

Shanghai Wells Co., Ltd. v. United States

Consol. Court No. 15-00103, Slip Op. 17-24 (CIT March 2, 2017)

FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the decision and remand order of the Court of International Trade (CIT or Court) in *Shanghai Wells Co., Ltd. v. United States*, Consol. Court No. 15-00103, Slip Op. 17-24 (CIT March 2, 2017) (*Remand Opinion and Order*). These final remand results concern *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2012-2013*, 80 FR 13332 (March 13, 2015) (*AR5 Final Results*), and accompanying Issues and Decision Memorandum (IDM). In the *Remand Opinion and Order*, the CIT remanded the *AR5 Final Results* for the Department to reconsider its selection of Thailand as the primary surrogate country.¹

As set forth in detail below, pursuant to the CIT's *Remand Opinion and Order*, we have reconsidered our selection of Thailand as the primary surrogate country. Specifically, we have addressed the relative quality of the financial statements on the record in the context of making our surrogate country selection.

¹ See *Remand Opinion and Order* at 8.

We released our draft remand results for comment by parties on April 21, 2017.² On May 8, 2017, Shanghai Wells Hanger Co., Ltd.³ (Shanghai Wells) and Fabriclean Supply, Inc. (Fabriclean) provided comments.⁴ We respond to these comments below. After considering these comments and analyzing the financial statements on the record, for purposes of this final remand redetermination, the Department continues to select Thailand as the primary surrogate country.

B. REMANDED ISSUE

Background

On March 13, 2015, the Department published the *AR5 Final Results*, which covered Shanghai Wells and the People's Republic of China (PRC)-wide entity.⁵ The period of review (POR) covers October 1, 2012, through September 30, 2013. In the *AR5 Final Results*, the Department determined normal value pursuant to section 773(c) of the Tariff Act of 1930, as amended, (the Act). During the review, the Department identified six potential surrogate countries on the record that were at a level of economic development comparable to the PRC and were significant producers of comparable merchandise, but only two countries, Thailand and the

² Department Letter re: Draft Remand Determination in the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China; 10/01/2012-09/30/2013, dated April 21, 2017 (Draft Remand).

³ The Department previously found that Shanghai Wells Hanger Co., Ltd. (Shanghai Wells), Hong Kong Wells Ltd. (HK Wells) and Hong Kong Wells Ltd. (USA) (Wells USA) are affiliated and that Shanghai Wells and HK Wells comprise a single entity. Because there were no changes in this review to the facts that supported that decision, we continued to find Shanghai Wells, HK Wells, and USA Wells are affiliated and that Shanghai Wells and HK Wells comprise a single entity. See *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758, 68761 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994, 27996 (May 13, 2011).

⁴ Letter to the Secretary from Shanghai Wells and Fabriclean re: Comments on Draft Remand, dated May 8, 2017 (Shanghai Wells' and Fabriclean's' Comments).

⁵ See *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2012-2013*, 80 FR 13332 (March 13, 2015) (*AR5 Final Results*), and accompanying Issues and Decision Memorandum (IDM).

Philippines, had publicly available data on the record for sourcing surrogate values (SVs).⁶ In addition, the Department determined that Thailand provided the best opportunity to use quality, publicly available data, and that the Thai financial statements were usable.⁷ Thus, the Department selected Thailand as the primary surrogate country, consistent with section 773(c)(4) of the Act.⁸

Shanghai Wells and Fabriclean challenged the Department's selection of Thailand as the primary surrogate country, arguing that Commerce did not apply its surrogate country selection criteria reasonably because it did not compare the Philippine and Thai financial statements to determine which was best.⁹ When there is more than one potential surrogate country at a level of economic development comparable to the non-market economy (NME) country under review and a significant producer of comparable merchandise, the Department selects "the country with the best factors data."¹⁰ Here, Shanghai Wells and Fabriclean argued that the Department failed to determine which country had the best factors data for determining the financial ratios used in the margin calculation because the Department did not adequately compare the available Philippine and Thai financial statements.¹¹

In the *Remand Opinion and Order*, the Court held that the Department "failed to apply its surrogate country selection criteria reasonably."¹² Specifically, the Court found that, while the Department addressed the relative quality of Thai and Philippine import and labor data, the Department failed to complete its surrogate country analysis by, similarly, comparing the Thai

⁶ See IDM at 11-12; see also *Remand Opinion and Order* at 5.

⁷ See IDM at 11-12.

⁸ See IDM at 12.

⁹ See *Remand Opinion and Order* at 6.

¹⁰ For a description of our practice see *Import Admin., U.S. Dep't of Commerce, Non-Market Economy Surrogate Country Selection Process, Policy Bulletin 04.1 (2004) (Policy Bulletin 04.1)* available at <http://enforcement.trade.gov/policy/bull04-1.html>.

¹¹ *Remand Opinion and Order*, at 6.

¹² *Remand Opinion and Order* at 6.

and Philippine financial statements to determine which were best.¹³ The Court explained that, rather than making this comparison, the Department instead “relied on a regulatory preference to value all factors of production” (FOPs) from a single country, found the Thai financial statements “usable,” and, thus, “failed to apply its surrogate country selection criteria reasonably,” selecting Thailand as the surrogate country.¹⁴ In its decision, the court states that “it expresses no opinion on whether either country may constitute a reasonable choice on the administrative record,” only that “{the Department’s} process of selecting Thailand was unreasonable.”¹⁵ For purposes of this Remand, the Department has compared the relative quality of the financial statements on the record and incorporated the results of its comparison into its surrogate country selection analysis.¹⁶

Analysis

In accordance with the *Remand Opinion and Order*, the Department has reconsidered its selection of Thailand as the primary surrogate country, and for the reasons set forth below, in these final remand results of redetermination, the Department continues to select Thailand as the primary surrogate country.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act instructs the Department to base normal value (NV), in most circumstances, on the NME producer’s FOPs, valued in a surrogate Market Economy (ME) country or countries considered to be appropriate by the Department. The Department generally selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries on the Department’s list of countries determined to be at a level of

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 8.

¹⁶ *Id.*

economic development comparable to the NME country are viable options because: (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons.¹⁷ The Department also will consider data availability when selecting a surrogate country. Importantly, if multiple countries are at a level of economic development comparable to the NME and are significant producers of comparable merchandise, “the country with the best factors data is selected as the primary surrogate country.”¹⁸ In the *AR5 Final Results*, because all of the potential surrogate countries were at a level of economic development comparable to the PRC and significant producers of comparable merchandise, the Department’s decision turned on the quality of the data available from two potential surrogate countries for which potential SV data was placed on the record—Thailand and the Philippines.¹⁹

The Court correctly stated that “Commerce’s surrogate country determination . . . turned on the issue of data quality” and that “{f}or import and labor data, Commerce determined that Thailand had the better quality data.”²⁰ Specifically, the Department found that the Thai Global Trade Atlas import data are more specific for valuing steel wire rod, the primary input because the alternative Philippine Harmonized System code contains wire rod with up to 0.60 percent carbon content which covers a much broader range of carbon contents than what Shanghai Wells used during the POR. Additionally, the Department found the National Statistical Office (NSO) data from Thailand are the best available information because the 2013 Manufacturing-specific NSO data are industry-specific and contemporaneous with the POR, as opposed to the Philippine International Labor Organization (ILO) data, which is sourced from 2008. Commerce’s

¹⁷ See *Policy Bulletin 04.1*.

¹⁸ *Id.* at “Data Considerations.”

¹⁹ See *Remand Opinion and Order* at 5; see also *IDM* at 8-15.

²⁰ *Id.* at 5-6.

decisions in this respect were not remanded to the Department in the *Remand Opinion and Order*. Rather, the Court remanded the *AR 5 Final Results* for the Department to evaluate the financial statements on the record.

In connection with financial statements, the Court stated that “{i}mplicit in Commerce’s ‘finding’ that the Thai financial statements are merely ‘usable’ is a tacit concession that the Philippine financial statements are actually superior”²¹ It was not the Department’s intent to so indicate. Rather, the Department had not considered the Philippine financial statements beyond analyzing from which country the statements came. As the Department explained in the IDM, “because we have useable financial statements from Thailand, the primary surrogate country in this review, and because it is the Department’s preference to stay within the primary surrogate country, we are not considering the Philippine financial statements.”²² We found the Thai statements usable because they came from producers of comparable merchandise and were contemporaneous with the POR.²³ Thus, and consistent with the Court’s opinion, we have further evaluated the Thai and Philippine financial statements on the record and compared them.

With respect to the best available information on the record to calculate surrogate financial ratios, the Department has considered the four Philippine financial statements and three Thai financial statements. Section 773(c)(1) of the Act directs the Department to value FOPs using “the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate. . . .” 19 CFR 351.408(c)(4) specifies that the Department will value overhead, general expenses, and profit using non-proprietary information from producers of identical or comparable merchandise in the surrogate country. Thus, pursuant

²¹ *Remand Opinion and Order* at 6.

²² IDM at 15.

²³ *Id.* at 10-15.

to the Act and the regulations, the Department's practice is to determine surrogate financial ratios using the best publicly available data from surrogate market economy companies. Further, the Department has a regulatory preference to value all surrogate values from the primary surrogate country.²⁴

The Department determines which financial statements are the best information on the record based on quality of data, specificity, and contemporaneity.²⁵ The Philippine financial statements are from four companies, APO Industries Inc. (APO Industries), Supersonic Manufacturing Inc. (Supersonic), Sterling Steel Incorporated (Sterling Steel), and Benedicto Steel Corporation (Benedicto).²⁶ The Thai financial statements are from three companies, L.S. Industries Co., Ltd. (L.S. Industries), Sahasilp Rivet Industrial Co., Ltd. (Sahasilp), and Thai Mongkol Fasteners Co., Ltd. (Mongkol Fasteners). First, we considered whether the financial statements pertained to manufacturers of identical or comparable merchandise when analyzing the quality of the data.

Here, there is no information on the record that any of the Thai or Philippine companies produce identical merchandise, *e.g.*, hangers. When analyzing whether a company is a producer of comparable merchandise, it is important to note that the statute does not define the term, "comparable merchandise." During the life of the antidumping duty order on hangers from the PRC, however, the Department has addressed the issue of what constitutes comparable

²⁴ See 19 CFR 351.408(c)(2).

²⁵ See, *e.g.*, *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) (*Electrolytic Manganese Dioxide Final*) and accompanying Issues and Decision Memorandum at Comment 2.

²⁶ See Letter to the Secretary from Fabriclean, entitled, "Surrogate Value Comments: Steel Wire Garment Hangers from the People's Republic of China," dated May 14, 2014 at Exhibit SV-8 (Fabriclean Surrogate Value Comments).

merchandise for hangers.²⁷ The Department has determined that nails and fasteners constitute comparable merchandise because, like the subject merchandise, nails and fasteners are a downstream product of wire requiring additional manufacturing processes.²⁸ The record contains information from the Thai and Philippine companies' websites and financial statements as to the kinds of merchandise they produce (*e.g.*, nails and fasteners),²⁹ including merchandise the Department has found to be comparable to hangers.³⁰ As such, the Department finds that the Thai and Philippine companies all produce comparable merchandise.

Fabriclean and Shanghai Wells argued that two of the Thai companies, Sahaslip and Mongkol Fasteners, do not produce comparable merchandise because their financial statements do not indicate they draw wire from wire rod.³¹ The Department disagrees because production process factors into our analysis of specificity of the data rather than our analysis of whether the companies are producers of comparable merchandise. In the *AR4 Final Results*, the Department stated that “where information as to inputs and production {process} is on the record for a producer of comparable merchandise, such information may be useful in determining whether it is appropriate to use.”³² However, when this type of information is not on the record, the absence of such information does not necessarily exclude a potential surrogate producer from consideration.³³ Here, because Shanghai Wells draws wire rod in its production process, the

²⁷ See, *e.g.*, *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011–2012*, 79 FR 31298 (June 2, 2014) (*AR4 Final Results*) and accompanying Issues and Decision Memorandum.

²⁸ See *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review* 77 FR 12553 (March 1, 2002) and accompanying Issues and Decision Memorandum at 9).

²⁹ See Letter to the Secretary from Petitioners, entitled, “Petitioner’s Submission of Pre-Preliminary Surrogate Data,” dated October 1, 2014 at Exhibit 3 (Petitioner’s Pre-prelim Surrogate Data).

³⁰ See *AR4 Final Results* and accompanying Issues and Decision Memorandum at Comment 1.D.

³¹ *Remand Opinion and Order* at 7. Additionally, the Department notes that while Fabriclean concludes that L.S. Industries draws wire based on photographs of what appear to be wire drawing machinery in Exhibit 1, the Department does not reach the same conclusion without additional evidence.

³² *AR4 Final Results* and accompanying Issues and Decision Memorandum at Comment 2.

³³ *Id.*

Department has analyzed whether the Thai and Philippine companies draw wire rod as part of their production process in our evaluation of specificity of the financial statements, not our evaluation of whether the companies produce comparable merchandise.³⁴

Our review of the information reveals that the Thai companies' financial statements do not include information on their respective inputs and production processes (*i.e.*, whether or not they draw wire rod).³⁵ Further, the Department finds that no other record information demonstrates that the Thai companies draw wire rod as part of their production process.³⁶ The Department also finds none of the Philippine companies' financial statements include information on their respective inputs and production processes. Indeed, Benedicto's financial statements suggest that the company is overwhelmingly a trader/re-seller rather than a producer when comparing its "Purchases and importation charges" values to its "Inventories" values.³⁷ Yet, the record contains information from Benedicto's and Supersonic's websites that they draw wire rod in their production processes.³⁸ Therefore, we conclude they draw wire as part of their production process. With respect to the other two Philippine companies, APO Industries and Sterling Steel, there is no evidence on the record that they draw wire rod in their production process, only that they, like Sahaslip and Mongkol Fasteners, are producers of comparable merchandise.³⁹ Therefore, we find two of the Philippine financial statements, Benedicto's and

³⁴ See Letter to the Secretary from Shanghai Wells, entitled, "Section C and D Questionnaire Response," dated March 19, 2014 (Section C and D Questionnaire Response).

³⁵ See Petitioner's Pre-prelim Surrogate Data at Exhibit 1; Fabriclean Surrogate Value Information at Exhibit 1.

³⁶ See Fabriclean Surrogate Value Information at Exhibit 1. While Fabriclean concludes that L.S. Industries draws wire based on photographs of what appear to be wire drawing machinery in Exhibit 1, the Department cannot make the same conclusion without additional evidence.

³⁷ See Fabriclean Surrogate Value Information at Exhibit 1; *see also Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 18816 (April 5, 2015) and accompanying Issues and Decision Memorandum at 13.

³⁸ Both Benedicto's and Supersonic's websites specifically reference drawing wire. See Fabriclean Surrogate Value Comments at SV-10.

³⁹ APO Industries' and Sterling Steel's websites are not on the record and there is only third-party information regarding their consumption of steel wire rod. See *id.*; *see also* Letter to the Secretary from Ningbo Dasheng Hanger

Supersonic's, come from companies that draw wire rod and are, thus, more specific to Shanghai Wells' production process.

Last, we examined contemporaneity. The Philippine financial statements cover three months of the POR (*i.e.*, October—December 2012).⁴⁰ The Thai financial statements cover nine months of the POR (*i.e.*, January—September 2013).⁴¹ As such, while both sets of financial statements are contemporaneous, the Thai financial statements cover a larger portion of the POR.

Therefore, after comparing the Thai and Philippine financial statements on the record, the Department finds that all the companies with financial statements under consideration make comparable merchandise. Thus, in that respect, neither set of statements is superior regarding data quality. Additionally, two of the Philippine companies, Benedicto and Supersonic, have production processes more specific to Shanghai Wells because they draw wire rod. Thus, two of the Philippine financial statements from Benedicto and Supersonic have more specific data than the financial statements from the Thai companies. Finally, while all of the financial statements are contemporaneous, the Thai statements are superior in this respect when compared to the Philippine statements because all three cover a larger portion of the POR.

There is no hierarchy among the criteria used to evaluate what constitutes the best available information for purposes of evaluating SV data.⁴² The Department's preference is to satisfy the breadth of the criteria used to evaluate which information is the "best available." Looking at the breadth of the criteria, not one specific factor, and given the product at issue in this proceeding (*i.e.*, hangers) and the financial statements on the record, having a more specific

Ind Co., Ltd. re: Surrogate Value for the Preliminary Results, dated May 14, 2014 at SV-5 (Ningbo Surrogate Values).

⁴⁰ See Fabriclean Surrogate Value Comments at Exhibit SV-8.

⁴¹ See Petitioner's Pre-prelim Surrogate Data Exhibit 1; Letter to the Secretary from Fabriclean, entitled, "Surrogate Value Information: Steel Wire Garment Hangers from the People's Republic of China," dated October 1, 2014 at Exhibit 1 (Fabriclean's Surrogate Value Information).

⁴² See *Electrolytic Manganese Dioxide Final* and accompanying Issues and Decision Memorandum at Comment 2.

production process of drawing wire rod does not outweigh contemporaneity, nor does contemporaneity outweigh production process. As such, when looking at these factors, quality of data, specificity, and contemporaneity, alone, the Thai statements are *all* superior with regard to contemporaneity and only *two* of the Philippine statements, Benedicto's and Supersonic's, are superior with regard to specificity. Thus, under the breadth of criteria, neither set of statements is superior as a whole such that they lead the Department to choose one possible primary surrogate country over the other.

With respect to our selection of the primary surrogate country, the Department analyzes the relative importance of each surrogate value in selecting the primary surrogate country. Despite the importance of wire drawing for the production of subject merchandise as the Court notes, when considering the available evidence in light of the particular facts of the hanger industry, the greatest contributor to normal value is the primary input, and, therefore, we are weighing data considerations surrounding the primary input more heavily in our surrogate country analysis.⁴³ Here, because Thailand has data from Harmonized System (HS) codes with a carbon content most specific to that consumed by Shanghai Wells, the Department more accurately captures the experience of the respondent in calculating the SV and subsequently the margin. The Department, therefore, finds the superiority of the Thai import data over that of the Philippines import data to be significant for purposes of its surrogate country selection.⁴⁴ As such, any apparent superiority of certain of the Philippine financial statements due to production process does not override our finding that Thailand has superior import data with respect to the primary input. Additionally, as described above, the Thai financial statements are more contemporaneous with the POR than the Philippine financial statements. Therefore, for purposes

⁴³ See, e.g., Section C and D Questionnaire Response.

⁴⁴ See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F.3d 1316, 1322 (Fed. Cir. 2010).

of our surrogate country selection, the Department continues to choose Thailand as the surrogate country for this review because: (1) Thailand is at the same level of economic development as that of the PRC; (2) Thailand is a significant exporter of comparable merchandise; (3) Thailand provides the best opportunity to use quality, publicly available data to value Shanghai Wells' FOPs, most notably wire rod, which is Shanghai Wells' primary input in manufacturing subject merchandise; and (4) any apparent superiority with regard to the production process of two of the Philippine financial statements over the Thai financial statements does not outweigh the significance we attribute in our surrogate country selection analysis on remand to the country that provides the best available data for valuing the primary input, wire rod, in this case. Thus, consistent with the *Remand Opinion and Order*, the Department has reconsidered this issue and finds it appropriate to continue to select Thailand as the surrogate country.

C. INTERESTED PARTY COMMENTS

On April 21, 2017, the Department released the draft remand results of redetermination to all interested parties.⁴⁵ We invited parties to comment on the draft remand results by May 5, 2017.⁴⁶ On May 2, 2017, at the request of Shanghai Wells and Fabriclean, we extended the comment period to May 8, 2017.⁴⁷ Shanghai Wells and Fabriclean submitted comments on May 8, 2017.⁴⁸ No other interested party submitted comments.

⁴⁵ See *Draft Remand*.

⁴⁶ *Id.*

⁴⁷ Memorandum regarding: Draft Remand Comments Extension, dated May 2, 2017.

⁴⁸ See Shanghai Wells' and Fabriclean's Comments.

Issue 1: Whether Certain Fasteners are Comparable Merchandise

Shanghai Wells' and Fabriclean's Comments:

- The Department's determination that the Thai financial statements and the Philippine financial statements were of equal comparability, quality, and reliability is not supported by record evidence.⁴⁹
- In determining which financial statements are the best information on the record, the Department erred in concluding that Sahasilp and Mongkol Fasteners are producers of comparable merchandise.⁵⁰
- Sahasilp and Mongkol Fasteners are likely producers of automotive and machinery part fasteners which the department has determined are not comparable merchandise to hangers.⁵¹

Department Position:

In its Draft Remand, unlike Shanghai Wells' and Fabriclean's characterization, the Department did not find that the Thai and Philippine financial statements were of equal comparability, quality, and reliability, but rather, in analyzing each of the statements, distinguished the financial statements on the record based on quality of data, specificity, and contemporaneity.⁵² Further, the Department disagrees that two Thai companies, Sahasilp and Mongkol Fasteners, do not produce comparable merchandise. As described above, evidence of specific production processes are useful in determining whether the data are specific, not whether a company is a producer of comparable merchandise. The Department finds that fasteners are

⁴⁹ Shanghai Wells' and Fabriclean's Comments at 2-3.

⁵⁰ *Id.* at 3-4.

⁵¹ *Id.*

⁵² *See supra* at 7-11.

comparable merchandise to hangers because, like the subject merchandise, nails and fasteners are a downstream product of wire requiring additional manufacturing processes.

While automotive and machinery part fasteners may be more specialized in terms of raw material and process, Shanghai Wells and Fabriclean do not provide any evidence in their comments that Sahasilp and Mongkol Fasteners only produce automotive and machinery fasteners.⁵³ Rather, the record indicates, in contrast to Shanghai Wells' and Fabriclean's claims, that Sahasilp and Mongkol Fasteners produce other kinds of fasteners and wire-based products, such as simple screws, bolts, furniture parts, and fasteners used in construction,⁵⁴ evidence of which the Department has taken to find Sahasilp and Mongkol Fasteners are producers of comparable merchandise.⁵⁵ Thus, while during the life of the order on hangers, the Department has not reached the conclusion that automotive fasteners are, or are not, comparable merchandise, it need not for purposes of this remand.

Additionally, Shanghai Wells and Fabriclean did not point to any evidence in their comments on the Draft Remand distinguishing automotive fasteners from the broad category of fasteners beyond their unsupported claim that the production process to produce automotive fasteners is different from that to produce comparable fasteners such as nails,⁵⁶ nor is there evidence on the record of this segment suggesting such a distinction. The Department also notes that, while Shanghai Wells and Fabriclean focus on the variety of products produced by Sahasilp and Mongkol Fasteners, it takes no issue with the evidence on the record suggesting Supersonic

⁵³ Shanghai Wells' and Fabriclean's Comments at 3.

⁵⁴ Petitioner's Pre-prelim Surrogate Data at Exhibit 3.

⁵⁵ *See, e.g., AR4 Final Results.*

⁵⁶ Shanghai Wells' and Fabriclean's Comments at 3-4.

produces gabions and mattresses, in addition to fasteners, or that APO industries produces piano hinges, in addition to fasteners.⁵⁷

The Department has found that a manufacturer is a producer of downstream wire-based comparable merchandise, even where it produces merchandise in addition to that which the Department has expressly found to be comparable.⁵⁸ In *PRC Steel Threaded Rod*, the Department looked to whether fasteners were comparable merchandise to steel threaded rod because, similar to the comparison between hangers and fasteners, both steel threaded rod and fasteners are downstream wire products requiring additional manufacturing.⁵⁹ Therein, the Department found that where a producer makes automotive fasteners in addition to other fasteners, even if the automotive fasteners are more specialized, they are still considered a producer of fasteners for purposes of comparable merchandise.⁶⁰ As such, because Sahasilp and Mongkol Fasteners produce fasteners in addition to automotive fasteners, the Department continues to find that, for purposes of comparing the financial statements in its surrogate country selection process, all of the companies whose financial statements are under consideration, including Sahasilp and Mongkol Fasteners, are producers of comparable merchandise.

⁵⁷ See *Fabriclean Surrogate Value Comments* at SV-10; *Ningo Surrogate Values* at SV-5.

⁵⁸ See *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 74 FR 8907 (February 27, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁹ *Id.*

⁶⁰ *Id.*

Issue 2: Whether Record Evidence Demonstrates that APO Industries' and Sterling Steel's Production Process is More Similar to Shanghai Wells

Shanghai Wells' and Fabriclean's Comments:

- The Department erred in its conclusion that APO Industries and Sterling Steel do not consume steel wire rod, because there is third-party record evidence demonstrating that they do.⁶¹
- The Department failed to explain why only company websites and not third-party evidence is probative regarding its conclusion that only two Philippine companies consume wire rod to produce wire product.⁶²
- In the third administrative review of this Order, the Department concluded that APO Industries and Sterling Steel draw steel wire rod, and it should conclude the same here.

Department's Position:

As discussed above, once the Department determines a company is a producer of comparable merchandise, it may look at information regarding the production process to compare the specificity of the data provided in financial statements.⁶³ In doing so for purposes of this remand redetermination, the Department has considered whether the record evidence demonstrates that the companies under consideration produce the subject merchandise in a comparable manner as the respondent and whether that evidence is reliable.⁶⁴ As described above, because Shanghai Wells draws wire rod in its production process, the Department reviewed the record evidence to determine whether APO Industries and Sterling Steel, as well as Supersonic, Benedicto, L.S. Industries, Sahasilp, and Mongkol Fasteners, draw wire rod in their

⁶¹ *Id.* at 4-6.

⁶² *Id.*

⁶³ See *AR4 Final Results* and accompanying Issues and Decision Memorandum at Comment 2.

⁶⁴ *Id.*

production processes.⁶⁵ We continue to find that, for APO Industries and Sterling Steel, there is no reliable record evidence demonstrating that they draw wire rod in their production processes.

First, Shanghai Wells and Fabriclean misconstrue the Department's conclusion that there is no reliable evidence on the record that APO Industries and Sterling Steel draw wire rod as an affirmative conclusion that they do not draw wire rod.⁶⁶ Rather, the Department finds the third-party websites Shanghai Wells and Fabriclean advance in support of their argument are largely unreliable.⁶⁷ Four out of five of the third-party sources are websites which can either be added to or edited by anyone who accesses the websites, affirmatively state that they are unverified, or contain inaccurate company information, including the wrong addresses.⁶⁸ The fifth website only provides a generic company listing, without evidence of wire drawing. Thus, although we may find the companies' own websites to be more probative than a third-party website, ultimately, none of the websites on the record provide reliable evidence of wire drawing by APO Industries or Sterling Steel.

Second, Shanghai Wells and Fabriclean argue that third-party websites discussed above, and a solicitation for wire rod, provide evidence that APO Industries and Sterling Steel draw wire rod in their production process.⁶⁹ Their argument does not accurately reflect the information on the record. As Shanghai Wells and Fabriclean state in their comments, the third-party websites mention "steel wire" or "steel wire rod" as raw materials used by APO Industries or products manufactured by Sterling Steel, respectively.⁷⁰ While the websites and solicitation are further evidence that APO Industries and Sterling Steel produce comparable merchandise,

⁶⁵ See Section C and D Questionnaire Response

⁶⁶ *Id.* at 4.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See Fabriclean Surrogate Value Comments at SV-10.

⁷⁰ See Ningo Surrogate Values at SV-5.

mere mention of “steel wire” or “steel wire rod” on the third-party websites does not demonstrate that the companies engage in drawing steel wire rod as a part of their production processes. Similarly, a solicitation for wire rod does not indicate that APO Industries draws wire rod as part of its production process.⁷¹

Finally, recognizing the Department’s determination in the third administrative review that APO Industries and Sterling Steel produced comparable merchandise by drawing wire rod, in this administrative review, the information on the record does not demonstrate that APO Industries and Sterling Steel draw wire rod. Also, the circumstances present in the third administrative review are distinguishable from the circumstances in this review. Namely, for the third administrative review, there were no other usable financial statements from producers of comparable merchandise on the record and the Department did not engage in a comparison of financial statements as here.⁷² Here, there are usable statements from both Thailand and the Philippines from producers of comparable merchandise. As such, pursuant to remand, the Department re-evaluated the issue and the evidence on the record of the current segment in its comparative analysis of the Thai and Philippine financial statements.

As such, our conclusion in the third administrative review of this order regarding APO Industries’ and Sterling Steel’s wire drawing does not negate the absence of information on the record of this review demonstrating that APO Industries or Sterling Steel drew wire rod in their production processes. Therefore, for purposes of this review, the Department continues to find there is no reliable evidence that APO Industries, Sterling Steel, or any of the Thai companies whose financial statements are under consideration, draw wire rod in their production processes.

⁷¹ Fabriclean Surrogate Value Comments at SV-10.

⁷² *AR3 Final Results*, and accompanying IDM at 14

Issue 3: Relevance of Contemporaneity

Shanghai Wells' and Fabriclean's Comments:

- The contemporaneity of the financial statements should be of limited relevance considering both the Thai and Philippine financial statements are contemporaneous and inflation is of little concern with respect to surrogate financial ratios.⁷³

Department's Position:

Shanghai Wells and Fabriclean posit that relative contemporaneity is a factor of little relevance in comparing the financial statements based, on the decision in *PRC Cased Pencils*.⁷⁴ While relative contemporaneity may be of lesser importance when there is another overarching factor, such as in the *PRC Cased Pencils* decision, where the contemporaneous statements were flawed with evidence of the company's financial difficulties, the facts in this case are different.⁷⁵ Here, no such flaws exist in the statements being compared. As such, contemporaneity matters more significantly with regard to our comparison. Further, a fulsome evaluation of each financial statement in this review includes an examination of contemporaneity.

Issue 4: Whether Sahasilp's and Mongkol Fasteners' Financial Statements Contain

Additional Deficiencies

Shanghai Wells' and Fabriclean's Comments:

- The Department does not address the other deficiencies in Sahasilp's and Mongkol Fasteners' financial statements, namely that they lead to higher overhead and SG&A ratios because they do not make comparable merchandise.⁷⁶

⁷³ *Id.* at 6-7.

⁷⁴ Shanghai Wells' and Fabriclean's Comments at 7 (citing *Final Results of the 2001-2002 Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China*, 69 FR 29266 (May 21, 2004), and accompanying Issues and Decision Memorandum at Comment 3 (*PRC Cased Pencils*)).

⁷⁵ See *PRC Cased Pencils* at Comment 3.

⁷⁶ Plaintiff's Comments at 7-9.

- The “Article making cost” in Mongkol Fastener’s financial statements is ambiguous and overstates the overhead ratios of the company.⁷⁷
- Thus, the production experience of the Thai companies is different from Shanghai Wells, such that it distorts the calculation of their overhead and SG&A ratios.⁷⁸

Department’s Position:

As the Department explained above, the Department finds that Sahasilp and Mongkol Fasteners do produce comparable merchandise to hangers. Beyond that, the Department considered whether any deficiencies in the financial statement make it unusable on its face.⁷⁹ For example, the Department looks at whether the statements are complete and do not reflect commercial anomalies, such as the company ceasing debt and interest payments on loans.⁸⁰ Further, there is no support for Shanghai Wells’ and Fabriclean’s implication that the Department must choose the surrogate information resulting in the lowest normal value for its dumping analysis.

The relative degree of financial ratios, when compared with the financial ratios that might be derived from other financial statements on the record, alone, in this case, is not a reason to discount the financial statements. Shanghai Wells and Fabriclean rely on the relatively lower degree of the financial ratios for L.S. Industries vis-à-vis the financial ratios for Sahasilp and Mongkol Fasteners as the basis for their arguments that Sahasilp’s and Mongkol Fasteners’ financial statements are flawed and that the “companies’ production experience and, in turn, their financial experience, are not reflective of the {respondents’} experience as evidenced by their

⁷⁷ *Id.* at 8-9.

⁷⁸ *Id.* at 8.

⁷⁹ *See, e.g., PRC Cased Pencils.*

⁸⁰ *Id.*

higher financial ratios.”⁸¹ However, Shanghai Wells and Fabriclean provide no support that these higher ratios must inherently contradict the Department’s determination, or the record evidence it is based on, that Sahasilp and Mongkol Fasteners produce comparable merchandise.⁸²

The mere fact that Sahasilp and Mongkol Fasteners have higher overhead and SG&A expenses than L.S. Industries is not an inherent flaw in the financial statements, nor is it enough on its own given the facts of this case to discount their financial statements. Shanghai Wells and Fabriclean provide no support that financial experience, such as higher financial ratios alone, proves a production experience of a producer of comparable merchandise is so dissimilar from that of the respondent such that we must find the financial statement is distorted. Thus, a decision to discount Sahasilp’s and Mongkol Fasteners’ financial statements on the basis of relatively higher financial ratios would be in contradiction to the Department’s practice to consider complete statements without flaws⁸³ and could allow respondents to discredit any financial statement with higher ratios.⁸⁴

Additionally, and consistent with our practice, because the Department relies on the data as submitted, we are unable to go behind the statements to analyze further the particular expense at issue here, “Article Making cost” beyond the information provided in the financial statement.⁸⁵ The Department may make financial ratio adjustments when we can determine whether the income/expense is unrelated to the general operations of the company.⁸⁶ However,

⁸¹ Shanghai Wells’ and Fabriclean’s Comments at 8.

⁸² *Id.*

⁸³ *See, e.g., PRC Cased Pencils.*

⁸⁴ *See, e.g., AR4 Final Results.*

⁸⁵ *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 18B.

⁸⁶ *See, e.g., Third Administrative Review of Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decision Memorandum at Comment 4a (stating that the Department made no interest income offset for “deposit and SBI bonds” because the Department could not discern from the financial statements

that is not the case here. Mongkol Fasteners listed “Article making cost,” under “Production Expenses” in its financial statements. Because Mongkol Fasteners considers its “Article making cost” a production expense, we have treated it as such in our financial ratio calculations, *i.e.*, as part of Manufacturing Overhead.⁸⁷ There is no information in Mongkol Fasteners’s financial statements indicating that “Article making cost” is not related to the production operations of the company.

As such, in our review of Mongkol Fasteners’ financial statements, we find that the accompanying notes to the financial statements specify the expenses included in production costs for the production of the comparable merchandise during the period of review. These expenses include expenses for raw material, labor, and production expenses, which included, “Article making cost.”⁸⁸ Because the audited financial statements go into this detail defining the totality of the expenses included in the applicable production costs, the Department does not find that the amount from the “Article making cost” used in Mongkol Fasteners’ financial ratio calculations is overstated. Nor do we agree that the line item description “Article making cost,” describing a cost of sale expense in Mongkol Fasteners’ financial statements, is ambiguous. Further Shanghai Wells and Fabriclean fail to provide any evidence supporting their characterization or why such claims regarding the statements’ alleged misallocation or misidentified costs overcome the fact that Mongkol Fasteners’ financial statements themselves treated these costs in the manner in

whether income from these assets were long-term or short-term in nature); *see also Bulk Aspirin from the People’s Republic of China; Final Results of Antidumping Duty Review*, 68 FR 6710 (February 10, 2003) and accompanying Issues and Decision Memorandum at Comment 5 (stating that the Department offset interest expense with short-term interest revenue where the Department could discern the short-term nature of the interest revenue from the financial statements).

⁸⁷ *Id.*

⁸⁸ *See* Petitioner’s Pre-prelim Surrogate Data at Exhibit 2.

which they did, and moreover were audited and not found lacking in this regard. Thus, we have not made any financial ratio adjustments.

Issue 5: Whether the Relevance of Wire Rod Carbon Content is Based on Substantial

Evidence

Shanghai Wells' and Fabriclean's Comments:

- The record lacks evidence regarding the relevance of carbon content such that carbon content is the most important characteristic for selecting the best available information with respect to surrogate country.⁸⁹
- The Department has not provided an explanation as to why its determination that the Thai classification is more specific to Shanghai Wells' production process in this review differs from its determination in the third administrative review that the Thai classifications were “not any more specific.”⁹⁰
- The import statistics do not explain whether the actual carbon content makes a difference to the manufacturer.⁹¹

Department's Position:

The Department disagrees that there is no evidence on the record that wire rod carbon content is an important characteristic when choosing the best available information for purposes of surrogate country selection. As described above, and in the Draft Remand, wire rod, as the primary input, is the greatest contributor to the normal value for hangers.⁹² Therefore, by using SVs with a carbon content most specific to that consumed by Shanghai Wells, the Department more accurately captures the experience of the respondent and, subsequently, the margin.

⁸⁹ *Id.* at 9-11.

⁹⁰ *Id.* at 11 (citing *AR3 Final Results*, and accompanying IDM at 14).

⁹¹ *Id.* at 10.

⁹² *See, e.g.*, Section C and D Questionnaire Response.

We also disagree that the determination in the third administrative review has bearing on the record evidence of this review. Specifically, in the *AR3 Final Results*, and accompanying IDM, the Department relied on Shanghai Wells' section C questionnaire response which indicated that it used steel wire rod with up to 0.25 percent carbon content, thereby supporting the conclusion that the Philippine HTS category was more specific, because not all of the steel wire rod utilized by Shanghai Wells would be covered by the narrower Thai HTS category.⁹³ However, in the *AR5 Final Results*, and accompanying IDM, Shanghai Wells reported via mill certificates that it actually consumed steel wire rod with a carbon content between 0.05 and 0.10 percent during this POR.⁹⁴ Therefore, the record evidence of this review differs from that of the third administrative review, such that the applicable narrower Thai HTS category is more specific to Shanghai Wells' consumption for this period of review, despite not being so during the third administrative review.⁹⁵

Shanghai Wells and Fabriclean argue that the import statistics do not explain whether hanger manufacturers consider the actual carbon content of the steel wire rod they use in their production. Shanghai Wells claims to only know the carbon content of the wire rod it purchases via mill certificates because it does not specify carbon content when purchasing wire rod for its production of hangers.⁹⁶ The nature of Shanghai Wells' sourcing, however, does not alter the fact that the mill certificates reflect that Shanghai Wells actually uses steel wire rod with a carbon content more accurately reflected in the Thai import data. Thus, as record evidence, we continue to rely on Shanghai Wells' mill certificates to inform us of the carbon content of the wire rod it uses in production, thereby further informing our finding that the Thai import data are

⁹³ *AR3 Final Results*, and accompanying IDM at 10-11.

⁹⁴ See *AR5 Final Results*, and accompanying IDM at Comment 2.

⁹⁵ *Id.*

⁹⁶ Shanghai Wells' and Fabriclean's Comments at 10.

more specific to Shanghai Wells' input for purposes of selecting the surrogate value for wire rod, which contributes to our surrogate country selection analysis.

Further, as noted in the *AR5 Final Results* and accompanying IDM, carbon content does affect production, because a lower carbon content makes it easier to bend the wire into hangers.⁹⁷ The Department relied on its extensive experience in steel cases and the very nature of low carbon steel in making this observation about the subject merchandise. The Department's experience leads us to note that low carbon steel products, such as those mentioned here, other things being equal, are more malleable than higher carbon steels, making them easier to cold form, which, in this case, means bending the low carbon steel wire into hangers.⁹⁸ Therefore, by using a HS code with a carbon content most specific to that consumed by Shanghai Wells, the Department more accurately captures the experience of the respondent in calculating the SV.

⁹⁷ See *AR5 Final Results*, and accompanying IDM at Comment 2.

⁹⁸ *Id.*

D. FINAL RESULTS OF REDETERMINATION

Per the Court's remand order, the Department has reconsidered its selection of Thailand as the primary surrogate country and, in doing so, compared the available Thai and Philippine financial statements on the administrative record. Thus, in this final redetermination, the Department has continued to select Thailand as the surrogate country.

6/6/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance