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April 11, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Senior Director, Office I
Antidumping and Countervailing Duty Operations

SUBJECT: Steel Wire Garment Hangers from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Seventh Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China; 2014-2015

SUMMARY

The Department of Commerce (the Department) analyzed the comments submitted by Petitioner,[1] a U.S. importer,[2] and U.S. distributors[3] in this administrative review of the antidumping (AD) duty order of steel wire garment hangers from the People's Republic of China (PRC). Following the *Preliminary Results*[4] and the analysis of the comments received, we have made changes to the margin calculations for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the list of the issues in this administrative review for which we received comments from interested parties:

Comment 1: Surrogate Country Selection
Comment 2: Surrogate Financial Ratio Calculation
Comment 3: Corrugated Paper Surrogate Value
Comment 4: Brokerage and Handling Surrogate Value
Comment 5: Value-Added Tax (VAT)

[1] M&B Metal Products Co., Inc. (Petitioner).
[2] Aristocraft of America LLC (Aristocraft or U.S. importer).
[3] Best for Less Dry Cleaners Supply LLC, Laundry & Cleaners Supply, Inc., Rocky Mountain Hanger MFG Co., Rosenberg Supply Co., Ltd, and ZTN Management Company, LLC (U.S. Distributors).
[4] *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 79435(November 14, 2016) *(Preliminary Results)* and accompanying Preliminary Decision Memorandum.

BACKGROUND

On November 14, 2016, the Department published the *Preliminary Results* of this administrative review. On January 4, 2017, Petitioner, Aristocraft, and U.S. Distributors submitted case briefs.[5] On January 9, 2017, Petitioner submitted a rebuttal brief.[6] The mandatory respondent, Shanghai Wells Hanger Co., Ltd./Hong Kong Wells Ltd.,[7] did not submit a case brief or rebuttal brief.

SCOPE OF THE ORDER

The merchandise that is subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. Also excluded from the scope of the order are chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule (HTS) subheadings 7326.20.0020, 7323.99.9060, and 7323.99.9080.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our review and analysis of comments received from parties, we made certain changes to our margin calculation. Specifically, we revised the brokerage and handling surrogate value and revised the surrogate financial ratios.

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[5] *See* Letter to the Secretary of Commerce from M&B Metal Products Co., Inc. "Re: Seventh Administrative Review of Steel Wire Garment Hangers from China: Petitioner's Case Brief," (January 4, 2017); *see also* Letter to the Secretary of Commerce from Aristocraft of America LLC "Re: Steel Wire Garment Hangers from the People's Republic of China: Case Brief of Aristocraft," (January 4, 2017) (Aristocraft's Case Brief); *see also* Letter to the Secretary of Commerce from U.S. Distributors "Re: Steel Wire Garment Hangers from the People's Republic of China – Case Brief," (January 4, 2017) (U.S. Distributors' Case Brief).

[6] *See* Letter to the Secretary of Commerce from M&B Metal Products Co., Inc. "Re: Seventh Administrative Review of Steel Wire Garment Hangers from China: Petitioner's Rebuttal Brief," (January 9, 2017) (Petitioner's Rebuttal Brief).

[7] In the first administrative review of the *Order*, the Department found that Shanghai Wells Hanger Co., Ltd. and Hong Kong Wells Ltd. are a single entity and, because there were no changes to the facts that supported that decision since that determination was made, we continue to find that these companies are part of a single entity for this administrative review. *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758, 68761 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994, 27996 (May 13, 2011); *see Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 2013-2014, 80 FR 69942 (November 2, 2015); *see also Preliminary Results* (November 14, 2016).

DISCUSSION OF THE ISSUES

Comment 1: Surrogate Country Selection

U.S. Distributors' and Aristocraft's Comments:

- The Department should select Bulgaria as the primary surrogate country (SC), as the Bulgarian information on the record is of higher quality and is more complete than the surrogate value (SV) information provided for Thailand.[8]
- Bulgaria and Thailand both cover the range of carbon content of steel wire rod consumed by Shanghai Wells in the production of the subject merchandise during the period of review (POR).[9]
- The Department should use the 2015 Bulgarian financial statements of VTPG-Stroymat Joint Stock Company (VTPG) and Special Wires & Nails Joint Stock Company (Special Wires and Nails) instead of the 2014 Thai financial statements used in the *Preliminary Results*.[10] The 2015 Bulgarian financial statements cover a greater portion of the POR (*i.e*. nine months of the POR) and Department precedent dictates that these financial statements should be preferred. The 2014 Thai financial statements used in the *Preliminary Results* suffer defects, such as the company not drawing steel wire rod and also an ambiguous translation of the "Article Making Cost" line item, which makes them unreliable for the calculation of surrogate financial ratios.[11]
- In *Labor Methodologies*, the Department expressed a preference for the use of Chapter 6A International Labor Organization (ILO) data for valuing labor. As this information has been provided for Bulgaria,[12] but not for Thailand, the Department should choose Bulgaria as the primary surrogate country.[13]
- The Thai import statistics are unreliable for valuing Shanghai Wells' factors of production (FOPs) as reports from the U.S. Trade Representative (USTR) and the Department's U.S. Commercial Service express concern that Thai Customs does not accurately report the value of imports.[14] Additionally, U.S. Distributors' comparison analysis of U.S. export statistics to Thailand import statistics illustrates discrepancies between the two countries' average unit values (AUVs).[15]
- HTS code 4808.10.00.000 used to value corrugated paper is aberrational.[16]

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[8] *See* U.S. Distributors' Case Brief at 3.
[9] *Id*. at 4.
[10] *Id.*; *see also* Letter to the Secretary of Commerce from U.S. Distributors "Re: Seventh Administrative Review of Steel Wire Garment Hangers form the People's Republic of China – Submission of Surrogate Value Information," (October 5, 2016) (U.S. Distributors' Final SV Submission) at Exhibits 1 to 7.
[11] *See* U.S. Distributors' Case Brief at 4-8.
[12] *See* Letter to the Secretary of Commerce from U.S. Distributors "Re: Seventh Administrative Review of Steel Wire Garment Hangers from the People's republic of China- Submission of Surrogate Value Information," (March 18, 2016) (U.S. Distributors' Initial SV Submission) at Exhibit 6.
[13] *See* U.S. Distributors' Case Brief at 8-9.
[14] *See* U.S. Distributors' Case Brief at 9-12; *see also* U.S. Distributors' Final SV Submission at Exhibits 1 to 4.
[15] *See* U.S. Distributors' Case Brief at 11-12; *see also* U.S. Distributors' Final SV Submission at Exhibit 14.
[16] *See* U.S. Distributors' Case Brief at 12; *see also* Comment 3 of this memorandum.

Petitioner's Rebuttal:

- The Department should continue to rely on Thailand as the primary surrogate country in this review.[17]
- The Department correctly valued steel wire rod using the two Thai tariff codes for steel wire rod, as they are the most specific to the steel wire rod used by Shanghai Wells and, thus, represent the best available source for valuing Shanghai Wells' steel wire rod input.[18]
- The Department stated in the *Preliminary Results* that the two Bulgarian financial statements are not suitable for the calculation of surrogate financial ratios, as they contain undetermined other revenue information and do not contain a detailed breakout of energy. In contrast, the Department found that the two Thai financial statements used in the *Preliminary Results* provide the best available information on the record.[19]
- Allegations as to the unreliability of Thai import data have been rejected by the Department in a recent review as the Department has concluded that the entirety of the Thai data should not be deemed unreliable. The Department's determination of the reliability of the Thai import data has been upheld on appeal.[20]

Department's Position: We disagree with U.S. Distributors and Aristocraft that the Department should select Bulgaria as the primary SC in this review, and continue to find that Thailand provides the best information to value SVs.

For these final results, no party challenges that both Bulgaria and Thailand are at a comparable level of economic development to the PRC or that both are significant producers of comparable merchandise. Thus, the Department has relied on the quality of the data on the record for Thailand and Bulgaria when selecting the most appropriate primary surrogate country. As described below, we determine that the Thai data provide the most specific data for valuing steel wire rod, which is the main input for the subject merchandise, and continue to find that of the data on the record, the Thai data constitute the best information to value Shanghai Wells' FOPs. When we combine our finding that Thailand is a better source of SV data with the other factors the Department considers when selecting a primary surrogate country discussed above, we find that Thailand is the appropriate surrogate country for the final results.

In accordance with section 773(c)(4) of the Tariff Act of 1930, as amended (the Act), in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy (ME) countries that are: (1) at a level of economic development comparable to that of the nonmarket economy (NME) country; and (2) significant producers of comparable merchandise.[21] When evaluating SV data to determine the most appropriate surrogate country, data quality is a critical consideration affecting surrogate country selection.[22]

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[17] *See* Petitioner's Rebuttal Brief at 2-4.
[18] *Id*. at 2.
[19] *Id*. at 2-3.
[20] *Id.* at 3-4 (citing *Hangzhou Yingqing Material Co. and Hangzhou Mechanical Co. v. United States*, No. 14-00133, Slip Op. 16-118 at 10-12 (Ct. of Int'l Trade December 21, 2016) and Elkay Manufacturing Co. v. United States, 180 F. Supp. 3d 1245 (CIT 2016)).
[21] For a description of our practice *see* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1).
[22] *Id*.

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons.[23]

In the *Preliminary Results*, the Department determined that Thailand provided the best source of SV data because the Thai data are the most complete and contemporaneous, and provide better quality of data on the whole. The Department considers several criteria when determining what constitutes the best available information, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, represent a broad market average, and are specific to the input.[24] Although there is no hierarchy for these above-mentioned principles, the Department's preference is to satisfy the breadth of the aforementioned criteria. Furthermore, it is the Department's practice to consider carefully the available evidence in light of the particular facts of each industry during its analysis of valuing the FOPs.[25] The Department must weigh the available information presented for each input value and, on a case-by-case basis, make a product-specific decision as to what constitutes the "best" available SV for each input.[26]

While we agree with U.S. Distributors and Aristocraft that both Bulgaria and Thailand data cover the range of steel wire rod carbon content consumed by Shanghai Wells in the production of the subject merchandise during the POR, we continue to determine that Thai import data from the Global Trade Atlas (GTA) are more specific for valuing steel wire rod with respect to the carbon content of the steel wire rod Shanghai Wells used during the POR to manufacture subject merchandise, and, accordingly, are the best available information. The relevant Thai HTS codes are 7213.91.90010, (Containing By Weight Not More Than 0.06 Percent Of Carbon…) and 7213.91.90011, (Containing By Weight More Than 0.06 Percent But Not More Than 0.10 Percent Of Carbon…),[27] both of which are narrower ranges than the Bulgarian HTS codes, and, thus, closer to the carbon content Shanghai Wells used. In contrast to the Thai HTS codes, the following Bulgarian HTS codes are on the record: 7213.91.41 (…Containing By Weight 0.06 Percent Or Less Of Carbon), 7213.91.49 (…Containing By Weight More Than 0.06 Percent But Less Than 0.25 Percent Of Carbon), and 7213.99.10 (…Containing By Weight Less Than 0.25 Percent Of Carbon).[28] Shanghai Wells provided two mill test certificates demonstrating that, during the POR, it used steel wire rod containing a carbon content of 0.06 percent to 0.08

[23] *Id*.
[24] *See, e.g., Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) (*Electrolytic Manganese*), and accompanying Decision Memorandum at Comment 2.
[25] *See* Policy Bulletin 04.1.
[26] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F.3d 1316, 1322 (Fed. Cir. 2010) (*Ad Hoc Shrimp*); *see also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*; 2012–2013, 80 FR 13332 (March 13 2015) (*Hangers AR5*), and accompanying Issues and Decision Memorandum at Comment 2.
[27] *See* Letter to the Secretary of Commerce from Petitioner "Re: Seventh Administrative Review of Steel Wire Garment Hangers from China: Petitioner's Submission of Surrogate Value Information," (March 18, 2016) (Petitioner's SV Submission) at Exhibit 1.
[28] *See* U.S. Distributors' Initial SV Submission at Exhibits 3 and 12.

percent.[29] The Thai HTS codes cover steel wire rod containing a carbon content up to 0.10 percent.[30] The Bulgarian HTS codes cover a broader range of steel wire rod containing a carbon content up to 0.25 percent.[31] The Department's experience in examining steel cases lends an understanding that low carbon steel, other things being equal, is more malleable than higher carbon steels, making them easier to cold form, which here means bending the low carbon steel wire into hangers.[32] Therefore, by using an HTS code with a carbon content most specific to that consumed by the respondent, the Department more accurately captures the experience of the respondent, leading to a more accurate surrogate valuation and, as a result, a more accurate normal value calculation.[33] Therefore, because the HTS codes for Thailand represent a range of steel wire rod with a carbon content more specific to that used by Shanghai Wells during the POR, they represent the "best" information on the record. Thus, we continue to determine that the Thai GTA data represent the best information to value the respondent's usage of steel wire rod during the POR.

Next, we disagree with U.S. Distributors and Aristocraft that the 2015 Bulgarian financial statements of VTPG and Special Wires and Nails constitute the best available information to value surrogate financial ratios, because the Bulgarian financial statements contain undetermined other revenue information listed as "other income" and "other revenue," respectively, on the profit and loss statement of each of the financial statements, and do not include a detailed breakout of energy.[34] Further, these statements also contain extremely large line items merely identified as "Book value of assets sold" with no further details as to the nature of the expenses. The Department discusses these flaws in more detail in Comment 2, below. For these final results, the Department finds that one of the Thai financial statements on the record offers better information than the 2015 Bulgarian financial statements, because the financial statements are contemporaneous, are for a producer of comparable merchandise, and do not suffer from the defects of the Bulgarian financial statements. While, in the *Preliminary Results*, we found two 2014 Thai statements to be the best available information on the record to calculate financial ratios,[35] for these final results, we are no longer relying on these 2014 Thai financial statements. Although U.S. Distributors and Aristocraft took issue with certain elements of our preliminary calculations, arguing that the 2014 Thai financial statements suffer defects, such as not drawing steel wire rod and containing an ambiguous translation of "Article Making Cost," because, as discussed below, we are no longer relying on these financial statements, these arguments are moot.

With regard to labor data, we disagree with U.S. Distributors and Aristocraft that the Chapter 6A ILO data submitted for Bulgaria provide the best information to value labor. In 2011, the

[29] *See* Letter to the Secretary of Commerce from Shanghai Wells "Re: Steel Wire Garment Hangers from the People's Republic of China: Section {C&D} Supplemental Questionnaire Response," (May 24, 2016) (Wells' Section C&D Supplemental Response) at Exhibit SC-2.
[30] *See* Petitioner's SV Submission at Exhibit 1.
[31] *See* U.S. Distributors' Initial SV Submission at Exhibits 3 and 12.
[32] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*; 2011–2012, 79 FR 31298 (June 2, 2014) (*Hangers AR4*), and accompanying Issues and Decision Memorandum at Comment 1.
[33] *Id*.
[34] *See* U.S. Distributors' Final SV Submission at Exhibits 1-3.
[35] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 9-10.

Department announced its decision to use Chapter 6A ILO instead of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.[36] We did not, however, preclude all other sources for evaluating labor costs in NME AD proceedings. Rather, we continue to follow the Department's practice of selecting the best available information to determine SVs for inputs such as labor.[37] In our *Preliminary Results*, we valued labor using manufacturing-specific data which directly reflect the four quarters covering the POR (fourth quarter of 2014 and first, second, and third quarters of 2015) from the Government of Thailand, National Statistical Office, Labor Force Survey of Whole Kingdom, (POR Manufacturing-Specific NSO Data).[38] Although the POR Manufacturing-Specific NSO data are not from the ILO, we find that this fact does not preclude us from using this source for valuing labor. In this review, the POR Manufacturing-Specific NSO Data are publicly available, are industry-specific, are contemporaneous with the POR, and are official Thai government statistics, while the Bulgaria Chapter 6A data are not contemporaneous, as the most recently available data cover the year 2007.[39] Additionally, the Court of International Trade (CIT) has affirmed the Department's previous use of POR manufacturing-specific NSO data, where these were the best available information on the record to value labor because they were more contemporaneous than the alternative ILO Chapter 6A data.[40] Additionally, like the Bulgarian ILO Chapter 6A data, the POR manufacturing-specific NSO data also reflect all costs related to labor.[41] Moreover, the Thai data are from Thailand, which, as described above and below, has superior specificity with respect to the primary material input, as well as the superior financial statements, both of which contribute more heavily to the normal value calculation than labor. Therefore, we continue to find that the POR Manufacturing-Specific NSO data are the best available data for determining Shanghai Wells' labor cost during the POR.

We disagree with U.S. Distributors and Aristocraft that reports from the Office of the USTR,[42] consultation requests made to the World Trade Organization (WTO),[43] and a publication of the Department's U.S. Commercial Service[44] indicate that the Thai import statistics are unreliable for valuing Shanghai Wells' FOPs. The Department has reviewed these concerns in previous reviews, and each time has found that these reports do not address the raw material inputs that are consumed in the production of the merchandise being reviewed, and, therefore, has declined

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[36] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36093-94 (June 21, 2011) (*Labor Methodologies*).
[37] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) (*Xanthan Gum*), and accompanying Issues and Decision Memorandum at Comment 6; *see also Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) (*Stainless Steel Sinks*), and accompanying Issues and Decision Memorandum at Comment 3.
[38] *See* Memorandum to the File from Jessica Weeks "Re: Seventh Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Preliminary Results," (November 4, 2016) at 4 and Attachment 4; *see also* Petitioner's SV Submission at Exhibit II.
[39] *See* U.S. Distributors' Initial SV Submission at Exhibit 6.
[40] *See Elkay Mfg. Co. v. United States*, 180 F. Supp. 3d 1245, 1254 (CIT 2016) (*Elkay*).
[41] *See* Petitioner's SV Submission at Exhibit II; *see also Labor Methodologies* 76 FR 36093 (June 21, 2011).
[42] *See* Letter to the Secretary of Commerce from U.S. Distributors "Re: Seventh Administrative Review of Steel Wire Garment Hangers from the People's Republic of China- Submission of Rebuttal Surrogate Value Information," (March 25, 2016) (U.S. Distributors' Rebuttal SV Submission) at Exhibits SV-1-SV-4.
[43] *Id*. at Exhibits SV-9-SV-11.
[44] *Id*. at Exhibits SV-5-SV-7.

to conclude that all Thai import data should be rejected due to the USTR reports.[45] Additionally, while the European Union and the Philippines requested consultations with Thailand at the WTO regarding how Thailand values its imports, these requests for consultations are not binding or adverse determinations with respect to the quality of the Thai data.[46] Further, while the U.S. Commercial Service publication cited by U.S. Distributors expresses similar concerns as the USTR reports, it similarly does not provide any additional detail or evidence that would cause the Department to determine that Thai import data are, overall, substandard. Importantly, the reports do not provide a basis for rejecting the entirety of Thai import data as unreliable. Moreover, as Petitioner points out, the Department's determination regarding the reliability of Thai import data has been upheld by the CIT.[47] Therefore, we continue to find that the USTR reports, consultation requests made to the WTO, and the U.S. Commercial Service publication do not provide sufficient evidence to reject all Thai import data as unreliable.

Lastly, as explained below, we disagree with U.S. Distributors and Aristocraft that the value for corrugated paper is aberrational. For a full analysis regarding corrugated paper, *see* Comment 3: Corrugated Paper Surrogate Value of this memorandum. Moreover, the surrogate value for corrugated paper is but one surrogate value the Department used for these final results. The Department finds that, in this particular proceeding, the quality of data available for Shanghai Wells' primary input, in this case steel wire rod, weighs more heavily in our analysis of data quality than the surrogate value for corrugated paper because, as discussed above, the carbon content of the steel wire rod plays a crucial role in the production of subject merchandise and, therefore, the Department seeks to use a SV with a carbon most specific to that consumed by the respondent. Moreover, the subject merchandise, steel wire garment hangers, is primarily comprised of steel wire, which is derived from steel wire rod.

In sum, as in the *Preliminary Results*,[48] we continue to find that, from the countries listed in the Surrogate Country List, it is appropriate to select Thailand as the surrogate country because: (1) Thailand is at a level of economic development comparable to that of the PRC; (2) Thailand is a significant exporter of comparable merchandise; and (3) Thailand provides the best opportunity to use quality, publicly available data to value Shanghai Wells' FOPs, most notably steel wire rod. As described above, the Thai SV data are the best available information on the record to value FOPs for Shanghai Wells, including financial ratios. Therefore, we continue to use Thailand as the surrogate country and, accordingly, have calculated normal value using Thai import values to value Shanghai Wells' FOPs.

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[45] *See Hangers AR4* and accompanying Issues and Decision Memorandum at Comment 1; *see also Hangers AR5* and accompanying Issues and Decision Memorandum at comment 2.
[46] *Id*.
[47] *See Elkay*, 180 F. Supp. 3d at 1255; *see also Hangzhou Yingqing Material Co. v. United States*, 195 F. Supp. 3d 1299, 1306 (CIT 2016).
[48] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 20.

Comment 2: Surrogate Financial Ratio Calculation

U.S. Distributors' and Aristocraft's Comments:

- If the Department continues to rely on Thailand as the surrogate country, it must recalculate the surrogate ratios for overhead, selling and general administrative expenses, and profit using the three 2015 Thai financial statements.[49]
- As Petitioner did not submit any information to contest or rebut these three financial statements, and as it is the Department's practice to choose statements that align with nine months of the POR instead of three, the Department should not rely on the financial statements used in the *Preliminary Results* (*i.e.* Sahasilp Rivet Industrial Co., Ltd. (Sahasilp Rivet), and Thai Mongkol Fasteners Co., Ltd. (Mongkol Fasteners)).[50]
- Although the Department may use multiple financial statements to calculate surrogate financial ratios and, in accordance with the Act, it has the discretion to determine which information is the "best available information" to value factors of NME countries, it must use the best available information on the record to do so.[51]
- In previous segments of this proceeding, the Department has focused on steel wire rod consumption and steel wire rod drawing to determine whether a surrogate company had a similar production process and produced comparable merchandise.[52]
- Sahasilp Rivet and Mongkol Fasteners do not draw steel wire rod and are not producers of comparable merchandise.[53]
- If the Department continues to use the 2014 Thai financial statement of Mongkol Fasteners, it must recalculate the overhead ratio to include "Article Making Cost" in labor, as it has been mistranslated and should say "Hire of Work."[54]

Petitioner's Rebuttal:

- The Department should continue to rely on the 2014 Thai financial statements of Sahasilp Rivet and Mongkol Fasteners used in the *Preliminary Results* to calculate surrogate financial ratios.[55]
- The record demonstrates that the financial statements of Sahasilp Rivet and Mongkol Fasteners are representative of producers of comparable merchandise, are contemporaneous, and are publicly available. Furthermore, the Department has relied on these financial statements in previous reviews of this proceeding. [56]
- U.S Distributors' claims that Sahasilp Rivet is not a producer of comparable merchandise are unsubstantiated, as they only cite to the company's profile in connection with participation at an industry event. This profile does not provide proof that the company does not draw steel wire rod, as the profile was most likely prepared in consideration of the target audience at the event.[57]

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[49] *See* U.S. Distributors' Case Brief at 13.
[50] *Id.*
[51] *Id*. at 14-15.
[52] *Id*. at 15-21.
[53] *Id*. at 21-23.
[54] *Id*. at 24-25.
[55] *See* Petitioner's Rebuttal Brief at 4.
[56] *Id*. at 5-8.
[57] *Id*. at 5-7.

- U.S. Distributors' claims that Mongkol Fasteners does not draw steel wire rod are unsubstantiated, as they have failed to cite to anything that conclusively demonstrates that Mongkol Fasteners does not draw steel wire rod.[58]
- The Department correctly classified the line item "Article Making Cost" as factory overhead. If the Department were to accept that the translation of "Article Making Cost" should have been "Hire of Work," the Department should continue its treatment of this expense as factory overhead, as Mongkol Fasteners' financial statement already distinguished direct and indirect expenses. Therefore, this expense should continue to be classified as manufacturing overhead.[59]

Department's Position: We determine that the 2015 Thai financial statements of L.S. Industry Company Limited (LSI) represents the best information on the record to value surrogate financial ratios. Section 773(c)(1) of the Act directs the Department to value FOPs using "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate… ."[60] Furthermore, 19 CFR 351.408(c)(4) specifies that the Department will value overhead, general expenses, and profit using non-proprietary information from producers of identical or comparable merchandise in the surrogate country. Pursuant to the Act and regulations, the Department's practice is to determine which financial statements are the best information on the record based on quality of data, specificity, and contemporaneity.[61]

In the *Preliminary Results*, we relied on the 2014 Thai financial statements of Sahasilp Rivet and Mongkol Fasteners.[62] However, U.S. Distributors timely provided a second SV submission,[63] close to the *Preliminary Results*, that included five 2015 financial statements. This submission included two 2015 Bulgarian financial statements, VTPG and Special Wires and Nails, and three 2015 Thai financial statements, LSI, Thai Mesh Company Limited (Thai Mesh), and Bangkok Fastening Company Limited (Bangkok Fastening).[64] Although the Department did not have adequate time to review these financial statements prior to the *Preliminary Results*, we analyzed these financial statements for these final results.[65]

The 2014 Thai financial statements used for the *Preliminary Results* are contemporaneous; however, they only cover three months of the POR.[66] However, the 2015 financial statements submitted by U.S. Distributors cover nine months of the POR and, thus, represent a majority of the POR.[67] Additionally, no information was submitted to rebut, clarify, or correct the 2015 financial statements submitted by U.S. Distributors. As our practice is to select the best available

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[58] *Id*. at 7-8.
[59] *Id.* at 8-9.
[60] *See* Section 773(c)(1) of the Act.
[61] *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 14.
[62] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 9 and 10.
[63] *See* U.S. Distributors' Final SV Submission.
[64] *Id*.
[65] See Preliminary Decision Memorandum at Footnote 38.
[66] *See* Petitioner's SV Submission; see also U.S. Distributors' Case Brief at 42.
[67] *See* U.S. Distributors' Final SV Submission at Exhibits 4, 5, and 6.

information on the record, we have narrowed our consideration of financial statements to the 2015 financial statements submitted by U.S. Distributors, as they cover a greater portion of the POR than the 2014 Thai financial statements.[68]

At the *Preliminary Results*, we found that the 2014 financial statements of VTPG, Special Wires and Nails, and Bangkok Fastening were not suitable to calculate surrogate financial ratios. Specifically, VTPG and Special Wires and Nails include undetermined other revenue information listed as "other income" and "other revenue," respectively, on the profit and loss statement of each of the financial statements.[69] As the Department cannot go behind these financial statements, it is unable to determine what these other revenue sources may be and, therefore, whether the other revenue information relates to other merchandise or services that are not considered comparable merchandise. In addition to "other income" and "other revenue," both VTPG and Special Wires and Nails include extremely large line-items that are booked as expenses and merely identified as "Book value of assets sold,"[70] with no further details provided in any of the explanatory notes to the statements. Accordingly, it is unclear what these expenses are related to, why the amounts are equal to more than twice the value of the salaries paid for the entire year, or whether there is a translation issue affecting the identification of the expenses. Furthermore, the 2014 financial statements of VTPG, Special Wires and Nails, and Bangkok Fastening did not include a breakout of energy.[71] It is the Department's practice to avoid double counting,[72] which could occur when the Department uses surrogate values for a respondent's energy FOPs and also uses financial statements that include energy, where the energy cannot be broken out to avoid double counting energy expenses. Here, because the record contains financial statements that adequately breakout energy costs, we decline to use statements that do not include this breakout. Although evidence on the record indicates that these three companies are producers of comparable merchandise, we find that the 2015 financial statements of these companies contain the same defects as the 2014 financial statements, such as other revenue items, unusually large entries for "Book value of assets sold", and no breakout of energy, as described above and in the *Preliminary Results* and accompanying Preliminary Decision Memorandum. Accordingly, the Department continues to find that these financial statements are not suitable sources by which to calculate surrogate financial ratios for these final results.[73] Additionally, U.S. Distributors submitted the 2015 Thai financial statements of Thai Mesh.[74] Like the financial statements previously discussed above, these financial statements do not include a breakout of energy. As previously stated in the reasons above, to avoid double counting energy costs, we decline to use these financial statements for these final results.

In accordance with the information on the record[75] and with respect to our practice as stated above, we find that the remaining Thai company's 2015 financial statement represents a

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[68] *Id; see also Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008).
[69] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 9 and 10.
[70] *See* U.S. Distributors' Final SV Submission at Exhibits 2 and 3.
[71] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 9 and 10.
[72] *See Stainless Steel Sinks* at Comment 4 (it is the Department's practice to avoid double counting costs where the data are available to do so).
[73] *See Preliminary Results* and accompanying Preliminary Decision Memorandum.
[74] *See* U.S. Distributors' Final SV Submission at Exhibit 5.
[75] *See* U.S. Distributors' Final SV Submission at Exhibits 8 and 9.

producer of comparable merchandise, is contemporaneous, specific, and provides quality data. The statute does not define "comparable merchandise." It is the Department's practice when determining whether the company is a producer of comparable merchandise to consider all information on the record.[76] In the present case, the 2015 financial statements of LSI contains information as to the kinds of merchandise the company produces (*e.g.* nails), merchandise the Department has found to be comparable to hangers.[77] While these financial statements do not indicate the types of inputs LSI consumes in its production process, the absence of readily apparent information on the input or wire drawing in a company's financial statement does not, necessarily, exclude the company from being a producer of comparable merchandise. In Hangers AR4, Hangers AR5, and Hangers AR6, the Department stated that, "where information as to the inputs and production {process} is on the record for a producer of comparable merchandise, such information may be useful in determining whether it is appropriate to use."[78] However, where this type of information is not readily apparent in the surrogate company's auditor's report, the absence of such information does not necessarily exclude a surrogate producer's financial statements from consideration.[79] Specifically, in this proceeding, there is no information on the record that indicates that any of the financial statements are representative of producers who exactly mirror Shanghai Wells' use of inputs or production process. However, the record does provide financial statements that are representative of producers of comparable merchandise.

Although the 2014 Thai financial statements are contemporaneous, the 2015 Thai financial statements of LSI cover a greater portion of the POR (*i.e.* nine months of the POR) and are, therefore, more representative of the POR. These financial statements provide quality, audited data by which to calculate surrogate financial ratios and, unlike certain financial statements described above, do not pose an issue relating to "other income" or "other revenue." Therefore, we determine that it is appropriate to rely on the 2015 Thai financial statements of LSI for the final results of this review.

Because we are no longer relying on the less contemporaneous 2014 financial statements used at the *Preliminary Results*, U.S. Distributors' and Aristocraft's arguments that the financial statements of Sahasilp Rivet and Mongkol Fasteners are not producers of comparable merchandise are moot for these final results. Although the Department has evaluated the financial statements of Sahasilp Rivet and Mongkol Fasteners in prior reviews and found these financial statements to be the best available information on the record to calculate surrogate financial ratios, for these final results, we find the 2015 financial statements of LSI to represent the best information available to calculate surrogate financial ratios.[80]

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[76] *Id.*
[77] *See Hangers AR5* and accompanying Issues and Decision Memorandum at Comment 3; see also *Hangers AR6* and accompanying Issues and Decision Memorandum at Comment 2.
[78] *See Hangers AR4* and accompanying Issues and Decision Memorandum at Comment 2; *see Hangers AR5* and accompanying Issues and Decision Memorandum at Comment 3; *see also Hangers AR6* and accompanying Issues and Decision Memorandum at Comment 2.
[79] *Id.*
[80] *See Hangers AR5* and accompanying Issues and Decision Memorandum at Comment 3; *see also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2013–2014 80 FR 69942 (November 12, 2015) (*Hangers AR6*), and accompanying Issues and Decision Memorandum at Comment 2.

Similarly, because we are no longer relying on the 2014 financial statements used at the *Preliminary Results*, U.S. Distributors' and Aristocraft's arguments that the Department must recalculate Mongkol Fasteners' ratio calculation due to a translation error of "Article Making cost" is moot.

Comment 3: Corrugated Paper Surrogate Value

U.S. Distributors' and Aristocraft's Comments:

- The Thai AUV for HTS code 4808.10, Corrugated Paper and Paperboard, Whether or Not Perforated, is aberrationally high compared to historical benchmark data for the same HTS code.[81]
- The Thai AUV in this POR is 305.48 baht/kg. Compared to an average of the first four reviews of this proceeding, the AUV in this POR is 1,264 percent greater and the quantity in this POR is 97 percent less. Thus, the Thai import quantities are not reflective of normal commercial behavior, which renders the data inherently distortive.[82]
- In a comparison of import quantities and AUVs from other potential surrogate countries during the POR, the Thai AUV is an outlier, as it is more than double the next highest country, the Thai import quantity is the lowest of the six potential surrogate countries, and the Thai import quantity represents 0.011 percent of total imports from all six countries.[83]
- The Department must explain why it is using aberrational data in its calculations.[84]
- In rejecting arguments that import data for corrugated paper were aberrational in *Hangers AR6*, the Department relied on two CIT cases. However, those cases are distinguishable from the case at hand because they focused on arguments that the selected SVs were aberrational because they were either the highest or the lowest values on the record. In this review, the data are aberrational not only because of the high SV, but also because of the low volume. Additionally, one of the CIT cases that the Department relied upon in *Hangers AR6* was ultimately remanded because the SV under contention appeared aberrational.[85]
- Shanghai Wells uses corrugated paper to self-produce the cartons in which to ship the subject merchandise. As a matter of common sense, the value of 1kg of cartons should be higher than 1kg of corrugated paper used to produce the finished cartons. In this POR, the Thai AUV for corrugated paper is 454 percent higher than that of cartons produced from corrugated paper.[86]
- For the final results, the Department should value corrugated paper using the Bulgarian data for HTS code 4808.10, Corrugated Paper and Paperboard, Whether or Not Perforated, or the Thai data for HTS code 4819.10, Cartons, Boxes and Cases, of Corrugated Paper or Paperboard.[87]

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[81] *See* U.S. Distributors' Case Brief at 26.
[82] *Id.* at 28-29.
[83] *Id*. at 30-31.
[84] *Id*. at 31.
[85] *Id*. at 33-34.
[86] *Id*. at 34-35.
[87] *Id*. at 36-37.

Petitioner’s Rebuttal:

- In *Hangers AR6*, the Department rejected U.S. Distributors’ arguments that the value for corrugated paper was aberrational and should continue to do so in this review.[88]
- In the *Preliminary Results*, the Department properly relied on GTA data from the POR under HTS code 4808.10 to value corrugated paper for packing purposes and properly disregarded import prices from NME and ME countries with broadly available subsidies.[89]
- In *Hangers AR6,* the Department addressed the arguments currently being made by U.S. Distributors and stated that higher prices alone or lower import quantities do not indicate that price data are distortive. Additionally, there is no evidence in the current review that the import values in question were not market driven.[90]

Department’s Position: We disagree with U.S. Distributors’ and Aristocraft’s arguments that the Thai HTS code 4808.10 used to value corrugated paper is aberrational. Interested parties must provide specific evidence showing whether the value is aberrational.[91] If a party presents sufficient evidence to demonstrate a particular SV is aberrational and, therefore, unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to value accurately the input in question.[92] With respect to benchmarking, the Department has examined historical import data for the potential surrogate countries for a given case, to the extent such import data are available, and/or examines data from the same HTS category for the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values.[93]

Although the Thai AUV was the highest among countries comparable to the PRC in terms of economic development, the Department has found that the existence of higher or lower prices alone does not necessarily mean a value is aberrational.[94] Additionally, it is self-evident that a range of prices will have a highest and lowest price. Furthermore, regarding U.S. Distributors’ and Aristocraft’s concerns that the Thai import quantity for the POR is lower than quantities from other potential surrogate countries, a range of quantities also must have a highest and lowest quantity and this does not, in itself, suggest that a quantity is commercially insignificant. Notably, in previous reviews of this proceeding, the Department has consistently found that small import quantities alone are not inherently distortive.[95] Furthermore, the 27,723kg of this input

[88] *See* Petitioner’s Rebuttal Brief at 18-21.
[89] *Id*. at 18.
[90] *Id*. at 18 and 19.
[91] *See Hangers AR6* and accompanying Issues and Decision Memorandum at Comment 4; *see also Hangers AR5* and accompanying Issues and Decision Memorandum at Comment 5.
[92] *Id.*
[93] *Id.*
[94] *See e.g. Polyethylene Terephthalate Film, and Strip from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013* 80 FR 33241 (June 11, 2015) and accompanying Issues and Decision Memorandum (stating that that “the existence of higher prices alone does not necessarily indicate that the price data are distorted or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular value”).
[95] *See Hangers AR5* and accompanying Issues and Decision Memorandum at Comment 5; *see also Hangers AR6* and accompanying Issues and Decision Memorandum at Comment 4.

imported by Thailand during the POR[96] is higher than the quantity that served as the basis for the corrugated paper surrogate value in the previous two segments of this proceeding,[97] and thus, is not an aberrationally small volume.

In addition to POR data for all potential surrogate countries, the record contains historical quantity and Thai AUV data for HTS code 4808.10 in each review of this proceeding.[98] As stated above, parties must provide sufficient evidence by which the Department can conduct an analysis. The data submitted by interested parties are insufficient for the Department to conclude that the Thai SV is aberrational. Although the record indicates that the Thai baht AUV of corrugated paper has increased over time, the record does not allow us to conclude that the prices in other potential surrogate countries did not increase concomitantly as part of a broader trend, as no party submitted historical data from all potential surrogate countries. Thus, the U.S. Distributors and Aristocraft have not placed information on the record that leads us to conclude that there is something aberrational with regard to the Thai baht AUV for corrugated paper. Instead, record information reflects that it was the highest AUV from among the potential surrogate countries during the POR, but that does not necessarily render the data aberrational. Accordingly, because the record lacks historical AUV data for the other potential surrogate countries, we are unable to draw any comparisons to the POR AUV data and determine that the Thai AUV represents an aberrational value.

We disagree with U.S. Distributors' and Aristocraft's comments that the Department should value corrugated paper using HTS code 4819.10 or the Bulgarian value for HTS code 4808.10 for corrugated paper.[99] In its questionnaire response, Shanghai Wells explained that it uses corrugated paper to form its cartons.[100] As creating cartons from corrugated paper is a part of Shanghai Wells' production process,[101] valuing corrugated paper using HTS code 4819.10, representing finished cartons, would not be representative of Shanghai Wells' experience. U.S. Distributors and Aristocraft point to the fact that the Thai AUV for corrugated paper is higher than that of the cartons produced from corrugated paper as evidence that the value is aberrational, because they claim that the value of the finished product should be higher than the value of the input. However, there is no evidence that merchandise imported under HTS code 4819.10 is comparable to that imported under HTS code 4808.10 or an appropriate proxy for valuing Shanghai Wells' consumption of this FOP. Moreover, there is no evidence on the record that would allow us to analyze whether the difference stems from the SV for HTS code 4819.10, and not 4808.10, that would account for the fact pattern identified by U.S. Distributors and Aristocraft. Additionally, we disagree with U.S. Distributors' and Aristocraft's argument that the Department should use the Bulgarian value for HTS code 4804.10 to value corrugated paper, because we do not find the Thai value for corrugated paper to be aberrational and it is the

[96] *See* U.S. Distributors' Rebuttal SV Submission at Exhibit SV-15.
[97] *See Hangers AR5* and accompanying Issues and Decision Memorandum at Comment 5; *see also Hangers AR6* and accompanying Issues and Decision Memorandum at Comment 4.
[98] *See* U.S. Distributors' Rebuttal SV Submission; *see also* U.S. Distributors' Final SV Submission.
[99] *See* U.S. Distributors' Case Brief at 36 and 37.
[100] *See* Letter to the Secretary of Commerce from Shanghai Wells "Re: Steel Wire Garment Hangers from the People's Republic of China: Section C&D Questionnaire Response," (February 4, 2016) at D-5.
[101] *Id.*

Department's preference to value all SVs using data from the primary surrogate country.[102] For the reasons described above, we are not changing our preliminary decision to use the Thai HTS code 4808.10, Corrugated Paper and Paperboard, Whether or Not Perforated, for these final results.

Comment 4: Brokerage and Handling Surrogate Value

U.S. Distributors' and Aristocraft's Comments:

- In its *Preliminary Results*, the Department based the SV for brokerage and handling (B&H) on information from the World Bank's *Doing Business 2015: Thailand* (*Doing Business 2015*) and *Doing Business 2016: Thailand* (*Doing Business 2016*).[103]
- The Department should limit its calculation of B&H to the World Bank's *Doing Business 2016*, as the Department has always relied on the version of the most recently available World Bank publication that most closely corresponds to the POR.[104]
- If the Department continues to average B&H costs from *Doing Business 2015* and *Doing Business 2016*, then the Department should exclude letter of credit costs from the SV calculation from *Doing Business 2015*, as it did in the prior administrative review.[105]
- The Department's allocation method overstates the total B&H expenses that Shanghai Wells incurred for each shipment, as the calculation for *Doing Business 2015* assumes a smaller denominator than that of Shanghai Wells' actual shipments.[106]
- If the Department continues to value B&H using both *Doing Business 2015* and *Doing Business 2016*, then it must weight average the expenses based on the time period of the POR each publication covers.[107]

Petitioner's Rebuttal:

- There is no legal impediment to the Department's reliance on the World Bank's *Doing Business 2015* and *Doing Business 2016.*[108]
- Averaging the costs of both publications results in a more accurate valuation of B&H expenses during the POR.[109]
- U.S. Distributors have argued in previous reviews that the Department should make adjustments to B&H costs. However, the Department has rejected these previous arguments.[110]

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[102] *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 Order*, 75 FR 844 (January 6, 2010), and accompanying Issues and Decision Memorandum.
[103] *See* U.S. Distributors' Case Brief at 37.
[104] *Id*. at 38.
[105] *Id*. at 38 and 39; *see also* U.S. Distributors' Final SV Submission at Exhibit 14 (explaining that the Department adjusted the brokerage and handling charges from *Doing Business 2014: Thailand* "to exclude Letter of Credits costs for Thailand, based on information from the World Bank").
[106] *See* U.S. Distributors' Case Brief at 39-41; *see also* Wells' Section C&D Supplemental Response at Exhibits SC-8 and SD-4.
[107] *See* U.S. Distributors' Case Brief at 42-43.
[108] *See* Petitioner's Rebuttal Brief at 20.
[109] *Id*.
[110] *Id*.

- The Department correctly relied on the World Bank's *Doing Business 2015* and *Doing Business 2016* to value B&H costs for Shanghai Wells.[111]

Department's Position: The Department agrees with U.S. Distributors and Aristocraft that it should only use the World Bank's *Doing Business 2016* to value B&H costs. However, we disagree in part with U.S. Distributors that it is the Department's practice to rely on the most recently available version of the World Bank publication. Instead, it is our practice to rely on the best available information.[112] As stated above, in an NME proceeding, section 773(c)(1) of the Act instructs the Department to value FOPs based upon the best available information from an ME country or countries that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, represent a broad market average, and are specific to the input.[113]

For the *Preliminary Results*, we valued B&H using a price list published in *Doing Business 2015* and *Doing Business 2016*, which measures the time and cost (excluding tariffs and the time and cost for sea transport) associated with exporting a standard shipment of goods by sea transport, and the number of documents necessary to complete the transaction. The *Doing Business 2015* price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods weighing 10,000kg, by ocean transport in Thailand, transported in a dry-cargo, 20-foot full container load.[114] The *Doing Business 2016* price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods weighing 15,000kg, by ocean transport in Thailand, transported in a dry-cargo, 20-foot full container load. Because the data used in the *Doing Business 2016* report are contemporaneous to the POR, we did not inflate this surrogate value.

For these final results, we valued B&H using the price list published only in the World Bank's *Doing Business 2016*. *Doing Business 2015* represents data current as of June 1, 2014, whereas *Doing Business 2016* represents data covering a time period current as of June 1, 2015.[115] The POR for this administrative review is October 1, 2014, through September 30, 2015. Because the data in *Doing Business 2015* predate the POR by four months, it is not contemporaneous with this review. Therefore, because *Doing Business 2016* is the only contemporaneous Thai source on the record for valuing B&H, we find it to be the best available information and have used *Doing Business* 2016 to value B&H expenses for these final results. Accordingly, because we are not using *Doing Business 2015* to value B&H expenses in these final results, we find that U.S. Distributors' and Aristocraft's arguments to deduct the cost of obtaining a letter of credit

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[111] *Id.* at 21.
[112] *See Ad Hoc Shrimp*, 618 F.3d 1316, 1322; *see also Hangers AR5* and accompanying Issues and Decision Memorandum at Comment 2.
[113] *See Electrolytic Manganese* and accompanying Issues and Decision Memorandum at Comment 2.
[114] *See Shanghai* Wells' Section C&D Supplemental Response at Exhibits SC-8 and SD-4; *see also* Letter to the Secretary of Commerce from Aristocraft "Re: Steel Wire Garment Hangers from the People's Republic of China: Rebuttal Surrogate Values of Aristocraft" (March 25, 2016) at Exhibit 2.
[115] *See Trucks and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*; 82 FR 8599 (January 27, 2017), and accompanying Issues and Decision Memorandum at Comment 17 and footnote 131 stating that "the data in the {2016 Doing Business Thailand Report} are current as of June 1, 2015…".

from the expense reported in *Doing Business 2015,* and parties' arguments concerning how to average the *Doing Business 2015* and *Doing Business 2016* data, are moot.

Comment 5: Value-Added Tax (VAT)

U.S. Distributors' and Aristocraft's Comments:

- Section 772(c)(2)(B) of the Act strictly pertains to export taxes. As VAT is not an export tax, the Department should not reduce U.S. price by the amount of unrefunded VAT.[116]
- The Department's treatment of VAT as an export tax under section 772(c)(2)(B) of the Act is not entitled to *Chevron* deference, because Congress expressed the intent of the statute to be applied only to "export taxes" and not unrefunded VAT.[117]
- Regardless of whether the sales of the finished goods were domestic or exported, Chinese VAT does not result in an export tax, as a net cost for VAT is only incurred for the purchases of raw material used to produce the merchandise. Therefore, the liability itself arises from the purchase of inputs, not from the exportation of a final product.[118]
- Shanghai Wells has demonstrated that it receives a refund of more than the eight percent deduction the Department applied in its calculation. If the Department continues to make a VAT adjustment, it should rely on Shanghai Wells' reported actual non-refundable VAT incurred by Shanghai Wells.[119]
- The Department's methodology does not correctly calculate the VAT adjustment for export price (EP) sales made by Hong Kong Wells Ltd. in Hong Kong directly to the customer. Instead, the irrecoverable VAT adjustment should be derived by using the free on board (FOB) price made by Shanghai Wells to HK Wells.[120]

Petitioner's Rebuttal:

- The Chinese VAT regime is different from traditional VAT regimes, in that a portion of the Input VAT is nonrefundable. Thus, the nonrefundable portion of the Input VAT amounts to a "tax, duty, or other charge" imposed on export sales but not domestic sales. Therefore, according to the *Methodological Change*, the Department must reduce the U.S. price by the irrecoverable VAT.[121]
- Aristocraft's argument that VAT is not an export tax ignores the differences between traditional VAT systems and the Chinese VAT system.[122]
- Aristocraft's reliance on *Chevron* is misplaced, as the statute does not define "export tax, duty, or other imposed charge." Furthermore, VAT is a cost that arises as a result of export sales and is, in fact, a tax "imposed by the exporting country on the exportation of subject merchandise."[123]

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[116] *See* Aristocraft's Case Brief at 1-4.
[117] *Id*. (citing to *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, 842 (1984) (*Chevron*)).
[118] *Id.*
[119] *See* Aristocraft's Case Brief at 4-7.
[120] *See* U.S. Distributors' Case Brief at 43.
[121] *See* Petitioner's Rebuttal Brief at 10-12 (citing *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings,* 77 FR 36481 (June 19, 2012) (*Methodological Change*)).
[122] *Id.*
[123] *Id*. at 12-14.

- The Department should continue to deduct eight percent from Shanghai Wells' U.S. price.[124]
- The Department's unrecoverable VAT formula "is solely a function of the rates under Chinese Regulation and the respondent specific export value of subject merchandise."[125]

Department's Position: In the *Preliminary Results*, we deducted an amount of irrecoverable VAT from the U.S. sale prices.[126] In 2012, we announced a change of methodology with respect to the calculation of the EP or constructed export price (CEP) to include an adjustment for irrecoverable VAT in certain NME countries, in accordance with 772(c)(2)(B) of the Act.[127] In this *Methodological Change*, the Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[128] This is because in a typical VAT system,[129] companies do not incur any irrecoverable VAT expense; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports (input VAT), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.[130] That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[131] Therefore, this amounts to a tax, duty, or other charge imposed on exports that is not imposed on domestic sales and we, thus, disagree with Aristocraft's and U.S. Distributors' assertions that irrecoverable VAT should not be deducted from U.S. prices. Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department arrives at a tax neutral dumping comparison by reducing the U.S. EP or CEP downward by this same percentage.[132]

Irrecoverable VAT is: 1) the FOB value of the exported good, applied to the difference between; 2) the standard VAT levy rate; and 3) the VAT rebate rate applicable to exported goods.[133] Information placed on the record of this review by Shanghai Wells indicates that, according to

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[124] *Id*. at 14-16.
[125] *Id*. at 17.
[126] *See Preliminary Results* and accompanying Preliminary Decision Memo.
[127] *See Methodological Change*, 77 FR at 36481.
[128] *Id.; see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying Issues and Decision Memorandum at Comment 5.A.
[129] S*ee, e.g., Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013* 80 FR 32087 (June 5, 2015) and accompanying Issues and Decision Memorandum at Comment 1
[130] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (*Diamond Sawblades*), and accompanying Issues and Decision Memorandum at Comment 6; *see also Methodological Change,* 77 FR at 36481.
[131] *See Methodological Change*, 77 FR at 36483.
[132] *See Methodological Change*, 77 FR at 36481.
[133] *See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 1, fn. 35.

the Chinese VAT schedule, the standard VAT levy is seventeen percent and the rebate rate for subject merchandise is nine percent.[134]

In 2011, the Department proposed a change of methodology with respect to the calculation of the EP or CEP to include an adjustment of any irrecoverable VAT in certain NME countries, in accordance with section 772 (c)(2)(B) of the Act and solicited comments.[135] Subsequently, in a 2012 *Federal Register* notice, the Department addressed comments it had received and announced its new methodology.[136] In this announcement, the Department stated that when a NME government has imposed an export tax, duty or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.[137]

Aristocraft's and U.S. Distributors' reliance on *Chevron* is misplaced, as both parties argue that the Department defies *Chevron* by treating VAT as an export tax. Under *Chevron*, "[w]hen a court reviews an agency's construction of the statute which it administers, it is confronted with two questions."[138] Additionally, the Supreme Court explained that the first question is "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter…the agency must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue . . . the question for the court is whether the agency's answer is based on a permissible construction of the statute."[139] Section 772(c)(2)(B) of the Act pertains to an export tax, duty, or other charge imposed on exportation of subject merchandise to the US. We disagree with U.S. Distributors' and Aristocraft's argument that VAT is not an export tax, duty, or other charge imposed on exportation, and therefore, under Section 772(c)(2)(B) of the Act the Department is not authorized to deduct from EP or CEP the amount of unrefunded VAT. Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Irrecoverable VAT is a new burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[140] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[141] The statute does not define the terms "export tax, duty, or other charge

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[134] *See* Shanghai Wells' Section C&D Supplemental Response at SC-12.
[135] *See Proposed Methodology for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Antidumping Proceedings; Request for Comment,* 76 FR 4866 (January 27, 2011).
[136] *Methodological Change.*
[137] *Id.* at 36483; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012,* 79 FR 4875 (January 30, 2014), and accompanying Issues and Decision Memorandum at Comment 5.
[138] *See Chevron*, 467 U.S. at 842.
[139] *Id.* at 843.
[140] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014), and accompanying Issues and Decision Memorandum at Comment 7; *see also Hangers AR6* and accompanying Issues and Decision Memorandum at Comment 3.
[141] *See, e.g., Diamond Sawblades* and accompanying Issues and Decision Memorandum at Comment 6; *see also Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty*

imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales. Therefore, as it is set forth in PRC law it can be considered to be an "export tax, duty, or other charge imposed" by the exporting country on exportation of subject merchandise.[142] Further, adjusting for irrecoverable VAT reduces the gross U.S. price charged to the customer to a tax neutral net price received by the seller, in accordance with section 772(c)(2)(B) of the Act. Therefore, we find that the deduction is consistent with our policy and consistent with the intent of the statute that the dumping margin calculation should be tax-neutral.[143]

We do not agree with U.S. Distributors and Aristocraft that the Department should use Shanghai Wells' alternative calculation for the treatment of its VAT liability. As stated in the previous review,[144] as well as numerous other proceedings, our practice is that we will not consider allocations across all company sales or across sales of products with different VAT schedules but, rather, will use the difference between the VAT rate paid for inputs and the VAT refund rate for the exported merchandise, consistent with PRC regulations, unless the company can show that an alternative calculation is more appropriate.[145] Shanghai Wells' calculation includes subject and non-subject merchandise, and as such, is not in accordance with our standard practice as described above. As Shanghai Wells has provided a calculation that applies to both subject and non-subject merchandise,[146] we find that it is not an appropriate method by which to calculate VAT for these final results.

Lastly, with regard to U.S. Distributors' and Aristocraft's argument that the Department did not correctly calculate the VAT adjustment on EP sales made by HK Wells directly to the U.S. customer, we continue to find that our preliminary decision was appropriate, given the record at hand. Although U.S. Distributors and Aristocraft would have us use the data on the record to derive a purported transfer price between HK Wells and Shanghai Wells, apart from Shanghai Wells' claim that it calculated its reported VAT tax by applying a tax liability ratio to the price between Shanghai Wells and HK Wells, there is nothing on the record to support the alleged transfer price. As there is no evidence on the record to support the transfer price from Shanghai Wells to HK Wells for EP sales made directly to an unaffiliated customer, the Department properly calculated VAT tax based on the information it has on this record, that is, the information provided to the Department within the U.S. Sales Database. Moreover, Shanghai Wells explained that for this channel of sale, "{a}fter Shanghai Wells shipped the merchandise directly to the United States, Shanghai Wells issued an invoice to Hong Kong Wells."[147] Thus, it

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Administrative Review; 2012-2013, 79 FR 71385 (December 2, 2014), and accompanying Issues and Decision Memorandum at Comment 5; *see also Hangers AR6* and accompanying Issues and Decision Memorandum at Comment 3.

[142] *See e.g., Hangers AR6* and accompanying Issues and Decision Memorandum at Comment 3.

[143] *See Methodological Change* 77 FR at 36483; *see also Notice of Final Rule, Antidumping Duties, Countervailing Duties*, 62 FR 27296 (May 19, 1997) (citing the Statement of Administrative Action Accompanying H.R. Doc. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994)).

[144] *See Hangers AR6* and accompanying Issues and Decision Memorandum at Comment 3.

[145] *See, e.g., Diamond Sawblades* and accompanying Issues and Decision Memorandum at Comment 6.

[146] *See* Wells' Section C&D Supplemental Response at Exhibit SC-19.

[147] *See* Letter to the Secretary of Commerce from Shanghai Wells "Section A Supplemental Questionnaire Response" (March 21, 2016) at 12.

is unclear what documentation accompanied the shipment and on what basis Shanghai Wells' VAT refund calculation was based. It is unclear, from the record, whether the invoice to the ultimate U.S. customer, to whom Shanghai Wells shipped directly, or the invoice to HK Wells that was only issued to HK Wells after the goods were shipped directly to the United States. Accordingly, using the information on the record concerning the Chinese regulations involved in conjunction with the VAT tax and refund rate information provided to the Department by Shanghai Wells, and in accordance with the Department's practice described in the *Methodological Change*, the Department calculated an irrecoverable VAT tax for sales made by HK Wells directly to the unaffiliated U.S. customer and continues to find that the methodology detailed in the *Preliminary Results* is appropriate for these final results.

RECOMMENDATION

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

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Agree Disagree

4/11/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance