

Aristocraft of America, LLC v. United States

Consol. Court No. 15-00307, Slip Op. 17-132 (CIT September 28, 2017)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the decision and remand order of the Court of International Trade (CIT or Court) in *Aristocraft of America, LLC v. United States*, Consol. Court No. 15-00307, Slip Op. 17-132 (CIT September 28, 2017) (*Remand Opinion and Order*). These final results of redetermination concern *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2013–2014*, 80 FR 69942 (November 12, 2015) (*AR6 Final Results*), and accompanying Issues and Decision Memorandum (AR6 IDM). In its *Remand Opinion and Order*, the CIT remanded the *AR6 Final Results* for Commerce to reconsider its value-added-tax (VAT) deduction and selection of financial statements for use in the calculation of surrogate financial ratios.¹

As set forth in detail below, pursuant to the CIT’s *Remand Opinion and Order*, we have further explained our adjustment for irrecoverable VAT and our selection of the Thai financial statements of LS Industry Co., Ltd. (LS Industry), to calculate surrogate financial ratios. Consequently, for the purposes of these results of redetermination on remand, Commerce made no changes to the margin calculation for the mandatory respondent in the *AR6 Final Results*,

¹ See *Remand Opinion and Order* at 3.

Shanghai Wells Hanger Co., Ltd (Shanghai Wells). The period of review (POR) is October 1, 2013, through September 30, 2014.

On December 1, 2017, we released our draft results of redetermination to interested parties.² On December 11, 2017, Shanghai Wells Hanger Co, Ltd., Hong Kong Wells Ltd., Hong Kong Wells Ltd. (USA) (collectively, Shanghai Wells), Best For Less Dry Cleaners Supply LLC, Ideal Chemical & Supply Company, Laundry & Cleaners Supply Inc., Rocky Mountain Hanger MFG Co., Rosenberg Supply Co., Ltd., and ZTN Management Company, LLC (collectively, U.S. Distributors), provided comments.³ We respond to these comments below. After considering these comments and analyzing the record, for purposes of this final remand redetermination, the Department continues to make an adjustment for irrecoverable VAT in the amount of eight percent and makes no change to its selection of financial statements for calculating surrogate financial ratios in this review.

B. REMANDED ISSUES

1. Irrecoverable VAT Adjustment

Background

In the *AR6 Final Results*, we declined to use Shanghai Wells' proposed alternative calculation for its irrecoverable VAT because its calculation relied on allocations across all company sales and across sales of products with different VAT schedules and because Shanghai Wells did not demonstrate that it was more appropriate than Commerce's standard irrecoverable VAT calculation methodology.⁴ In the AR6 IDM, we explained that our irrecoverable VAT

² See Department Letter re: Draft Remand Determination in the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China; 10/01/2013-9/30/2014, dated December 1, 2017 (Draft Remand).

³ See Shanghai Wells and U.S. Distributors' Letter "Comments on Draft Remand," dated December 11, 2017, (Draft Comments).

⁴ See AR6 IDM at Comment 3.

calculation methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount determined in step one.⁵ We further stated that because information placed on the record of this review by Shanghai Wells indicates that according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is nine percent, we removed from U.S. price the difference between the rates as the irrecoverable VAT, *i.e.*, eight percent.⁶

Aristocraft of America LLC, Shanghai Wells, Hong Kong Wells Ltd., Hong Kong Wells Ltd. (USA), Best For Less Dry Cleaners Supply LLC, Ideal Chemical & Supply Company, Laundry & Cleaners Supply Inc., Rocky Mountain Hanger MFG Co., Rosenberg Supply Co., Ltd., and ZTN Management Company, LLC, (collectively, Shanghai Wells, *et al.*), contend that Commerce erred in calculating Shanghai Wells' irrecoverable VAT adjustment and that the application of our VAT methodology was unreasonable given the administrative record.⁷

Although the Court supported our determination that a cost that arises as the result of export sales such as irrecoverable VAT can be considered to constitute an export tax or duty imposed within the meaning of the Act,⁸ the Court remanded the *AR6 Final Results* to Commerce with respect to the amount of irrecoverable VAT deducted by Commerce. Specifically, the Court held that Commerce failed to demonstrate that the calculation of an eight percent irrecoverable VAT deduction from Shanghai Wells' EP and CEP was reasonable.⁹ In its decision, the Court directs Commerce to provide "further explanation and, if appropriate,

⁵ *Id.*

⁶ *Id.*

⁷ See *Remand Opinion and Order* at 5.

⁸ *Id.* at 11; see also section 772(c)(2)(B) of the Tariff Act of 1930, as amended (the Act).

⁹ See *Remand Opinion and Order* at 11-12.

reconsideration” of our irrecoverable VAT calculation with respect to Shanghai Wells.¹⁰ For purposes of these final results of redetermination, Commerce has reviewed the record of this review in order to provide further explanation regarding the basis for its calculation methodology for irrecoverable VAT and clarification regarding its methodology.

Analysis

For these final results of redetermination, Commerce continues to reduce Shanghai Wells’ prices by eight percent to account for irrecoverable VAT. Commerce has further reviewed its determination and the record evidence and expands upon, and further explains, its determination with respect to the amount of the deduction of irrecoverable VAT.

Commerce is directed to reduce the export price or constructed export price used in the antidumping margin calculation by “the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C)”¹¹ Commerce’s irrecoverable VAT adjustment entails deducting the amount of irrecoverable VAT that was included in the selling price of steel wire garment hangers to the United States. In a typical VAT system, for both domestic and foreign sales, companies are able to recover the VAT paid on inputs. That stands in contrast to the China’s VAT regime, where some portion of the VAT is not refunded for exports. That is, companies do not receive a full rebate of VAT for exports when the government-mandated VAT refund rate for a particular exported product is less than the government-mandated VAT rate under China’s VAT system. This amounts to a tax, duty, or other charge imposed on exports that is not imposed on domestic

¹⁰ *Id.* at 13-14.

¹¹ Section 772(c)(2)(B) of the Act.

sales, an interpretation that the Court held was reasonable.¹² Where the irrecoverable VAT is a fixed percentage of U.S. price, Commerce explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.¹³

As explained below, companies that export a good, rather than sell it domestically, build VAT unrefunded by the government into the export price itself. Adjusting for this unrefunded VAT/irrecoverable VAT, which equates to an export tax, is consistent with section 772(c)(2)(B) of the Act. Moreover, this deduction is consistent with Commerce's longstanding policy that dumping margin calculations be tax-neutral.¹⁴

In the *AR6 Final Results*, Commerce calculated the amount of irrevocable VAT using a methodology that is supported by China's tax law and regulation and the accounting records of Shanghai Wells. In its initial questionnaire response, Shanghai Wells claimed that it was not required to pay any VAT on its export sales, and referred to Article 2 of China's VAT interim regulations that were effective on January 1, 2009).¹⁵ Article 2 simply states that "{f}or taxpayers selling or importing goods. . . the tax rate shall be 17 percent."¹⁶ In a supplemental response, Shanghai Wells stated that "the calculation of VAT payable, regardless of whether the sales are domestic sales or exports, is as follows: Output VAT (sales to customers X applicable VAT rate (17%)) minus Input VAT (VAT paid for purchase of materials)."¹⁷ Shanghai Wells

¹² See *Remand Opinion and Order* at 11; see also section 772(c)(2)(B) of the Act; *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-201*, 79 FR 35723 (June 24, 2014) and accompanying IDM and Comment 6.

¹³ See AR6 IDM at Comment 3.

¹⁴ See *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27369 (May 19, 1997) (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 827); see, e.g. *Fushun Jinly Petrochemical Carbon Co. v. United States*, Court No. 14-00287, Slip Op. 16-25, 2016 WL 1170876, at *10-11 (CIT Mar 23, 2016).

¹⁵ See Shanghai Wells' February 9, 2015, Section C and D questionnaire response (Shanghai Wells' CDQR) at C-36 and Exhibit C-12 (2009 VAT Interim Regulations).

¹⁶ See Shanghai Wells' CDQR at Exhibit C-12.

¹⁷ See Shanghai Wells' April 23, 2015, Supplemental Section C and D Questionnaire response (Shanghai Wells' SuppCD) at 6.

also provided an alternative irrecoverable VAT calculation that relies on deriving the input VAT paid on sales of subject merchandise through an allocation based on all company sales and then offsetting the input VAT paid by the nine percent VAT refund rate on exports.¹⁸ However, as explained in the *AR6 Final Results*,¹⁹ and further detailed below in these final results of redetermination, Shanghai Wells' alternative calculation makes a number of assumptions that are inappropriate. Moreover, the record demonstrates that its alternative calculation methodology is inconsistent with China's guidance on irrecoverable VAT and inconsistent with Shanghai Wells' own accounting records for the recording of irrecoverable VAT.

In the AR6 IDM, we stated that "we will not consider allocations across all company sales or across sales of products with different VAT schedules but, rather, to use the difference between the standard VAT rate and the refund rate, consistent with China's regulations, unless the company can show otherwise for the subject merchandise."²⁰ The aggregate input VAT that Shanghai Wells paid on purchases of materials that it used to make products, which it used in its alternative calculation for irrecoverable VAT, is not relevant to the calculation of the transaction-specific adjustment to U.S. price for irrecoverable VAT that Commerce makes to measure dumping. While Chinese companies may still deduct input VAT from output VAT similar to companies in a typical VAT system, in China's VAT system the companies do not receive a full rebate of the VAT on exports of specific products and that is the reason for our irrecoverable VAT adjustment. Specifically, according to Chinese law, the irrecoverable VAT rate for a particular product that is exported is the difference between the standard VAT levy rate for that

¹⁸ *Id.* at 7 and Exhibit 17.

¹⁹ *See* AR6 IDM at Comment 3.

²⁰ *Id.* (citing to *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 6).

product and the VAT refund rate for that product (here, the product is steel wire garment hangers).²¹ Accordingly, we rely on the difference between the VAT refund rate for steel wire garment hangers and the standard VAT levy rate for steel wire garment hangers to calculate the amount of the irrecoverable VAT adjustment to the U.S. price for steel wire garment hangers.

The Court questioned whether the “breakdown of the formula contradicts Commerce’s conclusion that the VAT was ‘paid on inputs and raw materials (used in the production of exports).’”²² However, we explain below why the Court’s “simplified example”²³ is not an appropriate analogy for the irrecoverable VAT incurred by Shanghai Wells on its exports of steel wire garment hangers given China’s VAT refund rules for exports. While the hypothetical expressed by the Court is an appropriate interpretation of the reasoning put forward by Shanghai Wells in its alternative irrecoverable VAT calculation, Shanghai Wells’ methodology is an oversimplification of the irrecoverable VAT liability experienced by Shanghai Wells in the normal course of business on sales of steel wire garment hangers, is inconsistent with China’s law on irrecoverable VAT, and is inconsistent with Shanghai Wells’ own accounting records for the recording of irrecoverable VAT. Commerce finds that Shanghai Well’s alternative VAT calculation is designed to limit Shanghai Wells’ antidumping duty liability in this proceeding. As detailed below, Shanghai Wells’ own books and records suggest that Shanghai Wells’ alternative calculation grossly understates the actual irrecoverable VAT it records in its books and records and is not otherwise rooted in reality.

²¹ Shanghai Wells’ June 1, 2015, Supplemental Questionnaire response (Shanghai Wells’ June 1 Response), at Exhibit 12, “Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services, Cai Shui 2012 No.39, May 25, 2012” (2012 VAT Circular) at Article 5.1.(1).

²² See *Remand Opinion and Order* at 13.

²³ *Id.* at 12.

Shanghai Wells claims that “the calculation of VAT payable, regardless of whether the sales are domestic sales or exports, is as follows: Output VAT (sales to customers X applicable VAT rate (17%)) minus Input VAT (VAT paid for purchase of materials).”²⁴ To support this claim, it points to Article 4 of the 2009 VAT Interim Regulations which states the following:

The formula for computing the tax payable is as follows:
Tax Payable = Current Output Tax {-} Current Input Tax
If the current output tax is less than and insufficient to offset the current input tax, the difference can be carried forward to the next term for continued offset.²⁵

On its surface, this formula may seem to support Shanghai Wells’ contention that its irrecoverable VAT is equal to the difference between its output VAT less its input VAT. However, further examination reveals that the record does not support this formula as a basis for determining the irrecoverable VAT Shanghai Wells’ actually incurred on its exports of steel wire garment hangers. Although Shanghai Wells points to the 2009 VAT Interim Regulations as support for its alternative irrecoverable VAT calculation,²⁶ further guidance on China’s VAT policies with respect to exported goods were issued by the Chinese government in May 2012 and in effect as of July 1, 2012.²⁷ The 2012 VAT Circular describes China’s VAT system and its requirements for irrecoverable VAT. Article 5.3 of the 2012 VAT Circular clarifies that for irrecoverable VAT, “{w}here the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of the exported goods and services.” The 2012 VAT Circular also states that (1) “{t}he VAT refund (exemption) of the goods and services exported by the manufacturing enterprises . . . shall be the actual FOB price of exported goods and services”; and (2) the VAT refund amount is equal to the “FOB price of

²⁴ See Shanghai Wells’ SuppCD at 6.

²⁵ See Interim Regulations at Article 4.

²⁶ *Id.*

²⁷ See 2012 VAT Circular.

exported goods x RMB conversion rate of foreign currency x tax refund rate of exported goods.” We find the 2012 VAT Circular supportive of our irrecoverable VAT calculation methodology.

Although China’s VAT regime is a complex system of liabilities, deductions, offsets, and exemptions, with carryover amounts between periods and refunds reflecting calculations from prior periods, the 2012 VAT Circular supports that where the VAT refund rate of the goods exported is lower than the standard VAT rate of 17 percent the exporter is left with a cost for the difference. Further, while portions of the 2012 VAT Circular indicate a link between the input VAT paid and tax paid or refunded, that language should not be read in a way that confuses how the exporter incurs the cost on a transaction level for specific exports of steel wire garment hangers. For example, the 2012 VAT Circular explains methodologies for the “{c}alculation of amount of tax refund and amount of tax exemption and offset for the current period,” and contains different guidelines depending on the amounts of “ending carryover for the current period” relative to the amount of “tax exemption, offset and refund for the current period.”²⁸ Again, these complex rules indicate the link between the input VAT paid and tax paid or refunded as reflected in Shanghai Wells’ aggregate VAT documentation, but, unlike transaction amounts, the aggregate amounts will be distorted not only by the time lag between input VAT paid long before production and the time that goods are exported, but also by offsets from differences arising from prior periods, including periods outside of the POI. Accordingly, the record demonstrates that Shanghai Wells’ alternative irrecoverable VAT calculation methodology does not reflect the expense it incurs in the normal course of business at the transaction level for specific exports of steel wire garment hangers and, consequently, that the Court’s “simplified example” is not analogous to Shanghai Wells’ experience for irrecoverable

²⁸ *Id.* at Article 5.1.(2)-(3).

VAT for its exports of steel wire garment hangers under China's VAT regime. Moreover, as explained below, Shanghai Wells' alternative methodology represents an inaccurate calculation of its actual amount of irrecoverable VAT experienced in the normal course of business.

In *Methodological Change*, Commerce stated that where a respondent has reported a gross price which is inclusive of tax, a deduction must be made for those taxes imposed on the sale in order to achieve what is called for in the statute.²⁹ Here, Shanghai Wells acknowledged that it incurs a VAT payable, regardless of whether the sales are domestic or exports, and that the nine percent refund rate is applied to exports of the subject merchandise while the standard 17 percent is normally generated on a domestic sale.³⁰ As cited above, Article 5.3 of the 2012 VAT Circular states that “{w}here the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of the exported goods and services.”³¹ Here, the refund rate of nine percent on exports of steel wire garment hangers is lower than the standard tax rate applicable to steel wire garment hangers (17 percent) and, accordingly, Chinese law directs Shanghai Wells to include the difference (eight percent) in the cost of the exported goods.

Therefore, we examined the record to determine whether Shanghai Wells' sales of subject merchandise included the cost of irrecoverable VAT, as directed by Chinese law, and found that Shanghai Wells records an amount for irrecoverable VAT in its accounting records and considers irrecoverable VAT as a cost of producing subject merchandise. Specifically, Shanghai Wells submitted a “Tax Payable” subledger with an entry translated by Shanghai Wells

²⁹ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483 (June 19, 2012) (*Methodological Change*) (citing section 772(c)(2)(B) of the Act).

³⁰ See Shanghai Wells' SuppCD at 6-7.

³¹ See 2012 VAT Circular at Article 5.3.

as “[]” in the amount of [] for the month of June 2014.³² That amount is equal to [] percent of Shanghai Wells’ export sales for the month of June 2014.³³ The accounting code listed as the account for irrecoverable VAT is [].³⁴ Shanghai Wells reported this accounting code in its Supplemental Section A response as “[],”³⁵ as “[]” in its Section C and D response,³⁶ and as “Total Un-exempted Tax” in a supplemental Section C and D response.³⁷ Shanghai Wells records “[]” as an expense in its Cost of Sales subledger.³⁸ Further, Shanghai Wells stated that in setting the prices of merchandise exported to the United States it “establishes price offers on the basis of the company’s production, freight, overhead, and administrative costs.”³⁹ Thus, because Shanghai Wells considers irrecoverable VAT to be a cost of producing subject merchandise, its sale price includes the cost of irrecoverable VAT, as directed by Chinese law and the 2012 VAT Circular.

Next, we further examined whether the amount deducted using our standard methodology (*i.e.*, eight percent) was reasonable given the administrative record and found that, during the POR, Shanghai Wells booked an amount equal to approximately the same amount that Commerce deducted from its prices using our standard methodology. Specifically, the average monthly amounts recorded by Shanghai Wells in its irrecoverable VAT account equaled [] percent of its monthly export sales value during the POR.⁴⁰ Although the record does not

³² See Shanghai Wells’ June 1 Response at Exhibit 14.

³³ Compare Shanghai Wells’ June 1 Response at Exhibit 14 and Shanghai Wells’ SuppCD at Exhibit 17. See also the business proprietary memorandum accompanying this remand redetermination (BPI Memo).

³⁴ See Shanghai Wells’ June 1 Response at Exhibit 14.

³⁵ See Shanghai Wells’ February 2, 2015, Supplemental Section A Questionnaire response at Exhibit 8.

³⁶ See Shanghai Wells’ CDQR at Exhibit R-4.

³⁷ See Shanghai Wells’ SuppCD at Exhibit 35.

³⁸ See Shanghai Wells’ CDQR at Exhibit R-4 (booking an amount to Shanghai Wells’ Cost of Sales subledger equal to [] percent of its export sales for the month of October 2013. See BPI Memo.).

³⁹ See Shanghai Wells’ January 8, 2015, Section A Questionnaire response at 6.

⁴⁰ See BPI Memo.

contain the amount of irrecoverable VAT recorded by Shanghai Wells on a transaction-by-transaction basis, the aggregate amounts incurred by Shanghai Wells support that Commerce's standard deduction of eight percent irrecoverable VAT is reasonable.

Accordingly, after reviewing the administrative record and reconsidering our methodology with respect to the deduction of irrecoverable VAT, we continue to find that Shanghai Wells' alternative VAT calculation is an inappropriate methodology by which to calculate Shanghai Wells' irrecoverable VAT and determines that our standard methodology is supported by the record and by Shanghai Wells' own books and records. Accordingly, Commerce is not making any changes to the *AR6 Final Results* with respect to our calculation of the amount of irrecoverable VAT deducted from Shanghai Wells' export price.

2. Financial Statements

Background

In the *AR6 Final Results*, Commerce calculated surrogate financial ratios using the Thai financial statements of LS Industry, Sahasilp Rivet Industrial Co. Ltd. (Sahasilp) and Thai Mongkol Fasteners Co., Ltd. (Thai Mongkol), because these financial statements represented the "best available" information within the meaning of section 773(c)(1) of the Act.⁴¹

Shanghai Wells, *et al.*, challenged Commerce's use of the financial statements of Sahasilp and Thai Mongkol because they claimed that Commerce equated production of "comparable merchandise" with drawing wire from wire rod and, because the record does not support the claim that these companies draw wire from wire rod, these companies did not produce "identical or comparable merchandise."⁴²

⁴¹ See AR6 IDM at Comment 2.

⁴² See *Remand Opinion and Order* at 23-24 and 26; see also AR6 IDM at Comment 2.

In the *Remand Opinion and Order*, the Court noted that during the less-than-fair value investigation (LTFV Investigation) of this proceeding, Commerce concluded that “only those companies which clearly identify wire rod as a raw material can be considered adequate surrogates to calculate the surrogate financial ratios because any of these more accurately reflect the production experience of the respondents”⁴³ and that Commerce “solidified its stance” that potential surrogate companies use wire rod in the production process in the following three administrative reviews.⁴⁴ In the fourth administrative review, the Court states, faced with more limited options, Commerce selected only the financial statements of LS Industry, while acknowledging that the record did not indicate whether LS Industry drew wire rod or the inputs it used in its production process of nails.⁴⁵ The Court states that “{i}n the fifth administrative review, Commerce selectively quoted its rationale from the fourth administrative review to justify selecting financial statements without regard to whether {the companies} drew wire from wire rod” and merely “mimicked {that} approach” in this review, despite record evidence indicating that Sahasilp and Thai Mongkol do not draw wire from wire rod and in spite of evidence demonstrating that LS Industry did draw wire from wire rod.⁴⁶ In its decision, the Court directs Commerce to “address reasonably the importance of drawing wire from wire rod as a surrogate company selection criterion.”⁴⁷ For purposes of this Remand, Commerce has reviewed the record of this proceeding in order to assess the importance of drawing wire from wire rod as a surrogate company selection criterion.

⁴³ See *Remand Opinion and Order* at 26 (citing to *Steel Wire Garment Hangers from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum (LTFV IDM) at Comment 3).

⁴⁴ See *Remand Opinion and Order* at 27.

⁴⁵ *Id.* (citing to *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011–2012*, 79 FR 31298 (June 2, 2014) (*AR4 Final Results*) and accompanying Issues and Decision Memorandum (AR4 IDM) at Comment 2).

⁴⁶ *Id.* at 28.

⁴⁷ *Id.* at 31.

Analysis

In accordance with the *Remand Opinion and Order*, Commerce has reconsidered its selection of financial statements in the *AR6 Final Results*. For the reasons set forth below in these final results of redetermination, Commerce explains that it has not changed its established practice in this proceeding and, all else being equal, continues to prefer financial statements from companies that draw wire from wire rod to produce identical or comparable merchandise in order to calculate the surrogate financial ratios of an integrated producer such as Shanghai Wells. Further, Commerce respectfully disagrees that the financial statements selected in this review represent a departure from our established practice, and continues to use the financial statements of LS Industry, Sahasilp, and Thai Mongkol, to calculate surrogate financial ratios for Shanghai Wells.

The statute directs Commerce to base the valuation of factors of production on “the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate. . . .”⁴⁸ 19 CFR 351.408(c)(4) further stipulates that Commerce normally will value manufacturing overhead, selling, general, and administrative (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, it is Commerce’s preference to use financial statements that: 1) are complete and contemporaneous; 2) are from the primary market economy surrogate country and a company

⁴⁸ Section 773(c)(1)(B) of the Act.

that produces products comparable to subject merchandise; and 3) we have no reason to believe or suspect may have benefitted from subsidies we have found to be countervailable.⁴⁹

In the first administrative review, Commerce was presented with a collection of 14 financial statements.⁵⁰ Commerce selected from that group the only financial statements that expressly identified consumption of steel wire rod in its production process.⁵¹ In the second administrative review (AR2), Commerce used four financial statements on the record after determining that each of the companies drew wire rod in the production of comparable merchandise.⁵² In the third administrative review (AR3), Commerce selected the financial statements of three Philippine producers of comparable merchandise that the record demonstrated drew wire from wire rod.⁵³

In the final results of the fourth administrative review (AR4), we selected the financial statements of only LS Industry because it was a producer of comparable merchandise, *i.e.*, nails.⁵⁴ However, we stated that the record did not indicate whether it drew wire from wire rod or what inputs it used in its production process and that “where information as to inputs and production is on the record for a producer of comparable merchandise, such information may be useful in determining whether it is appropriate to use.”⁵⁵

⁴⁹ See, e.g., *First Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994 (May 13, 2011) and accompanying Issues and Decision Memorandum (AR1 IDM) at Comment 2.

⁵⁰ See AR1 IDM at Comment 2.

⁵¹ *Id.*

⁵² See *Steel Wire Garment Hangers from the People’s Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012) and accompanying Issues and Decision Memorandum (AR2 IDM) at Comment 4.

⁵³ See *Steel Wire Garment Hangers from the People’s Republic of China: Antidumping Duty Administrative Review, 2010–2011*, 77 FR 66952 (November 8, 2012) and accompanying Preliminary Decision Memorandum (AR3 PDM) at “Data Availability”; unchanged in *Steel Wire Garment Hangers from the People’s Republic of China: Final*

Results of Antidumping Duty Administrative Review, 2010–2011, 78 FR 28803 (May 16, 2013).

⁵⁴ See AR4 IDM at Comment 2.

⁵⁵ *Id.*

In the fifth administrative review (AR5), we used the same financial statements at issue in this segment, LS Industry, Sahasilp, and Thai Mongkol.⁵⁶ As we stated in AR4 for LS Industry, the financial statements of Sahasilp and Thai Mongkol did not indicate the types of inputs they consume in their production processes, but determined that they produced merchandise Commerce has found to be comparable to steel wire garment hangers (*e.g.*, nails, fasteners, *etc.*).⁵⁷ Although we also relied on the financial statements of LS Industry, we did not state whether any record evidence existed that would indicate whether LS Industry drew wire from wire rod, as we had done in AR4,⁵⁸ only that all three statements were from Thai manufacturers of fasteners and wire-based products.⁵⁹ However, in a subsequent redetermination pursuant to court remand on AR5,⁶⁰ we stated that “{o}ur review of the information reveals that the Thai companies’ financial statements do not include information on their respective inputs and production processes (*i.e.*, whether or not they draw wire rod)” and that “{Commerce} finds that no other record information demonstrates that the Thai companies draw wire rod as part of their production process.”⁶¹ In a footnote, we further stated that “{w}hile {a U.S. importer} concludes that {LS Industry} draws wire based on photographs of what appear to be wire

⁵⁶ See *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2012–2013*, 80 FR 13332 (March 13, 2015) and accompanying Issues and Decision Memorandum (AR5 IDM) at Comment 3.

⁵⁷ *Id.*

⁵⁸ Compare *id.* with AR4 IDM at Comment 2 (“We note the information on the record does not indicate whether LS Industry draws wire rod or what inputs it uses in its production process.”)

⁵⁹ See *Steel Wire Garment Hangers from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 2012–2013*, 79 FR 65616 (November 5, 2014) and accompanying Preliminary Decision Memorandum at “Factor Valuations.”

⁶⁰ The AR5 remand is currently pending before the Court.

⁶¹ See *Final Results of Redetermination Pursuant to Court Remand Order in Shanghai Wells Co., Ltd. v. United States*, Consol. Court No. 15-00103, Slip Op. 17-24 (*AR5 Remand*) at 9, accessed on October 19, 2017, at <http://ia.ita.doc.gov/remands/17-24.pdf>. (The Court has not yet ruled on this remand redetermination, filed on June 7, 2017, ECF 68).

drawing machinery in Exhibit 1, Commerce cannot make the same conclusion without additional evidence.”⁶²

The Court stated that “Commerce acted unreasonably by failing to adhere to its announced selection criterion without explaining why that criterion suddenly has no relevance.”⁶³ However, for the reasons explained below, we respectfully disagree with the Court that the *AR6 Final Results* represent a departure from our established practice. Further, through the *Remand Order and Opinion*, it became apparent to us that we did not sufficiently address each argument made by Shanghai Wells, *et al.* Specifically, while we attempted to explain that Sahasilp and Thai Mongkol should be considered producers of comparable merchandise in light of the information available on the record, we did not directly address record evidence purporting to demonstrate that LS Industry drew wire from wire rod, which resulted in an incomplete analysis of the record information.⁶⁴

Based on our review of previous administrative reviews, described above, and the record of this administrative review, Commerce has never found the financial statements of LS Industry to represent the financial position of an integrated producer that draws wire from wire rod. Commerce maintains its stated position in the LTFV IDM that “only those companies which clearly identify wire rod as a raw material can be considered adequate surrogates to calculate the surrogate financial ratios because any of these more accurately reflect the production experience of the respondents.”⁶⁵ However, we do not construe this position to represent a blanket statement that equates production of comparable merchandise with drawing wire from wire rod,

⁶² *Id.*

⁶³ *Remand Opinion and Order* at 28.

⁶⁴ *See* AR6 IDM at Comment 2.

⁶⁵ *See* LTFV IDM at Comment 3.

as argued by Shanghai Wells, *et al.*⁶⁶ Rather, Commerce’s statement means that those financial statements for companies that clearly identify wire rod as a raw material can be considered adequate surrogates to calculate the surrogate financial ratios because such statements more accurately reflect the production experience of the respondents.⁶⁷ Where potential surrogate financial statements clearly identify the consumption of wire rod in their production process, those statements are preferable to statements that lack such detail. Alternatively, where the record lacks any financial statements that definitively indicate that the company produced identical or comparable merchandise by drawing wire from wire rod, Commerce must resort to the next best available information. Where the record contains multiple, otherwise usable, statements from producers of identical or comparable merchandise but lacks detail regarding production processes and raw materials, the absence of such information does not exclude a producer of comparable merchandise from consideration.⁶⁸

As detailed above, in the segment where we relied solely on the financial statements of LS Industry,⁶⁹ we still noted that the record does not indicate whether LS Industry is a producer of comparable merchandise that draws wire from wire rod.⁷⁰ In AR5, where we used LS Industry and Sahasilp and Thai Mongkol, we provided additional clarifying analysis to the Court in the AR5 Remand, as we do here for this redetermination for AR6.

Although the Court correctly noted that there exists “undisputed record evidence” in this review that LS Industry draws wire from wire rod,⁷¹ we do not interpret that statement to mean that there exists “irrefutable record evidence” that LS Industry draws wire from wire rod.

⁶⁶ See *Remand Opinion and Order* at 26.

⁶⁷ See AR1 IDM at Comment 2 (citing to LTFV IDM at Comment 3).

⁶⁸ See, e.g., AR6 IDM at Comment 2.

⁶⁹ See AR4 IDM at Comment 2.

⁷⁰ See AR4 IDM at Comment 2; AR7 IDM at Comment 2

⁷¹ See *Remand Opinion and Order* at 28 (citing U.S. Distributors’ Case Brief, “Steel Wire Garment Hangers from the People’s Republic of China – Case Brief,” dated August 24, 2015 (U.S. Distributors’ Case Brief)).

Rather, we interpret that statement to reflect that Commerce did not dispute the information to which the Court refers. Commerce neglected to address the information at issue in the *AR6 Final Results*. Accordingly, we look to the record evidence submitted by interested parties as referenced in the *Remand Opinion and Order*.⁷² In its administrative case brief before Commerce, U.S. Distributors claim that the photo gallery submitted from LS Industry’s website “shows wire rod in coils in nearly every photograph included in the gallery, and the pictures of the production areas show wire rod coils and drawing machines.”⁷³ However, a review of the source document reveals six photos of extremely poor quality that are unlabeled and do little to support the claims of U.S. Distributors. Even if one could claim to be able to identify the objects in the images with certainty, the record contains nothing beyond the claim of U.S. Distributors to substantiate what a wire drawing machine looks like or that the photographed images are definitively drawing machines used in LS Industry’s production process.⁷⁴ Although there appears to be machinery in one of the images, the type of machine is not discernable. Shanghai Wells reported that it used a straightening machine to straighten steel wire before it is fed through the hanger forming machine and there is nothing on the record to support the claim that the machine pictured is not, in fact, a straightening machine rather than a wire drawing machine, or any other type of machine.⁷⁵ Similarly, because there is no record evidence that documents the distinction between coils of wire and coils of wire rod, the images characterized by U.S. Distributors as “wire rod coil” could just as likely be coils of wire. Given the poor quality of the

⁷² See *FabriClean Supply Inc.’s May 13, 2015, Submission of Surrogate Value Information (FabriClean’s SV Submission)*, at Exhibit SV-11.

⁷³ See U.S. Distributors’ Case Brief at 15.

⁷⁴ *Id.* (“The Photo Gallery from LS Industry’s website submitted by FabriClean shows wire rod in coils in nearly every photograph included in the gallery, and the pictures of the production areas show wire rod coils and drawing machines.”)

⁷⁵ See Shanghai Wells’ CDQR at D-4.

images, Commerce cannot determine whether the material pictured is wire rod or, instead, any number of other products, *e.g.* steel bar, reinforcing bar, steel strip, or bundles of any other type of coiled materials. While the images appear to be from the website of LS Industry, there is nothing to suggest that the images are of LS Industry's own production facility.⁷⁶ Indeed, there are no discernable signs, markings on the facility itself, or company name posted, indicating that the photographs are of LS Industry's facility or describing the nature of the photographed materials and machines.⁷⁷ Further, the only narrative description on the website is: "The Machines – We use machines from Germany and Japan, the world leading machine manufacturers."⁷⁸ Finally, even if the images submitted by U.S. Distributors actually depicted coils of wire rod and wire drawing machines, there is nothing to suggest that the images were taken during the POR and not at some point outside of the POR.

Simply put, the images at issue do not definitively demonstrate that LS Industry drew wire from wire rod during the POR. Absent such information, the financial statements of LS Industry do not represent a clearly superior selection by which to value the surrogate financial ratios in this review. Therefore, we continue to find that the financial statements of LS Industry, Sahasilp, and Thai Mongkol, all represent equally suitable financial statements of producers of comparable merchandise. Absent definitive evidence to the contrary, all three statements represent the best available information on the record of this review for calculating surrogate financial ratios. Accordingly, Commerce is not making any changes to the *AR6 Final Results* with respect to the valuation of Shanghai Wells' overhead, SG&A, and profit ratios.

⁷⁶ See FabriClean's SV Submission at Exhibit SV-11.

⁷⁷ *Id.*

⁷⁸ *Id.*

C. INTERESTED PARTY COMMENTS

On December 1, 2017, Commerce released the draft results of redetermination to all interested parties.⁷⁹ We invited parties to comment on the draft results of redetermination by December 7, 2017.⁸⁰ On December 5, 2017, at the request of Shanghai Wells and U.S. Distributors, we extended the comment period to 12:00 p.m. on December 11, 2017.⁸¹ Shanghai Wells and U.S. Distributors submitted comments on December 11, 2017.⁸² No other interested party submitted comments.

Issue 1: Irrecoverable VAT Adjustment

Shanghai Wells and U.S. Distributors' Comments:

- In the draft remand results, Commerce ignores the Court's instructions to explain the assumption "that the 17 {percent} standard VAT levy was applied to the entire FOB export value of the hanger, and not to the VAT-subject inputs and raw materials used in production."⁸³
- Commerce points to no record evidence and the VAT Circular relied on by Commerce provides no information to support the conclusion that 17 percent is applied to the price of the finished hangers and not to the price of the inputs used in the production of finished hangers.
- Irrecoverable VAT is the difference between the VAT paid on inputs used to produce finished merchandise and the VAT refund upon export, while the VAT Circular relied on by Commerce only explains the second part of that equation, the VAT refund.

⁷⁹ See Draft Remand.

⁸⁰ *Id.*

⁸¹ See Memorandum regarding: Draft Remand Comments Extension, dated December 5, 2017.

⁸² See Draft Comments.

⁸³ *Id.* at 4 (citing to *Remand Opinion and Order* at 13).

- Commerce acknowledges a link between input VAT paid and the tax paid or refunded but points to no record evidence to support the conclusion that the standard VAT levy rate is applied to the full FOB price of the hangers.
- Commerce justifies its methodology by pointing out the complexities in calculating the irrecoverable VAT, but these complexities cannot excuse Commerce from supporting its calculation with record evidence and it cannot sacrifice accuracy for simplicity where to record evidence supports its calculation.
- Commerce claims that Shanghai Wells maintained an account for irrecoverable VAT but the account in question is translated in several different ways, and Shanghai Wells also has accounts for input tax, output tax, refund of VAT for export, and payment of VAT.
- It is unreasonable for Commerce to choose the translation that supports its position and Commerce should request clarification on the relationship between the various sub-accounts.

Commerce's Position:

We disagree with Shanghai Wells and U.S. Distributors that there is no record evidence to support the proposition that Shanghai Wells' irrecoverable VAT calculation should be based on the application of 17 percent to the FOB value of steel wire garment hangers. Shanghai Wells' own submissions support Commerce's use of 17 percent as the "applicable tax rate" in the formula for calculating irrecoverable VAT, as expressed in the Chinese government's guidance in the 2012 VAT Circular that is in effect for Shanghai Wells' sales of steel wire garment hangers during this POR. Moreover, Shanghai Wells' own alternative calculation for irrecoverable VAT confirms that 17 percent of the value of steel wire garment hangers is the appropriate starting point for the calculation of irrecoverable VAT. First, Shanghai Wells stated

that “the general calculation formula of VAT payable, regardless of whether the sales are domestic sales or exports, is as follows: Output VAT (sales to customers x applicable VAT rate (17 {percent})) minus Input VAT (VAT paid for purchase of materials).”⁸⁴ Shanghai Wells further stated that “{f}or the subject merchandise under this review. . . the standard 17 {percent} VAT is normally generated on a domestic sale.”⁸⁵ Thus, Shanghai Wells acknowledges that whether the sales are domestic or export, the applicable VAT rate is 17 percent for steel wire garment hangers. Second, the calculation advocated by Shanghai Wells as the “accurate and reconciled” calculation of its VAT liability applies 17 percent to the value of finished steel wire garment hangers.⁸⁶ Specifically, Shanghai Wells stated that “Tax liability = Total POR sales of subject merchandise x (Applicable VAT rate - VAT Refund Rate) - Input VAT for subject merchandise sales” and in its calculation stated that the “Applicable VAT rate” equals [

].⁸⁷ Accordingly, we find that the record supports the conclusion that the applicable VAT rate for steel wire garment hangers is 17 percent. Further, Shanghai Wells’ own calculation for irrecoverable VAT and the formula expressed in Chinese law support the conclusion that the difference between the applicable VAT rate (17 percent) and the refund rate (nine percent), *i.e.*, eight percent (17 – 9 = 8), should be applied to the value of Shanghai Wells’ steel wire garment hangers.⁸⁸

⁸⁴ See Shanghai Wells SuppCD at 6.

⁸⁵ *Id.* at 7.

⁸⁶ *Id.* at 7-8 and Exhibit 17.

⁸⁷ *Id.* at 7 and Exhibit 17.

⁸⁸ Shanghai Wells reported that “{f}or the subject merchandise under this review, the {nine percent} VAT refund rate is applied while the standard 17 {percent} VAT is normally generated on a domestic sale. This will leave the Output VAT rate as {eight percent}. . .” Shanghai Wells then applies the difference between the 17 percent tax rate and the nine percent refund rate (*i.e.*, eight percent) to its POR sales of subject merchandise in the following formula: Tax liability = Total POR sales of subject merchandise * (Applicable VAT rate-VAT Refund Rate)-Input VAT for subject merchandise sales. See Shanghai Wells SuppCD at 7.

Although Shanghai Wells points to the formula in the 2009 VAT Interim Regulations to support its contention that its irrecoverable VAT is equal to the difference between the VAT paid on inputs used to produce finished merchandise and the VAT refund upon export of the finished merchandise,⁸⁹ Shanghai Wells' reliance on the 2009 VAT Interim Regulations alone is misplaced. We find that the 2012 VAT Circular supplements the record by further explaining the formula in the 2009 VAT Interim Regulations and, in so doing, clarifies how the Chinese government directed Shanghai Wells to calculate the irrecoverable VAT for its exports of steel wire garment hangers during the POR. Specifically, the 2012 VAT Circular states that “{f} or the purposes of making it easier for tax authorities and taxpayers to understand and implement the export taxation policies systemically and accurately, the Ministry of Finance and State Administration of Taxation has sorted out and classified the VAT policies and consumption tax policies on exported goods . . . and clarified the several problems reflected in the actual implementation. Relevant issues are hereby notified as follows.”⁹⁰ Therefore, the 2012 VAT Circular informs our irrecoverable VAT calculation and supersedes the 2009 VAT Interim Regulations guidance relied upon by Shanghai Wells.

The 2012 VAT Circular states that the “Tax payable for the current period = output tax for the current period - (input tax for the current period - taxes prohibited from exemption and offset for the current period)” where the taxes prohibited from exemption and offset for the current period equals the “FOB of exported goods for the current period x RMB conversion rate of foreign currency x (tax rate applicable to exported goods - tax refund rate for exported goods).”⁹¹ The 2009 VAT Interim Regulations highlighted by Shanghai Wells do contain the

⁸⁹ See Shanghai Wells SuppCD at Exhibit C-12.

⁹⁰ See 2012 VAT Circular at 1.

⁹¹ *Id.* at Article 5.1(1).

simple formula “Tax Payable = Current Output Tax {-} Current Input Tax,”⁹² however, the 2012 VAT Circular describes an additional component to the calculation of tax payable, the “taxes prohibited from exemption and offset.”⁹³ This formula, clarified in the 2012 VAT Circular, mirrors our irrecoverable VAT calculation (FOB of exported goods for the current period x (tax rate applicable to exported goods - tax refund rate for exported goods)).⁹⁴ According to the 2012 VAT Circular, Shanghai Wells is prohibited from offsetting its tax payable by this amount.⁹⁵ It is important to note that Shanghai Wells’ arguments focus on its tax payable, which Shanghai Wells continually points to in support of its position; however, our irrecoverable VAT calculation focuses on the irrecoverable VAT (*i.e.*, the taxes prohibited from exemption and offset) that Chinese law requires be included in the cost of exported goods.⁹⁶ The formula in the 2012 VAT Circular demonstrates that the irrecoverable VAT calculation is just one component of the formula for tax payable, and is a component that the taxpayer is prohibited from exempting and must include in the cost of exported goods, *i.e.*, a cost incurred upon export. Not only does Shanghai Wells exclude this necessary component (*i.e.*, the taxes prohibited from exemption), from its formula, it erroneously claims that “tax payable” equates to the irrecoverable VAT that we are adjusting for and that Shanghai Wells includes in its cost of sales.

Notably, the formula used by Shanghai Wells to calculate its proposed irrecoverable VAT reported in its sales database in the underlying review⁹⁷ is not the same formula contained

⁹² See Shanghai Wells’ CDQR at Exhibit C-12, Article 4.

⁹³ See 2012 VAT Circular at Article 5.1.(1).

⁹⁴ *Id.*

⁹⁵ *Id.* (“Taxes prohibited from exemption and offset for the current period = FOB of exported goods for the current period × RMB conversion rate of foreign currency × (tax rate applicable to exported goods - tax refund rate for exported goods.”)

⁹⁶ *Id.* at Article 5.3 (“{w}here the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of the exported goods and services.”).

⁹⁷ See Shanghai Wells SuppCD at 7 and Exhibit 17 (“Tax liability = Total POR sales of subject merchandise * (Applicable VAT rate-VAT Refund Rate)-Input VAT for subject merchandise sales.”).

in the 2009 VAT Interim Regulations, which it alternatively argues is the correct calculation to determine its irrecoverable VAT,⁹⁸ or the formula expressed in the 2012 VAT Circular. Instead, Shanghai Wells' alternative calculation in its Supplemental Section C and D response is "Tax liability = Total POR sales of subject merchandise x (Applicable VAT rate - VAT Refund Rate) - Input VAT for subject merchandise sales,"⁹⁹ which produces an entirely different result than the formula in the 2009 VAT Interim Regulations and the 2012 VAT Circular. Accordingly, we find that the alternative calculation put forth by Shanghai Wells is not supported by Chinese law or the record of this review.

Furthermore, Shanghai Wells' own accounting records support the Department's determination that Shanghai Wells' irrecoverable VAT is equal to eight percent of the FOB price of its steel wire garment hangers exports. As explained above, Article 5.3 of the 2012 VAT Circular stipulates that "{w}here the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of the exported goods and services." Here, the refund rate of nine percent on exports of steel wire garment hangers is lower than the standard tax rate applicable to steel wire garment hangers (17 percent) and, accordingly, Chinese law directs Shanghai Wells to include the difference (eight percent) in the cost of the exported goods. Shanghai Wells did not attempt to rebut our contention that Chinese law requires Shanghai Wells to include the eight percent difference in its cost of exported goods; nor did it rebut our conclusion that Shanghai Wells booked approximately eight percent of its steel wire garment hanger price to its accounting records and considered it as a cost of its sales of

⁹⁸ See Draft Comments at 6 ("Plaintiffs maintain that irrecoverable VAT, as defined in PRC law, is the difference between the VAT paid on inputs and raw materials used to produce finished merchandise and the VAT refunded on export of the finished merchandise."); See also Interim Regulations at Article 4 ("Tax Payable = Current Output Tax - Current Input Tax"),

⁹⁹ See Shanghai Wells SuppCD at 7 and Exhibit 17; Shanghai Wells' June 1 Response at Exhibit 10.

steel wire garment hangers. The record demonstrates that Shanghai Wells records “[]” as an expense in its Cost of Sales subledger,¹⁰⁰ and that the average monthly amounts recorded by Shanghai Wells in its irrecoverable VAT account equaled [] percent of its monthly export sales value during the POR.¹⁰¹

Instead of rebutting our conclusion regarding the way in which Shanghai Wells itself recorded and treated the irrecoverable VAT in its own accounting records, Shanghai Wells takes issue with the fact that the translations of the name of the account to which it booked its irrecoverable VAT were inconsistent in its own submissions and that other tax-related accounts in its chart of accounts exist.¹⁰² Shanghai Wells claims that it is unreasonable for Commerce to simply choose the translation that supports the decision that Commerce is defending and that, given the inconsistency in translations of the name of this account, Commerce should request clarification from Shanghai Wells as to the relationship between account [

] and its sub-accounts (*e.g.*, account [], translated as “[],” account [], translated as “[],” *etc.*). We disagree that clarification of the sub-accounts within account [] is necessary because it is sub-account [] that is the subject of our concern with respect to irrecoverable VAT. We also disagree that clarification of the various translations of sub-account [] is necessary.

Shanghai Wells submitted an accounting document listing account [], translated as “[],” to which an amount equal to [] percent of Shanghai Wells’ export sales for the month of June 2014 was booked.¹⁰³ Also, Shanghai Wells reported this accounting

¹⁰⁰ See Shanghai Wells’ CDQR at Exhibit R-4 (booking an amount to Shanghai Wells’ Cost of Sales subledger equal to [] percent of its export sales for the month of October 2013. See BPI Memo.).

¹⁰¹ See BPI Memo.

¹⁰² See Draft Comments at 6-7.

¹⁰³ See Shanghai Wells’ June 1 Response at Exhibit 14.

code as “[]” in its Supplemental Section A response,¹⁰⁴ as “[]” in its Section C and D response,¹⁰⁵ and as “Total Un-exempted Tax” and “Changeover Withholding on Tax” in a supplemental Section C and D response.¹⁰⁶ This sub-account number along, with the translation “[],” is also booked as an expense in Shanghai Wells’ Cost of Sales subledger.¹⁰⁷ Although Shanghai Wells contends that the record is unclear as to which description accurately portrays what is accounted for in sub-account [],¹⁰⁸ the translations provided by Shanghai Wells in its submissions overwhelmingly describe an irrecoverable tax, *i.e.*, [], [], [], and unexempted. The record demonstrates that Shanghai Wells booked to accounting code [] an amount of approximately eight percent of its export prices and consistently translated the account name in a manner indicating an irrecoverable amount. Commerce did not selectively choose the translation that suited a desired outcome but, rather, considered the record as a whole in deducing the meaning of Shanghai Wells’ inconsistent submissions. Accordingly, we find that further clarification is not necessary to conclude that the record supports our calculation of irrecoverable VAT, as applied to Shanghai Wells in the final results of this review.

Issue 2: Financial Statements

Shanghai Wells, and U.S. Distributors’ Comments:

- Commerce claims that the photos of LS Industry’s facility are of such poor quality and lacking accompanying labeling that it cannot determine whether the photos depict wire rod or drawing machines.

¹⁰⁴ See Shanghai Wells’ February 2, 2015, Supplemental Section A Questionnaire response at Exhibit 8.

¹⁰⁵ See Shanghai Wells’ CDQR at Exhibit R-4.

¹⁰⁶ See Shanghai Wells’ SuppCD at Exhibit 35.

¹⁰⁷ See Shanghai Wells’ CDQR at Exhibit R-4 (booking an amount to Shanghai Wells’ Cost of Sales subledger equal to [] percent of its export sales for the month of October 2013. See BPI Memo.).

¹⁰⁸ See Draft Comments at 6-7.

- Commerce has a significant body of expertise in this regard, having visited the facilities of respondents in this proceeding as well as other proceedings involving merchandise produced by LS Industry, and, should be able to identify the material and machinery in the photos based on its experience.
- It is unreasonable for Commerce to conclude that these photographs do not at least establish a significantly greater likelihood that LS Industry draws wire rod than Sahasilp and Mongkol.
- Given that the only difference between wire and wire rod is its diameter, Commerce cannot ignore uncontroverted record evidence that LS Industry has material that resembles wire rod and machinery that resembles wire drawing machines.
- Commerce claims that there is nothing to suggest that the images are of LS Industry's own production facility but it is unreasonable to conclude that machines displayed on LS Industry's website are not the company's own machines.
- Commerce claims that nothing suggests that the images were taken during the POR but these same images were submitted in several past reviews with no change; absent evidence that the images were taken outside the POR it is unreasonable to conclude otherwise.
- The petitioner had ample opportunity in the underlying review to refute Shanghai Wells' description of the photographs but did not; without detracting evidence the deficiencies highlighted by Commerce are insufficient to conclude that LS Industry does not draw wire.
- Even if Commerce concludes that the record does not establish that LS Industry draws wire from wire rod, it cannot conclude that the statements of Sahasilp and Mongkol are

equally suitable because the record identifies manufacturing processes and machinery used by the companies but does not identify any wire rod drawing machinery.

- Sahasilp listed only forging, mold & die, and cold forging (and not wire drawing) as its Key Manufacturing Process in its company profile and Mongkol's website describes over fifteen types of machinery, but critically, it does not list any wire rod drawing machinery.¹⁰⁹
- Commerce cannot consider the financial statements of LS Industry, which manufactures goods that Commerce has deemed comparable in past reviews, to be equally suitable as the financial statements of companies that produce merchandise that Commerce has not deemed comparable in past reviews.
- The fact that Sahasilp and Mongkol do not have a similar production process as Shanghai Wells has a significant effect on the financial ratio calculations because the overhead and SG&A of those companies are substantially higher than LS Industry, which matches Shanghai Wells' production process.
- Commerce should reconsider its conclusion that the financial statements of all three companies equally satisfy its selection criteria and instead conclude that the financial statements of LS Industry are the best available information for calculating Shanghai Wells' financial ratios.

Commerce's Position:

As explained above, a review of the images from LS Industry's website reveals six photos of extremely poor quality that are unlabeled and do little to support the claims of U.S.

¹⁰⁹ See Draft Comments at 11-12 (citing to FabriClean Supply Inc.'s Rebuttal Surrogate Value Submission dated May 26, 2015, (Rebuttal SV Submission) at Exhibit RSV-4 at 8 and RSV-3 at 1).

Distributors.¹¹⁰ Absent clearer images and accompanying descriptions of the items depicted in the images, notwithstanding our knowledge of the material and machinery involved in the production of subject merchandise, Commerce is unable to conclude based on the grainy images submitted that the subject of the images are wire rod and a wire drawing machine. Indeed, Shanghai Wells and U.S. Distributors frame their argument in a manner that concedes that the images are of exceedingly poor quality when they state that the images contain “material that resembles wire rod and machinery that resembles a wire drawing machine.”¹¹¹ Similarly, because we cannot discern what is depicted in the images, whether the photos were taken during the POR or outside the POR is extraneous to our determination that we cannot conclude that LS Industry draws wire rod from the images on the record.

We do not find Shanghai Wells and U.S. Distributors’ claim that the petitioner failed to refute Shanghai Wells’ description of the photographs in the underlying review persuasive. Whether the petitioner refuted the description or not, ultimately, Commerce analyzes the information on the record for itself, taking into account parties comments, and then issue its determination. Furthermore, Shanghai Wells’ and U.S. Distributors’ claims are inaccurate. In its rebuttal brief in the underlying review, the petitioner countered the claim that the photo gallery page from LS Industry’s website shows wire rod coils and drawing machines, stating that “the photo gallery pictures have no captions to identify the coils as wire rod or the machinery as drawing machines.”¹¹²

With respect to Shanghai Wells and U.S. Distributors’ contention that we cannot conclude that the financial statements of Mongkol and Sahasilp are equally suitable to the

¹¹⁰ See FabriClean’s SV Submission, at Exhibit SV-11

¹¹¹ See Draft Comments at 10 (emphasis added).

¹¹² See the Petitioner’s Rebuttal Brief, “Sixth Administrative Review of Steel Wire Garment Hangers from China: Petitioner’s Rebuttal Brief,” dated September 1, 2015, at 9.

financial statements of LS Industry because the record suggests that neither company draws wire, we disagree. For the reasons explained above, the Department does not find that the images on the record demonstrate that LS Industry draws wire from wire rod in its production process. Therefore, in this respect, none of the LS Industry, Mongkol, or Sahasilp financial statements are preferable to the others. In other words, LS Industry's financial statements are not superior to Sahasilp's or Mongkol's financial statements in this respect. In prior reviews, we have found downstream products of wire that require additional manufacturing processes, like fasteners,¹¹³ that exhibit no otherwise disqualifying features, to be comparable to steel wire garment hangers.¹¹⁴ We do not necessarily equate the importance of drawing wire from wire rod with the production of comparable merchandise, but find that when we can clearly identify wire rod as a raw material, we find those related statements adequate surrogates to calculate the surrogate financial ratios because such statements more accurately reflect the production experience of the respondents.¹¹⁵ Mongkol's website indicates that it uses wire cutting machines in its production process and Sahasilp's website states that it can manufacture wire of varying thicknesses to the requirements and specifications of the customer for its precision springs product line.¹¹⁶ Given the absence of any information demonstrating that any of the potential surrogate companies draw wire from wire rod in their production process, we find, as we did in AR5,¹¹⁷ that Sahasilp and

¹¹³ See AR2 IDM at Comment 4 (finding that "the various fasteners produced by the surrogate companies are comparable to steel wire garment hangers, the subject merchandise, because fasteners, like steel wire garment hangers, are a downstream product of wire requiring additional manufacturing processes.").

¹¹⁴ See, e.g., AR5 IDM at Comment 3 ("While {Sahasilp's} and Mongkol Fasteners' financial statements do not indicate the types of inputs they consume in their production processes, the record does contain information as to kinds of merchandise they produce (e.g., nails, fasteners, etc.), merchandise the Department has found to be comparable to hangers." (citing to AR4 IDM at Comment 1.D)).

¹¹⁵ See AR1 IDM at Comment 2 (citing to LTFV IDM at Comment 3).

¹¹⁶ See Rebuttal SV Submission at Exhibit RSV-2 and RSV-3.

¹¹⁷ See AR5 IDM at Comment 3 ("Therefore, we find that Sahasilp and Mongkol {} had production of comparable merchandise for purposes of determining financial ratios for respondents.").

Mongkol merchandise that we have found to be comparable to steel wire garment hangers. Although Shanghai Wells and U.S. Distributors point to machinery identified on Mongkol's website and the absence of wire drawing machines as a basis for discounting the company's financial statements,¹¹⁸ there is nothing to suggest that the machinery listed is intended to be an exhaustive list of all machinery used by Mongkol and, in any case, they need not draw wire from wire rod to produce merchandise comparable to steel wire garment hangers.¹¹⁹ Although Shanghai Wells' and U.S. Distributors' claim that Sahasilp's company profile listed its "Key Manufacturing Processes" and that list does not include wire drawing, Shanghai Wells and U.S. Distributors support this claim with pages from a website of unknown authority that lacks any identifying features besides the word "Matchmaking" at the top and a web address at the bottom that does not appear to tie to Sahasilp.¹²⁰ Moreover, as described above, we also cannot discern whether LS Industry draws wire as part of its production process relying on the record evidence. As a result, we find that no information on the record demonstrates that any of the potential surrogate financial companies draw wire from wire rod. To be clear, we are not making a determination as to whether or not these companies draw wire rod. Instead, we are finding that information on the record of the underlying administrative review does not demonstrate that any of them draw wire from wire rod. Accordingly, we find that all three financial statements are equally suitable for valuing Shanghai Wells' financial ratios.

Although Shanghai Wells and U.S. Distributors attempt to impeach the reliability of the Mongkol and Sahasilp financial statements by pointing out the difference between the financial

¹¹⁸ See Draft Comments at 11-12.

¹¹⁹ See Rebuttal SV Submission at Exhibit RSV-3.

¹²⁰ See Rebuttal SV Submission at Exhibit RSV-4 (the website listed is <http://210.1.58.173/~match/2015/profile5.php?companyid=64&type=2>).

ratios calculated using those statements and those calculated using LS Industry's statements,¹²¹ we do not find this argument persuasive. As an initial matter, underlying Shanghai Wells' and U.S. Distributors' argument is their contention that LS Industry's production process matches that of Shanghai Wells' production process, making LS Industry's financial statements more relevant to Shanghai Wells. However, as explained above, we do not find that record evidence supports this contention. Additionally, the fact that there are differences between the ratios calculated using each of the companies' financial statements alone does not indicate that the cause of those differences is rooted in their respective production processes. Moreover, Shanghai Wells did not explain why a purportedly less integrated production process would result in higher overhead and SG&A ratios. Selecting all three financial statements to calculate the surrogate financial ratios for Shanghai Wells in this review further serves the purpose of satisfying Commerce's preference for using multiple financial statements, where none of the financial statements otherwise represent a superior selection. As we have explained in prior reviews, by averaging the factory overhead, SG&A, and profit ratios derived from multiple producers, we attempt to eliminate potential distortions that may arise from using those of a single producer and arrive at broader-based surrogate values that minimize the particular circumstances of any one producer.¹²²

The statute directs the Department to base the valuation of the FOPs on "the best available information regarding the values of such factors in a market economy country or

¹²¹ See Draft Comments at 13.

¹²² See AR3 PDM at "Data Availability" (citing to *Certain Preserved Mushrooms from the People's Republic of China: Final Results of New Shipper Review*, 66 FR 45006 (August 27, 2001) and accompanying Issues and Decision Memorandum, at Comment 1; *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) and accompanying Issues and Decision Memorandum at Comment 5); unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010–2011*, 78 FR 28803 (May 16, 2013) and accompanying Issues and Decision Memorandum at Comment 1.D.

countries considered to be appropriate. . . .”¹²³ Selecting the three financial statements on the record that contain no otherwise disqualifying features and that represent the financial position of companies that produced comparable merchandise during the POR in the primary surrogate country satisfies Commerce’s statutory obligations, as well as its preference for valuing financial ratios using multiple financial statements where none of the statements represent an otherwise superior selection. Accordingly, we continue to use the financial statements of LS Industry, Mongkol, and Sahasilp, and are not making any changes with respect to the calculation of surrogate financial ratios in this review.

D. FINAL RESULTS OF REDETERMINATION

Pursuant to the Court’s remand order, Commerce has reconsidered its calculation of the irrecoverable VAT adjustment and selection of financial statements for calculating surrogate financial ratios in this review. In so doing, Commerce has reexamined the administrative record and provided further explanation and analysis of our decision in the *AR6 Final Results*. As a result, in this draft redetermination, Commerce continues to make an adjustment for irrecoverable VAT in the amount of eight percent and makes no change to its selection of financial statements for calculating surrogate financial ratios in this review.

1/10/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

¹²³ See section 773(c)(1) of the Act.