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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Steel Wire Garment Hangers from
the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty Order¹ on steel wire garment hangers from the People’s Republic of China (“PRC”) for the period of review (“POR”) October 1, 2010, through September 30, 2011. The Department has preliminarily determined that the Shanghai Wells Group² did not sell subject merchandise in the United States at prices below normal value (“NV”).

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended, we will issue the final results of this review no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”).

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

² The Department previously found that Shanghai Wells Hanger Co., Ltd. (“Shanghai Wells”), Hong Kong Wells Ltd. (“HK Wells”) and Hong Kong Wells Ltd. (USA) (“Wells USA”) are affiliated and that Shanghai Wells and HK Wells comprise a single entity (collectively, “Shanghai Wells Group”). Because there were no changes in this review, we continue to find Shanghai Wells, HK Wells, and USA Wells are affiliated and that Shanghai Wells and HK Wells comprise a single entity. See Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review, 75 FR 68758, 68761 (November 9, 2010), unchanged in First Administrative Review of Steel Wire Garment Hangers From the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994, 27996 (May 13, 2011) (“PRC Hangers ARI”).



BACKGROUND

The Department received a timely request from M&B Metal Products Co., Inc (“Petitioner”), in accordance with 19 CFR 351.213(b), during the anniversary month of October, to conduct an administrative review of the antidumping duty order on steel wire garment hangers from the PRC.³ On November 30, 2011, the Department initiated this review with respect to 59 producers/exporters of subject merchandise.⁴

On February 28, 2012, Petitioner withdrew its request for an administrative review of 52 of the 59 companies under review.⁵ Thus, seven companies remain subject to this review.⁶ On July 11, 2012, the Department published a notice of rescission in the Federal Register for those companies for which the request for review was withdrawn and which also had a separate rate from a previous segment of this proceeding: Ningbo Dasheng Hanger Ind. Co., Ltd., Shanghai Jianhai International Trade Co., Ltd., Shaoxing Andrew Metal Manufactured, Shaoxing Dingli Metal Clotheshorse, Shaoxing Gangyuan Metal Manufacture, and Shaoxing Tongzhou Metal Manufactured Co., Ltd.⁷ The Department stated it would address the disposition of the remaining withdrawn companies that do not have a separate rate in the preliminary results of this review.⁸ For a detailed discussion of the remaining seven companies subject to this review, see the “Respondent Selection” and “Separate Rates” sections below.

On May 14, 2012, the Department published a notice in the Federal Register extending the deadline for issuing the preliminary results by 120 days to October 30, 2012.⁹ As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now November 1, 2012.¹⁰

³ See Letter from Petitioner to the Secretary of Commerce “Steel Wire Garment Hangers from China: Request for Third Administrative Review” (October 31, 2011).

⁴ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part, 76 FR 74041 (November 30, 2011).

⁵ See Letter from Petitioners to the Secretary of Commerce “Third Administrative Review of Steel Wire Garment Hangers from China – Petitioner’s Withdrawal of Review Requests for Specific Companies” (February 28, 2012).

⁶ These companies are: Pujiang County Command Metal Products Co., Ltd., Shanghai Wells Hanger Co., Ltd., Shangyu Baoxiang Metal Manufactured Co., Ltd., Shaoxing Liangbao Metal Manufactured Co., Ltd., Shaoxing Shunji Metal Clotheshorse Co., Ltd., Shaoxing Zhongbao Metal Manufactured Co., Ltd., and Zhejiang Lucky Cloud Hanger Co., Ltd.

⁷ See Steel Wire Garment Hangers From the People’s Republic of China: Partial Rescission of Antidumping Duty Administrative Review, 77 FR 40853 (July 11, 2012).

⁸ See id. at 40854 n.5.

⁹ See Steel Wire Hangers From the People’s Republic of China: Extension of Time Limit for Preliminary Results of the Third Antidumping Duty Administrative Review, 77 FR 28354 (May 14, 2012).

¹⁰ See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane” (October 31, 2012).

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (“the Act”), directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.¹¹ However, section 777A(c)(2) of the Act gives the Department the discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in an administrative review.

On December 1, 2011, the Department released CBP data for entries of subject merchandise during the POR under administrative protective order (“APO”) to all interested parties and invited comments regarding the CBP data and respondent selection.¹² On December 12, 2011, the Department received comments from Petitioner regarding respondent selection for this review.¹³ On December 12, 2011, the Department received an unsolicited quantity and value submission from the Shanghai Wells Group and a request from the same to be selected as a mandatory respondent in this review.¹⁴

On December 22, 2011, the Department issued the respondent selection memorandum after assessing its resources and determining that it could only reasonably examine two exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected the Shanghai Wells Group and Shaoxing Liangbao Metal Manufactured Co., Ltd. (“Shaoxing Liangbao”) as mandatory respondents.¹⁵ The Department sent the non-market economy antidumping questionnaire to the Shanghai Wells Group and Shaoxing Liangbao on December 28, 2011. As stated in the cover letter of our questionnaire, the deadlines for Section A was January 18, 2012, and for Sections C & D were February 3, 2012.¹⁶ On January 7, 2012, we received confirmation from FedEx that Shaoxing Liangbao had received the questionnaire dated December 28, 2011.¹⁷ Although we received a timely response from the Shanghai Wells Group,¹⁸ Shaoxing Liangbao did not respond to the Department’s Section A questionnaire and did not request an extension.

¹¹ See also 19 CFR 351.204(c) regarding respondent selection, in general.

¹² See Letter from Catherine Bertrand to All Interested Parties “2010 – 2011 Administrative Review of the Antidumping Duty Order on Steel Wire Garment Hangers from the People’s Republic of China: CBP Data for Respondent Selection” (December 1, 2011).

¹³ See Letter from Petitioner to the Secretary of Commerce “Third Administrative Review of Steel Wire Garment Hangers from China — Petitioner’s Comments on Respondent Selection” (December 12, 2011).

¹⁴ See Letter from Shanghai Wells to the Secretary of Commerce “Steel Wire Garment Hangers from the People’s Republic of China” (December 12, 2011).

¹⁵ See Memorandum from Irene Gorelik, Senior International Trade Analyst, Office 9 to James Doyle, Director, Office 9, “Third Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China: Selection of Mandatory Respondents” (December 22, 2011).

¹⁶ See Letters to Shanghai Wells and Shaoxing Liangbao from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People’s Republic of China: Non-Market Economy Questionnaire (December 28, 2011).

¹⁷ See Memorandum to the File from Kabir Archuleta, International Trade Analyst, Office 9, regarding Non-Market Economy Questionnaire Delivery Confirmation for Shaoxing Liangbao Metal Manufactured Co., Ltd. (January 20, 2012).

¹⁸ See Letter from the Shanghai Wells Group to the Secretary of Commerce regarding Section A Response (January 25, 2012).

On February 6, 2012, we selected Pu Jiang County Command Metal Products Co., Ltd (“Pu Jiang”) as a replacement mandatory respondent and served its U.S. counsel with the questionnaire.¹⁹ In our cover letter, we established a Section A questionnaire response deadline of February 27, 2012.²⁰ Pu Jiang did not respond to the Department’s Section A questionnaire and did not request an extension.

On March 8, 2012, we selected Shaoxing Shunji Metal Clotheshorse Co., Ltd. (“Shaoxing Shunji”) as a replacement mandatory respondent and served its U.S. counsel with the questionnaire.²¹ In our cover letter, we established a Section A questionnaire response deadline of March 29, 2012.²² Shaoxing Shunji did not respond to the Department’s Section A questionnaire and did not request an extension by the stated deadline.

On April 9, 2012, we selected Shaoxing Zhongbao Metal Manufactured Co., Ltd. (“Shaoxing Zhongbao”) as a replacement mandatory respondent and served its U.S. counsel with the questionnaire.²³ In our cover letter, we established a Section A questionnaire response deadline of April 30, 2012.²⁴ Shaoxing Zhongbao did not respond to the Department’s Section A questionnaire and did not request an extension.

On May 18, 2012, we selected Shangyu Baoxiang Metal Manufactured Co., Ltd. (“Shangyu Baoxiang”) and Zhejiang Lucky Cloud Hanger Co., Ltd. (“Lucky Hanger”) as replacement mandatory respondents and served its U.S. counsel with the questionnaire.²⁵ In our cover letter, we established a Section A questionnaire response deadline of June 8, 2012.²⁶ Shangyu Baoxiang and Lucky Hanger did not respond to the Department’s Section A questionnaire and did not request an extension.

¹⁹ See Memorandum to James C. Doyle, Director, Office 9, from Kabir Archuletta, International Trade Analyst, Office 9, regarding Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (February 6, 2012).

²⁰ See Letter to Pu Jiang from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China: Non-market Economy Questionnaire (February 6, 2012).

²¹ See Memorandum to James C. Doyle, Director, Office 9, from Kabir Archuletta, International Trade Analyst, Office 9, regarding Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (March 8, 2012).

²² See Letter to Shaoxing Shunji from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China: Non-market Economy Questionnaire (March 8, 2012).

²³ See Memorandum to James C. Doyle, Director, Office 9, from Kabir Archuletta, International Trade Analyst, Office 9, regarding Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (April 9, 2012).

²⁴ See Letter to Shaoxing Zhongbao from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China: Non-market Economy Questionnaire (April 9, 2012).

²⁵ See Memorandum to James C. Doyle, Director, Office 9, from Kabir Archuletta, International Trade Analyst, Office 9, regarding Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (May 18, 2012).

²⁶ See Letters to Shangyu Baoxiang and Lucky Hanger from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China: Non-market Economy Questionnaire (May 18, 2012).

Finally, the Department notes that on December 12, 2011, Petitioner submitted comments regarding respondent selection that also included certain allegations pertaining to shipments of subject merchandise that entered during the POR and questioning whether the proper antidumping duty rate had been applied upon entry.²⁷ The Department intends to forward this information to CBP for further investigation and enforcement, if appropriate.

SCOPE OF THE ORDER

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

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

DISCUSSION OF THE METHODOLOGY

Non-Market Economy (“NME”) Country Status

In every proceeding conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME shall remain in effect until revoked by the administering authority. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.²⁸ However, a company in the NME applying for separate rate status may

²⁷ See Letter from Petitioner to the Secretary of Commerce “Comments on Respondent Selection” (December 12, 2011), at pg. 2-4 and Exhibit 2.

²⁸ See Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, 70 FR 17233, 17233 (April 5, 2005) (“Policy Bulletin 05.1”), also available at: <http://ia.ita.doc.gov/policy/index.html>; see also 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, 53082 (September 8, 2006); and Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China, 71 FR 29303, 29307 (May 22, 2006).

rebut that presumption by demonstrating an absence of both de jure and de facto government control over its export activities.²⁹

The Department analyzes each entity's export independence under a test first articulated in Sparklers and as further developed in Silicon Carbide.³⁰ Importantly, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME") country, then the Department need not conduct a separate rate analysis to determine whether the company is independent from government control.³¹

The Department received a complete response to the Section A portion of the NME questionnaire from the Shanghai Wells Group, which contained information pertaining to the companies' eligibility for a separate rate. As noted above, Shaoxing Liangbao, Pu Jiang, Shaoxing Shunji, Shaoxing Zhongbao, Shangyu Baoxiang, and Lucky Hanger have terminated participation in this administrative review. Therefore, these five companies have failed to demonstrate their eligibility for a separate rate.

Separate Rate Recipients

Wholly Foreign-Owned

The Shanghai Wells Group reported that it is a wholly foreign-owned entity.³² Additionally, there is no evidence that the Shanghai Wells Group is under the control of the PRC government, and we have determined that further separate rate analysis is not necessary to determine whether this entity is independent from government control.³³ Thus, we have preliminarily granted separate rate status to the Shanghai Wells Group.

Facts Available

Sections 776(a)(1) and 776(a)(2) of the Act provide that, if necessary information is not available on the record, or if 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, then the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

²⁹ See Policy Bulletin 05.1.

³⁰ See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers"); see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585, 22586-87 (May 2, 1994) ("Silicon Carbide").

³¹ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

³² See Letter from Shanghai Wells to the Secretary of Commerce regarding Section A Questionnaire Response ("SAQR"), (January 25, 2012) at pg. 2 and 11.

³³ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China, 64 FR 71104, 71104-05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

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 suggested alternative forms 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 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, then the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department; and (5) the information can be used without undue difficulties.

However, section 776(b) of the Act states that if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department “in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.”³⁴ 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.”³⁵ An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.³⁶

Non-Responsive Companies

As stated in the “Respondent Selection” section above, the Department issued the NME questionnaire to Shaoxing Liangbao, Pu Jiang, Shaoxing Shunji, Shaoxing Zhongbao, Shangyu Baoxiang, and Lucky Hanger and did not receive a request for an extension of time or a response to Sections A, C or D of the Department’s questionnaire on the established deadlines. Therefore, the Department finds it appropriate to rely on the facts otherwise available in order to determine a margin Shaoxing Liangbao, Pu Jiang, Shaoxing Shunji, Shaoxing Zhongbao, Shangyu

³⁴ See also Uruguay Round Agreements Act Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1, at 870 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4198-99 (“SAA”).

³⁵ See *id.* at 870, 1994 U.S.C.C.A.N. at 4198-99.

³⁶ See section 776(b) of the Act; see also 19 CFR 351.308(c).

Baoxiang, and Lucky Hanger for purposes of these preliminary results, pursuant to section 776(a)(2) of the Act.³⁷

As stated above, section 776(b) of the Act provides that, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. As a result of these six companies' decision to terminate participation in this review, the Department will not grant these six companies a separate rate and considers them part of the PRC-wide entity. See "PRC-Wide Entity and Selection of Adverse Facts Available Rate" section below. See also the "Corroboration" section below for a discussion of the probative value of the PRC-wide rate of 187.25 percent rate.

PRC-Wide Entity and Selection of Adverse Facts Available ("AFA") Rate

The Department finds that the PRC-wide entity, including Shaoxing Liangbao, Pu Jiang, Shaoxing Shunji, Shaoxing Zhongbao, Shangyu Baoxiang, and Lucky Hanger withheld requested information, failed to provide information in a timely manner and in the form requested, and significantly impeded this proceeding. Moreover, by refusing to answer the Department's questionnaire, these six companies failed to cooperate to the best of their ability. Therefore, the Department must rely on AFA in order to determine a margin for the PRC-wide entity, pursuant to sections 776(a)(2)(A), (B), (C) and 776(b) of the Act.³⁸ By so doing, the Department avoids the concern that the PRC-wide entity might obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

As previously stated, the Department may rely on information derived from any of the following sources in deciding which facts to use as AFA: (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner."³⁹ In reviews, the Department normally selects as AFA the highest rate on the record of any segment of the proceeding.⁴⁰ The U.S. Court of International Trade ("CIT") and the U.S. Court of Appeals for the Federal Circuit

³⁷ See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Partial Rescission and Preliminary Results of the Sixth Administrative Review, 71 FR 11183, 11185-86 (March 6, 2006) (unchanged in final results); Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 18369, 18371 (April 11, 2005) (unchanged in final results).

³⁸ See, e.g., Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 69546, 69548 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1; see also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity), unchanged in Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007).

³⁹ See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8932 (February 23, 1998).

⁴⁰ See, e.g., 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, 3989 (January 22, 2009).

(“Federal Circuit”) consistently have upheld the Department’s practice in this regard.⁴¹ In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.”⁴² Therefore, consistent with the statute, court precedent, and its normal agency practice, the Department will use AFA to assign the rate of 187.25 percent, the highest rate on the record of any segment of the proceeding, to the PRC-wide entity (including Shaoxing Liangbao, Pu Jiang, Shaoxing Shunji, Shaoxing Zhongbao, Shangyu Baoxiang, and Lucky Hanger).⁴³

Corroboration of Information

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information on which it relies as facts available. The SAA defines secondary information as “information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁴⁴ The SAA also explains that the Department sufficiently corroborates secondary information when it determines that such information has probative value.⁴⁵ The Department previously has reasoned that “corroborated information” amounts to information it finds both reliable and relevant.⁴⁶

In this case, the Department selected the highest rate assigned in any segment of this proceeding (i.e., 187.25 percent) as the AFA rate for the current review. For purposes of corroboration, the Department will consider whether that margin is both reliable and relevant. The Department continues to find the information reliable, given that it corroborated the AFA rate used in the

⁴¹ See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190-91 (Fed. Circ. 1990) (“Rhone Poulenc”); see also, Shanghai Taoen Int’l Trading Co. v. United States, 360 F. Supp. 2d 1339, 1346-48 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335-36 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); Kompass Food Trading Int’l v. United States, 24 CIT 678, 683 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent).

⁴² See Rhone Poulenc, 899 F.2d at 1190 (emphasis omitted).

⁴³ See, e.g., Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049, 52051 (September 12, 2007).

⁴⁴ See SAA at 870, 1994 U.S.C.C.A.N. at 4199.

⁴⁵ See id.

⁴⁶ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

current review during the LTFV investigation.⁴⁷ No information has been presented in the current review that calls into question the reliability of this information. The Department considers information reasonably at its disposal to determine whether a margin continues to have relevance.⁴⁸ A selected margin remains relevant when it accurately reflects commercial practices in the industry.⁴⁹ For example, in Flowers, because the highest margin in that case was based on another company's uncharacteristic business expense resulting in an unusually high margin, the Department disregarded the margin as irrelevant.⁵⁰ Turning to the present case, the Department relied on credible information within the realm of actual selling practices to calculate the AFA rate during the LTFV investigation. In that proceeding, the Department took a simple average of the following: (1) the weighted-average of the calculated rates for the two mandatory respondents, and (2) a simple average of petition rates based on U.S. prices and normal values within the range of U.S. prices and normal values calculated for the two mandatory respondents.⁵¹ Furthermore, the calculation of this margin in the investigation was subject to comment from interested parties in the proceeding.⁵² Therefore, because the record of this review does not contain information that demonstrates that this rate is not appropriate to use as AFA, the Department determines that this rate has relevance.

As the 187.25 percent rate is both reliable and relevant, the Department determines that it has probative value. Accordingly, the Department determines that the calculated rate of 187.25 percent, which is the current PRC-wide rate, is in accord with the requirement of section 776(c) of the Act that secondary information be corroborated to the extent practicable (*i.e.*, that it have probative value). The Department has assigned this AFA rate to exports of the subject merchandise by the PRC-wide entity, which includes Shaoxing Liangbao, Pu Jiang, Shaoxing Shunji, Shaoxing Zhongbao, Shangyu Baoxiang, and Lucky Hanger.

Surrogate Country and Surrogate Value Data

On March 2, 2012, the Department sent interested parties a letter inviting comments on surrogate country selection and information regarding valuing factors of production ("FOPs").⁵³ On April 2, 2012, the Department received comments from Petitioner and Fabriclean Supply Inc. ("Fabriclean"), a U.S. importer of subject merchandise, on surrogate country selection.⁵⁴ For a

⁴⁷ See Steel Wire Garment Hangers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587, 47591 (August 14, 2008), as amended, Steel Wire Garment Hangers From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, 73 FR 53188, 53189 (September 15, 2008) ("Hangers LTFV").

⁴⁸ See section 776(c) of the Act.

⁴⁹ See Universal Polybag Co. v. United States, 577 F. Supp. 2d 1284, 1300 (CIT 2008).

⁵⁰ See Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) ("Flowers").

⁵¹ See Hangers LTFV, 73 FR at 53189; Steel Wire Garment Hangers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR at 47591.

⁵² See Steel Wire Garment Hangers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR at 47588.

⁵³ See Letter from Catherine Bertrand, Program Manager, Office 9, to Interested Parties "Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Deadlines for the Surrogate Country and Surrogate Value Comments" (March 2, 2012)

⁵⁴ See Letter from Petitioner to the Secretary of Commerce "Third Administrative Review of Steel Wire Garment

detailed discussion of the selection of the surrogate country, see “Surrogate Country” section below. On April 16, 2012, the Department received surrogate value comments from Petitioner and Fabriclean.⁵⁵ On April 26, 2012, the Department received surrogate value rebuttal comments from Fabriclean.⁵⁶ On April 30, 2012, the Department received surrogate value rebuttal comments from Petitioner.⁵⁷ On September 19, 2012, the Department received additional surrogate value data from Fabriclean.⁵⁸

Surrogate Country

When the Department is investigating imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then sections 773(c)(1) and 773(c)(4) of the Act direct it to base NV on the NME producer’s factors of production (“FOP”), to the extent possible, in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.⁵⁹ In this review, the Department determined that Colombia, Indonesia, the Philippines, Peru, South Africa, Thailand and Ukraine are countries whose per capita gross national income (“GNI”)⁶⁰ are comparable to the PRC in terms of economic development.⁶¹ Once we have identified the countries that are economically comparable to the PRC, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable.

Hangers from China: Petitioner’s Comments on Surrogate Country Selection” (April 2, 2012) (“Petitioner Surrogate Country Comments”); Letter from Fabriclean to the Secretary of Commerce “Surrogate Country Comments: Steel Wire Garment Hangers from the People’s Republic of China” (April 2, 2012) (“Fabriclean Surrogate Country Comments”).

⁵⁵ See Letter from Petitioner to the Secretary of Commerce “Third Administrative Review of Steel Wire Garment Hangers from China: Petitioner’s Surrogate Value Data” (April 16, 2012) (“Petitioner SV Comments”); Letter from Fabriclean to the Secretary of Commerce “Surrogate Value Comments: Steel Wire Garment Hangers from the People’s Republic of China” (April 16, 2012) (“Fabriclean SV Comments”).

⁵⁶ See Letter from Fabriclean to the Secretary of Commerce “Rebuttal Surrogate Value Comments: Steel Wire Garment Hangers from the People’s Republic of China” (April 26, 2012).

⁵⁷ See Letter from Petitioner to the Secretary of Commerce “Third Administrative Review of Steel Wire Garment Hangers from China: Petitioner’s Surrogate Value Rebuttal” (April 30, 2012).

⁵⁸ See Letter from Fabriclean to the Secretary of Commerce “Supplemental Surrogate Value Comments” (September 19, 2012) (“Fabriclean Supplemental SV Comments”).

⁵⁹ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin”).

⁶⁰ Although 19 CFR 351.408(b) instructs the Department to rely on gross domestic product (“GDP”) data in such comparisons, it is Departmental practice to use “per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department finds that the per capita GNI represents the single best measure of a country’s level of total income and thus level of economic development.” See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006).

⁶¹ The Department notes that these seven countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. See Letter from Catherine Bertrand to All Interested Parties “Third Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China: Deadlines for the Surrogate Country and Surrogate Value Comments,” (“Surrogate Country List”) (March 2, 2012) at 1 and Attachment I.

The comments from interested parties focus on the “significant producer” prong of the surrogate country selection analysis. Petitioner filed comments, stating that Thailand is economically comparable to the PRC, was the largest exporter of identical merchandise to the United States during the POR, and has quality data available, evidenced by the Department’s reliance on Thailand as a surrogate country in a number of other proceedings involving the PRC.⁶² Fabriclean also commented on surrogate country selection, stating that the Philippines is economically comparable to the PRC, is a significant producer of comparable merchandise (*i.e.*, wire, nails, wire rope, barbed wire, and other wire products), and has quality data that is publicly available.⁶³ Fabriclean’s submission included the financial statements of four Philippine producers of wire products that Fabriclean contests are comparable to subject merchandise and documentation regarding wire and nail manufacturer trade associations in the Philippines.⁶⁴

On September 19, 2012, Fabriclean submitted additional surrogate country comments and surrogate value (“SV”) data for Ukraine.⁶⁵ In its submission, Fabriclean maintained that the Philippines should be selected as the primary surrogate country in this review, but offered a complete set of Ukrainian SVs for the valuation of the Shanghai Wells Group’s FOPs based on the Department’s selection of Ukraine as the primary surrogate country in the recently published preliminary results of PRC Nails AR3 Prelim.⁶⁶

Economic Comparability

As stated above, the Department determined that Colombia, Indonesia, the Philippines, Peru, South Africa, Thailand and Ukraine are countries comparable to the PRC in terms of economic development.⁶⁷ Therefore, we consider all seven countries as having met this prong of the surrogate country selection criteria.

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Although the legislative history states that “the term ‘significant producer’ includes any country that is a significant net exporter and, if appropriate, Commerce may use a significant, net exporting country in valuing factors,”⁶⁸ that does not preclude reliance on additional or alternative metrics.⁶⁹ Moreover, neither the statute nor the Department’s regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources, such as the Policy Bulletin for guidance on defining

⁶² See Petitioner Surrogate Country Comments.

⁶³ See Fabriclean Surrogate Country Comments at 2-5.

⁶⁴ See Fabriclean Surrogate Country Comments at Exhibits 1 and 2.

⁶⁵ See Fabriclean Supplemental SV Comments.

⁶⁶ See Certain Steel Nails from the People’s Republic of China: Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 77 FR 53845, 53848-53849 (September 4, 2012) (“PRC Nails AR3 Prelim”).

⁶⁷ See Surrogate Country List.

⁶⁸ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 100 Cong. 2d Sess. (1988), reprinted in Cong. Rec. H2032 (Daily Ed. April 20, 1988).

⁶⁹ See Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262, 1274 n.5 (Ct. Int’l Trade 2006).

comparable merchandise. The Policy Bulletin states that “the terms ‘comparable level of economic development,’ ‘comparable merchandise,’ and ‘significant producer’ are not defined in the statute.”⁷⁰ The Policy Bulletin further states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”⁷¹ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.⁷² Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.⁷³ Importantly, the statute grants the Department discretion to examine various data sources for determining the best available information.⁷⁴

While Petitioner has placed evidence on the record of this review regarding exports of identical merchandise from Thailand to the United States,⁷⁵ Petitioner has not placed on the record of this review any financial statements of Thai producers of identical merchandise, which prevents the Department from reaching a conclusive determination that Thailand produces or is a significant producer of identical merchandise. While Petitioner did provide financial statements for two Thai companies, neither of these companies produce identical merchandise and it is questionable whether they produce comparable merchandise, as discussed in the “Data Availability” section below. In cases where the Department cannot discern whether identical merchandise is produced, “the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise.”⁷⁶ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, i.e., inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.⁷⁷

In this case, because the record did not contain reliable production data for identical merchandise, we analyzed which of the seven countries were exporters of comparable merchandise, as a proxy for production data, during the POR. We obtained export data using the Global Trade Atlas (“GTA”) for Harmonized Tariff Schedule (“HTS”) 7326.20: “Other Articles of Iron/Steel Wire.” We find that “Other Articles of Iron/Steel Wire” are comparable to subject merchandise because this is the HTS subheading that includes steel wire garment hangers and other downstream products manufactured from steel wire. The Department found that, of the

⁷⁰ See Policy Bulletin.

⁷¹ See id.

⁷² The Policy Bulletin also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” See id., at note 6.

⁷³ See Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65674 (December 15, 1997) and accompany Issues and Decision Memorandum at Comment 1 (to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute).

⁷⁴ See section 773(c) of the Act; Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

⁷⁵ See Petitioner Surrogate Country Comments at pg. 3-4 and Exhibit A.

⁷⁶ See Policy Bulletin, at 2.

⁷⁷ See id., at 3.

seven countries provided in the Surrogate Country List, all countries were exporters of comparable merchandise.⁷⁸ Therefore, because each of the seven countries on the Surrogate Country List satisfy the “economic comparability” and “significant producer” prongs of the surrogate country analysis, the Department also will consider data availability in selecting a surrogate country.⁷⁹ Importantly, “the country with the best factors data is selected as the primary surrogate country.”⁸⁰

Data Availability

When evaluating surrogate value data, the Department considers several factors including whether the surrogate value is publicly available, contemporaneous with the POR, from an approved surrogate country, tax and duty-exclusive, and specific to the input, and represents a broad market average.⁸¹ There is no hierarchy among these criteria; it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.⁸²

As noted above, between April 16, 2012, and September 19, 2012, the Department received surrogate country comments and surrogate value data from Petitioner and Fabriclean. Those submissions included full sets of data for valuing the Shanghai Wells Group's FOPs in the Philippines, Thailand, and Ukraine, including suitable values for the primary input, steel wire rod, with notable differences between the financial statements and labor data availability.

In its surrogate value comments, Petitioner placed on the record two financial statements of Thai companies for consideration: T.S. Steel Enterprise Co., Ltd. (“T.S. Steel”), and Capital Engineering Network Public Company Limited (“Capital Engineering”).⁸³ While these financial statements are publicly available and contemporaneous with the POR, the Department has several concerns with regard to their suitability for calculating surrogate financial ratios. First, record evidence suggests that T.S. Steel does not draw wire from steel wire rod,⁸⁴ *i.e.*, it does not employ an integrated wire-drawing process that closely matches the production process of the mandatory respondent. Further, T.S. Steel's financial statement demonstrates that the vast majority of its revenue is generated from the sale of handlifts and parts,⁸⁵ which is not comparable to subject merchandise. Second, the financial statement for Capital Engineering states that “[t]he principal business of the Company is investment”⁸⁶ and its other activities

⁷⁸ See Memorandum to the File from Kabir Archuleta, Analyst, through Catherine Bertrand, Program Manager, “Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Preliminary Results,” dated concurrently with these preliminary results, (“Prelim Surrogate Value Memo”) at Exhibit 1.

⁷⁹ See Policy Bulletin.

⁸⁰ See id.

⁸¹ See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

⁸² See Ad Hoc Shrimp Trade Action Comm. v. United States, 618 F.3d 1316, 1322 (Fed. Cir. 2010).

⁸³ See Petitioner SV Comments at Exhibits B and C.

⁸⁴ See Letter from Fabriclean to the Secretary of Commerce “Rebuttal Surrogate Value Comments” (April 26, 2012) (“Fabriclean Rebuttal SV Comments”) at Exhibit 2.

⁸⁵ See Petitioner SV Comments at Exhibit B, Note 13.

⁸⁶ See Petitioner SV Comments at Exhibit C, pg. 13.

include industrial equipment distribution, generation and distribution of energy, and construction and tunnel boring.⁸⁷ While Capital Engineering's financial statement also includes a subsidiary that appears to be engaged in wire production, the record does not demonstrate that this subsidiary draws wire from steel wire rod, that it produces any downstream products from wire that can be considered comparable, nor does it demonstrate the proportion of Capital Engineering's revenues that are generated from this line of business.⁸⁸ Thus, we find the two financial statements for Thai companies to be less appropriate for calculating the Shanghai Wells Group's financial ratios than the statements on the record from the Philippines.

As discussed in the "Factor Valuations" section below, the record contains four financial statements for Philippine producers of comparable merchandise.⁸⁹ Three of the four Philippine financial statements on the record are contemporaneous, exhibit no apparent evidence of subsidies, are for companies that produce comparable merchandise, and are for companies that employ an integrated wire-drawing production process that matches that of the Shanghai Wells Group.

With regard to the Ukraine financial statement submitted by Fabriclean, the Department has a stated preference for using multiple financial statements in order to determine surrogate financial ratios for factory overhead, selling, general, and administrative ("SG&A") expenses and profit.⁹⁰ By averaging the factory overhead, SG&A, and profit ratios derived from each, we attempt to eliminate potential distortions that may arise from using those of a single producer and arrive at broader-based surrogate values that minimize the particular circumstances of any one producer.⁹¹ Thus, because we have only one financial statement from the Ukraine and multiple such statements from the Philippines, we find that the financial statements from the Philippines constitute the best information on the record for calculating the surrogate financial ratios in this review.

Additional data availability concerns support the Department's selection of the Philippines as the primary surrogate country in this review. With regard to the labor data availability, only the Philippines reports labor data that is specific to manufacturing labor, specifically Manufacture of Fabricated Metal Products, Except Machinery and Equipment, while labor data reported by Thailand and Ukraine is not specific to any particular industry.⁹² Further, the most recently

⁸⁷ See *id.*, at pg. 13-14.

⁸⁸ See *id.*, at pg. 13 and Notes 5, 10, and 41.

⁸⁹ See Fabriclean Surrogate Country Comments at Exhibit 1.

⁹⁰ See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part, 75 FR 57449 (September 21, 2010), and accompanying Issues and Decision Memorandum at Comment 6; 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 at Comment 13.

⁹¹ See Certain Preserved Mushrooms from the People's Republic of China: Final Results of New Shipper Review, 66 FR 45006 (August 27, 2001) and accompanying Issues and Decision Memorandum, at Comment 1; Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) and accompanying Issues and Decision Memorandum at Comment 5.

⁹² See Prelim Surrogate Value Memo at Exhibit 2.

available labor data reported by Thailand and Ukraine is 2005 and 2006, respectively, whereas there is labor data available from the Philippines for 2008.⁹³

Accordingly, based on an analysis of the information on the record, the Department finds the SV data from the Philippines to be of superior quality than either the Thai or Ukrainian data because: (1) the Philippine financial statements on the record offer a selection of usable statements of producers of comparable merchandise, whereas the record only contains one usable statement from Ukraine and neither of the Thai financial statements appear to be for companies that produce comparable merchandise; (2) the labor data reported by the Philippines is specific to the manufacturing of fabricated metal products and is more contemporaneous than the data from Thailand and Ukraine. While the Department found Ukraine to be the appropriate surrogate country in PRC Nails AR3 Prelim based on the specificity of the steel wire rod SV to the respondents consumption and the contemporaneity of the financial statement, we note that the Nails record only contained a single financial statement from the only other viable surrogate country alternative in that review, Thailand, whereas here, we have multiple financial statements from a country other than Ukraine. Therefore, we find that of the countries listed on the Surrogate Country List, the data from the Philippines constitutes the best information available because: (1) the Philippines is at a level of economic development comparable to that of the PRC; (2) the Philippines is a significant exporter of comparable merchandise;⁹⁴ and (3) the Philippines provides the best opportunity to use quality, publicly available data to value the Shanghai Wells Group's FOPs. Because the record contains usable Philippine surrogate value data for all FOPs used by the Shanghai Wells Group, we have selected the Philippines as the surrogate country and, accordingly, have calculated NV using Philippine prices to value the respondent's FOPs, when available and appropriate.

Date of Sale

The Shanghai Wells Group reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date.⁹⁵ The Department preliminarily determines that the invoice date is the most appropriate date to use as the Shanghai Wells Group date of sale in accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale.⁹⁶

⁹³ See id.

⁹⁴ We note that while all countries on the Surrogate Country List had exports of comparable merchandise during the POR, the record demonstrates that multiple producers of comparable merchandise operate in the Philippines, evidenced by the three usable financial statements on the record, whereas the record only contains a single financial statement from the Ukraine and no usable financial statements from Thailand. We further note that Fabriclean has submitted evidence of the existence of wire and nail manufacturers' trade associations in the Philippines, which further underscores the contention that the country contains multiple producers of wire-related products, and, thus, we consider it to be a significant producer. See Fabriclean Surrogate Country Comments at Exhibits 1 and 2.

⁹⁵ See SAQR at pg. 12 and Letter from Shanghai Wells to the Secretary of Commerce regarding Section C and D Questionnaire Response (February 17, 2012) at pg. C-13.

⁹⁶ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

Fair Value Comparisons

To determine whether sales of steel wire garment hangers to the United States by the Shanghai Wells Group were made at less than NV, the Department compared either export price (“EP”) or constructed export price (“CEP”) to NV, as described in the “U.S. Price” and “Normal Value” sections below. In these preliminary results, the Department applied the average-to-average comparison methodology adopted in the Final Modification for Reviews.⁹⁷ In particular, the Department compared monthly, weighted-average EPs/CEPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.⁹⁸

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated EP for a portion of sales to the United States for the Shanghai Wells Group because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the sale price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price certain foreign inland freight, brokerage and handling (“B&H”), and international movement costs. Because the inland freight and B&H services were either provided by an NME vendor or paid for using an NME currency, the Department based the deduction of these charges on surrogate values.⁹⁹ For international freight provided by a ME provider and paid in U.S. dollars, the Department used the actual cost per kilogram (“kg”) of the freight.

Constructed Export Price

For some of the Shanghai Wells Group’s sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Chinese-based company by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by PRC service

⁹⁷ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) (“Final Modification for Reviews”).

⁹⁸ See *id.* at 8102.

⁹⁹ See Prelim Surrogate Value Memo for details regarding the SVs for movement expenses.

providers or paid for in renminbi, the Department valued these services using SVs (see “Factor Valuations” section below for further discussion). For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, see the company specific analysis memorandum, dated concurrently with these preliminary results.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an 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. Further, pursuant to section 773(c)(1) of the Act, the valuation of an NME respondent’s FOPs shall be based on the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the Department. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.

The Department used Philippine import statistics to value the raw material and packing material inputs that the Shanghai Wells Group used to produce the subject merchandise during the POR, except where listed below. With respect to the SVs based on Philippine import statistics, in accordance with the Omnibus Trade and Competitiveness Act of 1988 (“OTCA”) and long-standing agency practice, the Department has disregarded prices that it has reason to believe or suspect may be subsidized.¹⁰⁰ The Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific, export subsidies.¹⁰¹ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it has reason to believe or suspect that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies and that we should therefore disregard any data from these countries contained in the Philippine import statistics used to calculate SVs. The Department similarly disregarded prices from NME countries. Finally, imports that were labeled as originating from an “unspecified” country were excluded from the average value, since the

¹⁰⁰ See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

¹⁰¹ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19-20; See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.^{102, 103}

Factor Valuations

In accordance with section 773(c)(1) of the Act, for subject merchandise produced by the Shanghai Wells Group, the Department calculated NV based on the FOPs reported by the Shanghai Wells Group for the POR. The Department used data from Philippine import statistics and other publicly available Philippine sources in order to calculate SVs for the Shanghai Wells Group's FOPs (direct materials, energy, and packing materials) and certain movement expenses. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available Philippine SVs (except as noted below). Because the statute is silent concerning what constitutes the "best available information" for a particular SV, the courts have recognized that on this topic the Department may use "broad discretion to determine the best available information for an antidumping review."¹⁰⁴ The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.¹⁰⁵

In this case, the Department adjusted the SVs as necessary to ensure a fair calculation of production costs. First, the Department made adjustments to the SVs for exchange rates and taxes, and converted all applicable items to measurement on a per kg basis. Second, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, to accord with the decision of the Federal Circuit in Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997), the Department added to the Philippine import SVs a surrogate freight cost using the shorter of the reported distance between (1) the domestic supplier and the factory or (2) the nearest seaport and the factory.¹⁰⁶

We valued electricity using the 2011 prices published by the Manila Electric Company, which contains pricing data for electricity rates and other charges for residential and industrial customers. These electricity rates represent publicly available, broad-market averages.¹⁰⁷

We valued water using Philippine data based on two water utility companies providing service to the Manila metropolitan area: Manila Water Company Inc. (<http://www.manilawater.com/downloads/ltr.pse.sec.pdex.tariff.adjustment.jan2011.pdf>) and Maynilad Water Services, Inc.

¹⁰² See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552, 24559 (May 5, 2008), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008).

¹⁰³ See Prelim Surrogate Value Memo.

¹⁰⁴ See Ad Hoc Shrimp Trade Action Comm. v. United States, 618 F.3d 1316, 1322 (Fed. Cir. 2010).

¹⁰⁵ See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰⁶ See Prelim Surrogate Value Memo.

¹⁰⁷ See *id.*

(http://www.mayniladwater.com.ph/uploaded/Tariff_Rates_2012.pdf); and also data based on a water utility company covering all of the Philippines outside of Manila: the Local Water Utilities Administration (“LWUA”). We averaged all data from each of these sources and based the surrogate value on an average of the three figures.^{108, 109}

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.¹¹⁰ In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).¹¹¹

In these preliminary results, the Department calculated the labor input using the Labor method described in Labor Methodologies. To value the Shanghai Wells Group’s labor input, the Department relied on data reported by the Philippines to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under Division 28 (Manufacture of Fabricated Metal Products, Except Machinery and Equipment) of the ISIC-Revision 3 to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by the Philippines to the ILO under Division 28 of ISIC-Revision 3 standard, in accordance with Section 773(c)(4) of the Act.¹¹²

As stated above, the Department used Philippine ILO data reported under Chapter 6A of Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Because the financial statements used to calculate the surrogate financial ratios include itemized details of indirect labor costs, the Department made adjustments to the surrogate financial ratios.^{113, 114}

We valued truck freight expenses by averaging the rates charged by the Confederation of Truckers Association of the Philippines, Inc., and the distances to 92 destinations within the Philippines. We find these rates to be a broad market average of actual truck freight rates charged in the Philippines, specific to the input being valued, and contemporaneous with the POR.¹¹⁵

¹⁰⁸ See, e.g., Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part, 75 FR 5952 (February 5, 2010); unchanged in Wooden Bedroom Furniture From the People’s Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010).

¹⁰⁹ See Prelim Surrogate Value Memo.

¹¹⁰ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092, 36093-94 (June 21, 2011) (“Labor Methodologies”).

¹¹¹ See id.

¹¹² See Prelim Surrogate Value Memo.

¹¹³ See Labor Methodologies, at 76 FR 36093.

¹¹⁴ See Prelim Surrogate Value Memo.

¹¹⁵ See id.

We valued brokerage and handling expenses using a price list of export procedures necessary to export a standardized cargo of goods in the Philippines, as published in the World Bank's Doing Business 2012, Economy Profile: Philippines publication. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in the Philippines.¹¹⁶

To value factory overhead, selling, SG&A expenses, and profit, the Department is using the audited financial statements of Benedicto Steel Corporation ("Benedicto"), APO Industries, Inc. ("APO"), and Sterling Steel, Inc. ("Sterling"), for the year ending December 31, 2010. These companies are Philippine manufacturers of fasteners and wire-based products submitted by Fabriclean.¹¹⁷ While these companies produce comparable rather than identical merchandise, they appear to use an integrated wire-drawing production process with steel wire rod as the main input, which closely mirrors that of the mandatory respondent. We note that although Fabriclean submitted evidence indicating that all three of the aforementioned companies draw wire from steel wire rod, as does the Shanghai Wells Group, Fabriclean did not submit evidence that a fourth company, Supersonic Manufacturing Inc. ("Supersonic"), begins with steel wire rod in its production process.¹¹⁸ Accordingly, we are not using Supersonic's financial statement for these preliminary results because the record contains several usable financial statements from the primary surrogate country that more closely mirror the production experience of the respondent.¹¹⁹

Company Specific Issues

In its questionnaire responses and sales databases, the Shanghai Wells Group reported certain expenses incurred, and corresponding revenues earned, related to the transportation or movement of the subject merchandise sales during the POR.¹²⁰

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

¹¹⁶ See *id.*

¹¹⁷ See Fabriclean Surrogate Country Comments at Exhibit 1.

¹¹⁸ See Fabriclean Rebuttal SV Comments at Exhibit 4.

¹¹⁹ See Prelim Surrogate Value Memo.

¹²⁰ See Memorandum to the File from Kabir Archuletta, International Trade Analyst, "Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Preliminary Analysis Memo for Shanghai Wells Hanger Co., Ltd.," dated concurrently with these preliminary results.

Conclusion

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

(Date)