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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

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

Background

On November 9, 2004, the Department of Commerce (the Department) published *Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 69403 (*Preliminary Results*). The period of review (POR) is October l, 2002, through September 30, 2003. The respondent in this case is Hangzhou Spring Washer Co., Ltd. (also known as Zhejiang Wanxin Group, Ltd.) (collectively, Hangzhou).

Shakeproof Assembly Components Division of Illinois Tool Works, Inc. (Shakeproof), the U.S. interested party, filed surrogate value information and data on November 29, 2004, and the respondent filed surrogate value information and data on September 16, 2004, and November 29, 2004. We gave interested parties an opportunity to comment on the *Preliminary Results*. Shakeproof requested an undefined extension of time for filing case briefs on November 29, 2004. We did not grant this request. On December 8, 2004, Shakeproof requested a one-day extension to file its case brief.[1] We granted this extension to all parties. On December 10, 2004, Hangzhou filed its case brief. Shakeproof submitted the final proprietary version of its brief on December 13, 2004.[2] Shakeproof and Hangzhou submitted rebuttal briefs on December 17, 2004.

[1] Case briefs were originally due December 9.
[2] Shakeproof made a timely filing of its "bracketing not final copy" on Friday, December 10, 2004, and the "bracketing final" copies were then filed on Monday, December 13, 2004.

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Comment 1: Use of Steel Wire Rod from the United Kingdom

Hangzhou argues the market-economy purchase prices it paid for steel wire rod (wire rod) from the United Kingdom used in the production of helical spring lock washers (HSLWs) should be accepted for the final results. Its first argument is that there is no evidence to support the suspicion that the U.K. wire rod it purchased was subsidized. To make its point, Hangzhou argues the Department has not met its "believe or suspect" subsidization criteria, the use of the *Cut-to-length Carbon Steel Plate from the United Kingdom; Final Results of Expedited Sunset Review of Countervailing Duty Order,* 65 FR 18309 (April 7, 2000) (*2000 Sunset Review*), does not support finding that its U.K. producer[3] of wire rod received any subsidies for the wire rod in question, and the *2000 Sunset Review*'s validity is undermined by the *Section 129 Determination*[4] issued by the Department in response to a World Trade Organization (WTO) Appellate Body Report. Its second argument is that because the product was purchased from a third-country trading company, even if there were subsidies, they would not have been transferred to Hangzhou.

Hangzhou claims the Department's longstanding practice and its statute, upheld in the courts, set a preference for using market-economy purchase prices over (less exact) surrogate values.[5] The only time, according to Hangzhou, that the Department may justify a variation from this preference is when there is "particular, specific, and objective" evidence to support a reason to believe or suspect that the market-economy purchase prices were affected by subsidies.[6] Hangzhou claims this evidentiary requirement for finding a belief or suspicion of subsidization was not met in the preliminary results.

Further, Hangzhou points out that in past cases[7] where reason to believe or suspect has been applied, the Department found it had to take into account evidence that market prices were not distortive. In *Tables and Chairs,* argues Hangzhou, the Department did two things. First, as a rebuttal to the suspicion of subsidies established by a CVD determination, the Department considered evidence as to whether a specific supplier in the market economy did not benefit from subsidies. Second, it established that subsidies below *de minimis* are reason enough not to disregard market prices from that company. Hangzhou asserts that the Department should consider the record and general evidence that shows Hangzhou's wire rod producer did not benefit from subsidies.

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[3] The name of Hangzhou's wire rod producer is business proprietary information.

[4] Hangzhou cites *Section 129 Determination: Final Results of Expedited Sunset Review of Cut-to-Length Carbon Steel Plate from the United Kingdom* 68 FR 64858 (October 24, 2003), in Helical Spring Lock Washers from the PRC – 10th Review (Hangzhou Case Brief) (December 10, 2004) at 4.

[5] To further support this assertion, Hangzhou also cites three court cases. *See* Hangzhou Case Brief at 4 and 5.

[6] *See China National Machinery Import & Export Corporation II,* 293 F. Supp. 3d 1334, 1335 (October 15, 2003) (*CMC II*), citing *CMC I,* 264 F. Supp. 2d 1299, 1240 (CIT 2003), and *Fuyao Glass Industry Group Co. Ltd. v. United States* No. 02-00282, Slip Op. 03-169 (CIT December 18, 2003), as cited in Hangzhou Case Brief at 5.

[7] Specifically Hangzhou cites *Folding Metal Tables and Chairs from the People's Republic of China (the PRC),* 67 FR 20090 (April 24, 2003), and accompanying Issues and Decision Memorandum (*Tables and Chairs)* at Comment 1 in Hangzhou Case Brief at 5.

According to Hangzhou, the evidence it submitted on November 29, 2004, shows that the *2000 Sunset Review* is irrelevant to its case because of both the findings in the case itself and the WTO Report regarding this case. Hangzhou maintains that the *2000 Sunset Review* relied on six subsidies[8] found in the 1993 CVD investigation (*1993 CVD Determination*), all of which are now defunct, were not recurring and therefore no longer provide benefits, were not used, were eliminated by privatization, or fell below *de minimis*.[9] Therefore, Hangzhou concludes, the *2000 Sunset Review* does not provide grounds to meet the reason to believe or suspect criteria and the Department should consider the record evidence and not just the existence of the steel plate CVD order in making its determination. Hangzhou contends that the Department should not rely on the Omnibus Trade and Competitiveness Act of 1988 Conference Report to Accompany H.R. 3[10] to argue it is not required to conduct a new CVD investigation. Additionally, Hangzhou points out that looking at how the Department's own CVD determination relates to Hangzhou's supplier does not constitute such an investigation.

Hangzhou states that the WTO Dispute Settlement Body adopted the *United States - Countervailing Measures Concerning Certain Products from the European Communities*[11] which decided that the Department was not consistent with the Subsidies and Countervailing Duty Measure Agreement (SCM Agreement) when it made its countervailing duty determination regarding Hangzhou's wire rod producer. Hangzhou claims that the *2000 Sunset Review*[12] was modified by the WTO Appellate Body determination (and the Department's implementation thereof) and is not consistent with the SCM Agreement. Therefore, it does not provide a sufficient basis to meet the believe or suspect criteria.

Hangzhou asserts the continuance of the order of steel plate was because of the *Section 129 Determination.*[13] However, it maintains that in the *Section 129 Determination* the Department reviewed the continuance of the order and essentially found Hangzhou's U.K. wire rod producer to be excluded. Hangzhou goes on to argue that the fact that its supplier was included in the original 1993 CVD investigation but not in the subsequent *Section 129 Determination* means the Department implicitly considers the order no longer applicable to Hangzhou's supplier and should not rely on it to believe or suspect that subsidies have tainted its U.K. steel prices.

Next, Hangzhou points out that the Department revised its policy on pre-privatization subsidies and established a two-part test to determine if the privatization of a company ended subsidies

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[8] *See* Hangzhou Case Brief at 9 for a list of the subsidies and Hangzhou's November 29, 2004, submission at Exhibit 2 as cited in Hangzhou Case Brief at 9.

[9] *See* Hangzhou Case Brief at 9 to 11 for specific discussion of each of the 6 subsidies and why it specifically is not available to or in use by its U.K. supplier.

[10] H. Report No. 100-578 at 590-91, 1988 U.S. Code and Admin. N. 1547, 1623 (1988).

[11] WT/DS212/AB/R (December 9, 2000), as cited in Hangzhou Case Brief at 6.

[12] *Section 129 Determination.*

[13] *See Section 129 Determination*, as cited in Hangzhou Case Brief at 11 and 12.

received by that company.[14] According to Hangzhou, the first prong of the test, whether the government retains no control over the company and has sold all or substantially all of the company, was not an issue and has been met. Hangzhou argues that the second prong, whether privatization was done at arm's length at a fair market value, was also met. Hangzhou argues its wire rod producer has met the second prong of the test, which, due to the proprietary nature of the information cannot be summarized here. *See* Hangzhou's case brief at 7 and 8 for a full discussion of its argument. Additionally, Hangzhou points out that in *Table and Chairs*,[15] even with CVD cases against the rest of the country, the Department has accepted market-economy purchase prices from specific suppliers.

Additionally, Hangzhou states that the WTO established a panel to review the United States implementation of an Appellate Body ruling because the Department failed to examine the nature of the privatization in question in the *Section 129 Determination*.[16] According to Hangzhou, this supports its position that if the Department had done a privatization analysis on Hangzhou's supplier it would not have found subsidy benefits. Finally, Hangzhou states that the Department's subsidy suspicion analysis focuses on whether subsidies tainted a specific supplier's "actual present" market purchases. It argues that this cannot be concluded in the instant case.

In addition to arguing that its supplier has not received any subsidization benefits during the POR, Hangzhou points out that the U.K. steel it purchased was bought through a third-country trading company.[17] According to Hangzhou, this means the Department's decision to disregard these purchases is unsupported. Hangzhou stresses that, regardless of the preliminary finding in the instant review that the U.K. steel was subsidized, there is no record evidence to suggest that subsidies were passed through the trading company in Hangzhou's transaction with the third-country trading company. Citing a recent determination, Hangzhou asserts that the Department found that it was acceptable to use market-economy prices for inputs which were purchased through a Hong Kong trading company but that originated in a country with non-specific export subsidies that were widely available.[18] Specifically, Hangzhou states that in *Color Televisions* the Department explained that, consistent with the practice of utilizing market-economy purchase prices, the prices of inputs purchased in Hong Kong cannot be rejected only on the grounds of country of origin.[19] It is important to note, Hangzhou argues, that in *Color Televisions* the Department stated "the trading company in the third-country is not subject to the investigation

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[14] *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Table Agreements Act,* 68 FR 37125, 37127 (June 23, 2002), as cited in Hangzhou Case Brief at 7.

[15] *See Tables and Chairs* at Comment 2, as quoted in Hangzhou Case Brief at 8.

[16] *See Request for the Establishment of a Panel,* WT/DS212/15 (September 17,2004); *Constitution of the Panel,* WT/DS212/15 (October 8, 2004), as submitted in Hangzhou's November 19, 2004 submission at Exhibits 13 and 14 and cited in Hangzhou Case Brief at 12.

[17] *See* Hangzhou's February 9, 2004, section D response and October 13, 2004, second supplemental response, as cited in Hangzhou Case Brief at 13 and 14.

[18] *See Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), (*Color Televisions*) and accompanying Issues and Decision Memorandum at Comment 8 as cited in Hangzhou Case Brief at 14.

[19] *Id*.

and cannot therefore be presumed to have benefitted from any subsidies received by the producer or exporter of the merchandise."[20]

Shakeproof argues that the Department correctly rejected Hangzhou's market-economy purchase prices for steel wire rod produced in the United Kingdom. It argues that the practice of using a market-economy supplier is discretionary.[21] Shakeproof further claims that the Department interpreted a provision in a later report as saying prices will be disregarded where there is reason to believe or suspect that subsidies may exist, but that the Department does not have to conduct a formal investigation to determine if subsidies exist.[22] This has been, Shakeproof maintains, upheld by the courts.[23]

Shakeproof argues this provision has been specifically applied to valuing import factor inputs. Further, Shakeproof points out that the courts have confirmed that the existence of any generally available subsidies in a country is sufficient grounds to meet the reason to believe or suspect criteria.[24] According to Shakeproof, the Department has consistently used these grounds to reject market-economy purchase prices from countries with general subsidies.[25] Additionally, Shakeproof asserts that, in applying this policy, the Department does not consider the level of the subsidy and there is no *de minimis* threshold.[26]

Shakeproof goes on to claim that the Department's subsidies policy applies to both the existence of CVD subsidies and generally available export subsidies. Shakeproof notes that the Department has rejected market-economy purchase prices in the past on the grounds of generally available export subsidies.[27] Citing *TRBs,* Shakeproof argues that the Department should continue to reject arguments advocating the limiting of its subsidy suspicion policy exclusively to situations where CVD orders exist on the product or supplier in question and claiming that the Department must also find injury. The Department has, according to Shakeproof, issued a report on both general and industry-specific U.K. subsidy programs. Shakeproof argues that the

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[20] *Id*.

[21] *See* 19 CFR 351.408(c)(1).

[22] *See* Conference Report on the 1988 amendments to the Tariff Act of 1930, as amended, as quoted in Certain HSLWs from the PRC - Shakeproof's Rebuttal Brief (December 17, 2004) (Shakeproof Rebuttal Brief) at 2 and 3.

[23] *See Technoimportexport,UCF America, Inc. v. United States*, 783 F. Supp. 1401, 1405 (CIT 1992), as cited in Shakeproof Rebuttal Brief at 3.

[24] *See Tapered Roller Bearings {(TRBs)} and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of New Shipper Review,* 67 FR 10665 (March 8, 2002), as cited in Shakeproof Rebuttal Brief at 4.

[25] Shakeproof cites multiple cases for support, including *TRBs and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 1998-1999 Administrative Review and Determination Not To Revoke In Part,* 66 FR 1953 (January 10, 2001), and accompanying Issues and Decision Memorandum at Comment 1. *See* Shakeproof Rebuttal Brief at page 4.

[26] To support this assertion Shakeproof cites *Peer Bearing Company-Changsha v. United States*, Court No. 02-00241, Slip Op. 03-160 (December 12, 2003), at 18-19 in Shakeproof Rebuttal Brief at 6.

[27] *See TRBs and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2000-2001 Administrative Review, Partial Rescission of Review and Determination to Revoke Order In Part,* 67 FR 68990 (November 14, 2002), and accompanying Issues and Decision Memorandum at Comment 14, as cited in Shakeproof Rebuttal Brief at 5.

Department followed this practice in the preliminary results and properly disregarded Hangzhou's market prices of U.K. steel based on the existence of both the CVD order and the presence of generally available subsidies. Finally, Shakeproof asserts that the Department should reject all steel from the European Union as subsidized due to the wide range of countervailable subsidies available there. Shakeproof does not address Hangzhou's argument that it has not received any subsidization benefits during the POR where Hangzhou points out that the U.K. steel it purchased was bought through a third-country trading company.

Department's Position:

The Department has articulated its application of the *Omnibus Trade and Competitiveness Act of 1988 (OCTA),Conference Report to Accompany* H.R. 3, H. Report No. 100-578 at 590-91, 1988 U.S. Code and Adm. N. 1547, 1623 (1988) (*OTCA Legislative History*), to reject market-economy input prices that may be dumped or subsidized in several proceedings. *See, e.g., 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 1999-2000*). In upholding the Department's practice, the Court of International Trade (CIT) has required "particular, specific and objective" evidence for the Department to reject market-economy prices. The CIT also has found that U.S. CVD findings meet this evidentiary standard. For example, in *TRBs 1999-2000*, the Department rejected market-economy prices, citing U.S. CVD determinations relating to subsidies that were generally available to all exporters or were specific to and used by several steel exporters in the market-economy country from which CMC, a non-market-economy (NME) producer, imported steel inputs. The CIT affirmed the Department's rejection of market-economy prices, stating that "a company like CMC's supplier may have benefitted from a generally available subsidy program...by virtue of having engaged in foreign trade. Commerce specifically found that such a program existed and that companies like CMC's supplier did indeed use the {subsidy} program." *See China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003).

As in the ninth review of this case, the Department finds that the *1993 CVD Determination* and the *2000 Sunset Review* support the finding that there is reason to believe or suspect Hangzhou's wire rod prices may subsidized. The *1993 CVD Determination* and the *2000 Sunset Review* provide evidence of subsidies that were generally used by the U.K. steel industry (*e.g.*, Canceled National Loan Funds Debt and Regional Development Grants). In addition, we note that none of the subsidies investigated in the *1993 CVD Determination* or the *2000 Sunset Review* was tied to a particular steel product, meaning they may have benefitted any steel product made in the United Kingdom. The *1993 CVD Determination* and the *2000 Sunset Review*, provide specific evidence of countervailable subsidies that pertained to Hangzhou's producer. Therefore, we disagree with Hangzhou's contention that the subsidies investigated in the *1993 CVD Determination* and *2000 Sunset Review,* do not provide a basis to believe or suspect that wire rod prices from the United Kingdom may be subsidized. Given the CIT's requisite "particular, specific and objective"

evidence of subsidization, we find that a CVD order on steel products from the United Kingdom, which was in effect throughout the entire POR, provides the Department with sufficient evidence to believe or suspect that Hangzhou's wire rod prices may be subsidized. In addition, in the *2000 Sunset Review*, the Department found that "revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a subsidy" at a countervailable rate of 12 percent for all but one U.K. steel producer. The Department also found that because "no evidence has been submitted to the Department demonstrating the termination of the countervailable programs, it is reasonable to assume that these programs continue to exist and are utilized." *See 2000 Sunset Review* at Comment 1. Most recently, in October 2003, the Department reaffirmed its *2000 Sunset Review* findings in the *Section 129 Determination*, stating that "we continue to find likelihood of continuation or recurrence of a countervailable subsidy with respect to the order on CTL Plate from the United Kingdom." *See Section 129 Determination* at 9. (We note that the United States Trade Representative declined to instruct the Department to implement this determination. *See Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Duty Measures Concerning Certain Steel Products from the European Communities*, 68 FR 64858, 64859 (November 17, 2003).)

We also disagree with Hangzhou's argument that the Department's findings in other CVD proceedings, the WTO rulings and the *Section 129 Determination* undermine the Department's findings in the *1993 CVD Determination* and the *2000 Sunset Review*. We also disagree that the Department should reconsider its findings in the *1993 CVD Determination* and the *2000 Sunset Review*. Nothing contained in these other proceedings alters the continued existence of affirmative CVD findings with regard to steel exports from the United Kingdom. Moreover, any attempt by the Department to re-examine those existing findings of subsidization in this proceeding would be tantamount to conducting a formal investigation, or re-investigation, of our past findings and in direct contradiction to the *OTCA Legislative History* (Congress did "not intend for the Department to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intended for Commerce to base its decision on the information generally available to it at that time." H.R. Rep. No. 100-576 at 590-591 (1988)). Therefore, we find that the CVD proceedings cited by Hangzhou and the WTO rulings are irrelevant to the question of whether the Department has a reason to believe or suspect that Hangzhou's wire rod may be subsidized, particularly because the Department's determinations in the *2000 Sunset Review* are still in effect.

We disagree with Hangzhou's argument that, in keeping with *Color Televisions,* the Department should consider its purchases of U.K. steel as unsubsidized because the wire rod was purchased from a third-country trading company. It is the Department's longstanding practice to consider that goods determined to be dumped or subsidized remain so whether or not they are sold through third-country trading companies. *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000) and accompanying Issues and Decision Memorandum at Comment 1 (deeming the appropriate transactions for determining export price were not third country trading company sales of subject merchandise to the United States; rather, the appropriate transactions were the

sales between the trading company's PRC supplier and the trading company itself). Moreover, the applicable legislative history regarding the Department's nonmarket economy methodology indicates that Congress specifically directed that the Department "shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices." *Conference Report to the 1988 Omnibus Trade and Competitiveness Act*, H.R. Conf. Rep. No. 100-576, at 590 (1988).

In the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China,* 67 FR 36570 (May 24, 2002) and accompanying Issues and Decision Memorandum at Comment 1 (*Steel Pipe*), the respondent argued that the Department should use the actual prices of its input purchased through third-country market-economy trading companies, and contended that there was no proof that the effects of subsidization in the country of origin would have benefitted the market-economy trading companies. In keeping with its past practice, the Department determined that there was reason to believe or suspect the prices may be subsidized, notwithstanding the input being sold through a trading company in another country. Therefore, the Department rejected the use of those prices. *See Steel Pipe* at Comment 1.

The situation in the instant review is similar to the situation in *Steel Pipe*. The input, here wire rod, was known to have benefitted from industry-specific subsidies and was purchased by a PRC producer through a third-country trading company. Accordingly, consistent with *Steel Pipe*, we find that the evidence of subsidization in this case is a sufficient basis to believe or suspect that prices of this input may be subsidized, notwithstanding being sold through a Hong Kong trading company.

While the Department determined in *Color Televisions* to use prices of an input purchased through a Hong Kong trading company despite evidence that the input may have been subsidized by the country of origin, the decision in that case does not represent our practice and should not be followed because it did not take proper account of the directive in the legislative history for the Department to avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices. In our view, where an input is known to benefit from industry-specific subsidies, a reasonable basis to believe or suspect that the price of the input may be subsidized is established. Therefore, we are making the determination in this case consistent with the practice in *Steel Pipe*, our practice more generally, and with the legislative history discussed above.

Further, the Department found in *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China*, 69 FR 34125 (June 18, 2004) (*Retail Carrier Bags)* that concerns about price distortions in an NME also exist when inputs are produced in an NME country, but purchased by the NME producer through a third-country trading company. The Department found that a trading company's costs and prices are influenced by its NME suppliers' prices and costs, which are distorted in an NME. This is further evidence that the Department does not consider all purchases from a non-subsidized

third-country market-economy trading company to automatically be acceptable to value inputs. Rather, the Department must be assured that price-distorting circumstances, such as NME origin, industry-specific subsidies, or general export subsidies are not present. *See id.* at Comment 4.

Moreover, in *Retail Carrier Bags* the Department stated that "we have strong concerns that, were we to use the prices of inputs that were produced in an NME country, our methodology for valuing the factors of production would become easily open to manipulation." *See id.* The situation in the instant review raises the same concerns. It would not be difficult for a firm to open or make arrangements with a trading company in Hong Kong (or any other market-economy third country without subsidization) to route "sales" of subsidized market-economy products through this company in order to take advantage of our market-economy purchase methodology.

Accordingly, we find that the evidence provides a basis to believe or suspect that the prices of the wire rod input may be subsidized and that the reason to believe or suspect the prices may be subsidized is not mitigated by simply purchasing the input through a market-economy third-country trading company. Therefore, we did not use the market-economy prices for this input originating in the U.K. that were paid to the Hong Kong trading company affiliated with the U.K. supplier.

Comment 2: Plating Factor vs. Plating Services

Hangzhou argues that for the final results, the Department should not continue to use the plating price quote used in the preliminary results, but should instead value the intermediate inputs used to produce plating using surrogate values. It uses four arguments to support its assertion.

First, Hangzhou claims that the price quote is not reliable since it was obtained from an Indian company affiliated with Shakeproof. The price quote, Hangzhou states, gives no way to contact the person receiving the quote, Mr. Samir. According to Hangzhou, the supplier of the price quote, a "Mr. Samir" works for "ITW Shakeproof" which is really Illinois Tool Works Shakeproof in Pune, India and this demonstrates that the quote is not from an independent and neutral source. To support this assertion, Hangzhou contends that record evidence shows that Shakeproof owns an entity in Pune, India.[28] Additionally, Hangzhou maintains that these documents show that Illinois Tool Works, Inc. has license and technical agreements and owns 99.99 percent of ITW Delfast and that Mr. Samir Kulkarni is a director of ITW Delfast. With this link established, Hangzhou contends that the Department must check the reliability of the price quote.

Second, Hangzhou asserts that the use of the price quote contradicts the Department's normal practice of disregarding affiliated party transfers unless it has been tested and found reliable and

[28] Hangzhou cites its November 29, 2004, Exhibit 15 Statement of Resolution and surrogate value submission and the ITW Delfast India Private Limited (ITW Delfast) 2003 financial statements at Exhibit 5 at Hangzhou Case Brief page 16.

undistorted. Hangzhou states that, in calculating the margin of sales made to affiliated customers, the sales must be tested to see if they were made at arm's-length prices, the goal being to eliminate distorted prices.[29] Sales not at arm's length are, Hangzhou points out, excluded on the grounds that they are outside the normal course of trade.[30] Hangzhou argues that this principle generally applies to NME cases and specifically applies to Hangzhou because the values used to construct normal value should be based on undistorted sources.

Hangzhou argues that the Department's standard is that, to perform the arm's-length test, there must be sufficient purchases (in number or quantity) to establish a benchmark.[31] In this case, Hangzhou asserts, the Department does not have additional quotes against which to test the (single) price quote obtained by Shakeproof to confirm that the quote is non-distortive. In order to raise the margin, Hangzhou claims, Shakeproof has an incentive to solicit a high price quote. Hangzhou contends that, even if the Department does not find a link between Shakeproof and ITW Shakeproof, the similarities cannot be disregarded and there should be further investigation into how the price quote was obtained. It points out that not only is there is no contact information for ITW Shakeproof, there is no contact information or letterhead for the supplier of the quote, Sudha Electroplaters. Hangzhou argues that without access to this information it is not possible for any other party, the Department included, to look into either the details of how the price quote was obtained or the nature of Sudha Electroplaters.

According to Hangzhou, the questions about the reliability of the price quote show why, in most cases, the Department avoids using price quotes. It asserts that the Department's pressed preference is to use average non-export values that: (1) represent a range of prices within the POR or are most contemporaneous with the POR; (2) are product specific; and (3) are tax-exclusive.[32] Additionally, Hangzhou states that the preamble to the regulations confirms the Department's preference for a representative range of prices to value inputs[33] and that, on multiple occasions in the past, private information has been rejected by the Department.[34]

Third, Hangzhou contends that use of a price quote cannot be allowed because it results in double counting due to the fact that the quote includes amounts for overhead, profit, and selling, general, and administrative (SG&A) expenses. Hangzhou argues that, in order to avoid double

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[29] *See* 19 CFR 351403(c) *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69197 (November 15, 2002), as cited in Hangzhou Case Brief at 16.

[30] *See Antidumping Duties; Countervailing Duties; Final Rules,* 62 FR 27296, 27356 (May 19, 1997), as cited in Hangzhou Case Brief at 16.

[31] *Id.*

[32] For support Hangzhou cites a number of court cases such as *Taiyuan Heavy Machinery Import and Export Corp.,* No. 98-02-00411, Slip op. 99-103 (CIT 1999). *See* Hangzhou's Case Brief at 17 for the complete list.

[33] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27367 (May 19,1997), as cited in Hangzhou Case Brief at 18.

[34] *See, e.g., Final Redetermination of Voluntary Remand Determination in Certain Compact Ductile Iron Waterworks Fittings and Glands from the People's Republic of China* (September 30, 1994) at Comment 10 (*Redetermination of Waterworks Fittings*) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72265 (December 31, 1998) (*Mushrooms Final*), as cited in Hangzhou Case Brief at 18 and 19.

counting, the Department's normal practice is to value all material costs separately and then apply the financial ratios. Excluding the last review, Hangzhou maintains that the Department has found previously that there is no basis to independently value plating.[35] It asserts the Department's reasons for this were that there was no evidence that the Indian producers accounted for in the Reserve Bank of India (RBI) Bulletin also subcontracted their plating, and that there was a potential to double count the financial expenses for the plating portion of production. Hangzhou points out that in *Lock Washers Seven* the Department rejected Shakeproof's proposal to use a plating surrogate value or to apply financial ratios to the plating costs.[36] Hangzhou argues that nothing has changed since then.

Fourth, Hangzhou argues that using a price quote conflicts with the Department's regulations for subcontractors which says that subcontractors will not be treated as producers.[37] First, Hangzhou states that it controlled its plating subcontractors during the review and that the Department has acknowledged Hangzhou's control (in mandating the purchasing of materials and in determining the plating process used) in the past. Hangzhou asserts that the Department's past rejection of applying separate financial ratios to the plating costs in order to avoid double counting[38] implies that the Department has determined that the subcontractors were not independent of Hangzhou. According to Hangzhou, to apply separate financial ratios to the plating expenses would be equivalent to treating the subcontractor as a producer. Second, Hangzhou asserts that in other cases the Department has found it appropriate to value subcontractors' reported factors of production and has declined to apply separate amounts for financial expenses.[39]

By contrast, Shakeproof states the Department properly used the price quote to value plating for the preliminary results and should continue to do the same for the final. The Department's decision was, Shakeproof maintains, in accordance with law and substantially supported by evidence. Shakeproof argues that because the record is clear on the fact that the plating company is not affiliated with Hangzhou, and that Hangzhou paid for the plating, the question is what is the best available information to value plating. It states that there is an arm's-length Indian price quote on the record for approximately the same quantity of plating that Hangzhou had done. The price quote is, Shakeproof contends, comparable in value to the intermediate inputs used to produce plating. Further, Shakeproof maintains that the statute mandates the Department to use

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[35] *See Helical Spring Lock Washers from China: Final Results of Antidumping Duty Administrative Review(Lock Washers Seven)* 67 FR 8520 (February 25, 2002), and accompanying Issues and Decision Memorandum at Comment 2, as cited in Hangzhou Case Brief at 19.

[36] *Id*.

[37] *See* 19 CFR 351.401(h) as cited in Hangzhou's Case Brief at 21.

[38] *See Helical Spring Lock Washers from China* 65 FR 31143 (May 16, 2000) and accompanying Issues and Decision Memorandum at Comment 3 and *Helical Spring Lock Washers from China*, 64 FR 13401 (March 18, 1999) and accompanying Issues and Decision Memorandum at Comment 2 as cited in Hangzhou Case Brief at 21.

[39] *See Collated Roofing Nails,* 62 FR 51410 (October 1, 1997), and accompanying Issues and Decision Memorandum at Comment 6 and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from China,* 62 FR 61276 (November 17, 1997), as cited in Hangzhou Case Brief at 21 and 22.

the best information possible to value factors of production.[40]

Shakeproof asserts Hangzhou's first argument is without merit and questions whether it would make a difference if it (Shakeproof) had directly obtained the quote. Shakeproof states that the price quote reflects the value of plating in India and that Hangzhou chose not to obtain its own price quote. Finally, Shakeproof asserts that the price quote itself came from a company not affiliated with ITW and that there is no evidence the price is not fair.

Shakeproof also disagrees with Hangzhou's second and third arguments. It argues that, regardless of how subcontractors are treated by the Department, the price quote was correctly used in the preliminary results. Shakeproof asserts that there is no record evidence showing affiliation between Hangzhou and its subcontractor and that for a plating company to follow a customer's guidelines in a complicated process does not constitute control. To accept Hangzhou's argument would, Shakeproof alleges, alter the way investigations are conducted.

Additionally, according to Shakeproof, there is no reason to treat plating differently from other inputs whose values also included their producers' financial ratios. Shakeproof maintains that the plating company incurs SG&A and overhead expenses and makes profit, all of which are included in the price Hangzhou pays the plater. Shakeproof asserts that the prices Hangzhou charges covers the expenses it incurs to make the lock washers. There is no double counting, Shakeproof asserts, as long as the plater and Hangzhou are not affiliated and the Department does not apply overhead to plating.

Department's Position:

We used the plating price quote to value plating for the final results of this review because it is the best available information. The governing statute requires that "the valuation of the factors of production shall be based upon the best available information regarding the values of such factors in a market-economy country or countries that Commerce considers appropriate."[41] In reviews prior to the *2001-2002 Review,* using a surrogate value for plating in lieu of a valuation of the intermediate inputs used to produce plating was not a choice as no such information was available to the Department. In the *2001-2002 Review* this information was obtained by Shakeproof from an independent plater and placed on the record. The Department noted that Hangzhou is not an integrated producer, where use of a valuation the intermediate inputs used to produce plating would be used. Additionally, the Department would not normally value the factors of production consumed by subcontractors. Therefore, while use of a surrogate price is more consistent with its practice for dealing with valuation of purchases from a subcontractor, due to the lack of a surrogate price, the Department in prior reviews valued the intermediate inputs used to produce plating. Given this new information in the *2001-2002 Review*, the

[40] *See Section 773(c) (1*) of the Act as cited in Shakeproof Brief at 7. (Note: Shakeproof and Hangzhou cite the U.S. Code throughout their briefs and rebuttal briefs, but we have converted these references to citations to the Act throughout this memorandum.)
[41] *See* section 773(c)(1) of the Act.

Department used the surrogate value instead of a valuation of the intermediate inputs used to produce plating.[42] The Department, when making this decision, referred to its general policy, consistent with section 773(c)(1)(B) of the Act, to value the factors of production that a respondent uses to produce the subject merchandise. If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process.[43] However, the Department clarified in the *2001-2002 Review*, and nothing on the record of this review suggests otherwise, that Hangzhou is not a fully integrated producer because it does not have the capacity to plate HSLWs. Therefore, pursuant to the Department's practice, we would not normally value the factors of production consumed by Hangzhou's plating subcontractors (the "intermediate inputs"). Prior to the *2001-2002 Review,* the platers' factors of production data were the only information available to the Department to value plating and, therefore, we were required to use that information. In the instant review, the Department again found the plating price quote to be the best available information on the record to value plating and using it is consistent with section 773(c)(1) of the Act.

Hangzhou's reliance on 19 CFR 351.401(h) is misplaced. This provision of the Department's regulations deals solely with whether a toller or subcontractor should be considered a manufacturer or producer of the subject merchandise for purposes of determining who should be a respondent. The provision has nothing to do with whether a producer and one of its subcontractors should be collapsed. As such, the provision has no applicability with respect to whether or not the Department should consider the costs associated with the company that plates HSLWs for Hangzhou.

Hangzhou argued that the price quote is unreliable, lacks credibility and that use of a single price quote is inconsistent with the Department's practice of using a representative range of prices over a single price quote.[44] However, the cases that Hangzhou cited are distinguishable from this proceeding. In *Redetermination of Waterworks Fittings,* the issue was whether to use public or private information and the Department agreed that public information was preferable because it is more reliable. In this case, the price quote on the record is public. In the *Mushrooms Final,* the single price quote was rejected because it was a quote "offered to an *unidentified* party" (emphasis added) while in this case the price quote was offered to an identified party. Additionally, in both these cases there were better alternative sources of information. Although the use of a range of prices is a goal, that goal cannot always be attained. Moreover, Hangzhou has not provided an alternative price quote or any other information that would suggest that the price quote submitted by the U.S. interested party is unreliable or inaccurate. Therefore, in this case we find that the price quote is the best available information.

Hangzhou claimed that the Department's selection of a single price quote from a private source

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[42] *See Lock Washers 2001-2002 Review Issues and Decision Memorandum* at Comment 4.

[43] *See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances; Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), at Comment 3.

[44] *See* Hangzhou Case Brief at 17 and 18.

for factor valuation purposes is not consistent with the Department's practice and results in double counting.[45] The Department explains that a supplier's overhead, SG&A and profit ratios are distinct from those of the producer purchasing from that supplier where companies are independent. In the *2001-2002 Review*, we found this to be a reasonable and accurate calculation because, like all other material inputs used for producing HSLWs (*e.g.*, wire rod, caustic soda), Hangzhou incurs SG&A expenses to acquire plating services through its subcontractors, and to sell plated HSLWs.[46] We find no reason to diverge from this finding. In addition, the record contains no evidence demonstrating that the price Hangzhou pays for plating is different from the prices it pays for other material inputs, in terms of whether the prices include values for the supplier's material, labor, energy, overhead and SG&A expenses, and profit. Therefore, we do not find that using the plating price as a surrogate value overstates Hangzhou's SG&A and profit ratios. In addition, we do not find it unreasonable or inaccurate to treat the plating price the same as we have treated the surrogate prices for other material inputs with respect to SG&A and profit.[47] We agree that for plating, to apply Hangzhou's overhead is inappropriate because Hangzhou did not occur any overhead on the plating. In the preliminary results we erroneously applied overhead to plating. We have corrected that mistake for the final results. *See* Comment 12. Therefore, the Department will continue to use the plating price quote to value plating for the final results.

Comment 3: Labor Rates

Hangzhou claims the Department's calculation of the PRC's wage rate in the preliminary results is not consistent with the Department's statutory directive to value wages using a comparable country.[48] Hangzhou asserts that, according to the statue for NME normal value calculations, the Department is to value factors of production as if the NME respondent were in a market economy country with a level of economic development comparable to its own. It argues that, in this case, the Department's surrogate labor rate is inconsistent with this directive so the Department should instead calculate the estimated wage rate for the PRC using a publicly available countrywide rate for the countries that the Department has identified as economically comparable to the PRC.

In addition, Hangzhou states that, although the Department had publicly available record evidence of the countrywide wage rate for India of $0.14/hour,[49] the Department calculated the Chinese labor rate based on a regression analysis, yielding a wage rate for the PRC of $0.93/hour. Hangzhou notes this is six times greater than the Indian countrywide wage rate. Hangzhou faults the Department's use of data points from non-comparable source countries, such as Switzerland, the United Kingdom, Norway, and Germany as the reason the wage rate is "unreasonably high." Hangzhou also criticizes the Department's lack of an explanation as to why the regression analysis considers these high-wage countries in deriving the wage rate for the PRC. Hangzhou

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[45] *See* Hangzhou Case Brief at 19-21.

[46] *See* Hangzhou's January 21, 2003, submission at page D-9 for a list of its material inputs.

[47] *See Lock Washers 2001-2002 Review Issues and Decision Memorandum* at Comment 4.

[48] *See* section 773(c)(4)(A) of the Act as cited in Hangzhou Case Brief at 22.

[49] Hangzhou cites Department data used to calculate the PRC wage rate in Hangzhou Case Brief at 22.

contends that for the final results of this review, the Department should either use only the Indian wage rate, or use the average wage rates of market-economy countries that are economically comparable to the PRC.

Hangzhou further points out that the Department's wage rate calculation is inconsistent with the Department's premise that NME prices are invalid because the underlying assumption for gross national income (GNI), which is used in the regression analysis, is that the price levels within the PRC are valid. First, Hangzhou argues that the Department's calculation assumes that the per capita GNI for the PRC is valid and multiplies this figure by the results of the regression calculation.[50] Second, Hangzhou asserts that this assumption is in contradiction to the Department's entire NME methodology, which is premised upon the theory that the PRC's prices are unusable because they are not market-economy prices. Additionally, Hangzhou asserts that this inconsistency does not exist for the Indian wage rate or other economically comparable countries' wage rates that are included within the Department's regression analysis calculation. Therefore, Hangzhou argues that the Department should use either the Indian rate only or the average of a group of economically comparable countries' rates which would avoid the NME distortions that are presumed by the Department to be within the Chinese prices, which are a key component of the formula used to calculate the Chinese wage rate.

Hangzhou asserts that the Department has not fully disclosed its methodology for calculating the wage rate for the PRC, including the source documentation underlying the Department's data points. Hangzhou also charges that the Department acknowledged that certain problems may exist with the surrogate labor calculation.[51] Hangzhou claims that this demonstrates that the Department agrees that a recalculation of the regression analysis may require the Department to expand the basket of countries it includes in its regression analysis, expanding it beyond the nineteen countries that a respondent in *Wooden Bedroom Furniture* identified.[52] Hangzhou states that at the very least, the Department should fully disclose the calculation and supporting documents used to calculate the labor rate as applied to Hangzhou because, without access to these calculation documents for the regression analysis, Hangzhou is unable to comment further on the flaws and possible solutions in the Department's labor rate calculation.

Finally, Hangzhou notes that the Department failed to include countries for which GNI data were publicly available.[53] Hangzhou points specifically to the fact that Indonesia and Morocco, two countries specifically designated by the Department as potential surrogate countries, were among these excluded countries. Hangzhou asserts that the Department's arbitrary exclusion of certain countries contravenes its stated purpose for implementing the regression wage rate. Hangzhou

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[50] *See* the Department's wage calculation: China Wage Rate = (China GNI per Capita* X Coefficient) + Constant found at http://ia.ita.doc.gov/wages/02wages/02wages.html#table5, as cited in Hangzhou Case Brief at 23.

[51] *See Wooden Bedroom Furniture from the People's Republic of China,* 69 Fed. Reg. 67313 (November 17, 2004), as cited in Hangzhou Case Brief at 24.

[52] *Id*.

[53] Hangzhou claims per capita GNI and wage rate data for 19 countries were available on the International Labour Organization's website and data for approximately fourteen countries appeared in the 2003 Yearbook of Labor Statistics cited in Hangzhou Case Brief at 24.

cites the preamble of the Department's regulations,[54] which Hangzhou purports states that more data are better than less data, and averaging multiple data points leads to more accurate results. Hangzhou argues, however, that despite the Department's stated attempt for regression methodology to enhance fairness and predictability, this goal cannot be achieved when the Department arbitrarily includes or excludes certain countries' wages (as reported in the International Labour Organization (ILO) database) from the calculation of the PRC wage rate. Because of these issues, Hangzhou asserts the Department's regression analysis is flawed.

Shakeproof asserts that Hangzhou does not point to any statutory provision that mandates the Department calculate the wage rate in a specific manner. It further contends that the Act provides the Department with discretion and the Department exercised its authority by issuing regulations which address the wage rate issue. Shakeproof contends that the Courts have upheld this discretion noting that, where the statute is silent or ambiguous the Court will not overturn the Department's methodology where it is permissible under the statute. As such, Shakeproof maintains, the Department acted properly in determining the wage rate and no adjustments should be made.

Department's Position:

We do not agree that we should use countrywide wage rates from economically comparable countries as a surrogate value for PRC labor, or that we should use India's average wage rate of $0.14/hour. Use of such data as a surrogate for PRC labor would be contrary to the Department's regulations. The Department's valuation of labor in the calculation of antidumping duties in cases involving NME countries is established by 19 CFR 351.408(c)(3) which states:

> For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

As obligated, we have calculated the regression-based expected wage rate for the PRC in accordance with 19 CFR 351.408(c)(3), and we have used this wage rate in our calculation of the final margins in this review, as was done in *Wooden Bedroom Furniture*.[55] Contrary to Hangzhou's allegations, the Department has fully disclosed these calculations and the underlying data sources, which are available on the Department's website.

As articulated recently in *Wooden Bedroom Furniture*, the Department is considering re-evaluating the basket of countries it includes in its regression analysis. Such a re-evaluation requires more time than is currently available in this review to determine an accurate construction

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[54] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 Fed. Reg. 27296, 27356 (May 19, 1997) (Preamble), as cited in Hangzhou Case Brief at 25.

[55] *See* Issues and Decision Memorandum for *Wooden Bedroom Furniture* at Comment 23.

of a new dataset and to conduct a new regression analysis. Further, re-estimating the relationship between GNI and wage rates using a regression analysis on a different basket of countries would be a significant change in the dataset. Such a change should be subject to comment from the general public. Thus, as stated in *Wooden Bedroom Furniture,* it would be inappropriate to restrict this public-comment process to the context of the current review and, consequently, we will invite comments from the general public on this matter in a proceeding separate from the current review.

Therefore, for the final results of this review, the Department will use the 2004-revised expected wage rate of $0.93/hour as a surrogate for PRC labor costs, which the Department derived using its long-established methodology for the determination of the wage rate for the PRC.

Comment 4: Offsetting for Negative Margins

Hangzhou criticizes the Department's practice of avoiding offsetting for negative product-specific margins when determining the weighted-average dumping margin. Hangzhou states that the Department should not avoid offsetting because it prevents the production of a weighted-average margin for all the subject merchandise as required by the statute. Hangzhou notes that the Court of Appeals for the Federal Circuit (CAFC) and the CIT have consistently found that the statute does not require the Department to avoid offsetting.[56] Hangzhou also purports that, as both U.S. Courts and the WTO Appellate Body have recognized, the practice "distorts" the margin calculation.

Hangzhou argues that the statue defines "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer."[57] Hangzhou goes on to argue that the term "aggregate" is defined as "gathered into, or considered as, a whole," or "total," and that "average" means the "numerical results obtained by dividing the sum of two or more quantities by the number of quantities."[58] Hangzhou asserts that the CIT has recognized[59] that the term "amount"[60] when used to define the dumping margin refers to both the positive and negative values, and that the Department has also determined[61] that it should take into account negative and positive net prices in order to perform an accurate antidumping calculation.

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[56] Hangzhou cites *Viraj Group Ltd., v. United States,* 162 F. Supp. 2d at 662-63 (August 15, 2001) in Hangzhou Case Brief at 25.
[57] *See* section 777A(c)(1) of the Act as cited in Hangzhou Case Brief at 25.
[58] *See Webster's New World Dictionary*, Third College Edition at 25 (1988) as cited in Hangzhou Case Brief at 25-26.
[59] *See Floral Trading Council v. United States*, 41 F. Supp. 2d 319, 332 (CIT January 27, 1999), and section 773(e)(2)(B)(iii) of the Act, as cited in Hangzhou Case Brief at 26.
[60] *See* section 771(35)(A) of the Act, as cited in Hangzhou Case Brief at 26.
[61] *See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 Fed. Reg. 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 26 (*Pasta Final*), as cited in Hangzhou Case Brief at 26.

Hangzhou further claims that the Statement of Administrative Act (SAA) accompanying the Uruguay Round Agreements Act (URAA) and the legislative history reflect the intentions of Congress and the President's Administration that U.S. antidumping law be brought into conformity with the WTO Antidumping Agreement (ADA) which states that "a fair comparison" be made between the export price or constructed export price and normal value, and that "where the congressional intent is clear, it governs."[62] Hangzhou claims that Congress, in passing the URAA, specifically amended the Act[63] to incorporate Article 2.4 of the ADA which provides that "a fair comparison shall be made between the export price or constructed export price and normal value."[64] Hangzhou goes on to state that the WTO Appellate Body has specifically pointed to the fact that not offsetting negative margins in administrative reviews involves a comparison that is "not a 'fair comparison' between export price and normal value as required by Articles 2.4 and 2.4.2."[65]

Hangzhou states that the WTO Appellate Body has definitively found the U.S. practice of avoiding offsetting of negative margins to be inconsistent with the ADA,[66] and claims that although in that instance it applied to an investigation, the underlying reasoning that not offsetting negative margins unfairly manipulates margin calculations applies equally to the Department's practice in administrative reviews.[67]

Finally, Hangzhou claims that since a WTO Dispute Settlement Panel ruled, and the Appellate Body affirmed[68] that the U.S. practice of not offsetting negative margins is in violation of the ADA, the Department should not disregard negative margins in the final results of this review. Hangzhou emphasizes that the Appellate Body notes that the ADA is explicit on the issue of disregarding certain matters.[69]

Shakeproof contends in its rebuttal brief that in addition to the fact that the Department has addressed the issue of offsetting negative margins on numerous previous occasions, the Department's position that U.S. law, as implemented through the URAA, is consistent with U.S. WTO obligations[70] is correct, and the Department should continue to apply its margin calculation

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[62] *See Kaiser Aluminum & Chem. Corp. V. Bonjorno*, 494 U.S. 827, 837 (1990), as cited in Hangzhou Case Brief at 26.

[63] *See* Section 773 of the Act.

[64] *See* section 773 of the Act as cited in Hangzhou Case Brief at 26.

[65] *See United States–Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products From Japan*, WT/DS244/AB/R, AB-2003-5 (December 15, 2003), para 134 (emphasis added), as cited in Hangzhou Case Brief at 27.

[66] *See United States–Final Dumping Determination on Softwood Lumber from Canada,* WT/DS264/AB/R, Report of the Appellate Body, adopted Aug. 31, 2004 para. 108, as cited in Hangzhou Case Brief at 27.

[67] *See Softwood Lumber Panel Report,* note 359, as cited in Hangzhou Case Brief at 27.

[68] *Id.*

[69] Hangzhou cites to *United States–Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, Report of the Appellate Body, adopted August 31, 2004, para 100.

[70] Shakeproof refers to SAA, H.R. Doc. No. 103-316 (1994) at 669.

methodology pursuant to Department practice.[71]

Department's Position:

As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act.[72] The CIT has consistently upheld the Department's treatment of non-dumped sales.[73] Furthermore, the CAFC, in *Timken*[74] and most recently in *Corus Staal,*[75] has affirmed the Department's methodology as a reasonable interpretation of the statute.

Finally, in implementing the URAA, Congress made clear that reports issued by WTO panels or the Appellate Body "will not have any power to change U.S. law or order such a change."[76] The SAA emphasizes that "panel reports do not provide legal authority for federal agencies to change their regulations or procedures . . . ."[77] To the contrary, Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports.[78] As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute.[79] Based on the decisions by the CIT and the CAFC, we have not changed the methodology we used in calculating Hangzhou's weighted-average dumping margin.

Comment 5: By-Product Offset

According to Hangzhou, the Department intended to offset its cost of manufacturing (COM) by the steel scrap by-product value. However, Hangzhou points out, in the preliminary results the Department applied the by-product offset after the expense ratios were applied. Hangzhou claims this is a break in methodology from the previous three reviews and for the final results the Department should apply the by-product offset before the expense ratios are applied.

Regarding the by-product offset, Shakeproof states that "the profit ratio should not be applied to

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[71] *See Heavy Forged Hand Tools from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 67 FR 57789 (September 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

[72] *See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 66 FR 50408 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 1.

[73] *See, e.g.*, *SNR Roulements v. United States*, 341 F. Supp. 2d 1334, 1346-47 (CIT 2004), *Corus Staal BV v. Dept. of Commerce*, 283 F. Supp. 2d 1357 (CIT 2003), and *Bowe Passat Rienigungs-Und Waschereitechnik GmbH v. United States,* 926 F. Supp. 1138, 1150 (CIT 1996).

[74] See *Timken Co. v. United States*, 354 F.3d 1342-43, 1345 (Fed. Cir.), 2004.

[75] *See Corus Staal BV v. Dept. of Commerce*, Ct. No. 04-1107 (January 21, 2005), at 5, 10.

[76] SAA accompanying the URAA, H.R. Doc. No. 103-316, Vol. 1 (1994) at 660.

[77] *Id.*

[78] *See* section 129 of the Act.

[79] *See* section 129 of the Act (implementation of WTO reports is discretionary); *see also* SAA at1023 ("{a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is 'not inconsistent' with the panel or Appellate Body recommendations. . .")

the by-product offset, if, but only if, the scrap was a "by-product". . ."[80] (That is, if the steel scrap was not consumed by Hangzhou or its customers). According to Shakeproof, this information is not on the record. Shakeproof makes no argument regarding the other two expense ratios (SG&A and overhead).

Department's Position:

The record shows that Hangzhou sold the wire rod by-product in question as scrap.[81] For the final results, we have reduced the respondent's normal value for the scrap revenue associated with the scrap generated during the production process (*i.e.*, we used the scrap revenue as an offset to the normal value). In the Indian surrogate financial statements used in this case, there is no evidence that the Indian companies reduce their raw materials or any other manufacturing costs for scrap revenue. These Indian surrogate financial statements report a line item titled "other income" which includes amounts for dividend income, interest income, rent income, and other unidentified amounts. We consider it reasonable to assume that the unidentified amounts included in the "other income" line item on the Indian companies' financial statements include scrap revenue. Accordingly, we used the COM amounts from the surrogate statements to calculate the SG&A and profit rates and applied these rates to the respondent's COM without a scrap offset, because the denominator in the ratio and the amount to which the ratio is applied must be on the same basis.

Comment 6: Calculation of Brokerage and Handling Cost

Hangzhou argues that for brokerage and handling the Department inadvertently made calculations based on a per-kilogram basis instead of a per-piece basis. To correct this, Hangzhou states, the Department should apply brokerage and handling on a per-piece basis in the program. It proposes the following language to do this:

FGNMOVE = DBROKUSV * EXRATE * WEIGHT

Shakeproof states that the calculations are made on a per-1000 piece basis. Therefore, it agrees that brokerage and handling should be adjusted.

Department's Position:

The Department agrees with both parties that we inadvertently based brokerage and handling on a per-kilogram rather than per-piece basis. We have made the appropriate changes to the margin calculations. *See* Memorandum to the File: Final Calculation Memorandum, Hangzhou Spring Washer Plant, also known as Zhejiang Wanxin Group Co., Ltd. (Hangzhou Final Calculation Memo) (May 9, 2005) at 2.

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[80] *See* Shakeproof Rebuttal Brief at 13.

[81] *See* Section D at 16. *See also* First Supplemental at S-19 and Exhibit S -38.

Comment 7: Steel Wire Rod Inputs

Citing a recent court case, Shakeproof states that the Department has the power to determine if responses satisfy its requests and are verifiable.[82] According to Shakeproof, Hangzhou was requested, but failed, to supply verifiable documents related to purchases of both imported and domestic wire rod. Shakeproof also contends Hangzhou's reported purchases of wire rod do not fit the pattern of past reviews. This, and the lack of shipping documents, customs forms and VAT forms, Shakeproof asserts, cast additional doubt on the legitimacy of these transactions. This information, argues Shakeproof, should be rejected and best available information should be used instead. Shakeproof alleges that the evidence on the record "clearly supports a suspicion that Hangzhou's record keeping is either faulty or fabricated."[83] Shakeproof argues that the Department should reject Hangzhou's submissions and use best available information and adverse facts available.

Finally, Shakeproof argues that the steel wire rod market purchase prices should be rejected because the purchases made during the POR are not significant. It compares the amounts of steel imported in the 1995-1996 review to the current review input levels and asserts that the instant review's imports are not significant. Shakeproof states that, in this review, Hangzhou has not proven that the domestic and imported steel are physically identical.

In its rebuttal brief, Hangzhou claims that it cooperated fully and provided the Department with all requested documents corresponding to its market-economy purchases. Hangzhou contends that these documents substantiate its market-economy purchases of wire rod, and also prove that it consumed the imported wire rod during the POR. Hangzhou further counters that the Department's regulations specify that market-economy prices are the best available information to value factors of production when the imports are not insignificant and pointed to the fact that Shakeproof cited no record evidence to support its claims.

Hangzhou asserts that the Department should reject Shakeproof's argument to disregard certain market-economy wire rod purchases based on the fact that Hangzhou had not purchased wire rod of such origin in the past. Hangzhou maintains it demonstrated that the prices it paid for wire rod met the criteria for valuation based on the actual purchase price and the fact that it was purchased in a market-economy currency. Hangzhou also argues that the transactions were at arm's length, and the Department was able to confirm the veracity of these purchases. Hangzhou argues that this is consistent with how the Department verifies samples of submitted data and the Department is not required to test every single sale or purchase price reported by a respondent during the course of an administrative review.[84]

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[82] Shakeproof cites *Fujian Machinery and Equipment Import & Export Corporation v. United States,* 276 F. Supp 2d 1371 (CIT 2003), in Shakeproof Case Brief at 2.

[83] *See* Shakeproof Case Brief at 5.

[84] *See Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 Fed. Reg. 35296 (June 24, 2004,) and accompanying Issues and Decision Memorandum at Comment 7 (stating that the Department need not verify all reported market-economy purchases to utilize the actual purchase prices for valuing an input), as cited in Hangzhou

Hangzhou rebuts Shakeproof's argument that its market-economy wire rod purchases are insignificant by claiming that Shakeproof is relying on an incorrect statement of the relevant legal standard. Hangzhou asserts that the actual market-economy purchase price is clearly preferable to a surrogate value for valuing a factor of production.[85] Hangzhou refers to the Department's policy that the actual price paid for inputs will be used if the quantity was not insignificant[86] and that the actual prices are the best available information.[87] Hangzhou argues that, although Shakeproof assumes this means a large percentage of the total wire rod purchases, the Department actually defines this to mean the Department can "reasonably conclude from the quantities sold, and other aspects of the transactions, that the price paid is a reliable market-economy value for the input."[88]

Additionally, Hangzhou notes that its purchases in the current review are clearly within the range of the amount purchased in the third administrative review.[89] Hangzhou argues against Shakeproof's claim that the market-economy purchase quantity should be compared to wire rod purchased domestically. It further asserts that the Department has stated that it will normally use the price paid to the market-economy supplier when a factor is purchased from a market-economy supplier and paid for in a market-economy currency.[90]

Hangzhou clarifies that it responded to all of the Department's requests for information adequately and reported its total amount of purchases domestically sourced wire rod. It argues that the Department did not request further documents of its domestically sourced wire rod. Hangzhou contends the Department should reject all of Shakeproof's comments as unsupported by record evidence and continue to use Hangzhou's actual market-economy purchase prices in the final results of review.

Department's Position:

We will continue to use Hangzhou's market-economy wire rod purchase prices (from the country in question) to value wire rod for the final results if this review. With respect to Shakeproof's argument that certain reported transactions did not occur, we find that there is sufficient record evidence (*e.g.*, purchase documents, purchase agreements, and general ledger entries) to conclude that the transactions in question did occur. *See* Hangzhou's section D questionnaire response (Section D) (February 9, 2004) at Exhibit D-4; *see also* Hangzhou's supplemental questionnaire response (First Supplemental) (September 9, 2004) at Exhibits S-20 and S-21; *see also*

Rebuttal Brief at 5.

[85] *See 19 C.F.R. § 408(c)(1)* as cited in Hangzhou Rebuttal Brief at 6.

[86] *See Antidumping, Countervailing Duty; Final Rule*, 62 Fed. Reg. at 27366 (May 19, 1997) (Preamble) as cited in Hangzhou Rebuttal Brief at 6.

[87] *See Shakeproof Assembly Components Division of Illinois Tool Works, Inc. v. United States*, 268 F.3d 1376 (Fed. Cir. 2001) as cited in Hangzhou Rebuttal Brief at 6.

[88] *Id.*

[89] *See Shakeproof Assembly Components Division of Illinois Tool Works, Inc. v. United States*, 102 F. Supp.2d 486, 496 (CIT 2000) as cited in Hangzhou Rebuttal Brief at 7.

[90] *See 19 C.F.R. § 351.408(c)(1*) as cited in Hangzhou Rebuttal Brief at 7.

Hangzhou's supplemental questionnaire response (Second Supplemental) (October 13, 2004) at SII-8 and SII-9. The record evidence supports Hangzhou's claims to have purchased wire rod from market-economy suppliers at market-economy prices. Further, there is no evidence to indicate that these documents are not legitimate and we find that the sales documents tie into Hangzhou's books and records. We note that Hangzhou provided all the evidence the Department requested and we disagree with Shakeproof's assertion that Hangzhou's records are insufficient.

Second, we agree that Hangzhou's use of a certain supplier[91] does not fit the pattern of past reviews. However, we disagree with Shakeproof that this circumstance by itself casts doubt on the legitimacy of Hangzhou's purchases. The Department recognizes changing suppliers is a natural part of business. Further, as stated above, record evidence supports Hangzhou's claims regarding purchases from this supplier.

Third, we disagree with Shakeproof's assertion that Hangzhou's market-economy wire rod purchases under discussion here should not be used to value all its wire-rod inputs. Pursuant to section 351.408(c)(1) of the Department's regulations, in instances where a factor is purchased from a market-economy supplier, as well as from NME suppliers, the Department will normally value the factor using the price paid to the market-economy supplier. The question is whether Hangzhou's purchases are significant enough in quantity for us to do this. In *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania*, we found that 7 percent constituted a significant amount.[92] In the instant case, we find that Hangzhou's wire rod purchases from countries other than the U.K. are substantial enough for the Department to consider them significant.[93] Therefore, for purposes of the final results of this review, we have continued to value all of Hangzhou's wire rod based on actual prices paid to its market-economy supplier of non-U.K. steel. This is consistent with the Department's preference for, and past practice of, using actual prices paid to a market-economy supplier to value factors of production, as stated in section 351.408(c)(1) of the Department's regulations.

Comment 8: Financial Ratios

Shakeproof argues that the Department should not use the 1997 Reserve Bank of India (RBI) Bulletin as it did in the preliminary results to calculate surrogate financial ratios in this review. Instead, it asserts, either the 2002 (which covers 1,927 companies) or the 2003 (which covers 2,024 companies) RBI Bulletins it submitted should be used.[94] According to Shakeproof, these

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[91] *See* Hangzhou Calc Memo for the name of the supplier in question.

[92] *See Final Results of Antidumping Duty Administrative Review Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania,* 68 FR 12672 (March 17, 2003), and the accompanying Issues and Decision Memorandum at Comment 1.

[93] Due to the proprietary nature of the information, the percentage of wire rod purchases from countries other than the U.K. cannot be given here. *See* Hangzhou's Section D at Exhibit D-5 and First Supplemental at Exhibit S-23.

[94] Shakeproof cites its November 29, 2004, exhibit at 4 and 5. *See* Shakeproof Case Brief at 12. Shakeproof claims this will make the decision consistent with *Certain Heavy Forged Hand Tools from the PRC*. *See* Shakeproof's November 29, 2004, submission at Exhibit 5 as cited in Shakeproof's Case Brief at 12.

more recent RBI Bulletins show that the 1997 information is not the most contemporaneous and it is inaccurate. It maintains that both of these RBI Bulletins cover the year 2000-2001, making them more contemporaneous with what was used in the preliminary results and that either the 2002 or 2003 RBI Bulletin should be used.

In response, Hangzhou asserts that the Department's practice is to use producers of the same or similar products to value the financial ratios and that Shakeproof's argument proposes using the RBI Bulletins of unrelated industries instead of the metals and chemicals RBI Bulletin used in the preliminary results. Therefore, Hangzhou argues, the Department should disregard Shakeproof's argument. According to Hangzhou, the Department can obtain financial ratio information from the following three sources: (1) general RBI (that may or may not include products similar to HSLW) data of 1,927 or 2,024 public limited companies; (2) the RBI data for the industry group of "Processing and Manufacturing: Metals, Chemicals, and Products Thereof"; and (1997 RBI Data); or (3) Allied Components (ENGG) Private Limited (Allied Components) 2001-2002, an Indian producer of comparable merchandise. Of these choices, Hangzhou maintains that the RBI data Shakeproof wants to use are the least representative of Hangzhou's experience.

Hangzhou claims that there is no record evidence to show what type of companies are included in the 2002 and 2003 general RBI Bulletins and argues that they are a mix of manufacturing and service companies. It points out, however, that the other two options available (RBI Industrial Group Data and Allied Components) represent companies that produce merchandise comparable to HSLWs. Hangzhou asserts that the Department's regulations, supported by the preamble to *Antidumping Duties, Countervailing Duties; Final Rule,*[95] require that the financial ratios be valued using "information gathered from producers of identical or comparable merchandise in the surrogate country."[96]

Additionally, Hangzhou argues that the CIT, acknowledging this requirement, has rejected the use of RBI data based only on public companies.[97] Hangzhou asserts that in both *Shanghai Trade* and *Yantai Oriental* the CIT ruled that the Department incorrectly used non-specific RBI data to calculate the financial expense ratios when the record contained other, more specific, financial sources which had not been properly considered for reliability and comparability.

In the instant case, Hangzhou contends, Shakeproof has not presented a valid reason for the Department to forgo its practice of valuing the financial ratios using information from appropriate surrogate country manufacturers of identical or comparable merchandise. Further, Hangzhou argues that Shakeproof's statement that the general RBI data are the most contemporaneous, and therefore the best information available, ignores the existence of the

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[95] *See* 62 FR 27366 (May 19, 1997) as cited in Hangzhou Rebuttal Brief at 11.

[96] *See* 19 CFR 351.408(c)(4) as cited in Hangzhou Rebuttal Brief at 11.

[97] To support this statement Hangzhou cites *Shanghai Foreign Trade Enterprises Co., Ltd. v. United States* 318 F. Supp. 2d 1339, 1345 (CIT 2004) (*Shanghai Trade*), and *Yantai Oriental Juice Co. v. United States,* 2002 WL 1347018 (June 18, 2002) (*Yantai Oriental*) at page 11 of Hangzhou Rebuttal Brief .

Allied Components financial statements for 2001-2002. Hangzhou goes on to argue that the preference for industry- or product-specific financial information is not superseded by a preference for contemporaneity. Indeed, Hangzhou states, the Department recognizes that financial ratios are more stable over time than individual input values and that the contemporaneity of the information does not decide the source from which surrogate financial ratios will be taken. Hangzhou goes on to maintain that the Department has determined in past cases that it is more important to have comparability between a respondent and a surrogate producer than to have the data be contemporaneous. Hangzhou cites to past cases to support this assertion.[98]

Department's Position:

Hangzhou has argued that the Department should ignore Shakeproof's call for more contemporaneous data and should calculate financial ratios using "information gathered from producers of identical or comparable merchandise in the surrogate country" and that the 1997 RBI data meet this requirement. In this case, however, the data in the 1997 RBI Bulletin, which covers the period 1992-1993, are a decade older than the period covered by our review. In the 2001-2002 review of this case, we determined that, where the financial data were significantly outdated, it was more appropriate to use financial statements that are more contemporaneous with the POR, even if they are less specific to the lock washers industry, to calculate financial ratios.[99] In keeping with this determination, the Department has determined not to use the financial ratios calculated from the 1997 RBI Bulletin because that information is significantly outdated and there is more contemporaneous information on the record. Therefore, pursuant to section 773(c)(1) of the Act, we must consider whether the 2002 RBI Bulletin or 2003 RBI Bulletin, which Shakeproof placed on the record after the preliminary results, or the Allied Components financial statements are the best available information from which to calculate financial ratios.

First, we must consider if the information is contemporaneous enough for us to use. The 2002 RBI Bulletin covers the period 2000-2001 while the 2003 RBI Bulletins cover the period 2001-2002. The Allied Components financial statements cover the fiscal year 2001-2002 and show 2000-2001 data for comparison purposes. We find that all three sets of financial statements are sufficiently contemporaneous with the POR to use in calculating financial ratios.

Hangzhou cited two cases to support its argument against the 2002 and 2003 RBI Bulletins. We find that the situations regarding financial ratios in the two cases cited by Hangzhou differ from this case. Unlike *Shanghai Trade*, where the issue was whether there was a producer of comparable merchandise for use on a producer-specific basis, here there were no such data, and the issue is whether to use outdated data that are more specific to the industry or more

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[98] *See, e.g., Partial Extension Steel Drawer Slides from the People's Republic of China,* 60 FR 54472, 54475 (October 24, 1995) *Heavy Forged Hand Tools from the People's Republic of China,* 62 FR 11813, 11816 (March 13, 1997) as cited in Hangzhou's Rebuttal Brief at 12.

[99] *See* Issues and Decision Memorandum for the Final Results of Administrative Review; Helical Spring Lock Washers from the People's Republic of China (March 8, 2004) at Comment 6.

contemporaneous, but broader based data. The same fact pattern existed in *Yantai Oriental*, where the Court criticized the Department for failing to consider that the data used by the Department were "dramatically more outdated than the data Commerce rejected." Thus, the Court recognized that contemporaneity can be a factor in determining the "best available evidence."[100] There, the Department used data from "public limited companies" and explained a rational connection between the record evidence and its decision to use the much more contemporaneous RBI data.[101]

Allied Components did not register a profit during 2001-2002, the year for which we have complete financial information for this company. Therefore, in accordance with our practice, we cannot use its financial statements to calculate a profit ratio. This is in accordance with our practice as stated in the final results of ball bearings from the PRC. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China* (*Ball Bearings Investigation*), 68 FR 10685 (March 6, 2003) and accompanying Issues and Decision Memorandum at Comment 1.A; *Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 68 FR 48337 (August 13, 2003)(*Aspirin Review)* and accompanying Issues and Decision Memorandum at Comment 2. In past situations where the Department had a company with a loss it has used that company's financial statements (either alone or averaged with additional statements) to calculate SG&A and overhead ratios, but substituted the company's loss with the profit of another company (either alone or averaged with additional statements). *See e.g., Ball Bearings Investigation* and *Aspirin Review*. However, in this case we have no other individual company's financial statements which we can use to calculate a profit ratio. In addition, while some information regarding the 2000-2001 fiscal year is available, we find that the Allied Components' financial statements are incomplete for 2000-2001 because they do not show the auditor's notes nor all the details we need to calculate the financial ratios for that fiscal year. In the past, where we have other complete financial statements available to us, we have rejected the use of incomplete financial statements. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Small Diameter Seamless Standard, Line and Pressure Pipe from Romania*, 65 FR 39125 (June 23, 2000) and accompanying Issues and Decision Memorandum at Comment 1. Therefore, the Department finds that we cannot use the Allied Components' financial statements to calculate the financial ratios.

The 2002 and 2003 RBI Bulletins each cover a group of over 1,900 public limited companies and this means a very broad range of products and services are captured in these statements. While our preference is for more specific data, the Department was unable to find contemporaneous data that was more specific to the HSLWs industry. Therefore, in this case we will use the 2001-2002 data series from the 2003 RBI Bulletin to calculate the financial ratios for the final results because it is the best available and most contemporaneous, viable information on the record.

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[100] *Yantai Oriental Juice Co. V. United States,* 2002 WL 1347018 (June 18, 2002) (*Yantai Oriental*) at page 11 of Hangzhou Rebuttal Brief.
[101] *Id.*

Comment 9: Valuation of Steel Scrap

According to Shakeproof, the Department over-valued steel scrap in the preliminary results, by using a surrogate value that is higher than the price of steel wire rod imports used by the Department. Comparing the *WTA* scrap price that the Department used to value the market-economy purchase price of wire rod shows, Shakeproof claims, that either the import steel prices are aberrationally low or the steel scrap values are aberrationally high, or both. The scrap values (ranging from $0.076 USD/kg to $1.39 USD/kg)[102] show that some Indian import scrap values are higher than Indian imports of finished steel.[103] Shakeproof states that basket categories often have large ranges like the ones seen in the steel scrap values because products are not uniform, and argues that between this review and the last, the steel scrap from India increased 52 percent.[104] In conclusion Shakeproof argues that, in light of the "unreasonably high" surrogate value for steel scrap, either inflated 2001-2002 values should be used to value steel scrap or there should be a rejection of all steel scrap values.

Hangzhou responds that Shakeproof's argument should be dismissed because it has no basis and it ignores the Department's methodology for determining whether values are aberrational. First, Hangzhou asserts that the Department's practice is to use surrogate values derived from import statistics of the chosen surrogate country and that the Department has, where appropriate, excluded "aberrational data that appear to distort the overall value for a specific import category."[105] Hangzhou states that the basis for determining if prices are aberrational is, within a single import category, whether or not the import quantities and prices from specific countries are deviant. This is something, Hangzhou asserts, Shakeproof has not done.

Second, Hangzhou argues that Shakeproof's claim that steel scrap prices in the preliminary results are overvalued because some of the Indian import scrap prices were higher than those of finished steel is inaccurate. Hangzhou contends that Shakeproof "cherry-picked" the highest scrap price(s) and lowest finished steel price(s). According to Hangzhou, Shakeproof neither addressed nor considered how the quantities of steel scrap for each import price corresponds to the total quantity of imported steel scrap. Hangzhou points out that the majority of prices for steel scrap fall within the same price range or below the value the Department used. Hangzhou asserts that since Shakeproof has not demonstrated that the steel scrap prices are aberrational, the Department should not consider its requests to use 2001 to 2002 data or to reject certain values from the 2002 to 2003 data. Hangzhou maintains that the Department should continue to value steel scrap as it did in the preliminary results.

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[102] *See* Shakeproof's November 29, 2004 submission as cited in Shakeproof Case Brief at 11.

[103] Shakeproof cites both the FOP Memo at Exhibit 1 and its November 29, 2004 submission at 11 and Exhibit 5 as cited in Shakeproof Case Brief at 13.

[104] *See Preliminary Results of the Ninth Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China* Memorandum Re: Valuation of Factors of Production (October 31, 2003) at 5 as cited in Shakeproof Case Brief at 13.

[105] *See Final Less Than Fair Value Determination: Steel Wire Rope from India and the People's Republic of China*, 66 FR 12759 (February 28, 2001) and accompanying Issues and Decision Memorandum at Comment 1 as cited in Hangzhou Rebuttal Brief at 13.

Department's Position:

For the final results we will continue to use the *WTA* Indian steel scrap average price used in the preliminary results. Shakeproof has based its argument regarding aberrational values on a comparison of *WTA* Indian steel scrap prices to *WTA* Indian wire rod prices. Comparing steel scrap to wire rod is not an "apples-to-apples" comparison and is not consistent with Department practice. *See* Comment 10 below; *see also Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China,* 69 FR 67304 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 7 (*CVP-23 Final Determination*). Since they are different products, the difference between wire rod and steel scrap is irrelevant in this analysis. Therefore, Shakeproof has provided no foundation to suspect the scrap prices are aberrational. The burden is on the parties to demonstrate that there might be grounds for changing a surrogate value input. In this review, Shakeproof has not met this burden because it has given us no information on steel scrap prices that would lead us to investigate whether the *WTA* Indian steel scrap price we used in our preliminary results is an aberrational value.

Comment 10: Hydrochloric Acid

Shakeproof argues that the Department should use Indian import data to value hydrochloric acid. It states that in the current as well as previous two reviews, the Indian import values of this chemical were not used because they were found to be aberrational. But in the instant review, Shakeproof claims, the Department did not explain its reason for finding hydrochloric acid aberrational. Further, Shakeproof asserts that the Department should be consistent with contemporaneous investigations where Indian import statistics were used.[106] It argues that in *Ironing Tables*[107] the Department did not find Indian values for hydrochloric acid to be aberrational. Additionally, Shakeproof argues that because the Department was able to value hydrochloric acid with Indian import statistics in *Ironing Tables*, which covered the same period as this review, it should use that same, more contemporaneous, value (142.80 Rs/kg) for the instant review. It further points out that for the HSLWs final determination the Department found Indian imports to be a sufficient source for valuing chemicals.

Hangzhou argues that the Department correctly found in this review that the Indian import statistics were aberrational for hydrochloric acid. According to Hangzhou, Shakeproof seems to have acknowledged in its brief that the hydrochloric acid Indian import data differ from the U.S. benchmark values, but in spite of this fact Shakeproof "failed to prove that the Indian import data were not unreasonable." Hangzhou asserts that Shakeproof has failed to demonstrate that using Indian import data, and not *Chemical Weekly,* would not lead to any distortion in the normal value calculation. Additionally, Hangzhou points out that Shakeproof did not explain why it

[106] For support Shakeproof cites *Notice of Preliminary Determination of Sales at Less Than Fair Value: Floor Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China,* 69 FR 5127 (January 26, 2004{sic}) (February 3, 2004) *(Ironing Tables)* in Shakeproof Case Brief at 15.

[107] *Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China* 69 FR 35296, (June 24, 2004).

excluded Canada and Belgium from the average hydrochloric acid U.S. import price it suggests, and provided no evidence that imports from these countries were not "reflective of world market prices."[108]

In response to Shakeproof's argument that the Department should be consistent with *Ironing Tables,* Hangzhou asserts that Shakeproof never showed that hydrochloric acid valuation was an issue examined in that case. Hangzhou also points out that in *Ironing Tables,* unlike in the production of HSLWs, hydrochloric acid was a minor input. Additionally, Hangzhou argues that, in prior reviews, the Department has consistently rejected the use of the Indian import data for hydrochloric acid because it was aberrational. Hangzhou also states that, although it is the Department's preference to use a single surrogate country, where some data from the primary surrogate country has been unusable the Department has used another surrogate country to value those inputs.[109] In order to be consistent with its established methodology, Hangzhou maintains, for the valuation of hydrochloric acid the Department should continue to reject the Indian import data and use *Chemical Weekly*.

Department's Position:

Neither the *Ironing Tables* preliminary nor final determination[110] addresses the issue of hydrochloric acid. This case does not support using the hydrochloric acid data from the *WTA* Indian imports as Shakeproof purports. We note that there is a history of *WTA* Indian import values for hydrochloric acid being aberrational. As Shakeproof acknowledges, in previous segments of this case and in our investigation of *Carbazole Violet Pigment 23 from the People's Republic of China*, which covered the period of April 1, 2003, through September 30, 2003, we found that the Indian imports of hydrochloric acid were aberrational.[111]

Following the Department's practice of comparing data from the same source to determine if it is aberrational, we compared *WTA* Indian import values for hydrochloric acid with import data from the *WTA* for the other potential surrogate countries[112] (*i.e.,* Indonesia, Sir Lanka, Philippines, and Morocco) to determine whether the Indian import value for hydrochloric acid was aberrational. The *WTA* Indian import value for hydrochloric acid for the POR was $2.46 USD/kg,[113] based on approximately 87,993 kg of product. We believe this value is aberrational compared with the *WTA* import values from the other potential surrogate countries which ranged from 0.16 USD/kg, based on approximately 1,458,492 kg of product from Sir Lanka to $0.83

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[108] *See* Hangzhou Rebuttal Brief at 15.

[109] For support Hangzhou cites *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 1953 (January 10, 2001) in Hangzhou Rebuttal Brief at 16.

[110] *Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China* 69 FR 35296, (June 24, 2004).

[111] *See CVP-23 Final Determination* at Comment 7.

[112] We note that while Egypt is also a potential surrogate country of China the *WTA* have Egyptian import data. Therefore we did not use Egypt in our analysis.

[113] Source of exchange rate: http://www.ia.ita.doc.gov/exchange/india.txt average of POR daily rates.

USD/kg,[114] and based on approximately 34,198 kg of product from Morocco. Therefore, the final results, we will continue to value hydrochloric acid using *Chemical Weekly* data for the POR. Further, contrary to what parties seem to be implying in their case and rebuttal briefs, *Chemical Weekly* data are Indian data. Therefore, we have not deviated from our selected surrogate country, India, in valuing hydrochloric acid.

Comment 11: Joint Venture

Shakeproof asserts that the joint venture between Hangzhou and Tokuhatsu, known as Hangzhou Tokuhatsu Spring Washer Co., Ltd. (Hangzhou Tokuhatsu), is suspicious in nature. It argues that Hangzhou's claims to have only held shares in the joint venture but not in Tokuhatsu is an attempt to prevent the Department from accessing information it would be permitted to request. Shakeproof points out that the Tokuhatsu brochures on the record show that it produces the same products as Hangzhou.

Additionally, Shakeproof argues that Hangzhou's assertion that its relationship with Tokuhatsu is unrelated to sales of lock washers raises questions and that Hangzhou should have submitted documents demonstrating no lock washers were purchased from Tokuhatsu during the POR. If there is any evidence of affiliation, Shakeproof asserts that case precedent[115] requires Hangzhou to have provided records (*e.g.*, sales or financial) which prove whether or not there is any affiliation. Shakeproof argues that since Hangzhou did not provide these records the Department can apply adverse facts available.

Lastly, Shakeproof claims that Hangzhou did not sell its shares until the end of the POR and should have had access to the list of shareholders during the POR. Shakeproof alleges that Hangzhou failed to meet the Department's request and submit accurate and verifiable information and is trying to hide its relationship with a company shipping to the United States.

In response, Hangzhou argues that there are no grounds to apply an adverse inference of facts available and that Shakeproof has not established that the Department has not received all the information necessary to make a determination. Additionally, Hangzhou contends, Shakeproof has not demonstrated that Hangzhou failed to cooperate to the best of its ability in supplying information about its joint venture.

Hangzhou asserts that it supplied information about Hangzhou Tokuhatsu in its questionnaire responses and in its supplemental responses. Additionally, Hangzhou claims that there was some confusion in the supplemental questions over whether the Department wanted information for Tokuhatsu or Hangzhou Tokuhatsu but that it provided the requested information for both companies, as available. Hangzhou asserts that it never held shares in Tokuhatsu and explains that it provided the company brochure for Tokuhatsu but could not obtain the list of shareholders

[114] The *WTA* data for the Indonesia, Sir Lanka, Philippines, and Morocco is annualized. Since nine months of the POR fall within 2003 we used calendar year 2003 data 2003 to compare to the POR *WTA* Indian import data.

[115] *See Toyota Motor Sale, USA, Inc. v. United States,* 15 F. Supp. 2d 872 (CIT 1998) at 882-883 as quoted in Shakeproof Case Brief at 10.

because it did not have access to that information.

Department's Position:

Regarding Shakeproof's assertion that because Hangzhou did not provide certain records for Tokuhatsu the Department can apply adverse facts available, the Department must first assess whether the use of facts available is warranted, and then, whether the criteria for an adverse inference have been met. Section 776(a) of the Act, provides that facts available may be used if

> (1) necessary information is not available on the record, or
> (2) if an interested party or any other person – (A) withholds information that has been requested by the administering authority. . . ; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested subject to subsections (c)(1) and (e) of section 782 . . .; (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(I), the administering authority . . . shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this subtitle.

See also SAA at 868-870. We are satisfied that Hangzhou cooperated and provided all the requested information to which it had access for Tokuhatsu as well as for Hangzhou Tokuhatsu. *See* Section A response at A-3, First Supplemental Response at pages S1 to S-2 and Exhibits S-2 and S-3, and Second Supplemental Response at 1 to 2 and Exhibit SII-1. Additionally, we do not find that we lack necessary information to complete our analysis of Hangzhou or that Hangzhou impeded the proceeding. Further, we find no evidence on the record that leads us to question the legitimacy of the joint venture. Therefore, we do not find grounds for the application of facts available.

Comment 12: Application of Overhead to COM

Hangzhou argues if the Department continues to use the price quote to value plating, it should not include plating in the COM that is multiplied by the overhead ratio, in order to avoid double-counting as well as be consistent with the previous review. Hangzhou proposes the following changes to revise the program:

Line 629	DIRECT_MATERIAL = SWRSV + ((HCLIN + LYEIN + LUBOILIN + SONIIN) * EXRATE)
Line 640	TOTCOM = COM + OVRHD + PLATEIN * EXRATE + BY_PRODUCT
Line 645/646	NORMVAL = TOTCOM {+}SGA + PROFIT + PACKING

Shakeproof agrees that, if the Department uses a price quote to value plating costs, the plating costs should not be used in the COM to which the overhead ratio is applied, but that the Department should apply the SG&A and profit ratios.

Department's Position:

The Department agrees with both parties that the overhead ratio should be applied to the COM exclusive of plating costs since Hangzhou does not incur overhead on the plating. We have made the appropriate changes to the margin calculations. *See* Hangzhou Final Calculation Memo at 2. We will continue to apply the profit and SG&A ratios to the COM inclusive of plating costs.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final dumping margins in the *Federal Register*.

AGREE _____ DISAGREE _____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date