

DATE: May 14, 2010

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

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation: Prestressed Concrete Steel
Wire Strand (“PC strand”) From the People’s Republic of China
 (“PRC”)

SUMMARY

We have analyzed the case and rebuttal briefs submitted by Petitioners,¹ Xinhua Metal Products Co., Ltd. (“Xinhua Metal”), Wuxi Jinyang Metal Products Co., Ltd. (“WJMP”), Fasten Import & Export Co., Ltd. (“Fasten I&E”), and the Government of China (“GOC”), in the antidumping duty investigation of prestressed concrete steel wire strand (“PC strand”) from the People’s Republic of China (“PRC”). The Department of Commerce (“Department”) published its preliminary determination in this antidumping duty investigation on December 23, 2009. See Prestressed Concrete Steel Wire Strand From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 74 FR 68232 (December 23, 2009) (“Preliminary Determination”). The period of investigation (“POI”) is October 1, 2008, through March 31, 2009. Following the Preliminary Determination and an analysis of the comments received, we made changes to the margin calculations. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues for which we received comments by parties:

COMMENT 1: Surrogate Values

- A. Financial Ratios
- B. Wire Rod
- C. By-product Offset for Scrap Tie Wire

COMMENT 2: Xinhua Metal

- A. Adverse Facts Available (“AFA”)
- B. Foreign Brokerage and Handling
- C. PRC Domestic Insurance

¹ American Spring Wire Corporation, Insteel Wire Products Company, and Sumiden Wire Products Corporation (collectively “Petitioners”).

COMMENT 3: WJMP

- A. AFA
- B. Treatment of Certain Factors as Factory Overhead
- C. Valuation of Coal
- D. Valuation of Seals – Steel Belts

COMMENT 4: Fasten Group I&E's Separate Rate

COMMENT 5: Surrogate-Value Based Methodology

DISCUSSION OF THE ISSUES

COMMENT 1: Surrogate Values

A. Financial Ratios

Prior to the Preliminary Determination, Respondents placed on the record of this proceeding, the 2008/2009 financial statement of Rajratan Global which contained financial data for 2008/2009 and comparative data for 2007/2008. In the Preliminary Determination, the Department used the comparative 2007/2008 financial data.

Rajratan Global 2008/2009 Financial Statement

Petitioners argue that the Department should continue to find that Rajratan Global did not produce or sell PC strand during the year ending March 31, 2009, and therefore, not use Rajratan Global's 2008/2009 financial statement in the final determination.

Rajratan Global 2007/2008 Financial Statement

Petitioners argue that the Department should also reject Rajratan Global's 2007/2008 financial statement for numerous reasons. First, Petitioners state that the 2007/2008 financial statement is not contemporaneous with the POI because it covers a period from April 1, 2007 through March 31, 2008, while the POI is October 1, 2008 through March 31, 2009. Second, Petitioners claim the record does not contain the complete 2007/2008 financial statement and the Department's practice is to only use complete, full, publicly available financial statements. Petitioners argue that this record only contains the complete financial statement for the 2008/2009 financial statement along with summary comparative data for 2007/2008. Petitioners argue that the record only contains the complete financial statement for the 2008/2009 financial year, it does not include the audit report, notes, and schedules for 2007/2008. Third, Petitioners claim there is no evidence that Rajratan Global produced PC strand. Petitioners argue Rajratan Global only produces and sells PC wire and cite to Chlorinated Isocyanurates Review² as evidence that the Department will only use financial statements from companies whose production of identical or comparable merchandise closely approximates the non-market economy ("NME") producer's experience. Petitioners further argue that Rajratan Global discontinued its PC wire operations in

² See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 66087 (December 14, 2009) and accompanying Issues and Decision Memorandum ("Chlorinated Isocyanurates Review") at Comment 3.

2008. Petitioners point to a note in the financial statement that lists Rajratan Global's installed capacity for the PC wire Unit as "nil"³ for the year ending March 31, 2008. Petitioners again cite to Chlorinated Isocyanurates to support not using Rajratan Global's 2007/2008 financial statement because it does not produce similar merchandise. Petitioners also argue that the Department should reject Rajratan Global's 2007/2008 financial statement because their 2007/2008 production of PC wire was insignificant. According to Rajratan Global, production of PC wire was 939.21 MT,⁴ which represents 3.6 percent of Rajratan Global's total production for 2007/2008. Petitioners contend that this volume is not comparable to the production of the two Respondents. Similarly, Petitioners note the majority of Rajratan Global's sales revenue is from non-comparable merchandise. Petitioners argue 96.9 percent of Rajratan Global's 2007/2008 sales revenue came from the sale of tyre bead wire, which Petitioners claim is a very different product with a different production process than PC strand. Lastly, Petitioners argue that Rajratan Global should not be used for the surrogate financial ratios because Rajratan Global received a 3,369,859 Rs subsidy in 2007/2008 and cite to Kitchen Racks⁵ as evidence that the Department prefers not to use financial ratios from companies that receive subsidies.

Xinhua Metal disagrees with Petitioners' arguments regarding Rajratan Global's 2007/2008 financial statement. First, Xinhua Metal states that because the data is from April 1, 2007 through March 31, 2008, and ends six months right before the start of the POI does not mean the data is not contemporaneous. Xinhua Metal states that ideally the Department would like data that is fully contemporaneous, but notes there is nothing restricting the Department from using financial ratio information dated before the POI. In response to Petitioners' argument that complete financial "statements must include audit report, the notes and schedules,"⁶ Xinhua Metal argues these claims are misguided because the record contains information for both years ending March 31, 2009, and March 31, 2008, along with a balance sheet, profit and loss, balance sheet schedules, and a schedule of significant accounting policies and notes to the accounts. Xinhua Metal notes that although the audit report is specifically for the 2008/2009 financial statement, the 2007/2008 information is included with the audit report. Xinhua Metal goes on to explain that there is no evidence of any irregularities with the 2007/2008 information and Petitioners did not cite any evidence of irregularities. Next, Xinhua Metal argues that Rajratan Global produces relevant products. Xinhua Metal argues Rajratan Global's website clearly demonstrates the company produces both PC wire and PC strand. Similarly, Xinhua Metal argues that Rajratan Global produced a substantial amount of relevant merchandise because for the year ending March 31, 2008, it consumed 953 MT of wire rod,⁷ or nearly three times as much as reported by WTA, which was used in the Preliminary Determination to value wire rod. Lastly, Xinhua Metal argues there is no information concluding Rajratan Global received a countervailable ("CVD") subsidy. Xinhua Metal notes that for the year ending March 31, 2008,

³ See Xinhua Metal's Submission of Surrogate Value Submission at Exhibit 1, dated October 13, 2009 ("Rajratan Global Financial Statement").

⁴ See Rajratan Global Financial Statement at 27.

⁵ See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) and accompanying Issues and Decision Memorandum ("Kitchen Racks") at Comment 10.

⁶ See Petitioners' Case Brief at 8, dated March 15, 2010.

⁷ See Rajratan Global Financial Statement at 27.

Rajratan Global's statement contains a line item for an export incentive of Rs. 3,369,859,⁸ but that this notation alone is not enough to exclude the financial statement for existence of a CVD subsidy. Xinhua Metal cites to Silicon Metal⁹ where the Department found the financial statement did not specifically identify the type of subsidy, and therefore could not determine if the subsidy was actionable under CVD practice.

WJMP argues that Rajratan Global's financial statement should continue to be used for the surrogate financial ratios. WJMP argues that simply because Rajratan Global's 2007/2008 financial data was included with the 2008/2009 financial data, does not make it any less accurate. WJMP also states that based on Rajratan Global's financial statement, it did produce PC strand for the year ending March 31, 2008.

Tata Steel and Usha Martin 2008/2009 Financial Statements

Petitioners argue that the Department should use the financial statements of Tata Steel and Usha Martin for the surrogate financial ratios. Petitioners argue that Tata Steel and Usha Martin are superior to Rajratan Global for several reasons. First, Petitioners state that the financial statements of Tata Steel and Usha Martin are contemporaneous with the POI because these financial statements cover April 1, 2008 through March 31, 2009. Second, Petitioners note that the record contains complete financial statements for these two companies. Third, Petitioners claim that both Tata Steel and Usha Martin are large producers of PC strand and that they remained producers during the POI.

Xinhua Metal argues that the financial statements from Tata Steel and Usha Martin should not be used for the financial ratios because both Tata Steel and Usha Martin received CVD subsidies and are both highly integrated companies. Xinhua Metal argues that Tata Steel's financial statement indicates, "Export incentive under the Duty Entitlement Pass Book Scheme has been recognized on the basis of credits afforded in the pass book."¹⁰ Similarly, Xinhua Metal argues that Usha Martin's financial statement includes an entry for "DEPB/Pass Book Gain."¹¹ Next Xinhua Metal argues that unlike the Respondents in this investigation, both Tata Steel and Usha Martin are vertically integrated and, therefore, not representative of its production experience. Xinhua Metal cites to Cut-to-Length Carbon Steel Plate¹² where the Department stated it generally selects companies that best approximate the respondent's experience. Xinhua Metal argues that Tata Steel's financial statement discusses its iron mining and iron making projects.

⁸ See Rajratan Global Financial Statement at 21.

⁹ See Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty of Antidumping Administrative Review, 75 FR 1592 (January 12, 2010) and accompanying Issues and Decision Memorandum ("Silicon Metal") at Comment 4.

¹⁰ See Petitioners Surrogate Value Submission, Exhibit 2 Tata Steel's schedule N at 253 and schedule M at 169, dated October 13, 2009.

¹¹ See Petitioners Surrogate Value Submission, Exhibit 2 Usha Martin at 49, dated October 13, 2009.

¹² See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007 - 2008 Administrative Review of the Antidumping Duty Order, 75 FR 8301 (February 24, 2010) and accompanying Issues and Decision Memorandum ("Certain Cut-to-Length Carbon Steel Plate") at Comment 8.

Additionally, Xinhua Metal cites to Cut-to-Length Carbon Steel Plate and Line Pipe¹³ as examples where the Department found Tata Steel was an integrated producer and excluded its financial statement. Xinhua Metal notes that Usha Martin is also an integrated company as demonstrated by its consumption of raw materials in its financial statement.

WJMP argues that Tata Steel and Usha Martin should not be used as the basis for the financial ratios in the final determination because they are integrated steel producers. WJMP argues that PC strand production is a very small share of Tata Steel's total production for the year ending March 31, 2009. WJMP cites to Tata Steel's financial statement claiming that because Tata Steel mines ore and coal, melts pig iron, and produces many downstream products, Tata Steel's revenue and expenses do not mimic those of Xinhua Metal and WJMP, the two Respondents. WJMP also cites to Line Pipe as an instance where the Department excluded Tata Steel's financial statement. WJMP argues that the Department has previously found Tata Steel to benefit from subsidies. See Hot-Rolled Carbon Steel Flat Products.¹⁴ WJMP argues like Tata Steel, Usha Martin produces iron and steel products. Additionally, WJMP cites to Kitchen Racks¹⁵ as evidence that Usha Martin receives subsidies and as such, was rejected by the Department as a surrogate value for the financial ratios.

Department's Position:

In selecting surrogate values, section 773(c)(1) of the Act of 1930, as amended (the "Act") instructs the Department to use "the best available information" from the appropriate market-economy country. In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy ("ME") surrogate companies based on the "specificity, contemporaneity, and quality of the data."¹⁶

The Department rejects financial statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available on the record.¹⁷ Moreover, Congress indicated the Department should "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."¹⁸

The record contains the 2008/2009 financial statements from Rajratan Global (with the 2007/2008 comparative data), Tata Steel, and Usha Martin. In the final determination, the

¹³ See Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009) and accompanying Issues and Decision Memorandum ("Line Pipe") at Comment 13.

¹⁴ See Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295, 40297 (July 14, 2008) ("Hot-Rolled Carbon Steel Flat").

¹⁵ See Kitchen Racks at Comment 10.

¹⁶ See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁷ See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) and the accompanying Issues and Decision Memorandum at Comment 1.

¹⁸ See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988).

Department will use the 2008/2009 financial statement from Rajratan Global for the surrogate financial ratios because it is the best available information on the record.

The Department finds that Tata Steel and Usha Martin are both integrated companies, unlike the Respondents. Further, the Department finds that both Tata Steel and Usha Martin benefitted from a subsidy program, the Duty Entitlement Pass Back Scheme, which the Department has previously found to be countervailable.¹⁹ Therefore, because Tata Steel and Usha Martin are integrated companies that received subsidies previously determined to be countervailable, neither Tata Steel nor Usha Martin's financial statements will be used in the final determination of this investigation.²⁰ As a result, the only data available on the record is the 2007/2008 Rajratan Global comparative data and the 2008/2009 Rajratan Global financial statement.

Upon further review, the Department finds that the 2007/2008 comparative data contained in the 2008/2009 Rajratan Global financial statement does not constitute a complete financial statement because the 2007/2008 data are included solely for comparative purposes and does not include the auditor's report, and therefore, will not be used in the final determination. In contrast, the 2008/2009 financial statement for Rajratan Global is a complete financial statement because it contains all the main components of a financial statement (e.g., balance sheet, profit and loss statement, cash flow statement, auditor's report, and notes).

The Department finds that although Rajratan Global appears to have no production of identical merchandise in 2008/2009, it did have production of comparable merchandise, tyre bead wire. The Department disagrees with Petitioner's argument that the production process differs for tyre bead wire and PC strand. Tyre bead wire uses the same material input, wire rod, and the production process involves drawing wire rod. Although the end use of tyre bead may differ from PC strand, consistent with Chlorinated Isocyanurates Investigation,²¹ the inputs, production process, and machinery required are sufficiently similar to that of PC strand. Therefore, Rajratan Global had production of comparable merchandise in the 2008/2009 period.

Additionally, Rajratan Global, like the Respondents, is a non-integrated company, in this case meaning they purchase wire rod from suppliers. Therefore, the Department finds that as Rajratan Global is a non-integrated company, its overhead, SG&A, and profit, are more likely to be in line with the financial ratios experienced by the Respondents.

¹⁹ See e.g., Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 From India, 69 FR 67231 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment IV(A).

²⁰ However, with respect to the "export incentive" received by Rajratan Global, the Department finds that there is insufficient information on the record to determine if this "export incentive" constitutes an actionable subsidy. See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum ("OTR Tires") at Comment 17.A; Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 9.

²¹ See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum ("Chlorinated Isocyanurates Investigation") at Comment 2.

Finally, we find that the 2008/2009 financial statement from Rajratan Global covers the fiscal period April 1, 2008, through March 31, 2009, and fully overlaps with the POI, which is October 1, 2008, through March 31, 2009. Therefore, Rajratan Global's financial statement is contemporaneous.

Based on the analysis above, Rajratan Global satisfies the criteria for what constitutes the best information available. Consequently, the Department will use the 2008/2009 financial statement of Rajratan Global to value the financial ratios in the final determination because the company does not appear to have received an actionable subsidy, is a non-integrated producer of comparable merchandise, with a complete and contemporaneous financial statement.

B. Wire Rod

*WTA Indian Import Data HTS 7213.9190*²²

WJMP argues that the Department should not value wire rod using Indian import data from World Trade Atlas (“WTA”) under HTS 7213.9190 because Infodrive data demonstrates that these data are not the best source for valuing wire rod for production of 12.7 millimeter (“mm”) PC strand. WJMP states that these Infodrive data cover 99.9% of the imported quantity included in WTA and is therefore usable for surrogate value analysis in accordance with standards set by the CIT in Dorbest Ltd. v. United States 547 F. Supp. 2d 1321, 1332-33 (CIT 2008) (“Dorbest 2008”). According to WJMP, Infodrive lists 1711.07 metric tons (“MT”) of imports under HTS 7213.9190, but only 10.48 MT (0.6%) of which was made up of “non alloy steel wire rods, hot rolled size: dia. 11.0 mm.” WJMP further notes that all 11.0 mm wire rod imports were excluded by the Department in the Preliminary Determination as Infodrive listed it as having been sourced from Germany—a country that the Department has found likely to be subsidizing wire rod. Furthermore, WJMP states that Infodrive demonstrates 92.18 MT of the wire rod in WTA had a diameter equal or greater to 14 mm, and was therefore miscategorized. WJMP notes that 1210 MT of the wire rod in HTS data had a diameter of 5.5 mm, half the diameter of wire rod used by WJMP, which is too small to produce the merchandise produced or sold during the POI. Finally, WJMP states that this subheading includes products other than steel wire rod, such as “coils 81519032(spars {sic} parts for spinning m/c).” Therefore, WJMP argues that WTA data is not specific to the input wire rod it used to produce the merchandise subject to this investigation and should not be used to value wire rod.

Xinhua Metal argues that the Indian import data from WTA under HTS 7213.9190 are aberrational and should therefore not be used as the source for valuing wire rod in the final determination. Xinhua Metal points out that the \$1.31 surrogate value used in the Preliminary Determination is more than twice the purchase price documented in the financial statement of an Indian producer, Rajratan Global. Xinhua Metal also notes that the WTA value is significantly higher than values for imports of comparable wire rod from the Philippines, Thailand, Colombia, and Peru—countries found to be economically comparable to the PRC for the purpose of surrogate country selection in this investigation. Furthermore, Xinhua Metal notes that the wire

²² Harmonized Tariff Schedule (“HTS”) under subheading 7213.9190 is defined as “bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel, of circular cross-section measuring less than 14 mm in diameter.”

rod value used in the Preliminary Determination is comparable to the sales price of the finished product sold in the United States. Xinhua Metal states that wire rod prices in the United States during the POI were as low as \$0.73 per kilogram and that the entire raw material costs for U.S. producers were approximately \$0.94 per kilogram in 2008.²³ Xinhua Metal states that in other cases the Department has excluded aberrational data that appear to distort the overall value of a specific import category.²⁴ Xinhua Metal argues that the value from Indian import data for wire rod in this proceeding is aberrational in comparison with other prices for wire rod on the record and substantially higher than import values from other countries. As such, Xinhua Metal argues that the Department should exclude these data.

Xinhua Metal also argues that WTA data is not the best available information for the following reasons: (1) it is not specific to the input in question, (2) it represents a low usable volume, and (3) HTS 7213.9190 does not measure any of the specific inputs used by Respondents. With regard to the specificity, Xinhua Metal notes that the Department stated in Steel Nails²⁵ that 7213.9190 represents a basket category that includes not only iron products (both bar and rod) but also steel bars, and larger gauge wire—which are not used to produce subject merchandise. With regard to volume, Xinhua Metal states that WTA data only includes 357 MT of usable data, a fraction of the quantity purchased by Rajratan Global in fiscal year (“FY”) ending March 2008. Furthermore, Xinhua Metal argues that the values listed in the WTA data vary widely. Finally, with regard to WTA data not measuring any of the inputs, Xinhua Metal states that Infodrive shows that 7213.9190 only includes 40 MT of wire rod with a diameter of 11, 12.5, and 13.5 mm—all of which came from Germany and were accordingly excluded in the preliminary determination.

Petitioners argue that the Department should continue to value wire rod using Indian import data from WTA HTS 7213.9190 as it is the only source of information that accurately covers the wire rod inputs consumed for production of PC strand. Furthermore, Petitioners argue that Respondents have failed to demonstrate that the WTA data for imports of wire rod under HTS 7213.9190 are flawed or that any of the other surrogate value sources are preferable to it. With regard to the analysis performed by Respondents using Infodrive data, Petitioners argue that the Department has stated that it has reservations as to using Infodrive data, either as a corroborative tool or price benchmark unless there are the following: (1) direct and substantial evidence from Infodrive reflecting the imports from a particular country, (2) a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive India data, and (3) distortions of the AUV in question can be demonstrated by the Infodrive data.²⁶ Petitioners

²³ See Xinhua Metal, Surrogate Value Submission at Exhibit 1, dated February 23, 2010.

²⁴ See Notice of Final Determinations of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China: Notice of Final Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia, 66 FR 12759 (February 28, 2001) and accompanying Issues and Decision Memorandum (China) at Comment 1.

²⁵ See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) and accompanying Issues and Decision Memorandum (“Steel Nails”) at Comment 10.

²⁶ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 844 (January 6, 2010) and accompanying Issues and Decision Memorandum (“Tapered Roller Bearings Final”) at Comment 2.

argue that the Infodrive data is incomplete, inaccurate, and unreliable as it does not account for a significant portion of the imports on a country-by-country basis.

Petitioners address the arguments that Respondents raise with regard to what the Infodrive data show about WTA Indian import data. First, more than 77% of imports under HTS 7213.9101 cannot be used to make subject PC strand, as 5.5 mm wire rod comprises 69% of the category and wire rod greater than 13.0 mm comprises 8.4% of the category, Petitioners argue that Infodrive shows all 5.5 mm wire rod was sourced only from NME or subsidizing countries, and were therefore removed in the preliminary determination calculation. Second, as wire rod larger than 13 mm makes up 8.4% of the subheading, Petitioners argue that this demonstrates how flawed the Infodrive data are, if it is including wire rod of a diameter greater than 14 mm, as the diameter range listed for 7213.9190 is less than 14.0 mm. Third, as all imports into India of the wire rod of 11 mm, 12.5 mm, and 13.5 mm under HTS 7313.9190 came from Germany, a country whose data the Department excluded in the preliminary determination, Petitioners counter that this argument is senseless because Infodrive data have proven to be incomplete and problematic. Fourth, as to Infodrive data being complete and covering 99.9% of the imports, Petitioners counter that Infodrive under- and over-reported imports from several countries. Specifically, Infodrive underreported imports from Japan by 250,000 kg and from China by 204,281 kg; it overreported imports from Germany by 55,400 kg, from Arab Emirates by 236,510 kg, and from unknown by 70,000 kg. Finally, Petitioners argue that Infodrive data mistakenly included imports of “coils 81519032 (spars parts for spinning m/c),” which should not have been included in imports under 7213.9190.

*WTA Indian Import Data HTS 7213.91*²⁷

WJMP argues that if WTA data are used, the Department should value wire rod with HTS 7213.91 as it provides less distorted data than HTS 7213.9190, as it is not as heavily reliant on 5.5 mm wire rod.

Petitioners argue that the Department should not value wire rod using Indian import data from WTA HTS 7213.91. They argue that this category would include 7213.9110 and 7213.9120, which are defined as “Other Bars & Rods of Free Cutting Steel Electrode Quality” and “Other Bars & Rods of Free Cutting Steel Cold Heading Quality.” Petitioners note that neither of these steel categories is suitable for making PC strand due to a lack of ductility in free cutting steels. Specifically, these categories of steel contain higher levels of lead, sulphur and/or phosphorous that allow the steel to chip more easily during the machining processes—a quality that is not desirable for PC strand wire drawing due to the high degree of ductility needed to convert PC strand wire into high-tensile drawn wire.²⁸

Indian Joint Plant Committee Data (“JPC”)

WJMP argues that the Department should value wire rod using JPC data as it does not include other products or wire rod with widely ranging dimensions, as WTA data do. Furthermore,

²⁷ HTS under heading 7213.91 is defined as “bars and rods, I/Nas, hot rolled, in irregularly wound coils, of circular cross section measuring less than 14 mm.”

²⁸ See Petitioners’ Surrogate Value Letter at Attached Declaration, dated March 5, 2010.

WJMP argues that the WTA data largely consists of products that are unusable for the production of PC strand. WJMP states that the Department rejected Indian imports under HTS 7213.91 and instead used JPC data for the purposes of valuing wire rod in Steel Nails. WJMP argues that the circumstances in Steel Nails appear in this case—the JPC data are closer to the inputs used than those listed in WTA data and should therefore be used for valuation of wire rod. WJMP concludes by stating that though the 8 mm wire rod is not identical to that used by WJMP to produce PC strand, WJMP placed on the record a Tata Steel price ladder that demonstrates the relationships of prices of various diameters of wire rod in the Indian market, so the Department could adjust the value of 8 mm wire rod as reported in JPC data to 11.0 mm.

Xinhua Metal argues that, if the Department does not use Rajratan Global's financial statements to value wire rod, JPC data provides a sound basis to value wire rod inputs. Xinhua Metal notes that these data are specific to the input, are tax-exclusive after adjusting for taxes, represent a broad market average, are contemporaneous with the POI, and represent a market-wide survey. Xinhua Metal argues that the Department established the quality and specificity of JPC data and its superiority over WTA data for 7213.9190 in Steel Nails. Xinhua Metal states that JPC is the only institution in India which is empowered to collect data on the Indian iron and steel industry, resulting in the creation and maintenance of the only basic databank on this industry. Xinhua Metal states that wire rod reflected in JPC data can be used to produce merchandise subject to this investigation, as affirmed by an analysis by an independent Indian steel industry consultancy.²⁹ Finally, the submitted Tata Steel price lists reflect a difference of no more than approximately \$0.03 between the JPC-reported rod and rod as big as 12 mm.³⁰

Petitioners argue that the Department should not value wire rod using JPC data as 8 mm wire rod is not sufficiently large to produce PC strand with a diameter between 3/8" and 0.6". Petitioners argue that to produce such PC strand, one would consume PC strand with diameters between 9.5 mm and 13.0 mm.³¹ Petitioners argue that Respondents failed to demonstrate that the JPC data are preferable to WTA data used in the preliminary determination. Petitioners argue that Respondents mischaracterized the reasoning applied by the Department in Steel Nails in selecting JPC rather than WTA data to value wire rod. Specifically, Petitioners argue that the Department used JPC data because it was more specific for the size of wire rod used to produce nails rather than because there were any qualitative concerns regarding import data under HTS 7213.9190.

Rajratan Global's Purchases

WJMP argues that if the Department does not use JPC data to value wire rod, an alternative would be to use the actual purchase price of steel wire rod by Rajratan Global. The purchase

²⁹ See WJMP Surrogate Value Submission at Exhibit SSV-4, dated February 23, 2010.

³⁰ Id. at Exhibit SSV-2.

³¹ Id.

was 953 MT at the unit price of 25.72 Rs/kg. WJMP notes that this quantity is much greater than the 357 MT import quantity under HTS 7213.9190 as used by the Department in the preliminary determination. The purchase of wire rod took place during the FY ending March 31, 2008. WJMP argues that the Department could inflate the value from the financial statement to make it contemporaneous with the POI.

Xinhua Metal argues that the Department should value wire rod using purchases listed in the Rajratan Global financial statement as it is publicly available, specific to the input, audited, reliable, and nearly contemporaneous with the POI. Xinhua Metal argues that, though the Department prefers to use industry-wide data over single-firm data, in this instance the company consumed more wire rod than the usable WTA data represents.

Petitioners argue that the Department should not value wire rod using purchases from the 2007/2008 Rajratan Global financial statements. First, Petitioners argue that the Department has expressed a preference for country-wide data rather than company-specific data.³² Second, Petitioners argue there is no evidence on the record that Rajratan Global produced PC strand using wire rod during the Indian FY ending March 31, 2008. Rajratan Global's financial statements do not state what types, if any, of PC strand the company produced in 2007/2008. Petitioners note that the financial statements only reference the term "PC Wire," which is not defined in the financial statements. Petitioners argue that absent more information, one cannot know what size of wire rod was used by Rajratan Global or whether or not Rajratan Global produced merchandise subject to the scope of this investigation.

Additional Indian Market Data

Petitioners argue that the Department should not use pricing information from Indian domestic companies Tata Steel and Vizag Steel Steel Division of Rashtriya Ispat Nigam Ltd. ("Vizag"), to corroborate the values listed by JPC and Rajratan Global data as neither is an acceptable source for valuing wire rod. Petitioners argue that the Department should not consider Indian market data for "PC115 grade" wire rod as provided by Vizag because this type of wire rod is a special grade used to make small diameter (<3/8") PC strand for concrete railway sleepers.³³ Petitioners argue that this 7 mm wire rod lacks the tensile strength to produce larger diameter (3/8"-3/5") PC strand. Similarly, Petitioners argue that the department should not value wire rod using data from a generic category of wire rod such as "high carbon wire rod" ("HCWR") as provided in the price ladder from Tata Steel. Petitioners state that the term HCWR is typically defined as all wire rod with a carbon percentage >0.6%. Petitioners note that the product card for Tata Steel defines HCWR as carbon steels greater than 0.4% as High Carbon.³⁴ Petitioners state that the type of wire rod consumed for producing 270 KSI PC strand contains approximately 0.80% carbon, which is far more difficult to produce than 0.4% or 0.6% carbon wire rod. Finally, Petitioners argue that the Department should disregard purchases of wire rod shown on the

³² See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008) and accompanying Issues and Decision Memorandum at Comment 6 ("PRCB").

³³ See Petitioners' Surrogate Value Letter, dated March 5, 2010.

³⁴ Id. at Attachment I.

financial statements of Visakha Wire Ropes Ltd. because there is no information on the record regarding the diameters or grades of this wire rod.

WJMP argues that the prices listed for the sales by Vizag of 38.91 Rs/kg and the financial statement from Visakha Wire Ropes Ltd. of 35.10 Rs/kg provide further indication of a reasonable pricing range for wire rod. WJMP argues that these values support the JPC value of 32.4 Rs/kg and demonstrate the inaccurate and flawed price from WTA Indian import data under HTS 7213.9190. Finally, WJMP argues that the wire rod average price of 36.60 Rs/kg, maintained by Tata Steel according to its price lists, also corroborate prices listed for JPC and Rajratan Global, and stands to further demonstrate the flaws in the prices listed in WTA. Addressing Petitioners' contention that Tata Steel's wire rod is not suitable for the production of PC strand because of low carbon levels, WJMP responds that the price list does distinguish prices among rod diameters and does not distinguish prices based upon the carbon level because Tata Steel does not have different prices depending on the carbon level in the wire rod. Furthermore, WJMP argues that, as Tata Steel is one of the largest producers of PC strand in India, the assertion that its wire rod is not suitable for the production of PC strand "strains credulity."

Xinhua Metal argues that the Indian market data serve to buttress the Rajratan Global information and provide an alternative basis for valuing wire rod.

Department's Position:

To value the wire rod input, the Department has available on the record: (1) WTA Indian import data under HTS 7213.9190 valued at \$1.31/kg; (2) HTS 7213.91 valued at \$0.73/kg; (3) JPC data valued at \$0.67/kg; (4) Rajratan Global financial statements data valued at \$0.53/kg; and (5) additional Indian market data. In the Preliminary Determination the Department used WTA Indian import data under HTS 7213.9190 to value wire rod.

Section 773(c)(1) of the Act instructs the Department to value the factors of production ("FOP") based upon the best available information from an appropriate ME country. When considering what constitutes the best available information, the Department considers several criteria, including whether the surrogate value is: publicly available; contemporaneous with the POI; represents a broad market average; from an approved surrogate country; tax and duty exclusive; and specific to the input.³⁵

Additional Indian Market Data

First, the Department notes that no party has suggested valuing wire rod with any of the additional Indian market data. Instead, Respondents placed it on the record to corroborate the values listed for JPC and Rajratan Global's financial statement. The Department agrees with

³⁵ See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances. In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum ("CLPP") at Comment 3.

concerns that the Petitioners raised concerning Vizag purchases of wire rod being of a size too small. With regard to the price ladder from Tata Steel, the Department prefers to use surrogate values that are not price quotes, where other more reliable data are available.³⁶ Furthermore, the Department does not know how the price ladder was obtained or if it was available publicly prior to having been placed on the record. The Department has previously stated that price quotes submitted without information associated with how the quote was obtained, makes it impossible to know whether the data is complete and/or accurate.³⁷ Finally, the Department agrees with Petitioners that it should not use the Visakha Wire Ropes Ltd. financial statement to value wire rod as there is no information on the record regarding the diameter of the wire rod purchased.

WTA Indian Import Data HTS 7213.91

After examining the descriptions of the WTA Import data under HTS 7213.91 and 7213.9190, the Department finds that HTS 7213.91 is broader than 7213.9190 and therefore relying on it would only introduce a greater level of inaccuracy given that it includes more sub-categories of products that cannot be used to produce PC Strand.³⁸ As such, the Department finds that it does not represent the best available information on the record.

JPC Data

The Department notes that JPC data meets the following surrogate value selection criteria the Department typically considers: it is publicly available; it is contemporaneous with the POI; it represents a broad market average (though of an unknown quantity); it comes from an approved surrogate country; and it can be made adjusted to be tax and duty exclusive.³⁹ However, the Department notes that this source does not provide data that best satisfies specificity of the input. JPC provides data for 8 mm steel wire rod for the months of the POI. While Xinhua Metal noted that there is a statement from an Indian steel products specialist on the record affirming that merchandise subject to the scope of the investigation could have been produced using only 8 mm wire rod, neither Xinhua Metal nor WJMP consumed 8 mm wire rod to produce PC strand that was sold to the United States during the POI. They consumed 13 mm and 11 mm wire rod, respectively.⁴⁰ Both WJMP and Xinhua Metal suggest that if the Department has reservations using JPC data because it is 8 mm, the Department could adjust the value listed in JPC data by using the price ladder from Tata Steel which demonstrated the relationship between wire rod diameter and prices during the POI in India. Essentially, WJMP is asking the Department to

³⁶ See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) and accompanying Issues and Decisions Memorandum at Comment 5; see also Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003) and accompanying Issues and Decision Memorandum at Comment 1.

³⁷ See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

³⁸ Petitioners' Surrogate Value Letter, dated March 5, 2010.

³⁹ See CLPP at Comment 3.

⁴⁰ See Xinhua Metal's First Supplemental D Questionnaire Response, at 15, dated November 2, 2009; WJMP's Supplemental D Questionnaire Response at 2, dated October 28, 2009.

create a new value using two separate sources which have no direct relationship to each other. Moreover, the price ladder from Tata Steel is from WJMP's parent company, and as such, is not from a public source insulated from conflicts of interest. Therefore, it would not be appropriate to combine these sources given the other options on the record.

With respect to Respondents' arguments that in Steel Nails the Department determined the quality and specificity of the input and the superiority of JPC data over WTA Indian import data, the Department disagrees. In Steel Nails, the Department used JPC data because it was more specific to the input used by nails producers, not because the WTA data lacked quality. In Steel Nails, producers used wire rod sizes much closer to the diameters of 6 and 8 mm for which JPC provides data, while in the instant case, neither of the Respondents used wire rod of a diameter very close to 8 mm. While Respondents argue that the data for 8 mm wire rod are more specific to the inputs than that provided by WTA Indian import data under HTS 7213.9190, the Department finds again that no parties used a wire rod size close to 8 mm. Furthermore, HTS 7213.9190 provides a range of wire rod sizes between 0 and 14 mm; the wire rod input sizes of both Respondents fall within this range.

Rajratan Global's Purchases

Rajratan Global purchased wire rod in FY ending March 2008 and Xinhua Metal argues that the Department should use the purchases listed in the financial statement to value wire rod. The Department notes that the purchases of wire rod made by Rajratan Global come from an approved surrogate country. With respect to whether Rajratan Global's purchases represent a broad market average, the Department notes that this is the experience of a single company who made an unknown number of purchases at an indeterminate time in the FY ending March 2008. While the Department notes that Rajratan Global purchased 953 MT in FY ending March 2008, the Department has expressed a preference to use country-wide data rather than company-specific data.⁴¹ With respect to whether the purchases were tax and duty exclusive, that information is unclear from what is listed in the financial statement. Although WJMP provided information from Rajratan Global's website that identifies the company's capability to produce PC strand, there is no indication that they used the wire rod size Respondents reported to produce the PC strand. In essence, the Department cannot draw any inferences as to the size of the input given the information on the record. Therefore, absent the size of Rajratan Global's wire rod purchase, and given a superior source on the record, the Department cannot rely on it for this final determination. Moreover, this is the only surrogate value source that is not contemporaneous with the POI.

WTA Indian Import Data HTS 7213.9190

The Department notes that no party contests that WTA Indian import data under HTS 7213.9190 is from an approved surrogate country, is contemporaneous with the POI, or is tax and duty exclusive. Although parties dispute the broad-market average factor and the specificity of the WTA data, the Department disagrees and finds that it satisfies these criteria.

⁴¹ See PRCB at Comment 6.

Because HTS 7213.9190 is a basket category sub-heading comprising of different products of different diameters, Respondents placed Infodrive data on the record for the purposes of analyzing the actual products that were imported during the POI. While WJMP argues that Dorbest 2008 established a standard of completeness that permitted the Department to consider Infodrive data to analyze WTA data, ultimately, the Department did not use the Infodrive data to change how it had previously valued the cardboard input in that proceeding because the Infodrive data was incomplete. See Dorbest Ltd. v. United States, 602 F. Supp. 2d 1287, 1290-91 (CIT 2009). In evaluating the Infodrive data and the arguments made in case and rebuttal briefs, in this case the Department examined the record in a manner consistent with Tapered Roller Bearings Final. The Department will use Infodrive either as a corroborative tool or price benchmark when there is the following: (1) a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive India data; (2) direct and substantial evidence from Infodrive reflecting the imports from a particular country; and (3) distortions of the AUV in question can be demonstrated by the Infodrive data.

(1) a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive India data;

Infodrive data on the record reports a volume of 1,712,281 kg while WTA data has 1,712,461 kg. Therefore, the Department find that the Infodrive appears to capture the universe of imports from WTA data.⁴²

(2) direct and substantial evidence from Infodrive reflecting the imports from a particular country;

Next the Department compared WTA and Infodrive data on a country-by-country basis to determine if Infodrive accurately reflects data for the countries, as listed in WTA. WTA reports Japan as having exported 250,000 kg of wire rod to India during the POI, while Infodrive provides no information.⁴³ In addition, the Infodrive data provides significant reporting discrepancies with China by underreporting imports by more than 110,000 kg, Germany was overreported by more than 55,000 kg, and Infodrive provided considerable import values for the United Arab Emirates and unknown countries, neither of which had any data reported in WTA.⁴⁴ Therefore, the Department finds that Infodrive does not provide data that accurately reflects import volumes as listed on a country-by-country basis in WTA.

(3) distortions of the AUV in question can be demonstrated by the Infodrive data.

With regard to Xinhua Metal's argument that the value reported for wire rod under HTS 7213.9190 is aberrational, the Department disagrees. While the AUV for HTS 7213.9190 is the highest of the sources on the record, after having removed import data from NME and subsidizing countries, that factor alone is not a basis of exclusion or of deeming it aberrational.

⁴² See Petitioners' Surrogate Value Letter at 2, dated October 13, 2009, and see WJMP's Surrogate Value Rebuttal Letter at Exhibit 1, dated October 23, 2009.

⁴³ Id.

⁴⁴ Id.

The Department has stated that the existence of higher prices alone does not necessarily indicate that price data are distorted or misrepresented.⁴⁵ Thus, the existence of a higher price is not sufficient to exclude a particular surrogate value, absent specific evidence that the value is otherwise abnormal or unreliable. The Department has established in past cases, tests that it will perform to determine whether an AUV is aberrational.⁴⁶ In this case record information lacks certain surrogate value information that were present in the above cases to test data in the same manner. Given the discrepancies between Infodrive and WTA data discussed above, the Department determines that Infodrive data is not an appropriate to for analyzing these data.

Respondents placed on the record WTA data from the POI for HTS 7213.91, but not for HTS 7213.9190, from the other surrogate countries the Department designated for this review. As discussed above, this is a broader basket category that includes additional sub-headings that cannot be used in the production of PC strand. Lacking data for the same HTS sub-heading from other approved surrogate countries, in past cases, the Department has tested import data to determine if it is aberrational by taking into consideration the range of prices, AUV and the percentage difference of certain data points from the AUV, and the volume of imports from specific countries.⁴⁷ Any data points which represent extremely high or low prices and extremely low quantities may be considered aberrational, when weighted in conjunction with any other record evidence concerning such.⁴⁸ The import data from usable countries under HTS 7213.9190 is not considered aberrational, according to the above mentioned test as the quantities listed for Japan and the United Kingdom are not extremely low. Therefore, the Department does not find the WTA Indian import data to be aberrational.

Therefore, after analyzing the Infodrive data in a manner consistent with the Tapered Roller Bearings Final, the Department finds that in this case, Infodrive is not an appropriate tool for analyzing the WTA data. Therefore, the WTA data remains useable. Moreover, because Respondents did not establish that any of the other wire rod surrogate value sources on the record are preferable to the WTA data, the Department determines that WTA Indian import data under HTS 7213.9190 remains the best available information on the record and the Department will continue to rely upon this value for the final determination.

C. By-product offset for scrap tie wire

Xinhua Metal argues that in the final determination, it should be granted a by-product offset for scrap tie wire. Xinhua Metal states that the scrap tie wire is used to tie the purchased wire rods

⁴⁵ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decisions Memorandum (“Tapered Roller Bearings”) at Comment 6.

⁴⁶ See Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005) and accompanying Issues and Decision Memorandum at Comment 2 and Chlorinated Isocyanurates from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 73 FR 52645 (September 10, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁷ See Mittal Steel Galati S.A. v. United States, 502 F. Supp. 2d 1295, 1308 (C.I.T. 2007).

⁴⁸ Id.

together, and as such, the scrap tie wire is included in the wire rod price, increasing the production cost. Before the wire rod goes into production, Xinhua Metal explains that the wire rods are untied and sold. Therefore, Xinhua Metal argues scrap tie wire is a by-product and Xinhua Metal should be granted the offset.

Petitioners state that Xinhua Metal's by-product claim for scrap tie wire should be rejected because the scrap tie wire is related to wire rod packaging and is not generated during production of PC strand. As evidence that the scrap tie wire was not related to the production process, Petitioners cite to Xinhua Metal's own explanation of the tie wire as "low carbon steel wire for tying the wire rod..."⁴⁹ and the description in the verification report.⁵⁰

Department's Position:

The Department agrees with Petitioners and continue to reject Xinhua Metal's claim of scrap tie wire as a by-product offset in the final determination. In Section D of the original NME questionnaire sent to Xinhua Metal on August 14, 2009, by-product offsets are explained as:

By-product/co-product offsets are only granted for merchandise that is either sold or reintroduced into production during the POI/POR, up to the amount of that by-product/co-product actually produced during the POI/POR.⁵¹

As Xinhua Metal explained at verification, the scrap tie wire "is not the same size or diameter as the wire rod; it is merely a lower quality wire that is used to tie the bundles of wire rod together."⁵² Record evidence does not indicate that the surrogate value for wire rod included these tie wires or that the Indian producer used as the surrogate for the financial ratios included these tie wires as overhead. Because the scrap tie wire is not generated during the production of PC strand, the Department is not granting Xinhua Metal a by-product offset for scrap tie wire.

As we have determined that tie wire is not a by-product for Xinhua Metal, we evaluated this by-product claim for WJMP. As a result, we will also not grant WJMP a by-product offset for scrap steel wire bindings in the final determination, as the bindings are not generated during the production of PC strand. See WJMP's Second Supplemental Section D Questionnaire Response submission at page 5, dated November 25, 2009.

COMMENT 2: Xinhua Metal

A. Adverse Facts Available ("AFA")

Petitioners cite to section 776(a) of the Act and argue that the Department should resort to AFA because Xinhua Metal's accounting system is not Generally Accepted Accounting Principles ("GAAP") compliant, the accounting system and financial statements are not reliable, this lack

⁴⁹ See Xinhua Metal 1st Supplemental D Response at Exhibit 20, dated October 30, 2009.

⁵⁰ See Memorandum to the File, from Alexis Polovina, Case Analyst, through Alex Villanueva, Program Manager, Verification of the Sales and Processing Response of Xinhua Metal Products Co., Ltd. in the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from the People's Republic of China ("PRC") ("Xinhua Metal Verification Report") at 11, dated March 2, 2010.

⁵¹ See Xinhua Metal Original Questionnaire, Section D, at 9, dated August 14, 2009.

⁵² See Xinhua Metal Verification Report at 11.

of reliability prohibits reconciling data to the financial statements, the invoice numbering system prevented the Department from conducting a completeness test, the packing factors were understated, and the factor data is not mathematically possible.

First, Petitioners argue that Xinhua Metal's accounting system is not compliant with GAAP because of delays in recording export sales. At verification, Xinhua Metal explained that for sales to the United States, it does not follow a fixed timetable for recording revenue.⁵³ Petitioners assert that this is at odds with Xinhua Metal's original statement in its section A response where Xinhua Metal stated that it is Chinese GAAP compliant.⁵⁴ Petitioners further argue that the delay in recording exports, due to double entry accounting, causes Xinhua Metal's accounting books and records to also be non-GAAP compliant. Petitioners note that, in Xinhua Metal's supplemental response, Xinhua Metal stated that the delay "is the only area where Xinhua Metal does not meet Chinese GAAP."⁵⁵ However, Petitioners explain that due to the double-entry accounting system, a sale would lead to accounting entries in the accounts receivable, sales income, cost of goods sold ("COGS"), and inventory accounts, affecting the financial statement. Petitioners also state that using the invoice date as the date of sale is incorrect because Xinhua Metal's invoice date does not reflect the date recorded in the ordinary course of business. Petitioners claim that based on Xinhua Metal's explanation at verification, the date of contract should be used as the date of sale because Xinhua Metal stated "if a customer changes its terms after the invoice a new contract will be issued."⁵⁶ Petitioners also take issue with Xinhua Metal's recording of domestic and export sales. Petitioners argue that Xinhua Metal's apparent practice of recording domestic sales immediately but not appearing to follow a time schedule for recording exports raises concerns about the reliability of Xinhua Metal's accounting system. Petitioners claim that this system of recording export sales prohibits the Department from conducting the sales and completeness tests at verification.

Petitioners argue another reason supporting the use of AFA is that Xinhua Metal's accounting system and financial statements lack reliability. Petitioners argue that based on its arguments above about Xinhua Metal's accounting and financial statements, the Department should find that Xinhua Metal's accounting and financial statements are not reliable. Petitioners cite to Fujian Lianfu Forestry⁵⁷ as an instance where the Court upheld the Department's decision to apply AFA to a respondent who, among other things, lacked a reliable financial statement. Further, Petitioners cite to Steel Butt-Weld Pipe Fittings⁵⁸ and Ad Hoc Shrimp Trade Action Comm.⁵⁹ to support its contention that the Department has previously rejected financial statements when evidence demonstrates the financial statements are not compliant with the home country's GAAP. Petitioners argue that the Department should find that Xinhua Metal's

⁵³ See Xinhua Metal Verification Report at 8.

⁵⁴ See Xinhua Metal Section A Questionnaire Response at 11, dated September 8, 2009.

⁵⁵ See Xinhua Metal 2nd Supplemental C&D Questionnaire Response at 1, dated December 1, 2009.

⁵⁶ See Xinhua Metal Verification Report at 9.

⁵⁷ See Fujian Lianfu Forestry Co. v. United States, 638 F. Supp.2d 1325 (CIT 2009) ("Fujian Lianfu Forestry").

⁵⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From the Philippines, 65 FR 81823 (December 27, 2000) and accompanying Issues and Decision Memorandum ("Steel Butt-Weld Pipe Fittings") at Comment 2.

⁵⁹ See Ad Hoc Shrimp Trade Action Comm. v. United States, Slip Op. 09-126 (CIT October 30, 2009) ("Ad Hoc Shrimp Trade Action Comm.").

accounting system prohibited the reconciling of Xinhua Metal's sales, due to Xinhua Metal's lack of a fixed timetable for recording export sales. Petitioners further claim that at verification the Department uncovered invoices recorded during the POI, but with invoice dates prior to the POI. Citing to PIERS data of Xinhua Metal's POI entries and Krupp Thyssen Nirosta GmbH v. United States,⁶⁰ Petitioners suggest that the Department should infer based on the verification finding that Xinhua Metal has other unreported sales to the United States.

Additionally, Petitioners argue that Xinhua Metal's invoice numbering system is another reason in support of AFA. Petitioners note at verification a company official explained "the domestic sales are sequential, but that the export invoices are not sequential."⁶¹ Petitioners argue that Xinhua Metal's export invoices are not sequential, contain duplicate numbers, and contain gaps in the numbering system. As such, Petitioners state the Department cannot determine if all invoices have been reported properly, or if invoices are missing. Petitioners cite to Hand Tools⁶² as an instance where the Department applied AFA to a respondent that randomly recorded invoices into its accounting system because the Department could not perform a completeness test. Petitioners continue to argue that Xinhua Metal's financial statements are unreliable and cite to Gourmet Equipment⁶³ where the Court stated "normally Commerce may not require a party to change its accounting system or provide information which it simply does not have. Commerce may, however, require a party to provide financial statements which are usable or suffer the consequences."

Next, Petitioners argue that Xinhua Metal understated the usage ratios for plastic film, wooden pallets, and galvanized steel strip, because Xinhua Metal used the incorrect denominator when calculating the usage ratios. Petitioners contend that Xinhua Metal incorrectly used the larger figure of total POI production rather than the smaller figure of total U.S. sales as the denominator, which would lead to a larger consumption ratio.

Lastly, Petitioners contend that Xinhua Metal's reported FOP data result in a mathematical impossibility because after subtracting by-product offsets, the wire-rod consumption is less than the PC strand produced. Petitioners cite to Frontseating Service Valves⁶⁴ as evidence that the Department will reject by-product offsets when the reported FOPs do not make physical sense. Petitioners go on to state that the Department should reject all of Xinhua Metal's scrap offsets because they do not meet the by-product criteria and/or do not result in a mathematically possible wire rod consumption factor.

Petitioners cite to section 776(a) of the Act and argue Xinhua Metal failed to provide necessary, complete, accurate, and timely responses to all of the Department's requests, and therefore,

⁶⁰ See Krupp Thyssen Nirosta GmbH v. United States, 24 CIT 666 (2000).

⁶¹ See Xinhua Metal Verification Report at 9.

⁶² See Notice of Final Results and Partial Recession of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China, 65 FR 43290 (July 13, 2000) and accompanying Issues and Decision Memorandum ("Hand Tools") at Comment 1.

⁶³ See Gourmet Equipment Corp. v. United States, 24 CIT 572, 578 (2000).

⁶⁴ See Frontseating Service Valves from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination, and Postponement of Final Determination, 73 FR 62952, 62957 (October 22, 2008) ("Frontseating Service Valves").

recommend the Department apply FA. Petitioners cite to section 776(b) of the Act and claim that, in this case, the application of FA with an adverse inference is warranted. Petitioners highlight the failings in Xinhua Metal's accounting system and the impacts on its financial statements as evidence of not fully disclosing information requested by the Department. Petitioners cite to Cut-to-Length Carbon-Quality Steel Plate⁶⁵ where the Department rejected a respondent's response containing multiple errors and inaccuracies. Petitioners assert the flaws explained above are so numerous that the Department cannot find the submissions reliable and must apply AFA. Petitioners go on to state the Department should modify the margins in the Initiation Notice⁶⁶ to reflect Petitioners' arguments on the surrogate values discussed above in Comment 1. Petitioners claim the highest margin from the modified Initiation Notice should be used as AFA, as they are the only corroborated information on the record. See e.g., Tissue Paper⁶⁷ and PC Strand from Brazil.⁶⁸

Xinhua Metal argues that Petitioners' claims for application of AFA are unwarranted because Xinhua Metal submitted accurate, reliable, and complete information on a timely basis.

With respect to its accounting system, Xinhua Metal argues that Petitioners' allegations were all addressed before the Preliminary Determination and at verification. Xinhua Metal states that its financial statements were audited and no concerns were raised by the auditor. Further, Xinhua Metal notes its accounting books and records were completed prior to the initiation of this investigation. Xinhua Metal adds that Petitioners do not cite to any regulation requiring a respondent's accounting system to be 100% GAAP-compliant, and at verification, the Department was able to address each item on the outline including the accounting system, sales and cost reconciliations, completeness tests, and the FOPs. Xinhua Metal further states that the company is fully compliant with PRC accounting rules and regulations. Xinhua Metal asserts that once the accounting department receives a sale, the accountants record the sale that month. As described at verification, the only area where sales are sometimes recorded in a month other than the month the sale occurred is export sales. Xinhua Metal explains that the sales department sometimes delays notifying the accounting department, and this is why there is a delay in recording the sale.

Xinhua Metal claims Petitioners' arguments regarding the invoicing system are contrary to the record. Xinhua Metal contends that its export invoice numbering system did not prevent the Department from conducting its completeness test. Xinhua Metal states the Department was able to verify all of Xinhua Metal's POI sales. In support, Xinhua Metal claims many companies do not have sequential invoicing systems and this alone does not prevent the Department from verifying the sales. Xinhua Metal disputes the claim that two U.S. sales invoiced prior to the

⁶⁵ See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from India, 64 FR 73126, 73129-73131 (December 29, 1999) ("Cut-to-Length Carbon-Quality Steel Plate"), *aff'd* Steel Authority of India v. United States, 25 CIT 482, 487, 149 F. Supp. 2d 921, 928 (2001).

⁶⁶ See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Initiation of Antidumping Duty Investigation, 74 FR 29665 (June 23, 2009) ("Initiation Notice").

⁶⁷ See Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China, 70 FR 7475 (February 14, 2005) ("Tissue Paper").

⁶⁸ See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from Brazil, 68 FR 68354 (December 8, 2003) ("PC Strand from Brazil").

POI were discovered at verification. Xinhua Metal notes these two U.S. sales were reported in its original Section C response.

Xinhua Metal explains in its rebuttal brief, that it made an honest error in using the total production rather than U.S. sales as the denominator in calculating several packing factors.⁶⁹ Xinhua Metal explains that this mistake does not indicate a failure to cooperate or support application of AFA.

Regarding the wire rod usage ratio, Xinhua Metal also disagrees with Petitioners. Xinhua Metal maintains that the difference between the wire rod purchased and entered into production is due to the weight recording procedures. Xinhua Metal explains when it purchases wire rod from its suppliers, it accepts the supplier's weight. Therefore, its purchase of 1 MT of wire rod may be slightly over or under 1 MT. Xinhua Metal states that stock-in slips were available at verification and the Department was able to verify Xinhua Metal's wire rod usage.

Lastly, Xinhua Metal contends that Petitioners' arguments regarding missing information and information not being timely, complete, and accurate are without merit. Xinhua Metal argues that at the Preliminary Determination, the Department had all the necessary information to calculate a margin. Xinhua Metal notes that during verification the Department was able to verify Xinhua Metal's sales data. Xinhua Metal takes issue with Petitioners' claim of failings in the accounting system and financial statements because Xinhua Metal argues that those issues were dealt with in the questionnaires and at verification. Xinhua Metal asserts the Department was able to verify all of the submitted data, and Xinhua Metal argues that Petitioners do not identify what information was withheld. For these reasons, Xinhua Metal states neither FA nor FA with adverse inferences is appropriate in this instance.

Department's Position:

The Department disagrees with Petitioners that Xinhua Metal's financial and reporting issues warrant the use of FA with adverse inferences. Although we agree that certain packing factors and the wire rod usage should be adjusted, as discussed below, we do not find that FA with adverse inferences is warranted.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if the necessary information is not on the record, or an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and

⁶⁹ See Xinhua Metal's Rebuttal Brief at 18, dated March 22, 2010.

suggested alternative form in which such party is able to submit the information,” the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁷⁰

First, with regard to Petitioners’ concerns with Xinhua Metal’s accounting issues, in the Preliminary Determination, the Department acknowledged that one aspect of Xinhua Metal’s accounting system appeared to be non-GAAP compliant.⁷¹ However, we agree with Xinhua Metal that there is no regulation or precedent that requires a respondent to be GAAP compliant. Petitioners’ statement that the Department has a policy of rejecting financial statements where there is evidence that the financial statements are not consistent with the home country’s GAAP, is misguided.⁷² In Steel Butt-Weld Pipe Fittings cited by Petitioners, the Department explained that nothing at verification lead the Department to question the reliability of the respondent’s financial statements and given that they were prepared in accordance with the home country’s GAAP, and absent facts demonstrating otherwise, the Department had no reason to reject the respondent’s financial statement. In Ad Hoc Shrimp Trade Action Comm. cited by Petitioners, no party argued that the ME respondent’s records were not in accordance with the home country’s GAAP. Rather, petitioners in that case argued that the Department should not have relied on the respondent’s financial statements because the costs were unreliable. The Court upheld the Department’s decision to rely on financial statements when they are GAAP compliant and do not distort a firm’s actual costs.⁷³ In no instance in either of these cases did the Department state a policy of rejecting a respondent’s financial statements solely because they are not GAAP compliant in all respects. Similarly, the cases Petitioners cite in their case brief as examples of applying AFA for non-GAAP compliant respondents are extreme examples that are not reflective of the issues in this investigation. For example in Fujian Lianfu Forestry, the Department found serious problems with a respondent’s reported U.S. sales and FOP. The Department learned that the respondent passed off subject merchandise as its own production that it had not actually produced, and estimated the FOPs for these sales. Those sales accounted for 56% of its U.S. sales.⁷⁴ Additionally, its submitted information could not be tied back to its financial statements, and therefore, the Department found the financial statements were unreliable. In Hand Tools, the respondent failed verification because the company’s random reporting prevented reconciliation of the reported quantity and value of U.S. sales and the Department could not conduct a completeness test. Although we still continue to find that one aspect of Xinhua Metal’s accounting system appears non-GAAP compliant, we did not find that this fact prohibited verification. At verification, the Department spent a significant amount of

⁷⁰ See Statement of Administrative Action accompanying the URAA. H.R. Rep. No. 103-316, vol. 1, at 870 (1994).

⁷¹ See Memorandum to the File, from Alexis Polovina, Case Analyst, through Alex Villanueva, Program Manager, Analysis of the Preliminary Determination of the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from the People’s Republic of China (“PRC”): Xinhua Metal Products Co., Ltd. (“Xinhua Metal”) (“Xinhua Metal Preliminary Analysis Memo”), dated December 17, 2009.

⁷² See Petitioners’ Case Brief at 36, dated March 15, 2010.

⁷³ See Ad Hoc Shrimp Trade Action Comm., Slip Op. 09-126 at 14-15.

⁷⁴ See Fujian Lianfu Forestry, 638 F. Supp.2d at 1339-1341.

time looking into the timing of the sales to the United States. We traced the revenue for each of these sales as well as compared the payment terms to other export sales.⁷⁵ We did not find that the delay prohibited sales reconciliation and completeness tests. We did not identify any issues or problems that lead us to question Xinhua Metal's accounting system.

Next, with respect to Petitioner's claim that Xinhua Metal's accounting system and financial statements are unreliable, the Department disagrees. At verification, the Department examined sales revenue for all months of 2008 and 2009, and was able to reconcile the POI sales to the United States.⁷⁶ Additionally, the Department examined the chart of accounts, financial statements, exports to third countries, and sales documents. The Department did not find any unreported sales or discrepancies from what Xinhua Metal reported.⁷⁷ Further, in examining Xinhua Metal's accounting system and financial statements, we did not find them unreliable. Xinhua Metal's sales were recorded and the Department could trace the reported sales to the financial statements. See Xinhua Metal Verification Report. Regarding Petitioners' argument that the date of invoice should not be used as the date of sale, the Department continues to find that the date of invoice is appropriate for the date of sale because as Xinhua Metal explained, the invoice determines the material terms of the sale.⁷⁸

Third, with regard to Xinhua Metal's invoicing system, consistent with PSE,⁷⁹ we agree with Xinhua Metal that not having a sequentially ordered invoice is not grounds for total AFA. As explained above, we examined the sales revenue account for all months of 2008 and 2009 to gain a full understanding of the universe of Xinhua Metal's sales before, during, and after the POI. Petitioners' claim that the Department uncovered invoices recorded during the POI that were invoiced prior to the POI, is not fully accurate. Xinhua Metal reported these sales in their original Section C Questionnaire Response,⁸⁰ and at verification the Department was able to confirm that these invoices were invoiced prior to the POI by comparing the invoice to the bill-of-lading.⁸¹ Petitioners' allegations of unreported sales to the United States based on PIERS data are similarly inaccurate. Xinhua Metal confirmed the invoice dates of these sales in a supplemental response⁸² and the Department did not find any discrepancies at verification.⁸³

Next, with respect to the three packing factors that were only used for sales to the United States, the Department agrees with Petitioners that the denominator should be total U.S. sales rather than total POI production. Therefore, in the final determination, the Department will revise the denominators for plastic film, wooden pallets, and galvanized steel strip.

⁷⁵ See Xinhua Metal Verification Report at 7-8.

⁷⁶ Id.

⁷⁷ Id. at 12-13.

⁷⁸ See Xinhua Metal's Section A Questionnaire Response at 8, dated September 8, 2009; and Xinhua Metal Verification Report at 9.

⁷⁹ See First Administrative Review of Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010) and accompanying Issues and Decision Memorandum ("PSF") at Comment 5.

⁸⁰ See Xinhua Metal's Section C Questionnaire Response at 32, dated September 21, 2009.

⁸¹ See Xinhua Metal Verification Report at 12.

⁸² See Xinhua Metal's 1st Supplemental D Questionnaire Response at 2, dated October 30, 2009.

⁸³ See Xinhua Metal Verification Report at 12.

Lastly, regarding Xinhua Metal's wire rod usage, the Department agrees with Petitioners that once by-products are subtracted, the wire rod entered into production must be at least 1 kilogram for each kilogram of subject merchandise produced.

In an analysis memorandum issued in conjunction with the Preliminary Determination, we stated:

After deducting the adjusted by-product amount from the wire rod we note that the wire rod input is very near 1 kilogram of input. Therefore, it appears that Xinhua Metal captures all wire rod waste and that there is essentially no yield loss. In the final determination, the Department will continue to examine the by-product offsets preliminarily granted to determine if these offsets are properly reported. We hereby put Xinhua Metal on notice to be prepared to document with production and waste generation records that their by-product offset were reported accurately . . .⁸⁴

Xinhua Metal explained that the difference is due to the quantity purchased and the actual quantities entered into production.⁸⁵ Xinhua Metal also explained that it "does not weigh the wire rod after it has been de-scaled and cut. The best demonstration of yield loss is the FOP for wire rod."⁸⁶ As a result, at verification and after an analysis of the actual data reported for wire rod usage and subtracting the by-products offsets from the wire rod usage rate, the wire rod usage rate was less than 1 kilogram for 1 kilogram of PC strand. See Xinhua Metal's Rebuttal Brief at 16, dated March 22, 2010. Although Xinhua Metal does collect many of its wire rod by-products, it is not possible to produce 1 kilogram of PC strand from less than 1 kilogram of wire rod input. Therefore, we are applying FA to Xinhua Metal's wire rod usage, pursuant to 776(a)(2)(D) of the Act. The Act provides that in selecting from among the FA the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751, or any other information on the record. For the final determination, the Department will use a simple average of yield information from the petition and from WJMP to add a yield loss to Xinhua Metal's POI wire rod usage. See Memorandum to the File, from Alexis Polovina, Case Analyst, through Alex Villanueva, Program Manager, Analysis of the Final Determination of the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from the People's Republic of China ("PRC"): Xinhua Metal Products Co., Ltd. ("Xinhua Metal"), dated May 14, 2010. Because the data are from other producers of PC strand using a similar production process, we find that it is sufficiently corroborated, pursuant to section 776(c) of the Act.

In sum, the Department agrees that certain packing factors and the wire rod usage should be adjusted; however, we do not find that application of facts available with adverse inferences is warranted.

⁸⁴ See Xinhua Metal Preliminary Analysis Memo at 4.

⁸⁵ See Xinhua Metal's Post-Preliminary Questionnaire response, dated January 12, 2010; and Xinhua Metal's Rebuttal Case brief at 16, dated March 22, 2010.

⁸⁶ See Xinhua Metal's 1st Supplemental D Response at 5, dated October 30, 2009.

B. Foreign Brokerage and Handling

Petitioners argue that the Department should deduct a surrogate value for containerization because at verification Xinhua Metal informed the Department that it paid its broker containerization and loading fees. Xinhua Metal did not comment on this issue.

Department's Position:

The Department agrees with Petitioners. At verification, Xinhua Metal explained that the domestic brokerage and handling fee included a fee for containerization.⁸⁷ However, as no party placed a surrogate value for containerization on the record, the Department will use the brokerage and handling source on the record as a proxy for containerization, and deduct this amount as facts available for the containerization fee.

C. Domestic Insurance

Xinhua Metal argues that the Department should reconsider the surrogate value for domestic insurance used in the Preliminary Determination. Xinhua Metal cites to the Preliminary Surrogate Value Memo noting that the Department stated:

While it appears that the surrogate value for inland domestic insurance includes marine insurance, we were unable to locate a surrogate value that uses only domestic insurance. We will continue to look into this matter and address it further in the final determination.⁸⁸

Xinhua Metal urges the Department reconsider this surrogate value because they only incurred domestic inland insurance and not marine insurance.

Petitioners argue the Department should continue to use the expenses reported by Agro Dutch because, as no party submitted an alternative, it remains the best available information on the record

Department's Position:

We agree with Petitioners and will continue to use the insurance expenses reported by Agro Dutch to value domestic inland insurance incurred by Xinhua Metal in the final determination. The Department stated that it would continue to address this surrogate value at the final determination. We were unable to locate any alternative and no party submitted a more specific surrogate value alternative. Therefore, Agro Dutch remains the best available information on this record and we will continue to use it in the final determination.

COMMENT 3: WJMP

⁸⁷ See Xinhua Metal Verification Report at 16.

⁸⁸ See Memorandum to the File, from Alexis Polovina, case Analyst, through Alex Villanueva, Program Manager, Investigation of Prestressed Concrete Steel Wire Strand from the PRC: Surrogate Values for the Preliminary Determination ("Preliminary Surrogate Value Memo") at 12, dated December 17, 2009.

A. AFA

Petitioners cite to section 776(a) of the Act, arguing that the Department should apply total adverse facts available because WJMP's invoice accounting system precluded the Department from conducting basic verification tests, the financial statements are unreliable and cannot serve as a reliable benchmark, and WJMP failed to provide mathematically possible factor data.

First, Petitioners argue that WJMP's invoice accounting system prohibited the Department from confirming that WJMP had not underreported sales of PC strand to the United States during the POI. Specifically, Petitioners state that for export sales, WJMP's invoice dates did not always match sequentially with invoice numbers. To illustrate this, Petitioners note that at verification, the Department requested all invoices issued for the months of November 2008 and February 2009. In reviewing all invoices from those two months, the Department found that some of the invoice dates and invoice numbers did not match. Given that the Department's sample of two months identified some sales that had invoice dates that did not correspond to invoice numbers, Petitioners argue that the Department should conclude that the invoice accounting system is flawed and unacceptable.⁸⁹ Petitioners argue that in an invoice accounting system, such as this, WJMP could have manipulated invoice dates to hide sales from being reported and that the Department could not have conducted a thorough completeness test.

Second, Petitioners argue that because WJMP's invoice accounting system prevented the Department from performing a completeness test, the Department should also find that the financial statements are also unreliable and cannot serve as the basis to confirm the accuracy and completeness of WJMP's submitted data. Petitioners cite to Gourmet Equipment, in which the Court stated that the Department may not require a party to change its accounting system, but it may require a party to provide financial statements which are usable or suffer the consequences. Petitioners argue that the WJMP financial statements are not usable, and as such, the Department should apply total AFA.

Third, Petitioners argue that WJMP failed to provide mathematically possible wire rod FOP data. Petitioners note that the production of PC strand involves the usage of wire rod and various stages of production in which a certain percentage of wire rod is lost. Petitioners argue that WJMP submitted three different FOPs, and three different wire rod FOPs cannot be accurate nor can they all reconcile to financial statements. Petitioners argue that WJMP has not and cannot provide a reconciliation for each of these wire rod FOPs. Petitioners state that one of the wire rod FOPs that WJMP provided the Department was mathematically impossible because, after removing the by-product from the wire rod input, what remains is less than one kilogram of input for one kilogram of PC strand output. Petitioners argue that this is mathematically impossible result. Petitioners note that the Department has stated that it would not accept the reporting of factors that did not make physical or logical sense.⁹⁰

⁸⁹ See Results of Redetermination Pursuant to Court Remand: Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Procuts, Inc. v. United States, CIT Court No. 99-08-00550 (October 30, 2000).

⁹⁰ See Frontseating Service Valves, 73 FR at 62957.

Based on these three arguments, Petitioners argue that WJMP failed to provide information that could be verified during this investigation and as such, the Department should assign total AFA to WJMP.

With respect to Petitioners' arguments that WJMP's invoice accounting system prohibited the Department from verifying the completeness of WJMP's questionnaire responses, WJMP states that the Department thoroughly examined and verified the completeness of its questionnaire responses. WJMP cites to the WJMP Verification Report at pages 17 and 18 in stating that factor cost reconciliation included data specifically tying factor utilization to and audited financial statements. WJMP states that this data was then linked to the cost of all sales. WJMP argues that this demonstrates that there was neither unreported production nor any unreported exports to the United States during the POI.

Similarly, WJMP states that the Department examined the records of the affiliated importer Corus America Inc., ("CAI"). WJMP states that the completeness of sales is based upon sales to unaffiliated U.S. customers. WJMP notes that Petitioners did not argue that there were any unreported sales from CAI to unaffiliated U.S. customers nor were any questions raised as to the accuracy or completeness of CAI's record. WJMP states that, upon reviewing records at CAI, the Department found no unreported U.S. sales of PC strand produced by WJMP. Furthermore, WJMP states that the Department found no missing invoices, as every invoice was accounted for internally. With regard to the invoice accounting system that WJMP uses resulting in the issuance of invoice numbers that do not correspond with invoice dates, WJMP explained that invoice dates are based upon the date that shipment instructions arrive, while the invoice number is assigned in response to vessel booking advice from the logistics department. WJMP stated that it may receive shipment instructions for a sailing before it receives shipment instructions for an earlier sailing, resulting in a higher invoice number for the earlier sailing. WJMP also states that it maintains all of its accounts on a SAP software system and its financial statements are certified by Deloitte Touche Tomatsu CPA Ltd. WJMP contends that there is nothing to support Petitioners' assertion that WJMP's accounting system is unreliable, incomplete, and inaccurate such that it should be assigned AFA.

With regard to Petitioners' arguments concerning WJMP's wire rod FOP, WJMP argues that it provided different wire rod FOPs and calculations in accordance with the Department's instructions. Furthermore, at verification, WJMP provided minor corrections which demonstrated an inadvertent error on the part of WJMP for not accounting for wire rod work in process at the outset and end of the POI. After making the necessary adjustments, WJMP reported a revised FOP which the Department verified. See WJMP Verification Report at 20. WJMP concludes by stating that the wire rod FOP claimed is both rational and conservative. Therefore, WJMP argues that the Department should reject Petitioners' contention that WJMP should be assigned AFA.

Department's Position:

The Department disagrees with Petitioners that WJMP's invoice accounting system prevented the Department from verifying the completeness of WJMP's questionnaire responses, that

WJMP's financial statements are unreliable, or that the wire rod utilization reported by WJMP is mathematically impossible. Therefore, the Department finds that the application of total AFA is not warranted.

At verification, the Department verified statements provided by WJMP in its questionnaire responses. The Department also verified the completeness of reported sales by reviewing all export sales for the POI months of November 2008 and February 2009. We reviewed all of the invoices from November and February and found that there were no unreported sales to the United States. We found that Petitioners were correct that there were certain sales in which the invoice number did not correspond to the invoice date, but we were able to account for all sales. See WJMP Verification Report at 17 and Exhibit D-WJMP. The Department verified WJMP's U.S. affiliated company, CAI, who made all sales to unaffiliated U.S. customers during the POI. The Department found no unreported sales to unaffiliated U.S. customers. Finally, we found that the reported FOP data reconciled with WJMP's financial statements. We found nothing that would lead us to conclude that WJMP's invoice accounting system was problematic. Similarly, we found no reason to determine that the financial statements WJMP provided were not usable.

With respect to the wire rod FOP, we disagree with Petitioners that what WJMP reported is impossible and does not reconcile to the financial statements. WJMP provided multiple wire rod FOPs because the Department instructed them in supplemental questionnaires to do so, to make the wire rod FOPs CONNUM-specific and to accurately account for the by-product offset. At verification, WJMP provided minor corrections. Among the minor corrections, WJMP identified that it had previously failed to account for wire rod work-in-process at the beginning and end of the POI. After making this correction, WJMP arrived upon a final wire FOP. This was the number that we verified and reconciled with WJMP's financial statements. See WJMP Verification Report at 19 and Exhibit H-WJMP. Furthermore, the wire rod FOP we verified proved to be mathematically possible because after subtracting the by-product from the wire rod FOP, what remains is an input of more than 1 kilogram of wire rod inputs for each kilogram of PC strand output.

Accordingly, we will not apply total AFA to WJMP because the criteria that the Department considers in applying total AFA were not met. We determine that the information submitted by WJMP met the established deadlines, was verified, was sufficiently complete so that it could serve as a reliable basis for reaching the applicable determination without undue difficulties, and that WJMP acted to the best of its ability.

B. Treatment of Certain Factors as Factory Overhead

WJMP argues that the Department should not find lime, dies, soda ash and drawing lubricants, diesel fuel, and transportation between the pickling plant and the main factory to be material inputs. WJMP argues that the Department should treat these FOPs as factory overhead. WJMP states that the Department typically takes into consideration: (1) whether the material is physically incorporated into the final product; (2) the material's contribution to the production process and finished product; (3) the relative cost of the input; and (4) the way the cost of the

input is typically treated in the industry.⁹¹ WJMP contends that each of the above are not incorporated into the final product, are used as production machinery or production lubrication, or are of relatively minor cost, and are typically treated by the industry as part of factory overhead. WJMP cites to the WJMP Verification Report at page 16, stating that lime is consumed to neutralize water rather than used for production. WJMP states that dies are used to set the dimension of the output for a specific product and not included in the ultimate product. Similarly, WJMP argues that soda ash, diesel fuel, and drawing lubricants are minor and not incorporated into the final product. Finally, WJMP argues that the transportation between the pickling plant and main factory is provided by WJMP's own drivers whose labor is included in the FOP database. See WJMP Verification Report at 2 and 16. Therefore, WJMP argues that the transportation and other factors listed above should be found to be factory overhead.

Petitioners did not submit comments on this issue.

Department's Position:

The Department finds that OTR Tires provides a framework for determining whether certain items are to be valued as FOPs or factory overhead. In the production process, lime never comes in contact with wire rod or PC strand. As WJMP notes, citing to the WJMP Verification Report at page 16, lime is used to neutralize water for recycling rather than being used directly as an input in the production of PC strand. Production of PC strand could continue without the usage of lime and lime accounts for a very small percentage of the cost of production. We find that lime is not physically incorporated into PC strand, it does not contribute to the production process beyond serving to clean water after it has been used, and has little relative cost. Therefore, we will not value lime as a FOP.

With regard to the distance between WJMP's pickling plant and the main factory, we agree that it is not proper to include this as a separate item in the normal value calculation. The Department noted at verification that WJMP's own drivers, rather than a third party, transported the wire rod.⁹² Moreover, WJMP separately reported the labor incurred to transport the wire rod between the main factory and the pickling plant. As such, we will not separately value the freight distance between the two facilities in the calculation of normal value as we find that it already accounts for both of these components as either a direct labor input or as part of the surrogate factory overhead. See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 1323 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 6, citing Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China, 62 FR 51410, 51417 (October 17, 1997).

We have determined to value WJMP's consumption of dies, soda ash, drawing lubricants, and diesel fuel as FOPs for the final determination. In several recent proceedings addressing the treatment of materials purported to be overhead expenses, the Department determined that

⁹¹ See OTR Tires at Comment 27.

⁹² See WJMP Verification Report at 16.

materials classified by a respondent as an overhead expense, but consumed for the purpose of manufacturing subject merchandise, are considered FOPs⁹³ which is consistent with OTR Tires. We note that each of these items are consumed regularly for the purpose of manufacturing PC strand and contribute directly to the production process and finished product. See WJMP Verification Exhibit G-WJMP at pages 2 and 3 and WJMP Verification Report at page 16.

C. Coal

Petitioners argue that the Department should value coal using WTA data under HTS 2701.1200 rather than using the Indian Bureau of Mines (“IBM”) data. Petitioners argue that WJMP reported using “bituminous” coal in PC strand production. However, the coal prices presented in the IBM report are prices for “run of mine” or “raw coal.” Petitioners provided a <http://www.wikipedia.org> definition of “run of mine” coal as raw, unprocessed coal that is delivered to coal preparation plants for processing. Therefore, Petitioners argue that WJMP could not have used “run of mine” coal in the production process of PC strand, and that the Department should value coal using WTA data under HTS 2701.1200.

Respondents did not submit comments on this issue.

Department’s Position:

Section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate ME country. The Department’s criteria for selecting surrogate value (“SV”) information are normally based on the use of publicly available information (“PAI”), and the Department considers several factors when choosing the most appropriate PAI, whether it is contemporaneous with the POI, represents a broad market average, comes from an approved surrogate country, is tax and duty exclusive, and specific to the input.⁹⁴

Both IBM data and WTA data satisfy the following criteria: public availability; representation of a broad-market average; and sourcing from an approved surrogate country. It is unclear whether the IBM data is tax and duty exclusive, while it is clear that WTA data is tax and duty exclusive. The WTA data is contemporaneous with the POI, while the IBM data is not. With regard to the specificity of the input, we cannot rely on the definition of “run of mine” from Wikipedia because this is a source that can be revised by the public at any time and thus cannot necessarily be considered an authoritative source of coal information. Therefore, with regard to specificity, we do not have the necessary information which we can rely upon. However, because the WTA data is tax and duty exclusive and is contemporaneous with the POI, we find that it represents the best information available and will use it as the surrogate value source in the final determination.

D. Seals – Steel Belts

⁹³ See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 2 and Steel Nails at Comment 20E.

⁹⁴ See CLPP at Comment 3.

Petitioners argue that the Department should value seals – steel belts using WTA data under HTS 7326.2090, “Other Articles of Iron or Steel Wire, for Other Use” rather than HTS 7211.1990, “Other Products, Hot Rolled, of a Thickness < 4.75 mm.” Petitioners argue that the Indian system reports “belts and belting” of iron and steel under HTS 7326.2090 because that same HTS number describes belts and belting under the HTS of the United States (“HTSUS”) system.

Respondents did not submit comments on this issue.

Department’s Position:

Section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate ME country. The Department’s criteria for selecting SV information are normally based on the use of PAI, and the Department considers several factors when choosing the most appropriate PAI, whether it is contemporaneous with the POI, represents a broad market average, comes from an approved surrogate country, is tax and duty exclusive, and specific to the input.⁹⁵

We agree with Petitioners that we should not value seals – steel belts using WTA data under HTS 7211.1990. Both surrogate value sources are publicly available, contemporaneous with the POI, represent a broad market average, come from an approved surrogate country, and are tax and duty exclusive. However, in this instance, we find that HTS 7326.2090 is more specific to the input in question than 7211.1990 because HTS describes “belts and belting” of iron and steel under the HTSUS system, which we determine to be more specific to the input in question. Therefore, we find that HTS 7326.2090 is the best available information we have on the record, and we will value seals – steel belting with WTA data under HTS 7326.2090 in the final determination.

COMMENT 4: Separate Rate Calculation

Fasten I&E argues that the Department should revise its current regulation regarding the calculation of the separate rate company when one of the Respondents is a voluntary Respondent. In the Preliminary Determination, because WJMP is a voluntary respondent, the Department did not weight average the margins received by WJMP and Xinhua Metal. Rather, the Department excluded the rate of the voluntary respondent, as directed by 19 CFR 351.204(d)(3), and applied the calculated rate for the single mandatory Respondent to Fasten I&E. Fasten I&E argues that, in order to calculate a representative margin, the Department should revise its regulations to include the voluntary respondent’s rate when calculating the separate rate. Fasten I&E notes that when the Department’s regulations on the separate rate calculation were adopted, the Department was also required to select a sufficient number of mandatory respondents so that at least 60 percent of exporters of subject merchandise would be selected in the original investigation. As the requirement on percentage of exporters is no longer in place, Fasten I&E contends that in instances where there are only two mandatory respondents, if one or more of these mandatory respondents were to drop out of the investigation to be replaced by a voluntary respondent, the calculated separate rate margin will not be representative

⁹⁵ Id.

of all the margins in the proceeding. Fasten I&E further states that 19 CFR 351.204(d)(2) requires mandatory and voluntary respondents be treated the same, and claims that excluding the voluntary respondent results in an unrepresentative margin.

Petitioners urge the Department to reject Fasten I&E's argument to include margin of the voluntary respondent, WJMP, in the calculation of the separate rate. Petitioners cite to Torrington Co. v. United States⁹⁶ as support that Fasten I&E's argument should be rejected because the Department has to follow its regulations. Further, Petitioners argue that WJMP is not representative of the PC strand industry because WJMP is a CEP entity and its operations are not representative of the majority of the PC strand producers. Lastly, Petitioners note that the Department did not limit the investigation to one mandatory respondent. Petitioners explain that the two selected mandatory Respondents failed to participate. Petitioners suggest that, had these companies participated, the dumping margin may have been even higher.

Department's Position:

We agree with Petitioners and will continue to exclude the voluntary respondent from the calculation of the separate rate in the final determination. In the Preliminary Determination, we stated that we would exclude the voluntary respondent from the calculation of the separate rate.⁹⁷ Our policy regarding separate rate and the voluntary respondents has been to interpret 19 CFR 351.204(d)(3) as to exclude any individually calculated rate for the voluntary respondents from the calculation of the separate rate. We continue to believe in the appropriateness of our statement in the preamble to the regulations at 62 FR 27810, "the producers or exporters most likely to submit voluntary responses are those with reason to believe that they will obtain a lower margin by volunteering than they would obtain by being subject to the all-others rate. Inclusion of rates determined for voluntary respondents thus would be expected to distort the weighted-average for the respondents selected by the Department on a neutral basis." As such, we will not revise our methodology in the final determination.

COMMENT 5: Surrogate-Value Based Methodology

The Government of China ("GOC") argues in rebuttal that the Department should reject Petitioners' surrogate value arguments because they are contrary to U.S. antidumping law. The GOC argues that as the Department has preliminarily determined to impose countervailing duties ("CVD") on subject merchandise,⁹⁸ application of a surrogate value based calculation imposes a double remedy. The GOC argues that if the Department continues to impose CVDs on the subject merchandise, then the Department must incorporate additional methodologies to avoid possible double counting of duties. The GOC cites to GPX,⁹⁹ where the Court of International Trade stated "If Commerce is to apply CVD remedies where it also utilizes the non-market economy antidumping ("NME AD") methodology, Commerce must adopt additional policies and procedures for its NME AD and CVD methodologies to account for the imposition of the

⁹⁶ See Torrington Co. v. United States, 818 F. Supp. 1563 (CIT 1993), aff'd 82 F.3d 1039, 1049 (Fed. Cir. 1996).

⁹⁷ See Preliminary Determination 74 FR at 68237.

⁹⁸ See Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 74 FR 56576 (November 2, 2009).

⁹⁹ See GPX Int'l Tire Corp. v. United States, 645 F. Supp. 2d 1231 (CIT 2009) ("GPX").

CVD law to products from an NME country and avoid to the extent possible double counting of duties.”¹⁰⁰ The GOC argues that to avoid double counting subsidies, the Department should reject the surrogate value methodology because the application of surrogate value methodology to determine the antidumping normal value benchmark will always result in a dumping margin calculation that provides a full remedy for any domestic subsidy provided in the exporting country.¹⁰¹ Instead, the GOC requests the Department to base normal value on actual PRC prices and costs.¹⁰² In support for using PRC prices and costs, the GOC cites to Low Enriched Uranium,¹⁰³ where the Department explained that domestic subsidies lowers prices in both the domestic market and the U.S. market.

Petitioners did not submit comments on this issue.

Department’s Position:

The Department disagrees with the GOC’s claim that the concurrent imposition of CVDs and the NME surrogate value methodology imposes a double remedy. The GOC cites to GPX as evidence that the Department must adopt additional policies to address possible double counting of duties. However, this reliance on GPX is misplaced as the decision is not final and a final order has not yet been issued by the Court, nor have all appellate rights been exhausted. Further, even if reliance on GPX were not misplaced, GPX does not support the GOC’s claims of double counting of duties. GPX did not find that a double remedy necessarily occurs through concurrent application of the CVD statute and NME provision of the AD statute, only that the “potential” for such double counting may exist.¹⁰⁴

The GOC is similarly mistaken in its reliance upon Low Enriched Uranium. The statement that “domestic subsidies presumably lower the price of the subject merchandise in the home and the U.S. markets” does not stand for the proposition that domestic subsidies are passed through into export prices, *pro rata*.¹⁰⁵ Taken at face value, the statement is that “domestic subsidies presumably lower the price of the subject merchandise in export markets . . .” This is no more than a presumption, and a very limited presumption at that – *e.g.*, the reductions in price could be 1 percent of the subsidy in each market. The Department’s point was not that all domestic subsidies are presumed to be fully passed through into domestic and export prices, but that the effect of domestic subsidies on the price in each market presumably was the same.

The GOC does not demonstrate that a double remedy will result from this investigation because it has failed to present any data showing the benefits received from any domestic subsidy lowers U.S. prices, *pro rata*. Although the subsidy was input-specific, it does not change the fact that the recipients of such subsidies may not necessarily choose to respond to such subsidies by lowering export prices, *pre rata*.

¹⁰⁰ See GPX, 645 F. Supp. 2d at 1234-35.

¹⁰¹ See GOC’s Rebuttal Brief at 4, dated March 20, 2010.

¹⁰² Id. at 6.

¹⁰³ See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France, 69 FR 46501 (August 3, 2004) (“Low Enriched Uranium”).

¹⁰⁴ See GPX, 645 F. Supp.2d at 1240.

¹⁰⁵ See Low Enriched Uranium, 69 FR at 46506.

The GOC's theory that concurrent AD and CVD proceedings against NME countries automatically result in the application of a double remedy is vague. The GOC asserts that the NME methodology inherently provides a remedy for any and all countervailable subsidies such that concurrent application of CVDs with the NME AD methodology is necessarily duplicative. Apparently, the GOC concludes that the NME methodology arrives at this conclusion mechanically because the DOC fails to cite any statutory provision that requires or achieves this result.

It appears that the general theory of this argument is that concurrent ADs and CVDs do not create automatic double remedies in market-economy ("ME") proceedings, because domestic subsidies automatically lower NV, and hence the dumping margins, *pro rata*. The NME AD methodology, on the other hand, produces a NV that is not affected by subsidies in any way, so that it necessarily exceeds what would have been the ME dumping margin by the full amount of the subsidy, thus creating a double remedy, which the statute requires the Department to offset. We reject this proposition.

There are several reasons why subsidies in ME cases would not necessarily lower the NV calculated by the Department, *pro rata*, below what it would have been absent any subsidies. Subsidies often come with conditions attached that reduce the cost savings to the recipient below the nominal amount of the benefit received. For example, subsidy recipients may be required to retain redundant workers, maintain higher levels of production than would be optimum, remain in economically disadvantageous locations, reduce pollution, obtain supplies from favored sources, and so forth. Even if subsidies come with no strings attached, there is no guarantee that they will result in a lower cost of production. Subsidies could be paid out as dividends, used to increase executive pay, or wasted in any number of ways.

Moreover, the statute provides that NV in ME cases is to be based on home market prices, where possible. Where NV is based on prices, the relationship of subsidies to NV becomes yet more tenuous. Not only is the extent to which the subsidies will affect costs uncertain, but, even to the extent that subsidies may lower costs, the extent to which the producer will pass these cost savings through to home market or third country prices is uncertain. Basic economic principles indicate that the prices are a function of the supply and demand for the product in the relevant market, so that any cost savings will be reflected in prices only indirectly.

Finally, to the extent that domestic subsidies lower NV in ME cases, they may lower export prices commensurately, so that the dumping margins may not change. Thus, it is not safe to conclude that subsidies in market economies automatically reduce dumping margins, still less that they automatically reduce dumping margins, *pro rata*.

The counterpoint to the argument that domestic subsidies automatically lower NVs (and, thus, dumping margins) in ME cases, *pro rata*, is that domestic subsidies have no effect whatsoever on NVs and, thus, dumping margins determined under the NME methodology. The GOC argues that domestic subsidies do not affect NV in NME cases because NV is essentially imported from surrogate, ME, countries. This premise is also incorrect as there are several ways in which subsidies can lower NME NVs.

For instance, although NME subsidies may not affect the factor values used to calculate NV in an NME proceeding, such subsidies may easily affect the quantity of factors consumed by the NME producer in manufacturing the subject merchandise. The simplest example would be where a domestic subsidy in an NME country enables an investigated producer to purchase more efficient equipment, lowering its consumption of labor, raw materials, or energy. When the SVs are multiplied by the NME producer's lower factor quantities, they result in lower NVs and, hence, lower dumping margins.¹⁰⁶ Any reduction in factor usage by NME producers would reduce NV in a second manner, because the final factor valuations are also used to calculate the amounts for overhead, SG&A, and profit that are additional components of NV.¹⁰⁷

The whole idea of comparing AD margins under the NME methodology to the theoretical margins that the Department would find if it treated China as an ME country is dependent upon other things being equal, so that any actual difference could be attributed to the difference in the distortion from subsidies. But this is not the case. The most obvious difference between NVs determined in ME and NME situations involves exchange rates. In ME proceedings, NVs are converted from the home market currency to the currency of the importing country at prevailing exchange rates. In NME proceedings, however, NVs are derived from the actual factors of production that are valued based on information from the surrogate country using the currency of the surrogate country. Thus, NVs in NME proceedings are not influenced by the exchange rate between the exporting country and the importing country. How the different roles that currencies play in NME and ME antidumping proceedings affect any difference in dumping margins calculated under the two methodologies is uncertain, and highly complex. What is certain, however, is that this key difference would prevent any simple comparison of NME and ME AD margins.

Respondents assert that the fact that the Department may find that an input for a particular product was provided for less than adequate remuneration in a CVD case, and then used an SV for that input in the AD case, proves that the subsidy lowered NV, *pro rata*. This conclusion is not logical. NME methodology involves more than the simple addition of input costs. It is a complex calculation that takes into consideration operating efficiencies, administrative expenses, the cost of capital, and numerous other factors. An SV for one factor of production that is higher than the price actually paid by the respondent company does not necessarily result in a higher dumping margin, nor does a lower SV for one factor of production necessarily result in a lower dumping margin. The individual elements of the NME methodology do not exist in a vacuum; the various elements necessarily work together. Moreover, TPCO did not provide evidence demonstrating how the countervailable CVD duty the Department found on steel billets in the companion CVD case lowered NV in this case.

Therefore, because of the reason explained above, the Department rejects the GOC's argument that the PRC prices and costs should be used to determine normal value. This is consistent with

¹⁰⁶ See section 773(c)(3) of the Act.

¹⁰⁷ See Hebei Metals & Mineral v. United States, 366 F. Supp. 2d at 1277 (citation omitted); Dorbest Ltd. v. United States, 452 F. Supp. 2d 1262, 1300-01 (CIT 2007).

Kitchen Racks¹⁰⁸ and OCTG.¹⁰⁹ Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

RECOMMENDATION

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

Agree

Disagree

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

¹⁰⁸ See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) and accompanying Issues and Decision Memorandum ("Kitchen Racks") at Comment 1.

¹⁰⁹ See Certain Oil Country Tubular Goods From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum ("OCTG") at Comment 7.