

February 20, 2009

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

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

SUBJECT: Certain Steel Threaded Rod from the People's Republic of China:
Issues and Decision Memorandum for the Final Determination of
Sales at Less Than Fair Value

SUMMARY:

We have analyzed the comments submitted in the investigation of steel threaded rod (“STR”) from the People’s Republic of China (“PRC”). As a result of our analysis, we have made changes from the *Preliminary Determination* and *Amended Preliminary Determination*.¹ 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 investigation for which we received comments on the *Preliminary Determination*:

Parts

I. General Issues:

- Comment 1: Surrogate Financial Ratios
- Comment 2: Treatment of Drawing Power as a Direct Material Input
- Comment 3: Wire Rod & Round Bar
- Comment 4: Hydrochloric Acid and Trisodium Phosphate

II. Ningbo Yinzhou Issues

- Comment 5: Application of Facts Available for Ningbo Yinzhou
- Comment 6: Ningbo Yinzhou and Zhonghuan/Guorui Verification Report
- Comment 7: Surrogate Value Selection—Galvanizing Surrogate Value

III. RMB & IFI Issues

- Comment 8: Surrogate Values—Packing Strips, Buckles, and Coal
- Comment 9: Limits to By-Product Offset
- Comment 10: Minor Corrections for the RMB & IFI Group

¹ See *Certain Steel Threaded Rod from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 58931 (October 8, 2008) (“*Preliminary Determination*”). See also *Certain Steel Threaded Rod from the People’s Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 63693 (October 27, 2008) (“*Amended Preliminary Determination*”).

BACKGROUND:

The period of investigation (“POI”) is July 1, 2007, through December 31, 2007. The Department of Commerce (“Department”) verified information submitted by: 1) the RMB Fasteners Ltd. and IFI & Morgan Ltd.² (the “RMB & IFI Group”) from November 3–4, 2008, and Jiaxing Brother Standard Part Co.³ (“Jiaxing Brother”), its affiliated producer from November 6–7, 2008; 2) Ningbo Yinzhou Foreign Trade Co., Ltd.⁴ (“Ningbo Yinzhou”) from November 13–14, 2008, and Haiyan Zhonghuan Fastener Factory (“Zhonghuan”), one of Ningbo Yinzhou’s manufacturers, and Zhejiang Guorui Industry Co., Ltd.⁵ (“Guorui”), one of Ningbo Yinzhou’s suppliers from November 10–12, 2008; and 3) Shanghai Prime Machinery Co., Ltd.⁶ (“Shanghai Prime”), a separate rate respondent, on November 17, 2008. On December 12, 2008, the Department allowed parties to place new factual information on the record, and provided all interested parties an opportunity to comment on this information.

In accordance with 19 CFR 351.309(c)(i), we invited parties to comment on our *Preliminary Determination*. On January 16, 2009, the Department received a case brief from Ningbo Yinzhou, the RMB & IFI Group, and Vulcan Threaded Products, Inc. (“Petitioner”). On January 23, 2009, the Department received rebuttal briefs from the RMB & IFI Group and Petitioner. No other party submitted case or rebuttal briefs. On November 6, 2008, Petitioner requested a hearing; on November 7, 2008, the RMB & IFI Group also requested a hearing; however, both requests were subsequently withdrawn on January 16, 2009, and January 22, 2009, respectively.

DISCUSSION OF THE ISSUES:

I. General Issues

Comment 1: Surrogate Financial Ratios

In the RMB & IFI Group’s January 16, 2009, case brief (“RMB & IFI Case Brief”), the RMB & IFI Group claims that, pursuant to the Department’s statutory requirement mandating the application of the “best available information” under section 773(c)(1) of the Tariff Act of 1930, as amended (“Act”), and among the Department’s established criteria for selecting appropriate

² See Memorandum to the File from Scot T. Fullerton, Program Manager, and Toni Dach, International Trade Compliance Analyst, regarding: “Verification of the Sales Response of RMB Fasteners Ltd. and IFI & Morgan Ltd. in the Antidumping Duty Investigation of Certain Steel Threaded Rod from the People’s Republic of China,” dated January 6, 2009 (“RMB & IFI Verification Report”).

³ See Memorandum to the File from Scot T. Fullerton, Program Manager, and Toni Dach, International Trade Compliance Analyst, regarding: “Verification of the Factors of Production Response of Jiaxing Brother Standard Part Co. in the Antidumping Duty Investigation of Certain Steel Threaded Rod from the People’s Republic of China,” dated January 6, 2009 (“Jiaxing Brother Verification Report”).

⁴ See Memorandum to the File from Scot T. Fullerton, Program Manager, and Toni Dach, International Trade Compliance Analyst, regarding: “Verification of the Sales Response of Ningbo Yinzhou Foreign Trade Co., Ltd. in the Antidumping Duty Investigation of Certain Steel Threaded Rod from the People’s Republic of China,” dated January 6, 2009 (“Ningbo Yinzhou Verification Report”).

⁵ See Memorandum to the File from Scot T. Fullerton, Program Manager, and Toni Dach, International Trade Compliance Analyst, regarding: “Verification of the Factors of Production Response of Haiyan Zhonghuan Fastener Factory and Zhejiang Guorui Industry Co., Ltd. in the Antidumping Duty Investigation of Certain Steel Threaded Rod from the People’s Republic of China,” dated January 6, 2009 (“Haiyan & Guorui Verification Report”).

⁶ See Memorandum to the File from Scot T. Fullerton, Program Manager, and Toni Dach, International Trade Compliance Analyst, regarding: “Verification of the Separate Rate Response of Shanghai Prime Machinery Co., Ltd. in the Antidumping Duty Investigation of Certain Steel Threaded Rod from the People’s Republic of China,” dated January 6, 2009 (“Shanghai Prime Separate Rate Verification Report”).

surrogate values: product specificity, country-wide price representativeness, tax exclusiveness, and contemporaneity to the POI,⁷ the product's specificity is paramount.

The RMB & IFI Group states that the wire drawing companies for whom they have placed financial statements on the record utilize comparable raw materials and production processes, including Nasco Steel Pvt. Ltd. ("Nasco Steel"), Deepak Fasteners Limited ("Deepak Fasteners"), Mangal Steel Enterprises Limited ("Mangal Steel"), Rajratan Global Wire Ltd. ("Rajratan Global"), Shri Bhagavati Bright Bar Ltd. ("Shri Bhagavati"), UIC Udyog Limited ("UIC Udyog"), and Visakha Wire Ropes Ltd. ("Visakha Wire Rope"). *See* RMB & IFI Case Brief at 3.

In Petitioner's January 23, 2009, rebuttal brief ("Petitioner's Rebuttal Brief"), Petitioner disputes the RMB & IFI Group's contention that the Department should include financial statements from wire drawing companies Rajratan Global, UIC Udyog, and Visakha Wire Rope.

Petitioner states that Rajratan Global is an exclusive producer of steel wire, which is an input consumed in the production of STR, and thus is not comparable to finished STR. Petitioner argues that in previous cases, the Department rejected wire rod producer financial statements where the subject merchandise was a downstream product of wire rod, and thus not comparable to STR.

Petitioner argues against the inclusion of the UIC Udyog financial statements, stating that in addition to producing steel wire, which is an input used in the production of STR, the company also produces other non-comparable products, as well as generating power from wind turbines. Petitioner points out that the financial statements do not segregate the significance of each division, and thus are not representative of an STR manufacturing company.

Petitioner also argues against the inclusion of the Visakha Wire Rope financial statements, arguing that the company is a producer of steel wire rope, which is a downstream product made from steel wire, but has an entirely different production process from STR. Petitioner argues that the manufacturing process is wholly dissimilar, and not comparable to STR, disqualifying its contention as a source for the surrogate financial ratios. *See* Petitioner Rebuttal Brief at 7–9.

The RMB & IFI Group argues that, with respect to the surrogate financial ratios, the Department includes financial statements for producers of identical or comparable merchandise that utilize comparable raw materials and production methods.⁸ The RMB & IFI Group asserts that, based

⁷ *Citing Polyethylene Retail Carrier Bag Comm. v. U.S.*, *Consol. Ct. No. 04-00319*, Slip Op. 05-157 at 49 & 65 (CIT 2005); and *Honey from the People's Republic of China: Notice of Final Results and Final Rescission, In Part, of Antidumping New Shipper Review*, 69 FR 64029 (November 3, 2004).

⁸ *Citing Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination*, 73 FR 66012 (November 6, 2008) ("CWCQ Line Pipe Prelim"); *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 9F; *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) ("Nails from the PRC"); *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) ("Chlorinated Isos"), and accompanying Issues and Decision Memorandum at 3; and *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) ("PRC Persulfates"), and accompanying Issues and Decision Memorandum at 1.

on the financial statements on the record of the investigation, Mangal Steel, Deepak Fasteners, and Shri Bhagavati are producers of identical merchandise and have virtually the same production experience as Jiaxing Brother, and therefore represent the best available information. Furthermore, the RMB & IFI Group argues, while the Department prefers to use multiple financial statements to derive its surrogate financial ratios,⁹ the Department may selectively apply only applicable financial statement(s).¹⁰ The RMB & IFI Group asserts that, if the Department selects a single financial statement, the Mangal Steel financial statements represent the best available information based on contemporaneity, public availability, production of identical merchandise, and similarity of production methods. However, the RMB & IFI Group asserts that, if the Department selects multiple financial statements to calculate the surrogate financial ratios, the Department should additionally utilize the Deepak Fasteners and Shri Bhagavati financial statements, as both companies produce comparable, if not identical merchandise to Jiaxing Brother, and utilize similar production processes. *See* RMB & IFI Case Brief at 7–15.

In its rebuttal brief, Petitioner counters the RMB & IFI Group’s contention that the Department should utilize the Mangal Steel financial statements as the sole financial statements used to calculate the surrogate financial ratios. Petitioner argues that Mangal Steel receives countervailable subsidies under the Duty Entitlement Pass Book Scheme (“DEPB”),¹¹ and that the Department consistently rejects financial statements that contain this subsidy. Furthermore, Petitioner points out that Mangal Steel’s reported profit is less than the government’s subsidy, noting that the company is otherwise an unprofitable company, and should be disqualified from consideration as a contributing source to calculate the surrogate financial ratios. *See* Petitioner’s Rebuttal Brief at 1–2.

Petitioner disputes the RMB & IFI Group’s contention that the Department should include the Shri Bhagavati financial statements in the calculation of the surrogate financial ratios, as the company was not profitable in 2007.¹² Moreover, Petitioner points out that Shri Bhagavati is designated as a “sick company” under applicable Indian law,¹³ and its financial statements appear incomplete. Petitioner also asserts that, despite its website claims, based on its financial statements, Shri Bhagavati does not appear to manufacture or sell STR. *See* Petitioner’s Rebuttal Brief at 3–4.

Petitioner argues against using Deepak Fasteners financial statements in the calculation of the surrogate financial ratios, as Deepak Fasteners received subsidies under the DEPB scheme.¹⁴

⁹ *Citing Shanghai Foreign Trade Enters. Co. v. United States*, 318 F. Supp. 2d 1339, 1341 (CIT 2004).

¹⁰ *Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005); and *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007), and accompanying Issues and Decision Memorandum at Comment 12.

¹¹ *See* Surrogate Values for the Final Determination on Behalf of Jiaxing Brother Standard Part Co., Ltd. (December 12, 2008) (“RMB & IFI SV Submission”), at Exhibit 1A: Mangal Financial Statement at Schedule J (“Export Incentives Receivable”); Schedule L (“Export Incentives”); and Schedule S (“Export incentives are accounted for on accrual basis and include the estimated value of export incentives receivable under the Duty Entitlement Pass Book Scheme).

¹² *See* RMB & IFI SV Submission at Exhibit 4A: “Director’s Report,” “Balance Sheet and Company’s General business Profile,” and “Profit and Loss Account.”

¹³ *Citing* Clause (O) of Sub section (1) of Section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985.

¹⁴ *See* August 25, 2008, RMB & IFI SV Submission at Exhibit 2a: Annexure XIX, Note 4(c).

Furthermore, Petitioner points out that the Deepak Fasteners financial statements appear to be incomplete. *See* Petitioner’s Rebuttal Brief at 5.

Petitioner disputes the RMB & IFI Group’s contention that the Department should utilize the Nasco Steel financial statements in the calculation of the surrogate financial ratios, as Nasco Steel is not a producer of comparable merchandise, its operations are extremely small and unrepresentative of large Chinese producers, and Nasco Steel’s financial statements report an unspecified source of income which should not be accounted for in the calculation of the surrogate financial ratios. *See* Petitioner’s Rebuttal Brief at 7.

The RMB & IFI Group argues that the Department should reject the financial statement of Lakshmi Precision Screws (“Lakshmi Screws”), placed on the record by Petitioner, for purposes of calculating the surrogate financial ratios, as there is no record evidence to demonstrate that Lakshmi Screws is a producer of STR. Specifically, the RMB & IFI Group argues that the Department should reject the Lakshmi Screws financial statements based on industry experts opinions, asserting that Lakshmi Screws is not a producer of comparable subject merchandise, as they produce automotive fasteners, which is entirely different in production and application from the fasteners produced by Jiaxing Brother. Furthermore, the RMB & IFI Group points out that the financial statement is not contemporaneous with the POI, and asserts that the Department’s prefers more contemporaneous information.¹⁵ The RMB & IFI Group also points out that the Department recently rejected the Lakshmi Screws financial statements in the final determination of *Nails from the PRC*, as the Department found that Lakshmi Screws’ production was not comparable to steel wire nails, and thus is likewise not comparable to STR. Additionally, the RMB & IFI Group identifies Lakshmi Screws from its financial statements as an “integrated producer” and thus should not be used to value surrogate financial ratios in the instant investigation. *See* RMB & IFI Case Briefs at 15–18.

Petitioner counters the RMB & IFI Group’s assertion that the Department should disregard the Lakshmi Screws financial statements for the purposes of calculating the surrogate financial ratios, stating that Lakshmi Screws utilizes similar raw materials and production processes to STR. Petitioner also argues that the financial statement indicates that Lakshmi Screws is a producer of STR, utilizes similar raw materials, and closely resembles the production processes of the respondents. *See* Petitioner Rebuttal Brief at 9–10.

The RMB & IFI Group argues that the Department should reject the Sarda Energy and Minerals Limited (“Sarda Energy”) financial statements, placed on the record by Petitioner, as there is no record evidence to suggest that Sarda Energy is a producer of comparable merchandise. Furthermore, the RMB & IFI Group argues that Sarda Energy is a vertically integrated company that owns coal mines and manufactures its own steel, which is wholly dissimilar to Jiaxing Brother’s production experience. Furthermore, the RMB & IFI Group states that Sarda Energy is an integrated steel producer and electric company that is subject to the DEPB program, which the Department has previously classified as a countervailable subsidy program and therefore the

¹⁵ *Citing 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), and accompanying Issues and Decision Memorandum at 9F.

Department should reject the consolidated Sarda Energy financial statements.¹⁶ *See* RMB & IFI Case Briefs at 18–22.

The RMB & IFI Group argues that the Department should also reject the Welspun Power and Steel Limited (“Welspun Power”) financial statements, placed on the record by Petitioner, for purposes of calculating the surrogate financial ratios, as there is no record evidence to suggest that Welspun is a producer of subject merchandise or comparable products, but is a vertically integrated manufacturer of products that are not comparable to Jiaxing Brother’s STR, including yarns, pipe, and textiles. The RMB & IFI Group also indicates that Welspun Power participates in the Kutch Incentive Scheme, which the Department may find is a countervailable rebate scheme. *See* RMB & IFI Case Briefs at 22–23.

Petitioner disagrees with the RMB & IFI Group’s contention that Welspun Power is not appropriate to include in calculating the surrogate financial ratios. Petitioner argues that Welspun is a significant producer of comparable merchandise, and that there is no record evidence to indicate that the Kutch Incentive Scheme is subject to countervailable subsidies. *See* Petitioner Rebuttal Brief at 11.

The RMB & IFI Group also argues that the Department should reject the Sterling Tools Limited (“Sterling Tools”) financial statements, placed on the record by Petitioner, for purposes of calculating the surrogate financial ratios, as Sterling Tools is a producer of custom high-tensile automotive oriented fasteners and other custom non-comparable types of fasteners. The RMB & IFI Group argues that the non-comparability of Sterling Tool’s manufactured high-tensile fasteners is evidenced by the fact that Sterling Tools owns “NABL certified laboratories” for research and quality control of automotive fasteners, which is unnecessary for subject STR produced by Jiaxing Brother. The RMB & IFI Group claims that the fasteners produced by Sterling Tools, like Lakshmi Screws, is similarly non-comparable in terms of intended final product application and manufacturing processes. *See* RMB & IFI Case Briefs at 24–26.

Petitioner rebuts the RMB & IFI Group’s contention that Sterling Tools is not appropriate to include in the calculation of the surrogate financial ratios. Petitioner argues that Sterling Tools manufactures products using similar raw materials and utilizes a production process similar to that of STR, and specifically produces fasteners. *See* Petitioner Rebuttal Brief at 11.

In its January 16, 2009, case brief (“Petitioner’s Case Brief”), Petitioner argues that the Department should reject the Nasco Steel financial statements from the calculation of the surrogate financial ratios, as there is no record evidence to suggest that Nasco produces any products comparable to STR, but rather manufactures hinges. Moreover, Petitioner argues that based on its financial statements, Nasco’s production process is dissimilar to the production process in manufacturing STR, and merely uses wire rod as an ancillary material in producing hinges. Furthermore, Petitioner asserts that Nasco is a small company and is thus not representative of large Chinese producers. *See* Petitioner’s Case Brief at 6–7.

¹⁶ *Citing CWCQ Pipe Prelim*, at 66019–66020; *Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products From India*, 71 FR 7916 (February 16, 2006); and affirmed in *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006).

Petitioner claims that the Nasco Steel financial statements are not appropriate to determine the surrogate financial ratios, arguing that the Department normally treats increases in stock related to work-in-progress as a reduction to raw material costs, while increases to finished goods or raw materials are excluded from the ratio calculation. However, Petitioner argues that Nasco Steel classified its increase in stock as revenue, in order to appear profitable. Petitioner asserts that because the revenue line item for stock increases is unclear, Nasco Steel's profitability is ambiguous, and therefore the financial statements are unsuitable for the purposes of calculating the surrogate financial ratios.

Furthermore, Petitioner asserts that the Department erred in the preliminary determination and should not treat Nasco Steel's reported "other income" as an offset to selling, general, and administrative ("SG&A") expenses for the final determination. Petitioner argues that without clarification of the "other income" category, it is not possible to identify the source of the revenue, which may be more properly allocated as SG&A, and therefore, using "other income" to offset SG&A would constitute double counting. Rather, Petitioner argues that the Department should use the financial statements of comparable producers: 1) Sarda Energy—producers of rolled long products, including thermo mechanically treated ribbed bars ("TMT bars") for construction; 2) Welspun Power—producers of rolled long products, including TMT bars; and 3) Sterling Tools—producers of bolts, nuts, screws, and cold forged high-tensile fasteners. *See* Petitioner's Case Briefs at 7–10.

In its rebuttal brief, the RMB & IFI Group disputes Petitioner's contention that the financial statements of Nasco Steel should be rejected because it is a producer of non-comparable merchandise in favor of the financial statements of Sarda Energy, Welspun Power, and Sterling Tools, and argues that there is no record evidence that any of Petitioner's recommended companies are producers of subject merchandise. The RMB & IFI Group argues that Sarda Energy and Welspun Power produce a steel product that is far too general to compare to Jiaying Brother's STR, and that there is no record evidence to suggest that Sarda Energy and Welspun Power produce any comparable merchandise. Furthermore, the RMB & IFI Group argues that while Sterling Tools produces steel products, purportedly similar to STR by Petitioner, there is no record evidence to support Petitioner's claim that it is similar to STR produced by Jiaying Brother. Moreover, the RMB & IFI Group asserts that Nasco Steel, unlike Sarda Energy, Welspun Power, and Sterling Tools, consumes comparable grade steel wire drawing rods, which is more similar to STR than high-end fasteners, and thus the Department should include the Nasco Steel financial statements in calculating the surrogate financial ratios. *See* RMB & IFI Rebuttal Brief at 13–16.

Department's Position:

Of the financial statements on the record of the investigation, the Department has determined that only the 07/08 Nasco Steel, 06/07 Lakshmi Screws, and 07/08 Sterling Tools are appropriate sources for the purposes of calculating the surrogate financial ratios. In selecting surrogate values for factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market-economy country. In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy

surrogate companies based on the “specificity, contemporaneity, and quality of the data.”¹⁷ Moreover, for valuing factory overhead, SG&A, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. See 19 CFR 351.408(c)(4) and section 773(c)(4) of the Act.¹⁸

The Department’s criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent’s experience, and publicly available information. See, e.g., *Chlorinated Isos*, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3; *PRC Shrimp* at Comment 9F.

The Department also rejects financial statements of surrogate producers whose production process is not comparable to the respondent’s production process when better information is available. See, e.g., *Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) (“*PRC Persulfates*”) and the accompanying Issues and Decision Memorandum at Comment 1.

Moreover, Congress indicated the Department should “avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.” See *Omnibus Trade and Competitiveness Act of 1988*, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988). Therefore, where the Department has a reason to believe or suspect that the company may have received subsidies, it may consider that the financial ratios derived from that company’s financial statements are less representative of the financial experience of that company or the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. See, e.g., *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decision Memorandum at Comment 1C.

As we stated in *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) (“*Tires*”) at Comment 17.A, it is the Department’s practice to disregard financial statements where we have reason to suspect that the company has received actionable subsidies, and where there is other usable data on the record. Specifically, we stated,

{s}ection 351.408(c)(4) of the Department’s regulations further stipulates that the Department normally will value manufacturing overhead, SG&A expenses and profit using “non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.” In complying with the statute and the regulations, the Department calculates the financial ratios based on contemporaneous financial statements of companies producing comparable merchandise from the surrogate country, some of which may contain evidence of subsidization. However, where the Department has a reason to believe or suspect that the company producing comparable merchandise

¹⁷ See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁸ See, e.g., *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 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 2 (“*Diamond Sawblades*”).

may have received actionable subsidies, it 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 that do not contain evidence of subsidization. Consequently, the Department does not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios.

Additionally, as we stated in *Tires* at Comment 17.A, the Department has used financial statements with some evidence of subsidies when the circumstances of the particular case warranted such use. In particular, we stated,

{t}he Department also has previously accepted the financial statement of a surrogate producer (Pidilite) which contained evidence that the company received a subsidy that the Department had found to be countervailable.¹⁹ However, in that case the only other reliable alternative was Reserve Bank of India data, which was not industry-specific and comprised two sets of data, one based on 997 selected public limited companies based in India and the other based on 2,204 selected public limited companies based in India.²⁰ Consequently, the Department found, in that case, that the financial ratios of Pidilite, a producer of identical merchandise, represented the best available information on the record in comparison to the extremely broad-based data from the Reserve Bank of India. *See {Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004) and accompanying Issues and Decision Memorandum}* at Comment 1.

Rejected Financial Statements:

Based on the criteria discussed above, for the final determination, the Department has disregarded the following financial statements: 07/08 Rajratan Global, 07/08 UIC Udyog, 07/08 Visakha Wire Ropes, 07/08 Shri Bhagavati, 07/08 Welspun Power, 07/08 Mangal Steel, 06/07 Deepak Fasteners, and 07/08 Sarda Energy.

With respect to the 07/08 Rajratan Global and 07/08 UIC Udyog financial statements, consistent with its finding in *Hangers from the PRC*,²¹ the Department agrees with Petitioner that the financial statements of companies that produce inputs—which are consumed in manufacturing the subject merchandise—would not capture downstream costs of producing STR. Wire rod is a general production material input that often involves value-added further manufacturing in order to produce a finished (or semi-finished) steel product, including STR, and is thus less comparable to STR than companies that produce finished steel products. Furthermore, with respect to Visakha Wire Ropes, the Department agrees with Petitioner that the company does not

¹⁹ See *Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 From India*, 69 FR 67321 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment IV.A.1.b.

²⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 1(summary of parties comments).

²¹ See *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008) (“*Hangers from the PRC*”), and accompanying Issues and Decision Memorandum at Comment 3.

appear to manufacture products comparable to STR. Therefore, for the final determination, the Department finds that the 07/08 Rajratan Global, 07/08 UIC Udyog, and 07/08 Visakha Wire Ropes financial statements are not appropriate sources for the surrogate financial ratios, as the companies do not constitute the best available information.

With respect to the 07/08 Shri Bhagavati financial statements, the Department agrees with Petitioner that Shri Bhagavati is a “sick” company, as classified under Indian law. While the Department has previously applied the financial statements of “potentially sick” companies, it is the Department’s practice not to use, in the calculation of the surrogate financial ratios, the financial statements of companies officially designated as “sick” by the Indian government when there are other usable financial statements available. *See, e.g., 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 14, and *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 3. Thus, for the final determination, the Department has determined not to use the 07/08 Shri Bhagavati financial statements for purposes of calculating the surrogate financial ratios.

Consistent with the Department’s past practice, the Department has also rejected the 07/08 Mangal Steel, 06/07 Deepak Fasteners, 07/08 Sarda Energy, and 07/08 Welspun Power financial statements for the purposes of calculating the surrogate financial ratios, as the companies are recipients of Indian subsidies that the Department has previously deemed countervailable.²² Specifically, the Mangal Steel,²³ Sarda Energy,²⁴ and Deepak Fasteners²⁵ financial statements identify the companies’ participation in the DEPB subsidy, while Welspun Power²⁶ participates in the Export Promotion Capital Goods Scheme (“EPCG”) subsidy.^{27 28}

Additionally, the Department agrees with Petitioner that the Deepak Fasteners financial statements appear to be incomplete. In addition to information identified by Petitioner which appears to be missing from the company’s “Balance Sheet Abstract and Company’s General Business Profiles,” the Department also notes that the “Consolidated Profit and Loss Account for the Year Ending 31-03-07” references schedules V and XIV, which are also missing from the

²² *See e.g., Certain Iron-Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 64 FR 61592, 61597 (November 12, 1999) (unchanged in final results); *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 (September 12, 2007); *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

²³ *See* 2007–2008 Mangal Steel financial statements at Schedule S (Significant Accounting Policies & Notes on Accounts) at item vi (Revenue Recognition); and Schedule L (Sales & Related Income) “Export Incentives.”

²⁴ *See* 2007–2008 Sarda Energy and Minerals Limited financial statements at Schedule L.

²⁵ *See* 2007–2008 Deepak Fasteners financial statements at Annexure XIX (Notes on Account) at item 4c (Revenue Recognition).

²⁶ *See* 2007–2008 Welspun Power financial statements at Schedule 21 (Accounting Policies and Notes to Accounts) at item 2iii (Contingent Liabilities not provided for in respect of).

²⁷ *See* <http://ia.ita.doc.gov/esel/eselframes.html>.

²⁸ The Department has previously found the Kutch Incentive Scheme to be not countervailable.

record. Therefore, in addition to the reference to the countervailable subsidy, the Department also finds that the 06/07 Deepak Fasteners financial statements are incomplete and thus less reliable for purposes of calculating the surrogate financial ratios.

Utilized Financial Statements:

Of the remaining financial statements (07/08 Nasco Steel, 06/07 Lakshmi Screws, and 07/08 Sterling Tools), the Department notes that none of the companies are manufacturers of products that are identical to subject STR. In this case, to determine the best available information, the Department must determine the comparability of the products they manufacture in the absence of producers of identical merchandise to subject STR. As there is no hierarchy for applying the above-mentioned criteria for determining comparability for the purposes of selecting which financial statements to use, the Department's decisions in such situations must necessarily be case-by-case. For the final determination, in terms of comparability, absent additional record evidence to evaluate the difference between high-tensile fasteners produced by Lakshmi Screws and Sterling Tools, and the steel products produced by Nasco Steel, the Department finds that all three companies are producers of merchandise comparable to the subject STR. The Department finds that the production of fasteners is a significant portion of the business of Lakshmi Screws, Sterling Tools, and Nasco Steel. Furthermore, the Department finds that all three financial statements are appropriate sources given that no usable financial statements are available for producers of identical merchandise. For the final determination, the Department finds that Lakshmi Screws, Sterling Tools, and Nasco Steel are producers of steel products, which are comparable to the subject merchandise, and thus constitutes the best available information.

The Department finds that the 06/07 Lakshmi Screws and 07/08 Sterling Tools financial statements meet the Department's surrogate value selection criteria for the purposes of calculating the surrogate financial ratios. We recognize the affidavits provided by the RMB & IFI Group placed on the record discussing the difference between high-tensile fasteners and the STR produced by the RMB & IFI Group. While high-tensile fasteners for the automotive industry may be different than the fasteners produced by the RMB & IFI Group in terms of raw materials and process, pursuant to section 773(c)(1) of the Act, record evidence demonstrates that both Lakshmi Screws and Sterling Tools nevertheless produce steel threaded fasteners, and thus, of the remaining financial statements, are manufacturers of products that are comparable, albeit more specialized.

Additionally, while the 06/07 Lakshmi Screws financial statements do not overlap by month with the POI, the Department finds that a four-month difference is not a basis upon which to exclude the 06/07 Lakshmi Screws financial statements as a surrogate value source. *See Zhejiang Native Produce & Animal By-Products Import & Export Group Corp., et. al. v. United States*, Court No. 06-00234; Slip Op. 08-68 at 42 (CIT June 16, 2008) ("*Zhejiang v. United States*"), where the Court found that a several month difference in contemporaneity is not material.

With respect to comparability, the Department notes that there is no record evidence to suggest that the high-tensile fasteners are more or less comparable to STR than the steel fastener products manufactured by Nasco Steel. Therefore, the Department finds that Nasco Steel is also a producer of comparable steel products. Furthermore, the Department notes that the Nasco Steel financial statements are contemporaneous to the POI and thus meet the Department's surrogate selection criteria. With respect to Petitioner's assertions that a company's size bears

upon the suitability of the Nasco Steel financial statements, without additional record evidence to suggest that the Nasco Steel's experience is not representative of an STR producer's experience, the Department finds that the company's size alone is an insufficient basis upon which to conclude the representative nature of a company's financial statements, and therefore, is not a sufficient basis upon which to exclude financial statements from consideration.

Furthermore, the Department disagrees with Petitioner's characterization of Nasco Steel's accounting practices regarding classification of "increases/decreases in stock." The Department finds that including increases in stock as an income line item is a common Indian accounting practice, as evidenced by the other financial statements on the record of the instant investigation including Welspun Power and Sarda Energy,²⁹ and arbitrarily excluding the income does not indicate that the company is unprofitable. Furthermore, the Department disagrees that it erred in its treatment of "increase/decrease in stock." Consistent with the Department's practice in calculating surrogate financial ratios,³⁰ the Department finds that the "increases in stock" in the Nasco financial statements refers to changes in finished goods, and is therefore appropriately excluded from the surrogate financial ratio calculation. *See, e.g., Steel Wire Garment Hangers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008), and accompanying Surrogate Values Memo at Attachment 1 (unchanged in *Steel Wire Garment Hangers From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 53188 (September 15, 2008)). Furthermore, the Department finds that its treatment of the "increase in stock" line item is mutually exclusive of Nasco Steel's accounting standards, and that the Department's classification methodology does not need to adhere to Indian accounting principles when calculating the surrogate financial ratios. Regardless of the Indian accounting classifications, the Department allocates incomes and expenses, in the calculation of the surrogate financial ratio, to best represent the costs associated with the manufacturing of the comparable merchandise. Thus, despite the difference in the treatment of the "increase in stock" line item, the Department finds that the Nasco Steel financial statements are suitable surrogate financial statements based on the Department's surrogate value criteria.

With respect to the "other incomes" line item, the Department agrees with Petitioner that without further evidence regarding the nature of the revenue and its relationship to production/sales incomes, it is inappropriate to include the line item in the calculation of the financial ratios for the final determination.

Therefore, for the final determination, the Department finds that the 06/07 Lakshmi Screws, 07/08 Sterling Tools, and 07/08 Nasco Steel financial statements meet the Department's surrogate value selection criteria, and thus constitute the best available information pursuant to section 773(c)(1) of the Act.

²⁹ See Petitioner's December 12, 2008, surrogate value submission at exhibit 1 and 3: 2007/2008 Welspun Power and Steel Limited Audited Financial Statements: Profit and Loss Account (and schedule 16); and *see* 2007/2008 Sarda Energy and Minerals Limited Annual Report: Profit and Loss Account at 51.

³⁰ *See e.g., Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45729 (August 6, 2008), and accompanying Surrogate Values Memorandum at exhibit 8 (unchanged for the Final Determination).

Comment 2: Treatment of Drawing Powder as a Direct Material Input

The RMB & IFI Group argues that the Department should treat drawing powder as a consumable or store, rather than a direct material, as none of the surrogate financial statements identifies drawing powder as a raw material input. The RMB & IFI Group argues that because the surrogate financial statements most likely classify drawing powder as a consumable or store, the Department's treatment of drawing powder as a direct material input would constitute double counting. *See* RMB & IFI Case Brief at 29.

Petitioner rebuts the RMB & IFI Group's assertion that the Department should treat drawing powder as an SG&A item rather than a direct material. Petitioner asserts that in previous cases, the Department has rejected this argument and determined that drawing powder is appropriately classified as a direct material input.³¹ *See* Petitioner Rebuttal Brief at 12.

Department's Position:

While the Department agrees with the RMB & IFI Group that in general, SG&A expenses should not be treated as a direct material input, in the instant investigation, the Department will continue to treat drawing powder as a direct material input consistent with its past treatment of drawing powder in *Hangers from the PRC* and *Nails from the PRC*.³² The Department has, in previous proceedings, addressed the treatment of materials purported to be overhead expenses and found that materials normally classified by a respondent as an overhead expense, but consumed for the purpose of manufacturing subject merchandise, are properly considered factors of production ("FOPs").³³ The Department notes that drawing powder is consumed in the production of the subject merchandise. *See* the RMB/IFI Group's response to the Department's sections C and D questionnaire, dated July 30, 2008, at D-3. Furthermore, although drawing powder is not identified in the financial statements as a raw material input, we note that it is also not specifically identified as a "chemical/store," or any other ancillary production material which is more appropriately categorized as a SG&A line item in any of the potential surrogate financial statements. Rather, the Department notes that, financial statements often do not provide a comprehensive listing of all individual direct materials consumed during manufacturing, but typically only identify major materials consumed. Therefore, without additional record evidence demonstrating that drawing powder is more appropriately treated as an SG&A line item, the Department will continue to treat drawing powder as a direct material input, consistent with *Nails from the PRC*.

³¹ *Citing Hangers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 2; and *Nails from the PRC*, and accompanying Issues and Decision Memorandum at Comment 17 and 20E.

³² *See Hangers from the PRC*; and *Nails from the PRC*, and accompanying Surrogate Values Memorandum at Exhibit 2.

³³ *See Nails from the PRC*, 73 FR 33977, and accompanying Issues and Decision Memorandum at Comment 20E; *see also Diamond Sawblades* 71 FR 29303 and accompanying Issues and Decision Memorandum at Comment 2; *Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 31514 (May 18, 2000), and accompanying Issues and Decision Memorandum ("*Silicomanganese from the PRC*"), at Miscellaneous Issues, Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China*, 60 FR 56045, 56051 (November 6, 1995).

Comment 3: Wire Rod & Round Bar

Petitioner asserts that the Department should use alternative sources to value wire rod and round bar. Petitioner argues that the Department should use the monthly prices for wire rod and round bar as reported by the Joint-Plant Committee (“JPC”)— a joint industry/government board that monitors Indian steel prices, which is usually considered to be a more reliable source than the average import values reported by the World Trade Atlas (“WTA”). Petitioner argues that the JPC price data is publicly available, specific to round bar and wire rod, represents broad market averages, and are tax-exclusive in accordance with 19 CFR 351.408(c)(1). In comparison, Petitioner asserts that the WTA data is not specific with respect to carbon content, which is an important characteristic of subject STR, and that the Department has previously used JPC data to value steel wire rod. Petitioner argues that the WTA values for wire rod and round bar are unexpectedly lower than the values of ingots and billets as reported by Indian steel producing companies on the record of the instant investigation,³⁴ which are less processed products than wire rod and round bar and thus should have lower values than wire rod and round bar. Therefore, Petitioner argues that, for the final determination, the Department should reject the WTA values for wire rod and round bar as unreliable, and instead apply the JPC values, which have been previously recognized by the Department as reliable and representative. *See* Petitioner’s Case Brief at 11-12.

The RMB & IFI Group rebuts Petitioner’s assertion that the Department should apply the JPC data to value wire rod and round bar. Specifically, the RMB & IFI Group claims that, rather than preferring JPC data, the Department evaluates the suitability of potential surrogate value data on a case-by-case basis and determines the suitability of information as indicated by the particular details of the instant case.³⁵ The RMB & IFI Group asserts that in both *Hangers from the PRC* and *Nails from the PRC*, based on the specific details present in those cases, the Department found compelling reasons to support the application of the JPC data; however, the RMB & IFI Group argues that those circumstances are not present in the instant investigation of STR. Here, the record evidence regarding the sizes of the wire rod reportedly consumed by Jiaying Brother and verified by the Department, the WTA data is more specific to value the RMB & IFI Group’s consumption of round bar and wire rod. The RMB & IFI Group also asserts that, based on the timely filed new information provided after the preliminary determination, the Department used the proper WTA Harmonized Tariff Schedule (“HTS”) category to value wire rod. The RMB & IFI Group claims that where it is unable to further define or clarify information, the Department applies the respondent’s classification for both wire rod and round bar. Furthermore, to address any aberrant values, the RMB & IFI Group recommends that the Department remove small import values.³⁶ *See* RMB & IFI Rebuttal Brief at 1–9.

The RMB & IFI Group further rebuts Petitioner’s contention by asserting that the WTA import data is superior to the JPC data and constitutes the best available information to value wire rod and round bar. The RMB & IFI Group claims that the Petitioner has not provided record evidence to demonstrate that the JPC prices are actual sales prices. Furthermore, the RMB & IFI Group argues that while the WTA HTS categories are general categories, the Department

³⁴ *Citing* potential surrogate value financial statements of Sarda Energy, Welspun Power, and Nasco Steel.

³⁵ *Citing Nails from the PRC*, 73 FR 3928–3937, and the *Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People’s Republic of China*, 73 FR 15726–15734 (March 25, 2008).

³⁶ *Citing Mittal Steel Galati S.A. v. United States*, 502 F. Supp. 2d 1295, 1307–08 (CIT July 18, 2007).

regularly relies on WTA as the best available information according to section 773(c)(1) of the Act.³⁷ See RMB & IFI Rebuttal Brief at 9–11.

Furthermore, the RMB & IFI Group also rebuts the price benchmark established by Petitioner, which is predicated upon the price of steel ingots and billets from the Sarda Energy and Welspun Power financial statements, to evaluate the efficacy of the WTA based surrogate values for round bar and wire rod. The RMB & IFI Group argues that ingots and billets are not comparable to wire rod or round bar, and are thus inappropriate to use to evaluate the price of wire rod or round bar. The RMB & IFI Group points out that, where wire rod was consumed by Nasco Steel, the price is, in fact, very similar to the WTA import price applied to value wire rod. The RMB & IFI Group asserts that the Department has previously declined prices reported by Indian manufacturer in favor of country-wide WTA import statistics as the best available information.³⁸ See RMB & IFI Rebuttal Brief at 11–13.

Department’s Position:

Consistent with 773(c)(1) of the Act, the Department finds that the WTA import values applied during the *Preliminary Determination* continue to be the best available information on the record to value wire rod and round bar for the final determination. The Department’s criteria for selecting surrogate value information are normally based on the use of publicly available information, in which the Department considers the quality, specificity, and contemporaneity of the data. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079 (September 8, 2006) (“CLPP”), and accompanying Issues and Decision Memorandum at Comment 3.

In determining the most appropriate surrogate value to apply to the FOPs, the Department carefully considers the available evidence with respect to the particular facts of each case and evaluates the suitability of each surrogate value source on a case-by-case basis. See *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (“*Mushrooms*”); see also *Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2. As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input and make a product and case-specific decision as to what constitutes the “best” available surrogate value for each input. See *Mushrooms*.

While the Department has previously applied JPC data to value wire rod,³⁹ the Department finds that based on the evidence available in the instant investigation, the WTA import values

³⁷ Citing *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Polyester Staple Fiber from the People’s Republic of China*, 72 FR 19690 (April 19, 2007) (“*PRC PSF*”), and accompanying Issues and Decision Memorandum at Comment 8.

³⁸ Citing *PRC PSF*, and accompanying Issues and Decision Memorandum at Comment 5 and 7; and *Honey from the People’s Republic of China: Notice of Final Results and Final Rescission, In Part, of Antidumping Duty New Shipper Review*, 69 FR 64029 (November 3, 2004).

³⁹ See e.g., *Nails from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.

represent information that better encapsulates the gauges of wire rod and round bar consumed by respondents during the production of the subject merchandise. With respect to Petitioner's assertion that the Department previously applied the JPC data to value carbon steel wire rod, the Department notes that in the instant case, neither WTA nor JPC makes specific reference to the carbon content of the wire rod or round bar.

The Department notes that the JPC data provides prices for only two gauges of wire rod and three gauges of round bar. However, respondents consumed a considerably wider range of gauges for both wire rod and round bar.⁴⁰ Unlike *Nails from the PRC*, where respondents consumed a narrow range of gauges of wire rod similar to the price of wire rod reported by JPC, in the instant case, respondents consumed a large range of gauges. Thus, the level of specificity that made the JPC data appropriate in *Nails from the PRC* is not present in the instant investigation. Therefore, the Department finds that the JPC prices—while specific to wire rod and round bars—are not a suitable match, as the data does not adequately represent the full range of wire rod and round bar gauges consumed by respondents. Attributing the average price of only two gauges as representative of the entire range may potentially skew the accuracy of the surrogate value. Inasmuch as the JPC data is narrow, the WTA average import price covers a broader array of merchandise, which, in the instant case, provides for a more appropriate match to the full range of gauges for the steel bars and rods consumed by respondents. The Department finds that, in the instant case, the broader WTA import data, which encapsulates the full range of gauges consumed by respondents, remains the best available information.

Furthermore, with respect to Petitioner's claim that ingots and billets would be expected to have lower value than wire rod or round bar, the Department finds that Petitioner provides no record evidence to support its claim. Again, lacking specific record evidence to suggest that the WTA import values are unreliable or that the JPC data is a superior surrogate value source to value the types of wire rod and round bars consumed by respondents in the production of the subject merchandise, the Department continues to find the WTA import data represents the best available information.

With respect to the RMB & IFI Group's assertion that the Department remove aberrant values from the WTA import data in order to calculate the surrogate values, the Department finds that there is no record evidence to indicate that any of the reported values are aberrant or unrepresentative of commercial quantities, and therefore, we will continue to calculate the surrogate value for wire rod and round bar as established in the *Preliminary Results* as it constitutes the best available information.

Comment 4: Hydrochloric Acid and Trisodium Phosphate

The RMB & IFI Group asserts that, despite the RMB & IFI Group's original recommendation for the preliminary determination, the Department should select prices published by *Chemical Weekly* as an alternative to WTA data, as *Chemical Weekly* is a preferred source by the Department, to value hydrochloric acid.⁴¹ Furthermore, the RMB & IFI Group argues that the

⁴⁰ See October 27, 2008, Letter from the RMB/IFI Group; regarding Steel Threaded Rod from the People's Republic of China: New Fact Submission at Attachment 1.

⁴¹ Citing e.g., *Helical Spring Lock Washers From the People's Republic of China*, 73 FR 4175 (January 24, 2008) ("*Lock Washers from the PRC*"); and *Nails from the PRC*, and accompanying Issues and Decision Memorandum at Comment 18.

Chemical Weekly source for trisodium phosphate is more contemporaneous to the POI than the WTA Import data, and is thus more reliable. See RMB & IFI Case Brief at 32.

Petitioner rebuts the RMB & IFI Group's assertion that the Department should use alternative source other than WTA import data to value hydrochloric acid and trisodium phosphate. Petitioner argues that there is no record evidence to suggest that the WTA data is aberrational, unreliable, or somehow unrepresentative of the chemicals utilized in the production of STR. See Petitioner Rebuttal Brief at 13.

Department's Position:

The Department agrees with Petitioner that there is no evidence on the record of the instant case that demonstrates that the WTA import value for hydrochloric acid is aberrant, unreliable, or unrepresentative. The RMB & IFI Group is correct in noting that in certain previous cases, the Department found WTA import values for hydrochloric acid to be aberrant, even when no party placed specific record evidence on the record of those administrative segments to demonstrate how the data was unreliable. See the RMB & IFI Case Brief at 29-30, citing *Lock Washers from the PRC* and *Nails from the PRC*. We note however, that in accordance with recent practice, and the Department's practice going forward, merely citing to previous administrative segments is insufficient to demonstrate that a given surrogate value is aberrant.⁴² The Department shall make a determination regarding whether a given surrogate value is aberrant or unrepresentative based on the evidence on the record of that case. In assessing a party's argument that a given surrogate value is aberrant or unrepresentative, the Department will rely on evidence placed on the record of that case. In the instant case, we find there is no evidence on the record of this investigation which demonstrates that the WTA value for hydrochloric acid is aberrant. In general, the Department considers both sources (WTA and *Chemical Weekly*) to be acceptable sources of surrogate value data. However, as there is no record evidence to demonstrate that the *Chemical Weekly* prices are more reliable than the WTA import values, the Department has continued to value hydrochloric acid using the WTA import values.

With respect to WTA import values for trisodium phosphate, the Department disagrees with the RMB & IFI Group's assertion that the *Chemical Weekly* prices represent a more contemporaneous period. Pursuant to *Zhejiang v. United States*, Slip Op. 08-68 at 42, with respect to contemporaneity, the Department finds that a difference of several months is not material, and therefore not a basis upon which to exclude WTA import values. Furthermore, as stated above, the Department considers both *Chemical Weekly* and WTA import values to be acceptable sources of surrogate value data. However, as there is no specific record evidence to demonstrate that the average WTA import value for trisodium phosphate is aberrant, unreliable, or otherwise unrepresentative, the Department has continued to value trisodium phosphate using the WTA import values for the final determination.

While, we consider both sources to be reliable, comparable, public, and contemporaneous, we are using WTA to value these chemicals because it represents values from the whole of India, whereas the *Chemical Weekly* values are derived from prices in just two of India's major

⁴² See, e.g., *Chlorinated Isos* 73 FR 52645, and accompanying Issues and Decision Memorandum at Comment 2; see also *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), and accompanying Issues and Decision Memorandum at Comment 2.

markets. Although *Chemical Weekly* only provides data from two cities, the Department notes that the cities represent major chemical markets, and is a suitable source of surrogate values; however, where WTA is of equal value, we find that WTA better represents country wide prices.

Additionally, the Department notes that, for the *Preliminary Determination*, the RMB & IFI Group found that the HTS categories in WTA for hydrochloric acid and trisodium phosphate were appropriate, and the Department agreed, applying the HTS categories in WTA recommended by the RMB & IFI Group for both trisodium phosphate⁴³ and hydrochloric acid.⁴⁴ Subsequently, the RMB & IFI Group has not provided additional record evidence to suggest that the type of hydrochloric acid and trisodium phosphate listed by *Chemical Weekly* are more appropriate than the types listed by WTA to value the hydrochloric acid and trisodium phosphate consumed by Jiaxing Brother.

II. Ningbo Yinzhou Issues:

Comment 5: Application of Facts Available for Ningbo Yinzhou

Petitioner argues that, because Ningbo Yinzhou was unable to complete many verification procedures, the Department should apply partial facts available in calculating a dumping margin for Ningbo Yinzhou in the final determination. Petitioner states that Ningbo Yinzhou did not complete a reconciliation of its U.S. sales database to its accounting records.⁴⁵ Petitioner also states that the Department was only able to fully complete one sales trace, and partially complete a second sales trace, both selected on-site, leaving the five pre-selected sales traces uncompleted.⁴⁶ Finally, Petitioner states that Ningbo Yinzhou's lack of preparedness for verification caused significant delays and limited or prevented the Department's verification of certain parts of Ningbo Yinzhou's responses to the Department.⁴⁷ Petitioner argues that, due to these deficiencies, the Department should apply partial facts available in calculating Ningbo Yinzhou's dumping margin for the final results, and assign the lowest reported price per CONNUM from Ningbo Yinzhou's U.S. sales database as the U.S. price for all sales, disallow billing adjustments, and use the highest movement expenses for all sales observations.

Additionally, Petitioner argues that, because Ningbo Yinzhou's supplier, Guorui, and Guorui's processor, Zhonghuan, were unable to complete many verification procedures, the Department should apply partial facts available in calculating a dumping margin for Ningbo Yinzhou in the final determination. Petitioner states that Zhonghuan was unable to reconcile its reported factor consumption to its underlying records.⁴⁸ Petitioner also states that the Department discovered unreported FOPs for both Guorui and Zhonghuan at verification, including water, drawing

⁴³ For the *Preliminary Determination*, the RMB & IFI Group placed data on the record from Indian Import Statistics for HTS 2835.23.00. The Department found that, in 2006, HTS 2835.23.00 was collapsed into HTS 2835.29.30, which is specific to trisodium phosphate. See *Preliminary Determination* and accompanying Factor of Production Memorandum.

⁴⁴ See August 25, 2008, Steel Threaded Rod from the People's Republic of China: Surrogate Values for the Preliminary Determination at Exhibit 3, from the RMB & IFI Group.

⁴⁵ *Citing* Verification of the Sales Response of Ningbo Yinzhou Foreign Trade Co., Ltd., in the Antidumping Duty Investigation of Certain Steel Threaded Rod from the People's Republic of China, January 6, 2009 ("Ningbo Yinzhou Verification Report") at 2.

⁴⁶ *Citing* id. at 2 and 11-12.

⁴⁷ *Citing* id. at 9 and 12-13.

⁴⁸ *Citing* Verification of the Factors of Production Response of Zhonghuan Fastener Factory and Zhejiang Guorui Industry Co., Ltd., in the Antidumping Investigation of Certain Steel Threaded Rod from the People's Republic of China, January 6, 2009 ("Zhonghuan/Guorui Verification Report") at 2 and 9-16.

powder, plastic caps, wood pieces, nails, labor, and energy.⁴⁹ Due to these deficiencies, Petitioner argues that the Department should apply partial facts available in calculating Ningbo Yinzhou's dumping margin for the final results, and assign the highest reported consumption of all FOPs for each CONNUM as reported by Jiaxing Brother to the matching models in Ningbo Yinzhou's FOP database. *See* Petitioner's Case Brief at 1-4.

In Ningbo Yinzhou's January 16, 2009, case brief ("Ningbo Yinzhou Case Brief"), Ningbo Yinzhou claims that the Department should not apply total facts available or any adverse facts available, due to the full cooperation of Ningbo Yinzhou; its suppliers, Guorui and Ningbo Daxie Chuofeng Industrial Development Co., Ltd. ("Daxie"); and Guorui and Daxie's processors, specifically Zhonghuan, at which verification was conducted. While Ningbo Yinzhou admits that Zhonghuan's record-keeping is unsophisticated, it argues that all parties were fully cooperative in answering the Department's questionnaires to the best of their ability, as well as fully responsive at verification, answering Department questions and providing documents as requested to the best of their ability. Ningbo Yinzhou argues that the antidumping law is "remedial, not punitive," and application of total facts available or any adverse facts available would accord the same treatment to Ningbo Yinzhou as to a company that refused to participate in the Department's investigation. *See* Ningbo Yinzhou's Case Brief at 1-3.

Petitioner rebuts Ningbo Yinzhou's assertion that it should not be penalized for the deficiencies discovered at verification, and argues that the Department should apply partial facts available in accordance with arguments made in its case brief. *See* Petitioner's Rebuttal Case Brief at 15.

Department's Position:

A. Facts Available

The Department finds that the use of facts otherwise available is warranted with respect to Ningbo Yinzhou pursuant to section 776(a) of the Act. In general, sections 776(a)(1) and (2) of the Act state that the Department may use facts otherwise available in reaching the applicable determination if: (1) The necessary information is not available on the record, or (2) an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this subtitle, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified.

As further discussed in each of the subsections below, pursuant to sections 776(a)(2) (A), (B), (C) and (D) of the Act, the Department determines that the use of facts otherwise available is warranted for this final determination. Ningbo Yinzhou failed to provide information regarding certain factors of production and models in the form and manner requested by the Department. Ningbo Yinzhou withheld certain information that was specifically requested by the Department and significantly impeded the proceeding by not providing accurate or complete responses to the Department's questions regarding certain factors of production and the sales reconciliation. Additionally, information discovered at verification directly contradicted information contained in Ningbo Yinzhou's questionnaire responses. Due to the respondent's lack of preparedness, significant delays were experienced by the Department in completing verification procedures, which prevented the completion of certain other verification procedures. Due to the

⁴⁹ *Citing id.* at 14-17.

insufficiency of the respondent's record keeping, numerous verification procedures could not be completed. For these reasons, the Department was unable to verify certain statements in Ningbo Yinzhou's questionnaire responses. *See* Ningbo Yinzhou Verification Report.

1. Sales Reconciliation

Pursuant to 776(a)(2) (B) and (D) of the Act, the Department finds that application of facts available is appropriate because Ningbo Yinzhou did not complete a sales reconciliation as required by and in accordance with the Department's antidumping questionnaire and verification outline.

On June 10, 2008, the Department released its original A, C, and D antidumping questionnaire to Ningbo Yinzhou. In this questionnaire, we requested and provided instructions for completing reconciliations of Ningbo Yinzhou's sales and cost of production responses to its accounting records and financial statements. On July 16, 2008, pursuant to a request by Ningbo Yinzhou, we extended the deadline for Ningbo Yinzhou to submit its section C and D responses and sales and cost reconciliations by 13 days. On July 31, 2008, Ningbo Yinzhou submitted its response to the Department's section C and D questionnaire. At this time, Ningbo Yinzhou did not submit sales or cost of production reconciliations. No explanation of why the documents were missing was included in its response. *See* Ningbo Yinzhou's Response to Sections C and D of the Department's Questionnaire, dated July 31, 2008 ("Sections C and D Response"). On August 4, 2008, the Department notified representatives for Ningbo Yinzhou of the missing reconciliations, and requested that the completed reconciliations be submitted by August 8, 2008. *See* Memorandum to the File from Toni Dach, International Trade Analyst, Re: Antidumping Duty Investigation of Steel Threaded Rod from the People's Republic of China: Deadline for Ningbo Yinzhou Foreign Trade Co., Ltd. to Submit the Sales and FOP Reconciliations. On August 8, 2008, Ningbo Yinzhou submitted what it stated were sales and cost of production reconciliations. *See* Ningbo Yinzhou's Sales and FOP Reconciliations, dated August 8, 2008 ("Sales and FOP Reconciliations").

On October 27, 2008, we released our verification outline to Ningbo Yinzhou. *See* Letter to Ningbo Yinzhou Foreign Trade Co., Ltd., from Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, Re: Antidumping Duty Investigation of Certain Steel Threaded Rod from the People's Republic of China, dated October 27, 2008 ("Ningbo Yinzhou Verification Outline"). In the outline the Department instructed Ningbo Yinzhou to prepare a verification package for its sales reconciliation by "review{ing} the reconciliation worksheets and programs that tie the sales system/journal to the general ledger and into the financial statements sales total. Then tie the sales system to the quantity and value totals reported in the most up-to-date submission of your U.S. market database."

At verification, we attempted to verify the sales reconciliation submitted to the Department by Ningbo Yinzhou. Company officials for Ningbo Yinzhou then explained for the first time that, due to the way it records sales, the company had not tied the U.S. sales database submitted to the Department to its accounting records and financial statements. Specifically, company officials explained that Ningbo Yinzhou enters sales into its accounting records and financial statements based on the quantity and value that appears on the Chinese customs invoice, which sometimes differs from the final invoice issued to the U.S. customer. In addition, company officials explained that invoices are entered into the accounting system on the date that an invoice is received from its suppliers, Guorui or Daxie, which is almost always different from the date the

U.S. customer is invoiced, and can sometimes be several months after the invoice is issued to the U.S. customer. Company officials explained that the U.S. sales database was compiled manually, and that the date of sale used in the U.S. sales database was the actual invoice date, which does not correlate with the date of sale entered into Ningbo Yinzhou's accounting system and, subsequently, into Ningbo Yinzhou's financial statements. *See* Ningbo Yinzhou Verification Report at 2, 6-8, and 10-11.

At the time we first attempted to verify Ningbo Yinzhou's sales reconciliation, company officials had not prepared the sales reconciliation in accordance with the instructions provided in the verification outline. While we provided additional instructions as to what was required, and allowed company officials to continue working to prepare a complete sales reconciliation throughout verification, the completed sales reconciliation was not presented to Department officials before the conclusion of verification. Because the difference in date between the commercial invoice Ningbo Yinzhou presented to its U.S. customers and the date the sales were entered into Ningbo Yinzhou's accounting records was not reconciled by company officials, we could not verify what portion of the total sales from the company's financial statements accounted for the U.S. sales database, and the company was unable to demonstrate on the record how its U.S. sales listing relates to its accounting records. *See* Ningbo Yinzhou Verification Report at 2, 6-8, and 10-11.

As Ningbo Yinzhou did not complete a reconciliation of its U.S. sales database to its accounting records and financial statements, we were unable to verify the accuracy of Ningbo Yinzhou's U.S. sales database. Without a complete and verifiable sales reconciliation, we cannot determine whether the total quantity and value of sales reported in the U.S. sales database is overreported or underreported. Additionally, we cannot determine the accuracy of the total value and gross unit price reported in the U.S. sales database.

2. *Uncompleted Sales Traces*

Pursuant to 776(a)(2)(D) of the Act, the Department finds that application of facts available is further warranted because we were unable to complete numerous sales traces during the Department's verification, due to the company's failure to adequately prepare the sales trace packages.

On October 27, 2008, the Department released a letter to Ningbo Yinzhou, enclosing an outline of the planned schedule for verification of Ningbo Yinzhou's responses to the Department. *See* Ningbo Yinzhou Verification Outline. In this outline, we identified five observations from Ningbo Yinzhou's U.S. sales database for which we requested Ningbo Yinzhou prepare packages tracing the sale from the initial inquiry from the U.S. customer through payment by the U.S. customer. In addition to these five pre-selected sales, we selected three additional sales on-site to review. We began our verification of the sales trace packages with the sales selected on-site. We were originally presented with packages including only the commercial invoice from Ningbo Yinzhou to the U.S. customer, a packing list, and a purchase order. In the Department's verification outline and throughout the process of verifying the selected sales, we requested additional documentation for these sales, including the Chinese customs declaration, the invoice presented to Chinese customs, the packing list presented to Chinese customs, the Bill of Lading, accounting documentation, invoices from Guorui to Ningbo Yinzhou, payment documentation from the U.S. customer to Ningbo Yinzhou, and the sub-ledger for operating income showing the invoices included in the payment from the U.S. customer along with copies of those invoices.

We were presented with the additional requested documentation only for the first sale selected on site. We reviewed the packet containing only the commercial invoice, packing list, and purchase order for the second sale selected on site. Due to numerous delays in receiving the requested documentation, as well as delays in completing other sections of the verification outline, the other pre-selected sales traces and sales traces selected on-site were not completed. *See* Ningbo Yinzhou Verification Report at “Summary of Issues” and 11-12.

The purpose of verifying these sales trace packages is to determine whether the information submitted to the Department for sales observations in the U.S. sales database is accurate. This “spot-check” allows us to review, in depth, the accuracy of reported sales quantities, values, gross unit prices, and terms of sale. Because we were not provided with the documentation to complete the selected sales traces in a timely fashion, and therefore could not complete the verification of numerous selected sales traces, we cannot have confidence that information reported in Ningbo Yinzhou’s U.S. sales database is accurate or reliable.

3. *Total Production*

Pursuant to 776(a)(2)(D) of the Act, the Department further finds that application of facts available is warranted because Ningbo Yinzhou could not demonstrate at verification that Zhonghuan’s total production figure, upon which all factors of production for Zhonghuan are allocated, was accurate.

In the Department’s original Section D questionnaire, we requested that Ningbo Yinzhou report total production of the subject merchandise by each of its producers. Ningbo Yinzhou provided total production figures, in kilograms, for each of its producers in its narrative response as well as in two exhibits to its Sections C and D response. *See* Sections C and D Response at Xingda D-2, Xingda Exhibit D-4, Xingda Exhibit D-12, Xinyue D-2, Xinyue Exhibit D-4, Xinyue Exhibit D-13, Zhonghuan D-2, Zhonghuan Exhibit D-4, and Zhonghuan Exhibit D-11. There was some discrepancy between the total production quantities reported in the narrative and the total production quantities reported in the exhibits for each of Ningbo Yinzhou’s producers, and the Department asked Ningbo Yinzhou to provide accurate total production data for each of its producers in our August 21, 2008, supplemental sections C and D questionnaire (“first supplemental sections C and D questionnaire”). In its September 8, 2008, response to the Department’s first supplemental sections C and D questionnaire, Ningbo Yinzhou indicated that the discrepancies between the figures was an error, and provided what it claimed was an accurate total production figure for each of its producers. At no point did Ningbo Yinzhou indicate that these total production figures did not reflect actual production during the POI, or that there was any discrepancy between various records of production for any of its processors.

In order to allocate each of its FOPs to each model produced, Zhonghuan divided total consumption of each factor by total production of all models by weight, and multiplied this “per-kilogram consumption” by the total production of the model in question by weight. In order to verify that this allocation methodology was accurate, at verification we attempted to confirm that Zhonghuan’s total production figure was accurate. We selected a CONNUM, and began to trace the production of that CONNUM through the accounting documents back to the source documents for production. We could not locate the production of this CONNUM in the workshop production records. Upon further inspection, we discovered that the CONNUM had been produced during an earlier month. Company officials then explained for the first time that, while production is recorded in the workshop production records at the time production occurs,

production is not recorded in the accounting records until the product leaves the warehouse or until the accountant is provided with the information necessary to enter production into its accounting records. Company officials stated that the time between the production of a product and when it is shipped can range from a few days to four to six months. In order to verify that the long lag between actual production and the recording of production in the company's accounting records was not an anomaly, we reviewed other CONNUMs, finding repeatedly that the date of actual production was not accurately reflected in Zhonghuan's accounting documents. Therefore, we could not verify the accuracy of the total production figure that Ningbo Yinzhou presented to the Department in the section D questionnaire response for Zhonghuan. See Zhonghuan/Guorui Verification Report at 2 and 11-13.

Because consumption of each of Zhonghuan's FOPs was allocated to one unit of production by first dividing total consumption of each input during the POI by total production of all subject merchandise during the POI, the fact that the total production figure reported by Ningbo Yinzhou for Zhonghuan is incorrect makes the allocation of each FOP to one unit of production inaccurate. The Department relies on the reported consumption of inputs for one unit of production to construct a normal value for each CONNUM produced by the respondent. Since we determined at verification that the total production quantity used by the respondent in calculating the consumption of each FOP was inaccurate, the reported consumption of each FOP for each CONNUM in Zhonghuan's FOP database is also inaccurate. Therefore, the Department does not have reliable FOP consumption data upon which to calculate normal value.

4. *Models Without Reported Factors of Production*

Pursuant to 776(a)(2) (A) and (B) of the Act, the Department finds that application of facts available is appropriate because Ningbo Yinzhou failed to report FOPs for a number of models in its U.S. sales database.

In calculating the preliminary determination of this investigation, we discovered that for numerous CONNUMs listed in the U.S. sales database Ningbo Yinzhou did not provide FOPs in its section D databases. Subsequent to the *Preliminary Determination*, we requested that Ningbo Yinzhou provide FOP for the CONNUMs in the U.S. sales database for which none were provided. See Supplemental Sections C and D Questionnaire, dated October 6, 2008 ("third supplemental sections C and D questionnaire"). In its response to the Department, Ningbo Yinzhou did not provide the requested FOP, and simply stated that it would be "extremely difficult" for the company to provide FOP for all CONNUMs in the U.S. sales database, and requested that the Department instead use Ningbo Yinzhou's suggested "surrogate CONNUMs" to calculate the cost of production for models in the U.S. sales database without matching models in the FOP databases. See Ningbo Yinzhou's response to the Department's 3rd supplemental sections C and D questionnaire, dated October 17, 2008. Ningbo Yinzhou provided no explanation as to why it would be "difficult" to provide the requested FOP, and did not identify any internal company record-keeping issues that may have been the source of the problem.

At verification, as discussed in the "Total Production" section of this memorandum, we discovered for the first time that Zhonghuan's production of STR was not always recorded in the accounting records at the time the production occurred. Company officials explained that the FOP database was compiled using accounting records, which were not based on the company's source documents that recorded actual production for the POI. Company officials noted that Zhonghuan's accounting records, from which Ningbo Yinzhou's section D database were

prepared, were not based on the source production documents prepared at the time of production, but rather on production summaries prepared by Zhonghuan's owner for entry into the accounting records, which recorded production at the time that products left the warehouse or when Zhonghuan's owner otherwise transmitted the information to the accountant. We inquired whether the differences noted between the source documents for production and the accounting records of Zhonghuan accounted for the problem noted in the Department's third supplemental sections C and D questionnaire, where we identified sales in its U.S. sales database for which FOPs were not provided. Company officials confirmed that these disparities were the cause of certain sales having no matching FOP. *See Zhonghuan/Guorui Verification Report at 12-13.*

The Department calculates a normal value for each reported CONNUM in calculating an antidumping duty margin for a respondent. Because each of Ningbo Yinzhou's models sold during the POI did not have matching FOP reported, the Department cannot calculate a normal value for each of these models, or, consequently, an accurate antidumping duty margin for Ningbo Yinzhou.

5. Unreported Factors

Pursuant to 776(a)(2) (A) and (C) of the Act, the Department finds that application of facts available is further warranted because Ningbo Yinzhou failed to report certain FOPs consumed in producing the subject merchandise.

In the Department's original section D questionnaire, we provided instructions for reporting all FOPs consumed in the production of the subject merchandise to the Department. On July 31, 2008, Ningbo Yinzhou submitted an FOP database to the Department for its processor, Zhonghuan, listing all FOPs it claims were used in producing the subject merchandise. In the Department's August 21, 2008 supplemental sections C and D questionnaire to Ningbo Yinzhou, we noted that oil, water, hydrochloric acid, and sulfuric acid, reported as consumed in production of the subject merchandise by Ningbo Yinzhou's other processors, were not reported by Zhonghuan, and asked Ningbo Yinzhou to ensure that all FOPs were reported. Ningbo Yinzhou responded in its First Supplemental Sections C and D Response that Zhonghuan uses a slightly different production process than the other processors, but that all FOPs consumed by Zhonghuan were reported in its initial response to the Department except oil. Ningbo Yinzhou reported that Zhonghuan purchases waste oil, and provided the quantity consumed during the POI. *See Ningbo Yinzhou's First Supplemental Sections C and D Response.*

At verification, we conducted a tour of Zhonghuan's production facilities. During this tour, we noted several materials in use for production of STR that were not reported to the Department, including water, drawing powder, and plastic packing caps. Company officials explained that water is used in the production of subject merchandise, but that only a small quantity is consumed. The factory owner stated that he produces the drawing powder himself from waste materials and a small amount of household soap, the purchase of which he does not record in the company's accounting books. Finally, company officials explained that plastic caps were purchased as a part of "packing tubes," which were reported to the Department as a packing input in production of the subject merchandise. *See Zhonghuan/Guorui Verification Report at 2 and 8-9.*

Despite the explanations offered by company officials as to why they did not report water, drawing powder, and plastic caps as FOPs, the Department notes that the original questionnaire

very clearly states that FOPs should be reported “based on the actual inputs used by your company during the POI.” With regard to company officials’ explanation of their failure to report water consumption, even if only a small amount of an FOP is consumed, it should be reported. In regard to drawing powder, the Department noted that the original questionnaire states that all materials consumed should be reported, not simply those inputs which are recorded in a company’s inventory records. Even though company officials state that plastic caps were reported as a part of the packing input paper tubes, they were consumed during the production of the subject merchandise, and should have been reported separately. Moreover, the quantity of paper tubes consumed was otherwise reported on an incorrect basis, as explained below in “Factors Reported on Incorrect Basis.” Therefore, the Department finds that Ningbo Yinzhou failed to report all inputs used in producing the subject merchandise, and thus the Department does not have reliable data upon which to calculate normal value.

6. *Factors Reported on Incorrect Basis*

Pursuant to 776(a)(2)(B) of the Act, the Department finds that application of facts available is appropriate because Ningbo Yinzhou failed to report certain FOPs in a manner that reflects its actual consumption during the POI.

In the Department’s standard section D original questionnaire, we instructed the company to report the consumption of factors “based on the actual inputs *used* by your company during the POI.” *See* Original Questionnaire, dated June 10, 2008 (“Original Questionnaire”), at D-1 (emphasis added). Despite this request, at verification, company officials explained for the first time that all of Zhonghuan’s packing factors were reported to the Department based on purchases, not consumption. Company officials stated that they did not record the actual consumption of packing materials used in producing the subject merchandise during the POI, and therefore only reported the amount of packing inputs purchased during the POI. Therefore, we could not verify the allocation of packing materials to each unit of production, as we were not provided with an accounting of what quantity of packing factors were actually used during the POI. *See* Zhonghuan/Guorui Verification Report at 2 and 16-17.

The Department bases its calculation of normal value on the *consumption* of inputs used in producing the subject merchandise. The company may have purchased materials prior to the POI that were consumed during the POI, or purchased materials during the POI that were still in warehouse at the conclusion of the POI. Because Ningbo Yinzhou reported these packing factors based on purchase rather than consumption data, the Department does not have the necessary data concerning what quantities of materials were *consumed* in the production of the subject merchandise to calculate an accurate normal value. Despite the instructions in the Department’s original questionnaire to report actual consumption of inputs, the respondent never informed the Department that its packing factors were not reported according to Department guidelines. Therefore, the Department was unable to suggest an alternative reporting method for these inputs, as Ningbo Yinzhou did not disclose this issue until verification.

B. *Adverse Facts Available*

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has “failed to cooperate by not acting to the best of its ability to comply with a request for

information.”⁵⁰ In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.⁵¹

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.”⁵² The Court of Appeals for the Federal Circuit (“Federal Circuit”), in *Nippon*, provided an explanation of the “failure to act to the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.⁵³ The Federal Circuit acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries “would suffice” as well.⁵⁴ Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.⁵⁵ The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁵⁶

Within the meaning of section 776(b) of the Act, and despite Ningbo Yinzhou’s contention that it did cooperate fully with the Department’s investigation, we find that Ningbo Yinzhou failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information, as noted above, and that the application of adverse facts available (“AFA”) is warranted. In particular, the Department gave specific instructions as to the purpose of and directions for reconciling Ningbo Yinzhou’s U.S. sales database to Ningbo Yinzhou’s accounting records, and reporting of all FOPs for all models. *See* Original Questionnaire at Appendix V and Section D, First Supplemental Sections C and D Questionnaire at 10, Third Supplemental Sections C and D questionnaire at 3, and Ningbo Yinzhou Verification Outline at VIII. Quantity and Value Reconciliation. The Department provided specific instructions for completing the sales reconciliation in its original questionnaire and verification outline. *See* Original Questionnaire at Appendix V and Ningbo Yinzhou Verification Outline at VIII. Quantity and Value Reconciliation. The Department also provided specific instructions for reporting all FOPs, even those the company does not pay for, and the basis upon which those factors should be reported in the original questionnaire. *See* Original Questionnaire at Section D, First Supplemental Sections C and D Questionnaire at 10, Third Supplemental Sections C and D questionnaire at 3. The Department provided specific guidelines for what supporting documentation should be provided to the verifiers for the purposes of the sales reconciliation, sales traces, and factor packages in the verification outline. *See* Ningbo Yinzhou Verification Outline at VIII. Quantity and Value Reconciliation, X. Verification Of Reported Transaction-Specific Data For Selected Sales From The U.S. Sales Database, XIII. Material Inputs, XIV. Energy Inputs, and XVII. Packing. Department officials also provided detailed instructions at

⁵⁰ *See* section 776(b) of the Act.

⁵¹ *Id.*; *see also* Statement of Administrative Action (“SAA”) accompanying the URAA, H.R. Rep. No. 103-316 at 870 (1994).

⁵² *See* SAA at 870.

⁵³ *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (“*Nippon*”).

⁵⁴ *Id.* at 1380.

⁵⁵ *Id.* at 1382.

⁵⁶ *Id.* at 1382.

verification as to what documents and procedures were necessary to successfully complete the sales reconciliation, sales traces, and factor allocation verifications. *See* Ningbo Yinzhou Verification Report at 10, 11-12, and Zhonghuan/Guorui Verification Report at 11-17. In the original questionnaire, the Department also noted that if the respondent's books and records prevent them from reporting any information in the manner requested by the Department, the respondent should contact the Department immediately. *See* Original Questionnaire at G-1. Despite these extensive instructions, provided numerous times over the course of the investigation, Ningbo Yinzhou failed to provide the Department with adequate information and supporting documentation to fully verify its responses to the Department's questionnaires. In addition, despite multiple opportunities presented by the Department, Ningbo Yinzhou failed to report certain FOPs and report FOPs for each model in the U.S. sales database.

Despite Ningbo Yinzhou's contention that Zhonghuan, as it is a small company, should not be penalized for keeping rudimentary records, the Federal Circuit, as noted, has indicated that inadequate record keeping is not condoned by the AFA standard.⁵⁷ Moreover, it was not simply the record-keeping methodology of the processor, Zhonghuan, that led to inaccurate and incomplete responses to the Department's questionnaires, but rather, the failure to look beyond the company's accounting documents to source documents, to provide the necessary and requested information, such as FOPs for all models and accurate information regarding total production. Ningbo Yinzhou's failure to look beyond the records "immediately available," given the presumption that a company is familiar with its own records, is not an excuse for providing inadequate responses to the Department's requests for information.⁵⁸

In sum, despite the Department's detailed and very specific questionnaires and instructions in the verification outline, and questions asked and instructions given at verification as to what procedures and documentation were necessary to successfully complete verification procedures, Ningbo Yinzhou gave insufficient attention to its statutory duty to reply accurately and completely to requests for information regarding its sales reconciliation, sales documentation for sales traces, factors consumed in production, total production, and FOPs for each model. For all of the aforementioned reasons, the Department finds that Ningbo Yinzhou failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Therefore, we recommend applying total AFA to Ningbo Yinzhou for this final determination.

With respect to Petitioner's argument that the Department should apply partial facts available in calculating an antidumping duty margin for Ningbo Yinzhou, we disagree. The Department has determined, as discussed above, that Ningbo Yinzhou's U.S. sales database and the FOP database for Zhonghuan's production, accounting for a majority of U.S. sales, are both wholly unreliable. As such, using any U.S. sales prices or FOPs contained in the submitted sales and FOP databases, would result in a dumping margin based on unreliable information. Petitioner's argument that we should use only selected values and information from the U.S. sales database, and wholly disregard Ningbo Yinzhou's FOP databases, itself indicates that the information presented by Ningbo Yinzhou is unusable as submitted to the Department. Without accurate prices upon which to calculate an antidumping duty margin, the Department has determined that the application of total AFA, as opposed to partial facts available as recommended by Petitioner, is warranted with respect to Ningbo Yinzhou.

⁵⁷ *Id.* at 1382.

⁵⁸ *Id.* at 1383.

Comment 6: Ningbo Yinzhou and Zhonghuan/Guorui Verification Reports

Ningbo Yinzhou claims that the Department made several errors in its verification reports. First, Ningbo Yinzhou claims that the Department incorrectly stated that Zhonghuan does not regularly prepare financial statements. Ningbo Yinzhou maintains that Zhonghuan prepares monthly and yearly financial statements, but that these statements are simply not audited, as auditing is not required of sole proprietorship businesses. Second, Ningbo Yinzhou claims that the Department incorrectly stated that we requested the original owner's notebook for Zhonghuan (which contains the source documentation for total production), and were only provided with a copy. Ningbo Yinzhou maintains that the original of the notebook was provided to Department officials. Third, Ningbo Yinzhou maintains that, contrary to Department claims in the verification report, Zhonghuan did not estimate its electricity consumption. Ningbo Yinzhou claims that the calculation of the cost per kilowatt hour of electricity was thoroughly documented, and the total electricity consumed was not an estimate. Finally, Ningbo Yinzhou claims that the differences between the submitted U.S. sales database and Ningbo Yinzhou's financial records, noted in the verification report, are inconsequential, and can all be documented. Ningbo Yinzhou maintains that its accounting records for sales can be reconciled with its general ledgers and financial statements. *See* Ningbo Yinzhou's Case Brief at 3-5.

Petitioner rebuts Ningbo Yinzhou's assertions that the Department should "correct" the Ningbo Yinzhou and Zhonghuan/Guorui verification reports, and argues that these verification reports are complete and consistent with the record of the investigation. *See* Petitioner's Rebuttal Case Brief at 15.

Department's Position:

The Department finds that the verification reports prepared for Ningbo Yinzhou and Zhonghuan/Guorui are complete and correspond with the evidence collected at verification. With respect to Ningbo Yinzhou's assertion that Zhonghuan does prepare monthly financial statements, we note that, in its response to the Department's questionnaires and at verification, company officials asserted that Zhonghuan prepares only a monthly balance sheet and income statement. *See* First Supplemental Sections C and D Response at 16 and Attachment 19. The Department intended to convey in this statement that the financial reports prepared by Zhonghuan do not represent complete, regular financial statements. We note however, given that we found at verification that Zhonghuan's accounting records do not reflect actual POI total production, it is irrelevant whether they prepare any financial statement, whether or not audited. The purpose of tying a producer's accounting records to a financial statement is relevant for the purpose of ensuring that the accounting records, on which FOP data is based, are accurate and complete. In the instant case, since we found that the accounting records are not accurate and complete, as they do not correspond to the source documentation, whether or not the company completes a financial statement is irrelevant.

With respect to Ningbo Yinzhou's assertion that the Department was provided with an original of Zhonghuan's owner's notebook, which contains the source documents for production, consumption, and inventory, we disagree. We note that the original notebook presented for examination to the Department at verification covered only a portion of the POI. We subsequently requested all original notebooks that contained information for the POI, and only copies of the relevant production record pages were provided. However, despite the

Department's requests, by the end of verification, the originals for the whole POI were not provided. We note, however, that whether or not the original of the owner's notebook was provided to the verifiers is not a factor in the Department's decision to apply AFA to Ningbo Yinzhou, as the AFA determination is based on the numerous other deficiencies noted in Comment 5 above. *See* Zhonghuan/Guorui Verification Report at 12.

With respect to electricity, company officials did state, as noted in the verification report, that the total amount of electricity consumed during the POI was an estimate. Therefore, the Department also referred to it as an estimate in the verification report. *See* Zhonghuan/Guorui Verification Report at 15. While invoices for electricity consumption were presented to the Department, and became a part of the verification exhibits, the consumption of electricity during the POI reported to the Department is not drawn directly from these invoices. *See* Zhonghuan/Guorui Verification Report at 15 and Exhibit 13. Therefore, we continue to find that the reported amount of electricity consumed by Zhonghuan during the POI was an estimate, as the underlying costs used to produce the total figure for electricity consumed are estimates. We note that whether or not the reported electricity consumption is an estimate is immaterial to the Department's determination to apply AFA to Ningbo Yinzhou, as the AFA determination is based upon the numerous other deficiencies noted above, in Comment 5.

Finally, we disagree with Ningbo Yinzhou's assertion that the documentation demonstrating the differences between the invoices Ningbo Yinzhou submitted to its U.S. customers, and the invoices submitted to PRC Customs and recorded in its accounting records amounts to a complete sales reconciliation. As noted in the "Application of Facts Available for Ningbo Yinzhou" section above, this listing of the differences between the invoices as entered in Ningbo Yinzhou's accounting records and the invoices issued to U.S. customers and reported to the Department does not fully reconcile Ningbo Yinzhou's sales to its accounting records and financial statements. Because the difference in date between the commercial invoice Ningbo Yinzhou presented to its U.S. customers and the date the sales were entered into Ningbo Yinzhou's accounting records was not reconciled by company officials, we could not verify what portion of total sales from the company's accounting records is accounted for by the U.S. sales database, and the company was unable to demonstrate on the record how its U.S. sales listing relates to its accounting records. Therefore, the Department maintains that a reconciliation of Ningbo Yinzhou's reported U.S. sales database to its accounting records and financial statements was not completed.

Comment 7: Surrogate Value Selection—Galvanizing Surrogate Value

Petitioner asserts that, for the final determination, the Department should apply an average galvanization value of the two galvanizing surrogate value sources, as there is no record evidence to suggest that one value is more or less accurate than the other. *See* Petitioner's Case Brief at 10–11.

Respondents did not provide comments.

Department's Position:

The Department has applied total AFA to Ningbo Yinzhou, and therefore the Department need not make a determination regarding the appropriate galvanizing surrogate value. *See* Comment 1 above.

III. The RMB & IFI Group Issues:

Comment 8: Surrogate Values—Packing Strips, Buckles, and Coal

The RMB & IFI Group asserts that in the *Preliminary Determination*, the Department erroneously applied HTS classifications for 1) “plastic packing strip” to value Jiaxing Brother’s consumption of “steel packing strips,” 2) “metal screws” to value Jiaxing Brother’s consumption of “metal brackets,” and 3) “bituminous coal” to value Jiaxing Brother’s consumption of “steam coal.” Therefore, the RMB & IFI Group argues that the Department should correct the errors and apply the correct HTS classification for the final determination. *See* RMB & IFI Case Brief at 27–28.

Petitioner provided no comments.

Department’s Position:

Based on the information on the record of the investigation, the Department agrees with the RMB & IFI Group that the Department applied the incorrect HTS categories when valuing packing strips, metal brackets, and steam coal. The Department has corrected the valuations for the final determination by selecting HTS classifications appropriate to value the RMB & IFI Group’s packing strips, buckles, and coal. *See* Final Determination and accompanying Surrogate Value Memorandum for the Final Determination, dated February 20, 2009.

Comment 9: Limits to By-Product Offset

Petitioner claims that the Department should limit the RMB & IFI Group’s by-product offset in the calculation of normal value to the quantities examined by the team during verification. Petitioner argues that if the Department does not limit the offset to the quantity examined at verification, the Department should limit the by-product offset to the quantity of steel scrap generated by Jiaxing Brother during the POI. *See* Petitioner’s Case Brief at 5–6.

The RMB & IFI Group agrees with Petitioner’s assertion that the Department should limit by-product offset by the quantity of steel scrap generated during the POI.⁵⁹ However, the RMB & IFI Group rebuts Petitioner’s assertion that the offset should be limited to only the invoices for sales submitted on the record. The RMB & IFI Group argues that the amount of scrap generated during the POI was verified by the Department and that the record does not support applying a lesser amount. The RMB & IFI Group argues that verification is a sampling of the business process and is not intended to be exhaustive.⁶⁰ *See* RMB & IFI Rebuttal Brief at 17–19.

Department’s Position:

The Department agrees with Petitioner and the RMB & IFI Group that the scrap offset for the RMB & IFI Group should be limited to the quantity of scrap generated during the POI, consistent with Department position in the 2006/2007 administrative review of Chlorinated Isocyanurates from the PRC. *See Chlorinated Isos73* FR 52645, and accompanying Issues and Decision Memorandum at Comment 6. We disagree with Petitioner’s recommendation that the

⁵⁹ *Citing American Association of School Paper Suppliers v. United States*, Slip Op. 08-122 (November 17, 2008) at 22.

⁶⁰ *Citing Micron Technology, Inc. v. United States*, 117 F.3d 1386, 1396 (1997), *citing Bomont Industries*, 14 C.I.T. 208, 733 F. Supp. 1507, 1508 (1990).

scrap offset should be limited to quantities for which invoices were examined at verification. There is no evidence on the record of this review to indicate that the RMB & IFI Group did not sell the scrap for which it is claiming an offset. Therefore, the Department has adjusted the scrap offset for the final results to limit the offset to the quantity of scrap produced during the POI in accordance with the Department's practice.

Comment 10: Minor Corrections for the RMB & IFI Group

The RMB & IFI Group maintains that the Department should apply all minor corrections presented during verification of Jiaxing Brother for the final determination. Specifically, the RMB & IFI Group asserts that the Department should: 1) apply the reallocated labor consumption value; 2) apply the corrected total consumption of woodstrip, buckle, and staple; and 3) apply the other corrections to OTHDISU, NETWEIGHT, and GROSSWEIGHT, identified during verification. *See* RMB & IFI Case Brief at 32–33.

Petitioner argues that the Department should correct only certain errors in the U.S. sales database for the RMB & IFI Group. Specifically, Petitioner states that the Department discovered that the RMB & IFI Group misreported certain discounts because it failed to apply a proper conversion for the quantity unit from thousand feet to thousand pieces.⁶¹ Also, Petitioner states that the RMB & IFI Group misreported domestic inland freight distance, giving the distance to the closest port rather than the distance to the port the merchandise was actually shipped from.⁶² Petitioner argues that the Department should correct these errors in the RMB & IFI Group's U.S. sales database. *See* Petitioner's Case Brief at 4-5.

However, Petitioner rebuts the RMB & IFI Group's assertion that the Department should apply the reallocated labor consumption value. Petitioner argues that this correction is not "minor" in absolute or percentage terms, and requests that the Department review its verification findings to determine if Jiaxing Brother's labor hours were improperly reduced by this correction.⁶³ *See* Petitioner's Rebuttal Brief at 14.

The RMB & IFI Group agrees that the Department should correct "other discounts" and domestic inland freight distances for the final determination. However, the RMB & IFI Group asserts that these errors were not "discovered" by the Department at verification, they were presented as minor corrections by the company at the outset of verification, and other discounts and domestic inland freight distances were reported correctly reported on the record of the investigation.⁶⁴ *See* The RMB & IFI Group's Rebuttal Case Brief at 19.

⁶¹ *Citing* Verification of the Sales Response of RMB Fasteners Ltd. and IFI & Morgan Ltd. in the Antidumping Investigation of Certain Steel Threaded Rod from the People's Republic of China, January 6, 2009 ("RMB & IFI Verification Report") at 2 and 12.

⁶² *Citing* Verification of the Factors of Production Response of Jiaxing Brother Standard Part Co. in the Antidumping Duty Investigation of Certain Steel Threaded Rod from the People's Republic of China, January 6, 2009 ("Jiaxing Brother Verification Report") at 2 and 16.

⁶³ *Citing* Jiaxing Brother Verification Report at 15-16 and Exhibits 1 and 14.

⁶⁴ *Citing* RMB & IFI Verification Report, at Exhibit 1; IFI Morgan Minor Corrections Submission, dated November 5, 2008, at Attachment 1; and Brother Minor Corrections Submission, dated November 10, 2008, at Attachment 1.

Department's Position:

The Department agrees with the RMB & IFI Group that this adjustment to reported labor hours is minor in the context of all the data submitted regarding FOPs. With regard to Petitioner's argument that this change is not minor in absolute or percentage terms, we note that the RMB/IFI Group reported data for 56 factors, and in this context the Department considers the correction to the RMB/IFI Group's direct labor amounts minor. We also note that we verified this correction to the reported labor hours. There is no information on the record to demonstrate that the revised labor allocations presented at verification are inaccurate. Therefore, the Department has applied FOPs from the RMB & IFI Group's February 4, 2009, revised FOP database, which reflects all minor corrections presented at verification, and used this database in calculating the final margin for the RMB & IFI Group.

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 determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.

AGREE_____ DISAGREE_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date