

February 23, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Steel Wire Garment Hangers from the People’s Republic of China:
Issues and Decision Memorandum for the Final Results of the
Second Antidumping Duty Administrative Review

SUMMARY: We have analyzed the case and rebuttal briefs of interested parties in the second administrative review of the antidumping duty order¹ on steel wire garment hangers from the People’s Republic of China (“PRC”). As a result of our analysis, we have made changes to the Preliminary Results.² We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties:

General Issues

- Comment 1: Zeroing
- Comment 2: Whether to Rescind the Review with Respect to Zhongbao
- Comment 3: Adverse Facts Available for Non-Responsive Companies

Surrogate Values

- Comment 4: Selection of Surrogate Financial Statement
- Comment 5: Proper Inflation for Labor Surrogate Value

Company-Specific Issue

- Comment 6: Correct Importer Name

¹ See Notice of Antidumping Duty Order: Steel Wire Garment Hangers From the People’s Republic of China, 73 FR 58111 (October 6, 2008).

² See Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review, 76 FR 66903 (October 28, 2011) (“Preliminary Results”).

BACKGROUND: The period of review (“POR”) is October 1, 2009, through September 30, 2010. The Department of Commerce (“Department”) invited parties to comment on our Preliminary Results within the deadlines established in 19 CFR 351.309(c)(1)(ii).

On November 17, 2011, Fabriclean³ submitted additional surrogate value information.⁴ On November 28, 2011, Petitioner⁵, Shanghai Wells⁶, and Fabriclean filed case briefs. On December 5, 2011, Petitioner filed a rebuttal brief. The Department did not hold a public hearing pursuant to 19 CFR 351.310(d) because no party requested one.

DISCUSSION OF THE ISSUES:

Comment 1: Zeroing

Fabriclean’s Arguments

- The Department should not have used the practice of “zeroing” when calculating Shanghai Wells’s dumping margin.
- The practice of zeroing was overturned by the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) in Dongbu Steel⁷ and, as a result, the Department should abandon the practice.
- In light of the decision of the Federal Circuit in Dongbu Steel, the Department should change the approach adopted in the Preliminary Results, choose a single consistent interpretation of the statutory language, and recalculate Shanghai Wells’s antidumping duty margins without “zeroing.”

No other party commented on this issue.

Department’s Position: We have not changed our calculation of the weighted-average dumping margin, as suggested by Fabriclean, in these final results.

Section 771(35)(A) of the Tariff Act of 1930, as amended (“the Act”), defines “dumping margin” as the “amount by which the normal value {“NV”} exceeds the export price {“EP”} or {“CEP”} of the subject merchandise.” Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. We disagree with Fabriclean that the Department’s zeroing practice amounts to an inconsistent interpretation of section 771(35)(A) of the Act. Because no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to

³ Fabriclean Supply Inc. (“Fabriclean”), a U.S. importer of subject merchandise.

⁴ See Letter from Fabriclean to the Secretary, re: “Steel Wire Garment Hangers from the People’s Republic of China: Publicly Available Information for the Final Results of Review,” dated November 17, 2011 (“SV submission”).

⁵ M&B Metal Products Co., Inc. (“Petitioner”).

⁶ Shanghai Wells Hanger Co., Ltd. (“Shanghai Wells”).

⁷ See Dongbu Steel Co. v. United States, 635 F.3d 1363 (Fed. Cir. 2011) (“Dongbu Steel”).

offset the amount of dumping found with respect to other sales. The Federal Circuit has held that this is a reasonable interpretation of section 771(35) of the Act.⁸

Section 771(35)(B) of the Act defines weighted-average dumping margin as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” The Department applies this section by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term “aggregate dumping margins” in section 771(35)(B) of the Act is consistent with the Department’s interpretation of the singular “dumping margin” in section 771(35)(A) of the Act, as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel the dumping margins found on other sales.

This does not mean that non-dumped transactions are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped transactions examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped transactions is included in the numerator. Thus, a greater amount of non-dumped transactions results in a lower weighted-average margin.

The Federal Circuit explained in Timken that denial of offsets is a “reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value.”⁹ As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate “masked dumping” before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.¹⁰

In 2007, the Department implemented a modification of its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations.¹¹ With this modification, the Department’s interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the Uruguay Round Agreements Act was specifically limited to address adverse World Trade Organization (“WTO”) findings made in the context of antidumping investigations using average-to-average comparisons. The Department’s interpretation of the statute was unchanged in other contexts.

⁸ See, e.g., Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) (“Timken”); see also Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) (“Corus I”); SKF USA, Inc. v. United States, 630 F.3d 1365, 1375 (Fed. Cir. 2011) (“SKF”) (“Even after Commerce changed its policy with respect to original investigations, we have held that Commerce’s application of zeroing to administrative reviews is not inconsistent with the statute.” (citation omitted)).

⁹ See Timken, 354 F.3d at 1342.

¹⁰ See, e.g., Timken, 354 F.3d at 1343; see also NSK Ltd. v. United States, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).

¹¹ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (“Zeroing Notice”).

It is reasonable for the Department to interpret the same ambiguous language differently when using different comparison methodologies in different contexts. In particular, the use of the word “exceeds” in section 771(35)(A) of the Act can reasonably be interpreted in the context of an antidumping investigation to permit negative average-to-average comparison results to offset or reduce the amount of the aggregate dumping margins used in the numerator of the weighted-average dumping margin as defined in section 771(35)(B) of the Act. The average-to-average comparison methodology typically applied in antidumping duty investigations averages together high and low prices for directly comparable merchandise prior to making the comparison. This means that the determination of dumping necessarily is not made for individual sales, but rather at an “on average” level for the comparison. For this reason, the offsetting methodology adopted in the limited context of investigations using average-to-average comparisons is a reasonable manner of aggregating the comparison results produced by this comparison method. Thus, with respect to how negative comparison results are to be regarded under section 771(35)(A) of the Act, and treated in the calculation of the weighted average dumping margin under section 771(35)(B) of the Act, it is reasonable for the Department to consider whether the comparison result in question is a product of an average-to-average comparison or an average-to-transaction comparison.

In U.S. Steel, the Federal Circuit considered the reasonableness of the Department’s interpretation not to apply zeroing in the context of investigations using average-to-average comparisons, while continuing to apply zeroing in the context of investigations using average-to-transaction comparisons pursuant to the provision at section 777A(d)(1)(B) of the Act.¹² Specifically, in U.S. Steel, the Federal Circuit was faced with the argument that, if zeroing were never applied in investigations, then the average-to-transaction comparison methodology would be redundant because it would yield the same result as the average-to-average comparison methodology. The Court acknowledged that the Department intended to continue to use zeroing in connection with the average-to-transaction comparison method in the context of those investigations where the facts suggest that masked dumping may be occurring.¹³ The Court then affirmed as reasonable the Department’s application of its modified average-to-average comparison methodology in investigations in light of the Department’s stated intent to continue zeroing in other contexts.¹⁴

In addition, the Federal Circuit recently upheld as a reasonable interpretation of ambiguous statutory language the Department’s continued application of “zeroing” in the context of an administrative review completed after the implementation of the Zeroing Notice.¹⁵ In that case, the Department had explained that the changed interpretation of the ambiguous statutory language was limited to the context of investigations using average-to-average comparisons and was made pursuant to statutory authority for implementing an adverse WTO report. We find that our determination in this administrative review is consistent with the Federal Circuit’s recent decision in SKF.

¹² See U.S. Steel Corp., v. United States, 621 F.3d 1351, 1362-63 (Fed. Cir. 2010) (“U.S. Steel”).

¹³ Id.

¹⁴ Id.

¹⁵ See SKF.

Furthermore, in Corus I, the Federal Circuit acknowledged the difference between antidumping duty investigations and administrative reviews, and held that section 771(35) of the Act was just as ambiguous with respect to both proceedings, such that the Department was permitted, but not required, to use zeroing in antidumping duty investigations.¹⁶ That is, the Court explained that the holding in Timken – that zeroing is neither required nor precluded in administrative reviews – applies to antidumping duty investigations as well. Thus, Corus I does not preclude the use of zeroing in one context and not the other.

Moreover, we disagree with Fabriclean that the Federal Circuit’s recent decision in Dongbu Steel requires the Department to change its methodology in this administrative review. The holding of Dongbu Steel, and the recent decision in JTEKT¹⁷, was limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus administrative reviews. The Federal Circuit did not hold that these differing interpretations were contrary to law. Importantly, the panels in neither Dongbu Steel nor JTEKT overturned prior Federal Circuit decisions affirming zeroing in administrative reviews, including SKF, in which the Federal Circuit affirmed zeroing in administrative reviews notwithstanding the Department’s determination to no longer use zeroing in certain investigations. Unlike the determinations examined in Dongbu Steel and JTEKT, the Department here is providing additional explanation for its changed interpretation of the statute subsequent to the Final Modification for Antidumping Investigations¹⁸ – whereby we interpret section 771(35) of the Act in certain investigations (when using average-to-average comparisons) differently than in other proceedings, such as administrative reviews. For all these reasons, we find that our determination is consistent with the holdings in Dongbu Steel, JTEKT, U.S. Steel, and SKF.

Accordingly, and consistent with the Department’s interpretation of the Act described above, in the event that any of the export transactions examined in this review are found to exceed NV, the amount by which the price exceeds NV will not offset the dumping found in respect to other transactions.

Comment 2: Weather to Rescind the Review with Respect to Zhongbao¹⁹

Petitioner’s Arguments

- Although the Department accepted Zhongbao’s no shipment certification, the Department should assign Zhongbao the PRC-wide rate because Zhongbao’s U.S. sales information on the record indicates that it shipped and sold subject merchandise to the United States during the POR.
- Zhongbao may have been complicit in the misclassification of subject merchandise by the U.S. importer, because of the description Zhongbao used in its commercial invoice to describe the merchandise it shipped and sold to the U.S. importer.²⁰

¹⁶ See Corus I, 395 F.3d at 1347.

¹⁷ See JTEKT Corporation v. United States, 642 F.3d 1378 (Fed. Cir. 2011) (“JTEKT”).

¹⁸ See Antidumping Proceedings: Calculation of the Weighted – Average Dumping Margin During an Antidumping Investigation; Change in Effective Date of Final Modification, 72 FR 3783 (January 26, 2007) (“Final Modification for Antidumping Investigations”).

¹⁹ Shaoxing Zhongbao Metal Manufactured Co., Ltd. (“Zhongbao”).

- The Department should refer this matter to U.S. Customs and Border Protection (“CBP”).

No other party commented on this issue.

Department’s Position: We disagree with Petitioner that we should assign Zhongbao the PRC-wide rate. There is no evidence that Zhongbao’s U.S. sales during the POR were subject to antidumping duties. In the Preliminary Results, the Department rescinded the review with respect to Zhongbao, because there is no evidence of an entry of subject merchandise by Zhongbao on the record of this proceeding.²¹

The Department’s practice is to only conduct an individual review for companies with suspended entries, and that practice is clearly stated in Tissue Paper from the PRC.²² Further, the Federal Circuit upheld the Department’s policy of rescinding administrative reviews when there are no entries.²³ In the Preliminary Results, the Department indicated that it would rescind this review with respect to Zhongbao, because there is no evidence on the record that Zhongbao’s U.S. sales entered during the POR were subject to antidumping duties.²⁴ Therefore, because the evidence on the record continues to demonstrate that Zhongbao’s entries during the POR were not subject to antidumping duties, we will rescind this review with respect to Zhongbao.

With regard to the Petitioner’s arguments that Zhongbao should be assigned the PRC-wide rate because it may have been complicit in merchandise meeting the description of the scope being improperly entered by the U.S. importer, we find Petitioner’s allegation unsupported by record evidence. In Zhongbao’s response to the Department’s request for further information regarding its alleged U.S. sale of subject merchandise during the POR, Zhongbao provided documentation upon which its separate rate certification was based.²⁵ Further, Zhongbao provided copies of its attempts to obtain the CBP CF-7501 entry documentation from its U.S. customer.²⁶ The record evidence demonstrates that Zhongbao attempted to cooperate with the Department’s requests for information to the best of its abilities. Therefore, we find Petitioner’s allegation of any complicity on the part of Zhongbao to misidentify subject merchandise on U.S. entry documentation unconvincing as there is no information on the record to support this allegation. Additionally, we intend to refer this matter to CBP to investigate whether this entry was entered properly.

²⁰ The description of the merchandise Zhongbao sold to the United States is business proprietary information. For further details, see, Letter from Zhongbao to the Secretary, re: Steel Wire Garment Hangers from the People’s Republic of China: First Supplemental Response, dated April 18, 2011 (“Zhongbao SRC Supp”) at 1 and Exhibit 1.

²¹ See Preliminary Results, 76 FR at 66904-05.

²² See Certain Tissue Paper Products from the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 18497, 18500 (April 4, 2008) (“Tissue Paper from the PRC”), unchanged in Certain Tissue Paper Products from the People’s Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 73 FR 58113 (October 6, 2008).

²³ See East Sea Seafoods LLC v. United States, 714 F. Supp. 2d 1243, 1248 n.3 (CIT 2010) (interpreting Allegheny Ludlum Corp. v. United States, 346 F.3d 1368, 1374 (Fed. Cir. 2003)).

²⁴ See Preliminary Results, 76 FR at 66904-05.

²⁵ See Zhongbao SRC Supp at 1 and Exhibit 1.

²⁶ Id.

Comment 3: Adverse Facts Available for Non-Responsive Companies

Petitioner's Arguments

- The Department should continue to use adverse facts available (“AFA”) and assign the PRC-wide rate to (1) Jiaxing Boyi Medical Device Co., Ltd.; (2) Shaoxing Liangbao Metal Manufactured Co., Ltd.; (3) Pu Jiang County Command Metal Products Co., Ltd.; (4) Shaoxing Guochao Metal Products Co., Ltd.; (5) Yiwu Ao-Si Metal Products Co., Ltd.; and (6) Shaoxing Meideli Metal Hanger Co., Ltd. because these companies were non-responsive after being selected as mandatory respondents.

No other party commented on this issue.

Department's Position: We agree with Petitioner and will continue to apply AFA to (1) Jiaxing Boyi Medical Device Co., Ltd.; (2) Shaoxing Liangbao Metal Manufactured Co., Ltd.; (3) Pu Jiang County Command Metal Products Co., Ltd.; (4) Shaoxing Guochao Metal Products Co., Ltd.; (5) Yiwu Ao-Si Metal Products Co., Ltd.; and, (6) Shaoxing Meideli Metal Hanger Co., Ltd. and to treat them as part of the PRC-wide entity because we have not received any information since the Preliminary Results that provides a basis for a reconsideration of those findings. We also continue to find that none of these six companies are eligible for a separate rate for these final results and, thus, remain subject to the PRC-wide entity rate.

Surrogate Values

Comment 4: Selection of Surrogate Financial Statements

Fabriclean's Arguments:

- The Department should not use Sterling Tools Limited's (“Sterling”) financial statement to calculate the surrogate financial ratios because Sterling does not consume or draw wire rod. Further its production and sales processes are not comparable to those of Shanghai Wells.
- The Department should use the Nasco Steels Private Limited (“Nasco”), J&K Wire & Steel Industries Ltd. (“JK Wire”), and Bansidhar Granites Private Limited (“Bansidhar”) financial statements to calculate the surrogate financial ratios because these companies consume wire rod and produce wire products.
- In Nasco's financial ratio calculation, the Department should categorize the line item “carriage” under raw materials because it is listed under “manufacturing expenses” in Nasco's financial statement. Additionally, the Department should categorize “salary,” employee state insurance (“ESI”), and provident fund (“P.F.”) as direct labor because these labor costs are included in the labor cost data India reported to the International Labor Organization (“ILO”).
- In Bansidhar's financial ratio calculation, the Department should categorize the Other Income line item “Balances Written Off” as an offset to selling, general, and administrative (“SG&A”) expenses because these amounts represent bad debts previously written off and the “Bad Debts” expense is included among the SG&A expenses. Further, the Department should include Bansidhar's salary, staff welfare expenses, and employee provident fund (“EPF”) expenses as direct labor.

Shanghai Wells' Arguments:

- The Department should use the 2009-2010 Bansidhar, JK Wire, and Nasco financial statements.

Petitioner's Arguments:

- The Department should continue to use Sterling's financial statement because it consumes wire rod and its products and production activity are reasonably similar to the manufacture of steel wire garment hangers.
- The Department should not use Bansidhar, JK Wire, or Nasco's financial statements because the financial statements do not contain a cash flow statement and are therefore incomplete.
- The Department should not use Bansidhar, JK Wire, or Nasco's financial statements of because they are only profitable because of extraordinary circumstances. Further, JK Wire benefited from a "Central Subsidy" and the Department does not consider financial statements from companies benefitting from subsidies.
- The Department should not use Bansidhar or Nasco's financial statements because they are small companies vis-à-vis the large PRC producers of subject merchandise.
- The Department should not use Nasco's financial statement because it produces hinges and uses hot-rolled steel as its primary raw material. Further, Nasco's financial statement may not be an original document because it contains no signatures or auditor's seal stamps.

Department's Position: We agree with Fabriclean that we should use the 2009-2010 Bansidhar, JK Wire, and Nasco financial statements to calculate surrogate financial ratios for the final results.²⁷ Additionally, as in the Preliminary Results, we continue to find Sterling's 2009-2010 financial statements an appropriate source to calculate surrogate financial ratios.²⁸

Section 773(c)(1) of the Act states that when the Department cannot calculate the NV of subject merchandise from a non-market economy ("NME") using the method described in section 773(a) of the Act, then the Department shall determine the NV "on the basis of the value of the factors of production utilized in producing the merchandise"²⁹ In so doing, section 773(c)(1) explains further that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors..." In choosing surrogate financial ratios, it is the Department's practice to use data from market-economy ("ME") surrogate companies based on the "specificity, contemporaneity, and quality of the data."³⁰

²⁷ Fabriclean submitted the 2009-2010 Bansidhar, JK Wire, and Nasco financial statements in its post-preliminary results surrogate value submission. See Letter from Fabriclean to the Secretary, re: SV submission, dated November 17, 2011 at Exhibit 3, 5 and 6.

²⁸ See Preliminary Results, 76 FR at 66910.

²⁹ Section 773(c)(1) of the Act also explains that the Department will add to this amount general expenses, profit, and the cost of containers, coverings, and other expenses. In calculating these amounts, our practice is to use non-proprietary financial statements of companies producing identical or comparable merchandise from the primary surrogate country, some of which may contain evidence of subsidization. See also 19 CFR 351.408(c)(4).

³⁰ See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 1. More specifically, the Department's criteria for selecting among surrogate companies' financial statements are: public availability, complete and

As Bansidhar, JK Wire, Nasco, and Sterling do not produce steel wire garment hangers or clothes racks, we must calculate surrogate financial ratios using producers of comparable merchandise.³¹ We find that the various fasteners produced by the surrogate companies are comparable to steel wire garment hangers, the subject merchandise, because fasteners, like steel wire garment hangers, are a downstream product of wire requiring additional manufacturing processes.³² Therefore, the Department has determined these financial statements as the best available information to calculate the surrogate financial ratios because such statements most accurately reflect the operating experience of the respondents.³³

The 2009-2010 Bansidhar, JK Wire, Nasco financial statements submitted by Fabriclean, and Sterling's financial statement on the record, cover the same time period, April 1, 2009, through March 31, 2010, and are, therefore, sufficiently contemporaneous with the POR, which comprises October 1, 2009, to September 30, 2010. Moreover, as described below in greater detail, the Department finds these financial statements are publicly available, complete and audited, and representative of the production experience of Shanghai Wells.³⁴

We disagree with Fabriclean's contention that Sterling did not consume wire rod in its production process. In the Preliminary Results, we acknowledged that we had previously disregarded Sterling's financial statement because it apparently indicated a raw material consumption quantity and value which did not include steel wire rod.³⁵ However, we also stated in the Preliminary Results that we further examined Sterling's financial statement and determined that the company consumes wire rod.³⁶ More specifically, we explained that in the section of Sterling's financial statement containing the description of its raw materials, "Cold Head Quality Steel/Wire Rods Straight Length Bar," does not contain any dashes under the columns of quantity or value for the rows labeled "Cold Head Quality" or "Steel Wire/Wire Rod" that would indicate that Sterling did not consume these inputs.³⁷ Accordingly, the Department has determined that the description "Cold Head Quality Steel/Wire Rods Straight

audited, representative, and contemporaneous with the POR. 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 at Comment 3 ("Chlorinated Isos IDM").

³¹ See, e.g., 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 at Comment 3; Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004) ("PRC Shrimp"), and accompanying Issues and Decision Memorandum at Comment 9F.

³² See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587, 47588 ("Hangers LTFV") and accompanying Issues and Decision Memorandum at Comment 3; see also, e.g., Chlorinated Isos IDM at Comment 3.

³³ Id.

³⁴ See Chlorinated Isos IDM at Comment 3.

³⁵ See Preliminary Results, 76 FR at 66910; see also First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994 (May 13, 2011) and accompany Issues and Decision Memorandum at Comment 2.

³⁶ See Preliminary Results, 76 FR at 66910.

³⁷ See id. (citing Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: "Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Preliminary Results," dated October 24, 2011 ("Prelim SV Memo") at 9-10).

Length Bar” describes all inputs used by Sterling and is not broken into separate identifiable raw materials items and therefore represents a single listing of the raw materials consumed by Sterling. Accordingly, we continue to find that Sterling consumed wire rod in its production process.³⁸

Fabriclean also argues that Sterling is unsuitable for calculating the surrogate financial ratios because the record indicates that Sterling uses a cold forging process to produce its fasteners rather than drawing wire. While Fabriclean contends that Sterling’s fasteners are produced using a cold forging process, the record indicates that cold forging is one manufacturing process among many others used by Sterling in the manufacture of its products.³⁹ Regardless whether Sterling uses a cold forging process, Sterling purchased wire rod which is primarily drawn into wire and used in the production fasteners.⁴⁰

Accordingly, because Sterling uses similar raw materials and a similar production process as subject steel wire garment hangers in question, and because Sterling’s financial statement is audited, complete, and contemporaneous, we find Sterling’s financial statement satisfies all of our preferred criteria for surrogate financial statements.

We disagree with Petitioner’s contention that Bansidhar, JK Wire, and Nasco’s financial statements are incomplete because they lack cash flow statements. The auditor reports of these three financial statements make no mention of a cash flow statement as part of the review conducted by the auditor.⁴¹ All of these financial statements have balance sheets and profit and loss accounts as indicated by the auditors’ report accompanying the financial statements.⁴² Further all three of these financial statements have the accompanying schedules, as well as the notes to those schedules.⁴³ Additionally, we disagree with Petitioner’s argument that Nasco’s financial statement is unsuitable because it does not appear to be an original copy, because it lacks company and auditor signatures and official stamps. Nasco’s financial statement is an electronic copy and the Department has previously accepted electronic copies of financial statements.⁴⁴ Accordingly, we find Bansidhar, JK Wire, and Nasco’s financial statements audited, complete, and publically available.

We disagree with Petitioner’s argument that Bansidhar and Nasco are small companies which make them inappropriate surrogates for PRC producers of hangers. Petitioner has provided no explanation as to why the size of a company should matter in our analysis of surrogate companies beyond stating that Bansidhar and Nasco’s pre-tax profit and turnover are small. The Department has long found that disparate production volume alone does not render unreasonable

³⁸ See Letter from Petitioner to the Secretary, re: SV submission, dated May 4, 2011, at Exhibit 4, page 54.

³⁹ See Letter from Fabriclean to the Secretary, re: SV submission, dated November 17, 2011, at Exhibit 12.

⁴⁰ Id.; see also Letter from Petitioner to the Secretary, re: SV submission, dated May 4, 2011, at Exhibit 4,

⁴¹ See Letter from Fabriclean to the Secretary, re: SV submission, dated November 17, 2011 at Exhibit 3, 5, and 6.

⁴² Id.

⁴³ Id.

⁴⁴ See First Administrative Review of Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) and accompanying Issues and Decision Memorandum at Comment 2d.

data from a surrogate producer.⁴⁵ Because Petitioner has presented no evidence that smaller companies affect the calculation of the surrogate financial ratios, the Department will not exclude Bansidhar and Nasco's financial statements without such evidence.⁴⁶ In other proceedings, the Federal Circuit has upheld the Department's decision to not exclude the financial ratios of smaller companies from consideration.⁴⁷

We also find unconvincing Petitioner's arguments that the Department should exclude Bansidhar, JK Wire, and Nasco's financial statements because of purported profitability resulting from extraordinary circumstances. While it is Department's practice to disregard surrogate financial statements that have not earned a profit,⁴⁸ among profitable companies, "the Department does not consider the degree of profitability in determining whether a company's financial statements should be considered for surrogate financial ratios."⁴⁹ The information on the record indicates that these companies were profitable and that the profit realized by these companies did not result from factors outside the normal course of business.⁵⁰ Additionally, we note that in using Nasco's statement, we have excluded the "other income" line item from the ratios calculation, as the source of this income is unclear. The Department has previously addressed the treatment of this particular line item in Nasco's financial statement and similarly excluded it in other proceedings.⁵¹

Petitioner also attempts to discredit the JK Wire financial statement by noting that it contains a line item called "Central Subsidy." Where we have reason to believe or suspect that the company producing comparable merchandise may have benefitted from countervailable subsidies, the Department may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements of a company that do not contain evidence of

⁴⁵ See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 68030 (December 5, 2003) and accompanying Issues and Decision Memorandum at Comment 1 ("Simply because the production process of the surrogate producer results in smaller production volumes does not render it unfit as a surrogate."); see also Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum at Comment 4 ("Regarding the petitioner's arguments about capacity, we do not believe that size or capacity of the surrogate producer always poses a necessary consideration.").

⁴⁶ See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 14 ("{W}e continue to believe that the Department should not exclude the financial statements of the smaller companies absent specific record evidence demonstrating that economies of scale affect the financial ratios.").

⁴⁷ See Dorbest Ltd. v. United States, 604 F.3d 1363, 1373-74 (Fed. Cir. 2010).

⁴⁸ See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁹ 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 at Comment 13.

⁵⁰ See Letter from Fabriclean to the Secretary, re: SV submission, dated November 17, 2011 at Exhibit 3, 5 and 6.

⁵¹ See Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 8907 (February 27, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

subsidization.⁵² Consequently, the Department does not rely on financial statements that indicate the company received subsidies that the Department previously found countervailable when there are other more reliable and representative data on the record for purposes of calculating the surrogate financial ratios.⁵³ However, Petitioner has not provided any further detail on this line item, and the record does not contain any evidence suggesting that the Department has found it to be countervailable. Therefore, the Department declines to exclude the JK Wire financial statement on this basis.

Petitioner contends that Nasco's financial statement should not be used for the final results because Nasco consumed a greater proportion of "M.S. wire" and "nail wire" relative to wire rod to produce nails and, thus, Nasco's manufacturing processes do not reflect respondents' production processes. While Nasco's financial statements indicate that it consumed less wire rod than M.S. wire and nail wire or a raw material, it did consume wire rod.⁵⁴ As stated above, the Department has determined that those financial statements for companies which clearly identify wire rod as a raw material should be considered the best available information to calculate the surrogate financial ratios because such statements most accurately reflect the production experience of the respondents.⁵⁵ Accordingly, because Nasco's financial statement indicates that it consumed wire rod in its production process, we consider Nasco's financial statement to be among those surrogate financial statements considered as the best available information to calculate the surrogate financial ratios.⁵⁶

With regard to Bansidhar's line items "Balances Written Off" and "Bad Debts," we agree with Fabriclean that the Department should categorize the Other Income line item "Balances Written Off" as an offset to SG&A expenses and include "Bad Debts" as a SG&A expense. Because we cannot go behind the financial statement to determine the appropriateness of including this item in the financial ratio calculations, we looked to information in Bansidhar's financial statement to determine the possible nature of the activity generating the miscellaneous income to see if a relationship exists between the activity and the general operations of the company.⁵⁷ It is the Department's practice to include miscellaneous revenues as an offset to SG&A when we cannot determine that the revenues are not related to specific manufacturing or selling activities.⁵⁸ The exception to our practice arises when the reported information and the information in the surrogate financial statement indicates otherwise, *i.e.*, the income has been reported as a factor of production, the income relates to a separate line of business, or the income relates to the disposal

⁵² See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 36630 (June 28, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

⁵³ Id.

⁵⁴ See Letter from Fabriclean to the Secretary, re: SV submission, dated November 17, 2011 at Exhibit 3, page 7.

⁵⁵ See Hangers LTFV and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁶ See Chlorinated Isos IDM at Comment 3.

⁵⁷ See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁸ Id.

of non-routine assets.⁵⁹ In this instance, we have not found any information in Bansidhar's financial statement or other record information to indicate that its Other Income categories are not related to the general operations of the company or related to specific manufacturing or selling activities. Therefore, we have categorized the Other Income line item "Balances Written Off" as an offset to SG&A expenses and included "Bad Debts" as a SG&A expense in the surrogate financial ratio calculations based on their treatment in Bansidhar's financial statement.⁶⁰

We also agree with Fabriclean that the Department should categorize the line item "carriage" under raw materials because it is listed under "manufacturing expenses" in Nasco's financial statement. Therefore, as in the previous administrative review of the subject merchandise, we have categorized Nasco's line item "carriage" under raw materials in its surrogate financial ratio calculation.⁶¹

We disagree, in part, with Fabriclean's arguments regarding the categorization of Bansidhar and Nasco's labor expenses. In PRC Shrimp, the Department determined that individually identifiable labor costs, which are separately identified and classified as manufacturing-related labor costs in the surrogate financial statements and included in Chapter 6A "Labor cost" and "Compensation of employees," should be categorized as direct labor expenses for purposes of the Department's calculation of surrogate financial ratios.⁶² Conversely, labor expenses categorized in the selling or administrative cost section of financial statements have nothing to do with the factory workers, but rather relate to the selling and administrative staff of the company and should be categorized as SG&A expenses.⁶³ Further, it is the Department's practice to accept data from the surrogate producer's financial statements *in toto*, rather than performing a line-by-line analysis of the types of expenses included in each category.⁶⁴ Accordingly, because Bansidhar's financial statement categorizes "Wages, Labour Welfare expenses, and ESI Expenses" under Schedule 11 "Manufacturing & Direct Expenses" we categorized these expenses as direct labor. Further, Bansidhar has listed Salary and Staff Welfare Exp. under Schedule 12 "Payment and Provision for Employees" and EPF expenses under Schedule 13 "Administrative Expenses," which all appear to relate to non-factory workers.

⁵⁹ See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729 (August 11, 2011) and accompanying Issues and Decision Memorandum at Comment 19; see also Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011) and accompanying Issues and Decision Memorandum at Comment 9.

⁶⁰ See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: "Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Final Results," dated concurrently with this notice ("Final SV Memo") at 2 and Exhibit 10.

⁶¹ See First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994 (May 13, 2011) and accompanying Issues and Decision Memorandum at Comment 2.

⁶² See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comment 5.

⁶³ See *id.*

⁶⁴ See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 15.

Therefore, we will categorize Bansidhar's salary, staff welfare, and EPF expenses as SG&A expenses. Similarly, because Nasco has categorized salary, ESI and P.F. under Schedule 13 "Sales & Administrative Expenses," we will categorize these expenses as SG&A expenses, given that they relate to Nasco's non-manufacturing expenses.

Consequently, for the final results of this review, the Department will calculate the surrogate financial ratios using Bansidhar, JK Wire, Nasco, and Sterling's financial statements because we find that these financial statements constitute reliable and representative data sources in that: (1) they are complete and contemporaneous; (2) they are from the primary ME surrogate country and from companies that produce products comparable to subject merchandise (*i.e.*, downstream products manufactured from steel wire rod); and (3) we have no reason to believe or suspect that JK Wire may have benefitted from subsidies previously found to be countervailable.

Comment 5: Proper Inflation for Labor Surrogate Value

Fabriclean's Arguments:

- The Department should use the monthly producer price index ("PPI") to inflate the labor surrogate value ("SV"). Alternatively, the Department should use monthly consumer price index ("CPI") data to inflate the labor SV if the Department does not use the PPI data.

Petitioner's Arguments:

- The Department should continue to inflate the labor SV using the CPI in accordance with the Department's policy and recent practice.

Department's Position: We agree with Petitioner that we should inflate the labor SV using CPI. However, we also agree with Fabriclean that we should inflate the labor SV using monthly CPI data to inflate the labor SV. In the Preliminary Results, we inflated the labor SV using only yearly CPI data.⁶⁵

On June 21, 2011, the Department published in the Federal Register its methodology for valuing labor, stating that it inflates earnings data to the year that covers the majority of the period of the proceeding using the relevant CPI.⁶⁶

Fabriclean argues that the Department should inflate the labor SV using PPI because the International Labor Organization ("ILO") Chapter 6A data indicates that the reported labor data reflects costs incurred by employers and that the Department's use of CPI is unfounded and unexplained. In past cases, the Department has demonstrated a relationship between the average increase in a country's CPI and its average wage rate and further found that there is a correlation between CPI and labor.⁶⁷ Further, the Department has previously stated that it views CPI as

⁶⁵ See Prelim SV Memo at 6 and Exhibit 13a-c.

⁶⁶ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092, 36094 (June 21, 2011).

⁶⁷ See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208 (November 17, 2010) and accompanying Issues and Decision Memorandum ("AR2 Activated Carbon IDM") at Comment 4f.

more representative of changes in labor rates, while the whole-sale price index (“WPI”) or PPI is more representative of prices for material goods.⁶⁸ It is the Department’s long-standing practice to inflate non-concurrent labor data using the preferred inflator, CPI, and Fabriclean has failed to provide a sufficient basis to abandon this practice or make an exception.⁶⁹ Accordingly, the Department will continue to use CPI data to inflate labor rates in this case, as they represent the best available information.

With regard to inflating the labor rate, we agree with Fabriclean that the Department should inflate the labor SV using monthly instead of annual CPI data, because the use of annual inflation rates results in the application of an entire year’s inflation to production costs that may not be representative of the entire year.⁷⁰ Accordingly, the Department will use monthly CPI data to inflate the labor rate monthly in the final results of this review.

Company-Specific Issue

Comment 6: Correct Importer Name

Shanghai Wells’ Argument:

- The Department used an incorrect importer name in the draft liquidation instructions issued by the Department.

Department’s Position: We agree with Shanghai Wells that the Department inadvertently used the incorrect importer name in the draft liquidation instructions.⁷¹ For the final results, we will use the correct importer name as reported by Shanghai Wells.⁷²

⁶⁸ See Manganese Metal From the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12440, 12442 (March 13, 1998).

⁶⁹ See AR2 Activated Carbon IDM at Comment 4f.

⁷⁰ See Pure Magnesium From the People’s Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 76945 (December 9, 2011) and accompanying Issues and Decision Memorandum at Comment 3; see also Electric Golf Cars From Poland: Final Results of Antidumping Duty Administrative Review, 57 FR 10334 (March 25, 1992) and accompanying Issues and Decision Memorandum at Comment 6.

⁷¹ See Memorandum to the File, from Bob Palmer, International Trade Compliance Analyst, Import Administration, re: “Steel Wire Garment Hangers From the People’s Republic of China, Importer-Specific Liquidation Instructions for Shanghai Wells Hanger Co., Ltd.,” dated October 24, 2011.

⁷² The importer name reported by Shanghai Wells is business proprietary information. For details regarding the importer reported by Shanghai Wells see Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: “Program Analysis for the Final Results of Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China: Shanghai Wells Hanger Co., Ltd.,” dated concurrently with this notice.

RECOMMENDATION

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

AGREE _____

DISAGREE _____

Paul Piquado
Assistant Secretary
for Import Administration

Date