across Borders in India Details" page from *Doing Business 2009* website provides specific cost breakdowns for document preparation, customs clearance and ports and terminal handling.[72] We do not have information on the record indicating whether Essar Steel Limited ("Essar") and Himalya International Ltd. ("Himalya") included all of these costs in the lump sum they report for brokerage and handling, and, thus the *Doing Business 2009* data has a distinct advantage in explicitly breaking out these relevant costs.

We recognize that there is no evidence to link cost data from *Doing Business 2009* specifically to the export of subject merchandise; however, this link cannot be established with the data from Navneet, Essar and Himalya either, as there is no record information that any of these companies export subject merchandise. We determine that for brokerage and handling costs, *Doing Business 2009* is a more broad-based survey of costs in the Indian market and, thus, constitutes a more credible and representative source, than the data we used in the *Preliminary Results* which is limited to the experiences of three Indian companies. We confirmed the broad-based and representative nature of the statistics in *Doing Business 2009* with a review of the website (http://www.doingbusiness.org) referenced in Petitioner's submission. We found that the *Doing Business* survey for India includes information from 17 different locations in India.[73] The website also indicates that the World Bank Group obtained its data on India with the help of 280 private sector contributors and 230 public sector officials.[74] Additionally, we note that the cost data have an official nature, in that they represent statistical analysis by the World Bank, an international organization. In past cases, we have found international organization publications to be reliable and credible sources of information.[75]

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[71] *See CTL Carbon from the PRC* and accompanying Issues and Decision Memorandum at Comment 8.
[72] *See* Petitioner's December 28, 2009 submission Attachment 2, at 1.
[73] *See Doing Business 2009 Subnational Series: Doing Business in India*, The World Bank Group (June 30, 2009) at 7 found at http://www.doingbusiness.org/Subnational/.
[74] *See id.* at 6.
[75] Additionally, in NME AD investigations, the Department routinely relies on the International Monetary Fund statistics for adjusting costs for inflation and uses statistics from the International Labor Organization, the World Bank and the International Monetary Fund to calculate its NME labor rates. *See, e.g., Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009); *see also* Factor Valuation Memo at 1 and 8.

With reference to HSW's assertion that that the Department has "a higher applicable standard of corroboration of information used in preliminary and final results than for initiations," to the extent HSW intended to argue that the Department's acceptance of a data source in an initiation by itself does not put the data source on an equal footing with sources the Department has used in preliminary and final results, we agree. However, we are adopting *Doing Business 2009* based on the merits of the data source discussed above and not on the fact it was used in a previous initiation.

Comment 7: Correction of Calculation Error

HSW's Affirmative Comments:
HSW asserts that in the *Preliminary Results* margin calculation, the Department made a ministerial error when it added the alloy wire rod distance to the truck rate when it should have multiplied the distance by the truck rate. HSW argues that the Department should correct this in its margin calculation for the final results.[76]

Petitioner did not address this comment.

Department's Position:
The Department agrees with HSW that the Department erred in the way it applied the truck rate in the dumping calculation. The Department has made the specified correction to the calculation for the final results.[77] Due to the proprietary nature of the discussion of this error, the Department has addressed it in a separate memo.[78]

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[76] *See* Petitioner's Case Brief (January 6, 2010) at 1 and 3.
[77] *See* Memo to File from Austin Redington: Final Results of the 2007-2008 Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China: Calculation of Final Margin for Hangzhou Spring Washer Co., Ltd., also known as Zhejiang Wanxin Group Co., Ltd. (May 17, 2010) at 3 and Attachment 5.
[78] *See id.*

RECOMMENDATION

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

AGREE___________ DISAGREE___________

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Paul Piquado
Deputy Assistant Secretary
for AD/CVD Policy and Negotiations

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Date