FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND
SHANDONG HUARONG MACHINERY CO. v.
UNITED STATES
Court No. 03-00676

SUMMARY

The Department of Commerce ("the Department") has prepared these final results of redetermination pursuant to a remand order from the Court of International Trade ("the Court") in Shandong Huarong Machinery Co. v. United States, No. 03-00676 (CIT, May 2, 2005) ("Shandong Huarong"). The Shandong Huarong remand covers five issues from the final results of the administrative review of the antidumping duty order on bars and wedges from the People's Republic of China ("PRC"), covering the period February 1, 2001, through January 31, 2002. Specifically, the Court ordered the Department to do the following: (1) reopen the record in order to afford Shandong Huarong Machinery Co. ("Huarong") a second opportunity to provide a scrap offset in which its scrap sales are allocated to the production of bars/wedges; (2) explain why its methodology of including distances greater than the distance from the nearest port to the factory, when calculating the weighted-average freight distance for multiple suppliers of one particular factor of production ("FOP"), satisfies the reasoning in Sigma Corp. v. United States, 117 F.3d 1401 (Fed. Cir., 1997) ("Sigma") and Lasko Metal Products Inc. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994) ("Lasko"), or adjust its methodology; (3) explain its decision to disregard the effect of subsidies from the United States and other countries, in light of Fuyao Glass Indus. Group Co. v. United States, Slip Op. 2003-169 (CIT, 2003) ("Fuyao I") and Fuyao Glass Indus. Group Co. v. United States, Slip Op. 2005-06 (CIT, 2005) ("Fuyao II"); (4) supply a more complete explanation to support its determination that labor costs and other factor inputs for making steel pallets are included in the cost of brokerage and handling ("B &

H"); and (5) provide a more complete explanation to support its decision that the cost of movement from the truck to the container yard, demurrage and storage charges, and other port charges are included in the B & H cost. In accordance with the Court's remand instructions, we have made redeterminations with respect to these issues. As a result of the redeterminations, the Department has calculated a revised dumping margin of 31.00 percent for Huarong.

BACKGROUND

On September 10, 2003, the Department published a notice of final results of the antidumping duty administrative review on heavy forged hand tools (bars/wedges) from the PRC. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 53347 (September 10, 2003) and accompanying Issues and Decision Memorandum ("Final Results"). Huarong filed a summons on September 18, 2003, and filed a complaint on September 25, 2003, challenging the Department's Final Results. Ames True Temper ("Ames") filed a summons on October 10, 2003, and filed a complaint on November 10, 2003, also challenging the Department's Final Results. The Court consolidated the two cases on December 23, 2003. On February 17, 2004, Ames filed, with a supporting brief, a motion for judgment upon the agency record. On February 18, 2004, Huarong filed, with a supporting brief, its motion for judgment upon the agency record. In their briefs, Ames and Huarong challenged several aspects of the Final Results. See Ames's February 17, 2004, proposed order and brief in support of motion for judgment upon the agency record ("Ames Motion for Judgment"); see also Huarong's February 18, 2004, proposed order and brief in support of motion for judgment upon the agency record ("Huarong Motion for Judgment"). On April 26, 2004, the Department filed its opposition to both the Huarong Motion for Judgment

and the Ames Motion for Judgment. Ames filed an opposition to the Huarong Motion for Judgment on April 27, 2004. Huarong filed its reply to the Department's opposition and Ames's opposition on May 21, 2004. The Court issued its remand order on May 2, 2005.

The Department released the Draft Results of Redetermination Pursuant to Court Remand ("Draft Redetermination") to Huarong and Ames for comment on October 7, 2005. The Department received timely filed comments from both Huarong and Ames on October 14, 2005, and rebuttal comments from Huarong on October 19, 2005.

DISCUSSION

1. *The Department shall reopen the record in order to afford Huarong a second opportunity to provide a scrap offset in which its scrap sales are allocated to bars/wedges*.

In the underlying review, Huarong provided a list of its sales of scrap steel generated from the production of both subject merchandise and all other merchandise not subject to the bars/wedges order (e.g., automotive parts, scrapers, and forks). In the Final Results, we determined that, since Huarong did not allocate the quantity of scrap steel sold between subject and non-subject merchandise, the reported list of scrap sales was not useable in calculating a scrap offset for bars/wedges. Therefore, we denied Huarong a scrap offset. See Final Results at Comment 14.

Pursuant to the Court's order to reopen the record and allow Huarong a second opportunity to provide a scrap offset in which its scrap sales are allocated to bars/wedges, the Department issued four supplemental questionnaires to Huarong on June 20, August 3, August 17 and September 12, 2005. Based on information provided in response to these supplemental questionnaires, the Department has determined that Huarong has reported a scrap offset that is based upon a reasonable allocation methodology. See Huarong's September 20 and 28, 2005,

supplemental responses. Specifically, Huarong allocated its sales of scrap steel to subject merchandise by dividing its total quantity of scrap sales by the total input steel consumed to produce subject and non-subject merchandise, and then multiplied this ratio by the total steel input consumed to produce crow bars and wrecking bars. Huarong then used this allocated amount in its calculation of the per-unit scrap offset, by multiplying it by the weight of each finished product. The Department accepted this methodology in the Draft Redetermination. However, we have since noted that, in the underlying review, Huarong allocated other FOPs using the input weight of steel, rather than the weight of finished products. Therefore, we are revising the scrap offset methodology for this final remand redetermination, making it consistent with Huarong's other FOP allocations. See Comment 2, below.

2. *The Department shall explain why its methodology of including distances greater than the distance from the nearest port to the factory, when calculating the weighted-average freight distance for multiple suppliers of one particular FOP, satisfies the reasoning in Sigma.*

Huarong reported that it purchased steel from multiple steel suppliers and identified their respective distances from Huarong's factory in kilometers. In the underlying review, Huarong argued that the Department's methodology for calculating the freight distance is contrary to Sigma because the calculation of the weighted-average distance between the multiple steel suppliers and Huarong's factory included distances that were larger than the distance between Huarong's factory and the nearest port. Huarong asserted that while the Department can weight-average the freight distances when there are multiple steel suppliers, the maximum distance that can be assigned to any particular supplier within this calculation is the distance from the factory to the nearest port. Accordingly, Huarong argued that the Department should revise the weighted-average supplier distance by capping the distance from any one supplier to

Huarong's factory by the distance from the factory to the nearest port. See Final Results at Comment 15.

In the Final Results, the Department weight-averaged the individual freight distances from these suppliers to Huarong's factory into a single weighted-average freight distance, where the weight was the percentage quantity of steel that Huarong consumed from each supplier during the period of review ("POR"). We then compared this weighted-average supplier distance to the distance from Huarong's factory to the nearest port of export. We found that the distance between Huarong's factory and the nearest port was the shorter distance, and therefore used this distance in our calculation of normal value ("NV"). See Final Results at Comment 15.

The Court held that "Commerce failed to supply an adequate explanation as to why its methodology satisfies the reasoning found in Lasko and Sigma." Shandong Huarong at 10. On remand, the Court ordered the Department to "explain why, in calculating its weighted average, it should include any distance greater than the distance from the nearest port" and, if appropriate, adjust our methodology accordingly. Id. Upon reconsideration of this issue on remand, the Department has determined that capping the distance for each supplier (the "Sigma cap") before calculating the weighted-average freight distance yields a more accurate result, based on Sigma, and we have changed our calculation of the surrogate freight cost accordingly.

In Lasko, the CAFC stated that the statute "sets forth procedures in an effort to determine margins 'as accurately as possible,' " 43 F.3d at 1446 (quoting Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed Cir. 1990)). In Sigma, the CAFC reasoned that no rational producer in a market economy would choose to pay the highest combination of prices for its FOP plus freight. According to the CAFC's rationale, if a producer in a surrogate country had a factory next to a port (and thus had negligible freight expenses from the port to the factory), it

would purchase its FOP at the import price, rather than purchasing an equivalently priced domestic FOP that had to be shipped at significant expense from a domestic supplier factory. By the same token, if the surrogate country producer had a factory next to the domestic supplier factory and far from the nearest port, it would purchase its FOP from the domestic factory and thereby avoid the inland freight charge on an equivalently priced imported FOP.

According to Sigma, if the import price in a surrogate country is used as the basis for the FOP price in the PRC, the Department cannot assume that a Chinese manufacturer would purchase a domestically-produced input at the import price, rather than an imported input at the import price, regardless of the respective freight costs for inland transportation of the domestic and imported input. Thus, the CAFC reasoned that a manufacturer of subject merchandise in a non-market economy ("NME") country would minimize its costs by purchasing an imported FOP if the cost of transportation from the port to the factory were less than the cost of transportation from the supplier factory to its own factory. Therefore, under Sigma, the Department is to calculate freight distances based on the shorter of the reported distances from either the closest PRC seaport to the respondent factory, or from the PRC domestic materials supplier to the respondent factory. However, the CAFC in Sigma contemplated a comparison of only one single supplier distance with the distance to port, and did not face the issue presented in this case of multiple input suppliers.

When faced with multiple suppliers of a single FOP of the finished product, the Department's normal practice is to weight-average all freight distances into a single freight distance, as if there were a single hypothetical supplier. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Barium Carbonate From the People's Republic of China, 68 FR 12664 (March 17, 2003)

("Barium Carbonate") and Memorandum from David Layton to The File, "Factors of Production Valuation for Preliminary Determination," dated March 17, 2003, at 3 (unchanged in final) ("Where there was more than one distance reported for a particular input, we calculated a weighted-average distance."). In the instant case, the Department followed its practice and calculated a single weighted-average freight distance for the steel FOP. However, Barium Carbonate did not address the issue of where in our calculations the cap should be applied because all of the distances were smaller than the cap distance. The issue presented in this remand is whether it is more appropriate to apply the Sigma cap prior to calculating the weighted-average freight distance, or after it.

The NME methodology attempts to construct production costs that would have been incurred if the producer had been located in a market economy, where companies are assumed to behave in a manner that minimizes expenses and maximizes profits. According to the CAFC's reasoning, a rational company located in a market economy would purchase identically priced inputs only from those suppliers that are closer to its factory than the nearest port. In the case of the NME methodology, all suppliers are assumed to charge the same price for their input. When a NME company reports two or more input suppliers, where one supplier is more distant than the nearest port and the other is closer than the nearest port, the application of a single price means that a market-economy firm would not purchase inputs from the more distant supplier, because purchasing from the farther supplier would not be rational under these conditions, due to the higher freight cost. As a consequence, applying the Sigma cap before calculating the weighted-average freight distance will result in a more accurate surrogate freight cost, in accordance with the CAFC's reasoning in both Sigma and Lasko. Therefore, for this redetermination, the Department revised its calculation of the weighted-average supplier distance by capping the

distance from any one supplier to Huarong's factory by the distance from the factory to the nearest port. See Memorandum from Thomas Martin, International Trade Compliance Analyst, to the File, "Calculation Memorandum for the Draft Remand Redetermination: Shandong Huarong Machinery Company (Bars/Wedges)," dated concurrently with this draft remand redetermination ("Redetermination Calculation Memorandum").

3. *The Department shall explain its decision to disregard the effect of subsidies from the United States and other countries, in light of Fuyao I and Fuyao II.*

In the underlying administrative review, Huarong argued that the Department, pursuant to its "subsidy suspicion policy," must exclude from its surrogate value calculations nearly every country from the Indian import statistics because nearly every country listed has "generally available subsidies." With respect to the United States, Huarong argued that since the World Trade Organization ("WTO") has determined that the U.S. Foreign Sales Corporation ("FSC") tax program is contrary to WTO obligations and the U.S. government has agreed to implement the WTO's ruling, the United States must be deemed to have an export subsidy. As such, any U.S. exports to India must be excluded from surrogate value calculations. See Final Results at Comment 2. In the Final Results, the Department found that excluding U.S. export prices from Indian import statistics would result in an insignificant adjustment to NV, as defined in 19 C.F.R. § 351.413. Based on this finding, the Department did not address the argument regarding the FSC tax program and its effect on U.S. exports.

The Court noted the Department's position that excluding the U.S. export data results in an insignificant effect on NV, stating "the information generally available to Commerce indicates that the level of subsidies in the United States, 0.07%, would result in an 'insignificant adjustment,' which Commerce may disregard." See Shandong Huarong at 19. The Court

continued by stating that our decision is contrary to the result in Fuyao II, where the Department chose not to disregard subsidies that had a *de minimis* calculated benefit. The Court ordered the Department to "more fully explain its decision to disregard the effect of subsidies from the United States and other countries" in light of Fuyao II. Id.

The Department's decision with respect to U.S. exports to India is distinguishable from the decision at issue in Fuyao II. In that case, the respondent (Fuyao) purchased glass from the market economy countries of Korea, Thailand, and Indonesia, and argued that the Department should value glass with Fuyao's actual purchase prices from these countries. However, the Department disregarded Fuyao's market economy glass purchases finding that these prices may have been subsidized, and instead valued the glass with a surrogate value calculated from the import statistics of the surrogate country. See Fuyao I at 10. Fuyao countered by noting that several of the subsidy programs relied upon by the Department in taking this position conferred only a *de minimis* benefit under 19 C.F.R. § 351.106 and section 703(b)(4)(A) of the Tariff Act of 1930, as amended ("the Act"), meaning that any benefit received by the supplier was *de minimis*. Id. at 24. In the subsequent remand redetermination, which was upheld by the Court, the Department found that the *level of subsidization* should not be a factor in this determination. See Fuyao II at 17.

The Department's decision in the instant review has a different factual and statutory context. In the Final Results, the Department found that, due to the small volume of trade, including the U.S. export data in the calculation of the surrogate values from Indian import statistics had an insignificant effect on Huarong's NV, pursuant to 19 C.F.R. § 351.413 and section 777A(a)(2) of the Act. Under this section of the statute, the Department may "decline to take into account adjustments which are insignificant in relation to the price or value of the

merchandise." The Department's regulation states that "{o}rdinarily, under section 777A(a)(2) of the Act, an 'insignificant adjustment' is any individual adjustment having an *ad valorem* effect of less than 0.33 percent, or any group of adjustments having an *ad valorem* effect of less than 1.0 percent, of the export price, constructed export price, or NV, as the case may be." Moreover, the Preamble to the Department's regulations states that the Department has flexibility to determine, on a case-by-case basis, whether it should disregard a particular adjustment as insignificant. See Antidumping Duties; Countervailing Duties, Part II, 62 FR 27296, 27372 (May 19, 1997). In the instant review, the Department did not examine the level of subsidization to determine whether the FSC tax program conferred a *de minimis* benefit. Instead, we determined that the trade flow of the relevant U.S. exports to India was so small that the impact of removing these exports from the Indian import statistics would have an insignificant effect on Huarong's NV. In other words, the exports from the United States are an insignificant fraction of the aggregate exports to India from the rest of the world during this review period, and thus, the difference in the overall weighted-average NV that results when the U.S. export data are removed from the surrogate values is insignificant.

In reviewing this issue, the Court appears to have combined two separate concepts: (1) whether a subsidy program provides a *de minimis* benefit and (2) whether the quantity of trade of allegedly subsidized exports is so small that excluding these data from the calculation of surrogate values would result in an insignificant adjustment to NV. From the Court's statement that "the information generally available to Commerce indicates that *the level of subsidies in the United States, 0.07%*, would result in an 'insignificant adjustment,' " See Shandong Huarong at 19 (emphasis added), it appears that the Court believed that the "0.07%" was the calculated benefit from the FSC tax program. Instead, however, the "0.07%" refers to the difference in the

overall weighted-average dumping margin that results when the U.S. export data are removed from the surrogate values. See Memorandum from Tom Martin, Import Compliance Specialist, to the File, "Calculation Memorandum for the Final Results," dated September 2, 2003, at 3 ("Final Results Calculation Memorandum").[1]

In the Final Results, we conducted our analysis by first calculating two surrogate values, one with U.S. exports included and one other with the U.S. data excluded. See Memorandum from Thomas E. Martin, Import Compliance Specialist to the File, "Surrogate Values Used for the Final Results of the Eleventh Administrative Reviews of Certain Heavy Forged Hand Tools (Bars/Wedges) From the People's Republic of China - February 1, 2001 through January 31, 2002," dated September 2, 2003. We calculated NV using both sets of surrogate values and calculated the total weighted-average NV with U.S. exports included, and with U.S. exports excluded. We found that NV changed by only 0.21 percent. See Final Results Calculation Memorandum. As this adjustment would be an insignificant adjustment to NV, we did not remove imports from the United States from Indian import data when calculating the surrogate values used in the administrative review. We also noted that the difference in the overall weighted-average dumping margin (both with and without the relevant U.S. export data) was 0.07 percentage points. Id.

As the discussion above indicates, the issue faced by the Court in Fuyao I and Fuyao II is distinct from the issue in the underlying review. For the reasons set forth above, the Department

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[1] The description of "0.07%" in the Government's brief to the Court mistakenly stated that this value is the percentage change between two numbers. See Defendant's Response in Opposition to Plaintiffs' Motions for Judgment Upon Agency Record, at 26. The value should have been described as just the difference between two values. However, we note that the actual percentage change between the overall weighted-average margin with, and without, the U.S. export data is 0.18 percent. See Redetermination Calculation Memorandum at 3-4.

continues to find that excluding U.S. export prices from Indian import statistics would result in an insignificant adjustment to NV, as defined in 19 C.F.R. § 351.413. Accordingly, we have made no changes to our calculations pursuant to this issue.

4. *The Department shall supply a more complete explanation to support its determination that labor costs and other factor inputs for making steel pallets are included in the cost of B & H.*

With respect to the fourth issue remanded by the Court, in the underlying review, Ames contended that the Department failed to include the labor and other non-steel factor costs incurred by Huarong for fabricating its steel pallets. In the Final Results, the Department found that it was likely that labor and other non-steel input costs incurred by Huarong in making steel pallets were captured in the surrogate value for B & H, which was included in the deductions to U.S. price, pursuant to section 772(c)(2)(A) of the Act. See Final Results at Comment 12. In order to avoid double-counting, we did not separately value these costs and deduct them in our calculation of net U.S. price. The Court directed the Department to supply more information and provide a more complete explanation to support its decision to treat these costs as if they are included in B & H. See Shandong Huarong at 23. The surrogate value for B & H used in the Final Results originated from an expense reported by Viraj Impoexpo Limited ("Viraj") in Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews, 63 FR 48184 (September 9, 1998) ("Stainless Steel Wire Rod from India"). In the Final Results, the Department noted that Viraj did not identify the specific expenses included in the B & H expense it reported. See Final Results at Comment 12.

After reviewing upon remand the surrogate value for B & H used in the Final Results, we have determined that there is no information on the record of Stainless Steel Wire Rod from India that indicates that the costs associated with pallet manufacture were included in the

surrogate value for B & H. There is no suggestion on the record of Stainless Steel Wire Rod from India that the subject merchandise was transported on pallets.[2]

For this redetermination, we requested that Huarong provide the usage rate for labor required to manufacture self-produced steel pallets and the consumption rates for the materials and energy used when welding the steel into pallets. In response, Huarong reported consumption rates for labor and welding rod used in producing the pallets, and noted that the electricity used for welding the steel pallets was included in the previously reported electricity consumption rate. See Huarong's July 15, 2005, at A-4 and Exhibit 4. We valued welding rod using publicly available Indian import statistics for February 2001 through January 2002 from the World Trade Atlas, published by Global Trade Information Services, Inc., which is a secondary electronic source based upon the publication, Monthly Statistics of the Foreign Trade of India. Volume II: Imports ("MSFTI"). In calculating this surrogate value, we excluded imports from non-market economy ("NME") countries, and countries the Department has found to maintain generally available non-industry specific export subsidies.[3] We also excluded data that we deemed aberrational. We valued labor for making pallets using the regression-based wage rate for the PRC that the Department applied for both skilled and unskilled labor in the Final Results.

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[2] "In the foreign market the coils are not packed with anything but strapped with steel strips to keep it compact." See Memorandum to the File from Thomas Martin, Import Compliance Analyst, "Documents from Stainless Steel Wire Rod from India," dated concurrently with this draft remand redetermination ("Indian Documents Memorandum"), at Attachment 1, citing Viraj's May 11, 1998 supplemental questionnaire response at 4.

[3] After calculating the surrogate value for welding rod pursuant to this remand redetermination, we find that including this surrogate value in our analysis of issue 3 does not change our conclusion on that issue, i.e., inclusive of the surrogate value for welding rod, the percentage change in NV from excluding U.S. exports from the trade flow data is 0.21 percent, and this is insignificant. See Redetermination Calculation Memorandum at 3-4.

Accordingly, for this redetermination, the Department included the labor for making pallets and welding rod FOPs in our calculation of NV.

5. *The Department shall provide a more complete explanation to support its decision that the cost of movement from the truck to the container yard, demurrage and storage charges, and other port charges are included in the B & H cost.*

In the underlying administrative review, Ames argued that the Department should ensure that various movement and handling expenses incurred at the port of export (i.e., container movement expenses from truck to container yard to ship, wharfage, stevedorage, berthage, terminal handling, lashing, containerization, drayage, cartage, demurrage, and storage) are deducted from U.S. price. See Final Results at Comment 12. However, Ames provided no evidence that Huarong incurred these expenses. Id. In the Final Results, the Department found that it was likely that these expenses were captured in the B & H surrogate value included by the Department in its deductions to U.S. price. The Department reasoned that the B & H surrogate should include these expenses because "it is the Department's experience that the freight forwarder typically pays all of the miscellaneous expenses necessary to export a product, and then bills its customer (typically, the exporter) for these costs" in a single billing. For this reason, and to avoid possible double-counting, the Department did not separately value these port expenses in its calculation of net U.S. price. The Department also noted that demurrage and storage charges are not necessarily incurred if freight is properly expedited, and there is no record evidence to indicate that Huarong incurred demurrage and storage costs. See Final Results at Comment 12.

The Court stated that it is not sufficient for the Department to rely on its experience in determining that these transportation expenses were included in the B & H surrogate value,

absent evidence to the contrary. See Shandong Huarong at 27. The Court ordered the Department to provide additional explanation to support its decision that the movement and handling expenses allegedly incurred at the port of export are included in the B & H surrogate value used in the Final Results. Id.

Generally, B & H is a category of expenses that can encompass a number of different movement-related charges, including containerization, movement of the container from truck to container yard to ship, wharfage, stevedorage, berthage, terminal handling, lashing, drayage, cartage, demurrage, and storage. Although the complement of charges in the B & H expense category can vary from case to case, it is common for market economy respondents (the source of the surrogate B & H values) to report a total expense for B & H without itemizing the specific charges that the expense covers. Similarly, NME respondents often report only whether they incurred B & H, also without providing a itemized breakdown. This lack of specificity means that neither the respondent nor the surrogate value will necessarily provide detailed information regarding the composition of this expense. Therefore, it will not be possible in many cases to identify and match all charges contained in the B & H expenses for the NME respondent with those contained in the B & H surrogate value used by the Department. With that in mind, in selecting a surrogate value for this expense based upon the best available information on the record, the Department takes product characteristics into account whenever possible, on the reasoning that similar merchandise will incur similar B & H expenses. See Shandong Huarong at 13-16.

In this case, the respondent Huarong reported that it incurs a B & H expense. Huarong cannot provide any details regarding the specific services included in its B & H expense because it received a single bill from its freight forwarder for the B & H services that were necessary to

export its product. See Huarong's February 4, 2004, supplemental questionnaire response at 8. To value this expense, we used the B & H expenses that were reported by Viraj in Stainless Steel Wire Rod from India, as noted above. Likewise, Viraj reported a total B & H expense without detailing the specific services encompassed by its expense. See Indian Documents Memorandum, at Attachment 1, citing Viraj's March 30, 1998, supplemental questionnaire response at 12.

While we do not have the details of the B & H charges for Viraj or Huarong, we were able to identify certain movement-related expenses that both must have incurred, and that therefore must be captured in the B & H surrogate value. We reviewed Viraj's responses and found that its terms of delivery were cost-insurance-freight ("CIF"), which indicates that Viraj was responsible for paying all costs incurred at the port of export. See Indian Documents Memorandum, at Attachment 1, citing Viraj's March 30, 1998, supplemental questionnaire response at 11. Moreover, Viraj reported that its foreign inland freight accounted for only movement from the factory to the port of export, international freight accounted for only ocean freight, and insurance accounted for only marine insurance. Id. at 12-13. Therefore, any charges incurred in handling steel wire rod coils at the port of export were included in B & H. These port charges would include movement of merchandise from truck to container yard and from container yard to ship (which is also called drayage or cartage), as well as the other charges cited by Ames, that cover the costs of physically moving the goods from the truck to the vessel, and loading and securing it to the vessel (wharfage, stevedorage, berthage, terminal handling, and lashing). Given that Huarong's goods were also trucked to the port and loaded and secured to a vessel, it is reasonable to infer that Huarong would have incurred these same expenses. Huarong did not report a separate charge for these expenses or claim that they were included in any other

reported expense category. Since these costs were not elsewhere reported by Viraj or Huarong, it is reasonable for the Department to consider the expenses associated with the movement of merchandise from truck to container yard and from container yard to ship (which is also called drayage or cartage), wharfage, stevedorage, berthage, terminal handling, and lashing to be included in B & H and covered by the surrogate value that the Department applied.

Huarong reported that its freight forwarder containerized its merchandise as consolidated cargo but did not report a separate cost for this service, or claim that the cost was incorporated in any other reported expense. See Huarong's February 4, 2004, supplemental questionnaire response at Exhibit 5. Similarly, Viraj noted that its steel wire rod coils were "stuffed in containers," but did not report a separate cost for this service or claim that it was included in any other reported expense. See Indian Documents Memorandum, at Attachment 1, citing Viraj's March 16, 1998, section A response at 80; see also Indian Documents Memorandum, at Attachment 1, Viraj's May 11, 1998 supplemental B and C response at 4. Since these costs were not elsewhere reported by Viraj or Huarong, the Department concludes that the cost of containerization is included in B & H and covered by the surrogate value that the Department applied.

Regarding container demurrage and storage charges, these expenses are not necessarily incurred when exporting a product, if freight is properly expedited. To incur these expenses, shipments of subject merchandise would have to have been delayed during transport. See glossary of shipping terms on the website of the Maritime Administration, U.S. Department of Transportation, at http://www.marad.dot.gov/Publications/genref.htm. There is no record evidence to indicate that either Viraj or Huarong incurred demurrage and storage costs for any sale of subject merchandise during their respective PORs.

After comparing the record of Stainless Steel Wire Rod from India in regard to B & H expenses incurred by Viraj, and Huarong's experience in the record of the instant review, we find that Viraj's experience is sufficiently similar to Huarong's that its serves as a reasonable surrogate value. The port charges and containerization expenses incurred by Viraj should be included in its reported B & H expense because Viraj was required to report all such costs, and there is no reason to believe that it did not do so. Since we find that Viraj's reported B & H expense reasonably captures all relevant costs, the Department continues to find that its decision in the Final Results to deduct only B & H from U.S. price was correct.

Additionally, in the underlying review, Huarong's response at Field Number 17.0 (Foreign B & H) and its response at Field Number 9.0 (Terms of Delivery) were in some instances inconsistent. See Final Results at Comment 12. In the Department's initial questionnaire, we requested that Huarong "(d)escribe the terms of delivery offered and indicate the code used for each. The codes for delivery terms listed above are examples only. You need not use them." For certain sales, Huarong reported the terms of delivery as free-on-board ("FOB"), CIF, and cost-and-freight ("CNF"), but reported that it paid no B & H expenses. Although these international commercial terms properly include B & H for the account of the seller in a business transaction, and thus Huarong's response would appear contradictory, Huarong did not provide on the record a description of how it used these terms in its normal course of business. In the Final Results, the Department stated that where there was such inconsistency between the commonly understood meaning of a term of sale, and a response to a specifically defined field, we applied Huarong's response to the specifically defined field in its U.S. price calculations. See Final Results at Comment 12. However, in response to supplemental questions issued by the Department pursuant to this redetermination, Huarong

reported that it incurred B & H expenses on all of its sales with FOB, CIF, and CNF shipping terms. See Huarong's July 15, 2005, supplemental questionnaire response at A-6. Therefore, the Department applied B & H expenses to Huarong's U.S. sales with these shipping terms.

INTERESTED PARTY COMMENTS

Comment 1 - Whether The Department Should Grant Huarong's Scrap Offset

Ames argues that the Department's decision to grant Huarong's reported scrap offset is wrong for three reasons. First, Ames contends that Huarong is unable to tie any of its reported data to its financial statements or accounting records, and that many of the supporting documents provided by Huarong are not actual accounting documents, but are instead worksheets created specifically for the purpose of responding to the Department's questions. As an example, Ames points to the Department's request that Huarong reconcile its sales of scrap steel to its financial accounting system. Rather than providing a reconciliation worksheet, Huarong submitted only a list of its scrap sales. In order to support this list, Ames notes that Huarong provided a value-added tax invoice for one of the scrap sales on the list. Ames claims that this invoice is unreliable because the English translation states "scrap steel sales" to indicate that the underlying transaction was a sale of scrap steel. According to Ames, the original Chinese-language invoice, however, is empty in the relevant section and makes no mention whatsoever of "scrap steel sales." See Affidavit contained in the petitioner's October 17, 2005, submission. Moreover, in responding to the Department's request that Huarong reconcile its sales of scrap steel to its accounting system, the petitioner notes that Huarong stated that it does not have the "complete accounting records and documentation" to support its reported sales of scrap. Based on Huarong's statement, the petitioner concludes that Huarong's sales of scrap steel cannot be verified and, pursuant to section 782(e)(2) of the Act, the Department must deny the offset.

Furthermore, the petitioner claims that Huarong's data on the steel input consumed for both subject and non-subject merchandise cannot be tied to any accounting records because Huarong did not provide the Chinese-language original inventory records, but instead only provided the English translations. In addition, the petitioner claims that the total weight of finished crow bars and wrecking bars listed in Exhibit 3A of Huarong's July 15, 2005, supplemental response cannot be tied to the inventory sub-ledgers provided in Exhibits 3B and 3C of that same response. Based on the above, the petitioners conclude that Huarong's submitted data are unsupported, unreliable, and unverifiable.

Second, Ames argues that the Department should deny the scrap offset because granting it would not be appropriate given Huarong's methodology for reporting its consumption rate for steel. Ames contends that Huarong departed from its accounting books and records to report its steel consumption and instead used estimated amounts, called "caps." Ames states that the "caps" methodology is based on budgeted rather than actual usage rates and fails to account for variances. According to Ames, Huarong's reported scrap offset does not represent the variance between actual and budgeted steel costs because Huarong does not account for the total steel input used to produce subject merchandise and the claimed sales of scrap are factory-wide sales, not limited to either subject merchandise production or to POR production. Given the absence of variances between budgeted and actual costs, Ames argues that the Department should apply adverse facts available ("AFA") for Huarong's sales of bars.

Lastly, Ames contends that the Department only allows offsets to production costs where the expenses associated with the offset are also reported in the cost of manufacturing. Ames states that, in market economy cases, respondents report expenses representing the total material input withdrawn from inventory, but offset this cost with revenue from the sale of recovered

scrap. In NME cases, Ames notes that respondents report quantities used in production. If a NME respondent calculates its usage rate from the total quantity withdrawn from inventory, Ames contends that it would be appropriate to allow an offset for the sale of recovered scrap. However, Ames claims that Huarong did not report the total steel withdrawn from inventory. Instead, it reported steel usage based on "caps" which do not represent actual amounts and do not reconcile to its accounting records. Ames states that it is unclear whether Huarong's budgeted usage rates for steel include the quantity of steel scrap, or if it does, whether it captures all or part of the steel scrap. Ames argues that the Department would have to guess whether it would be double-counting or under-counting steel usage if it allows Huarong's claimed offset. Ames contends, therefore, that applying Huarong's scrap steel offset will not calculate the most accurate dumping margin, based on substantial evidence, and the offset should be disallowed.

In rebuttal, Huarong states that the affidavit from Ames' counsel, an attorney fluent in Chinese, is new evidence that is not on the record, and it should not be accepted by the Department.

Department Position:

The Department disagrees with Ames. Contrary to Ames' argument concerning the value-added tax invoice for a sale of scrap, we find that there is sufficient evidence on the record to support Huarong's reported scrap sales, even if the Department were to discount the value of the particular invoice questioned by Ames. First, exhibit 2 of Huarong's July 15, 2005, submission contains the following documents: a value-added tax ("VAT") invoice that shows the value of the sale, a payment entry sheet that shows the payment received for the sale, and an accounting voucher that shows the accounting record of the sale. Although Ames is correct that the English translation of the VAT invoice includes the phrase "Scrap Steel Sales," while the

original document does not have any Chinese characters in the relevant section of the document, the English translations of the payment entry sheet and the accounting voucher are undisputed. The payment sheet identifies the value of the sale, is dated on the same day as the VAT invoice, and identifies the same purchaser as is listed on the VAT invoice. More importantly, the accounting voucher identifies the account involved in the transaction as "Scrap Steel Sales" (with Chinese characters in the relevant section of the original document) and lists the same sales value and VAT tax as does the invoice. Given that the payment entry sheet and accounting voucher link to the VAT invoice, the payment sheet demonstrates that Huarong received payment for the scrap sale, and the accounting voucher identifies the transaction as a sale of scrap steel, we are not persuaded that the VAT invoice should be disregarded, as Ames contends.

Ames also asserts that the Department should deny Huarong the scrap offset because Huarong did not provide a worksheet in its July 15, 2005, submission to reconcile its scrap sales to its books and records. As Ames notes, Huarong stated that it "does not keep complete accounting records and documentation for the transactions occurred in 2001." See Huarong's July 15, 2005, submission at A-1. However, Huarong did not state that its scrap sales are unverifiable, as Ames claims. Instead, Huarong stated that "it is difficult for Huarong to trace all the invoices, sub-ledgers, payment receipts and financial statements for the {amount} of sales ... of scrap steel {sold} during the POR." Id. Although Huarong did not provide a full reconciliation, it did provide documentary evidence (i.e., invoice, payment entry sheet, voucher) to explain how its accounting system works, and to demonstrate how its records reconcile when it enters scrap sales into its books and records. Further, Huarong submitted additional, undisputed invoices to support its list of scrap sales during this remand and in the underlying review. Huarong provided four scrap sale invoices in its August 10, 2005, submission; two

invoices in its February 4, 2003, submission; and one invoice containing two sales of scrap in its June 24, 2002, submission. Given that the nine invoices on the record of this case correspond to Huarong's list of scrap sales, there is sufficient evidence that Huarong's list of scrap sales is reliable.

Ames also notes that Huarong did not provide the Chinese-language original inventory records in its September 28, 2005, submission, but instead only provided the English translations of its monthly inventory records. While this is correct, the Department's question requested only the translated documents. Specifically, the Department asked that Huarong "{p}rovide translated copies of your inventory records to support (1) the total steel input for subject and non-subject products, and (2) total steel input for bars and wedges, for the complete POR." See the Department's September 22, 2005, questionnaire to Huarong at question 3. Thus, Huarong provided the documents that were specifically requested by the Department. We note that Huarong did provide both the Chinese-language original inventory record for February 2001 and an undisputed English translation in its September 20, 2005, submission.

With respect to Ames' claim that the total finished weight of wrecking bars and crow bars cannot be tied to the inventory records Huarong provided in its July 15, 2005, submission at Exhibits 3B and 3C, we find that this argument is factually incorrect. Adding the monthly finished production weight, for the months of the POR, from the inventory records contained in Exhibits 3B and 3C does sum to the total finished weight for wrecking bars and crow bars contained in the worksheet provided in Exhibit 3A.

In its comments, the petitioner identified the items in Huarong's responses where Huarong did not provide full source documentation for certain values used in its scrap offset calculations. However, we note that Huarong did provide the Chinese-language inventory

ledgers and undisputed English translations showing the finished weight of wrecking bars, crow bars, forks, and scrapers produced during every month of the POR. See Huarong's July 15, 2005, submission at Exhibits 3B-3E. As noted above, Huarong also provided the Chinese-language inventory record, and undisputed English translation, for February 2001 showing its consumption of steel for wrecking bars and crow bars. The Department asked Huarong to support the values it used in its calculations, and it did so. The Department did not require Huarong to provide the level of documentary detail that Ames argues should have been provided in the supplemental questionnaire responses. We note that such full source documentation may be requested by the Department at verification. Although it is unusual for the Department to conduct verification during litigation, this was a possibility given that, at the Court's behest, the Department opened the record and requested that new data be placed on the record. The possibility that Huarong could have been verified, and would have been denied the offset had it failed verification, provides an additional degree of assurance regarding the reliability of the data used in its calculations. Taken as a whole, we find that the record evidence supports our conclusion that Huarong's scrap steel sales and its steel consumption data are reliable. Indeed, even verification involves "spot checks," not exhaustive examination of all submitted data. See Corus Eng. Steels, Ltd. v. United States, Slip Op. 03-110 at 13 (CIT 2003) (citing Monsanto v. United States, 698 F. Supp. 275, 281 (1988) and Hercules, Inc. v. United States, 673 F.Supp. 454, 469 (1987)).

The Department also disagrees with Ames' contention that we should deny Huarong's scrap offset and apply AFA to its sales of bars because Huarong reported its steel consumption rate using a methodology that does not reflect the variance between budgeted and actual costs. The Department has accepted "caps" in the past when the "caps" were found to reasonably

reflect actual consumption, and has rejected them when found to be otherwise. See Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China; Final Review Results of Antidumping Review, 64 FR 27506 (May 20, 1999). The Department acknowledged and accepted Huarong's use of "caps" in reporting its steel consumption rates in the preliminary and final results of this review. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 10690, 10693 (March 6, 2003) (unchanged in final results). Ames did not comment on this issue in the underlying review, nor did it include this issue in its litigation. Since we accepted Huarong's use of "caps" in reporting its steel consumption rates, and such usage was not challenged, Ames' comments are beyond the scope of the remand.

Lastly, the Department also disagrees with Ames' contention that we must deny the scrap offset because it is unclear whether Huarong's steel consumption rates include the quantity of steel that becomes scrap during the production process, or if it does, whether the rates capture all or part of the steel scrap. Huarong stated on the record that its reported steel FOP is a pre-production quantity. See Huarong's June 24, 2002, section D response at D-6. As noted above, we accepted Huarong's "caps" for steel consumption in the underlying review. Since the record evidence demonstrates that Huarong's reported steel consumption rates are the pre-production weight of subject merchandise, and by definition the pre-production weight includes the steel that will become scrap during the production process, it is appropriate to allow Huarong the opportunity to receive a scrap offset if it reports an offset that conforms to our normal practice. In the Final Results, we rejected Huarong's scrap offset because Huarong did not allocate its scrap steel sales to the bars and wedges category of products. See Final Results at Comment 14.

Pursuant to this remand determination, Huarong has now remedied the defects noted by the Department in the Final Results. Since Huarong has reported a scrap offset that conforms to our normal practice, it is appropriate that the Department now grant Huarong's scrap offset.

Comment 2 - Whether the Department Should Revise Huarong's Scrap Offset Calculations

Ames contends that Huarong's scrap offset methodology was not made on an "apples-to-apples" basis because it calculates the scrap offset ratio using the finished weight of bars but applies this ratio to the input weight of bars. Specifically, Ames notes that the denominator of Huarong's scrap offset ratio is the total finished weight of wrecking bars and crow bars. Since the numerator is the amount of scrap sales allocated to bars, Ames asserts that the scrap ratio represents the amount of scrap sold per unit of finished bar weight. However, according to Ames, the Department applied this ratio to the per-unit steel input weight of bars, as reported in Field Number 2.1. Because the denominator of the scrap ratio is not on the same basis as the value to which it is applied, Ames concludes that the Department used an apples-to-oranges methodology. Ames argues that the correct methodology should be either to divide the scrap sales allocated to bars by the total input weight of both wrecking bars and crow bars, or simply divide the unallocated total scrap sold by the total steel input weight for subject and non-subject merchandise, which yields the same mathematical result.

Huarong did not provide any rebuttal comments on this topic.

Department Position:

The Department agrees with Ames in part. Ames is incorrect in its argument that the Department calculated the per-unit scrap offset by multiplying Huarong's scrap ratio by the per-unit input weight reported in Field 2.1 of its June 24, 2002, submission. As stated in the calculation memorandum for the Draft Redetermination, "{w}e replaced the 'SCRAP' column

with the scrap offset that Huarong reported to the Department in its September 28, 2005, supplemental questionnaire response." See Memorandum from Tom Martin, Import Compliance Specialist, to the File, "Calculation Memorandum for the Draft Remand Redetermination: Shandong Huarong Machinery Company (Bars/Wedges)," dated October 7, 2005, at 3. Huarong reported its scrap offset methodology in Exhibit 1 of its September 20, 2005, submission and repeated these calculations in its September 28, 2005, submission at Exhibit 1. In the September 20, 2005, submission, the formula provided in question 1 states that the scrap ratio is multiplied against the finished weight of each product. In Exhibit 1 of each submission, Huarong calculated the scrap offset by multiplying the scrap ratio by the "unit weight" of each CONNUM. Huarong confirmed that the unit weight from the September 2005 submissions is in fact the finished weight (as opposed to input weight) by comparing the unit weight from these submissions to the reported FOP weight contained in Exhibit 5 of Huarong's June 24, 2002, submission. See Huarong's August 25, 2005, submission, at 1-2. Since the scrap ratio was also calculated on the basis of finished weight, the calculations in the Draft Redetermination are on an "apples-to-apples" basis.

Ames' proposed methodology, allocating scrap sold to subject merchandise on the basis of the input weight of steel, and the methodology used in the Draft Redetermination, allocating scrap sold to subject merchandise on the basis of the weight of finished merchandise, should both yield a similar mathematical result. In both cases, the ratios were applied on an "apples-to-apples" basis, finished weight to finished weight in the Draft Redetermination, and input weight to input weight under Ames' proposed methodology. Any difference in the mathematical result is attributable to the differences in the amount of scrap generated in the production of different models of subject merchandise, and one method is not more accurate than the other. However,

we have since noted that, in the underlying review, Huarong used an allocation methodology based on input weight for coal consumption and electricity consumption. See Huarong's June 24, 2002, submission at D-9 and D-10. For these FOPs, Huarong divided the total consumption by steel consumption in kilograms, and multiplied this by the input weight of steel for each CONNUM. Id. Since Huarong adopted a methodology relying upon steel input weights for these FOPs, we will also allocate the scrap steel offset using the steel input weights, rather than finished merchandise weight, to maintain overall consistency in our calculations.

Comment 3 - Whether The Department Erred In Applying The Sigma Cap

Ames argues that the Department should revert to the practice of calculating the weighted-average supplier distance before applying the Sigma cap, which is the distance from the respondent factory to the nearest port. Ames contends that the Department's methodology in applying Sigma shows the Department's misunderstanding of the Court's remand instructions, and also arbitrarily changes the application of its own precedent. According to Ames, the Court instructed the Department to first explain why its previous methodology is correct, and only "failing" to do so, adjust its methodology accordingly. Ames contends that the Court never disapproved of the Department's specific methodology, but only asked for an explanation. According to Ames, the Department did not explain in the Draft Redetermination why its previous methodology was incorrect, and departed from its precedent and its holding in the Final Results without a justified reason. Ames states that Sigma involved a single supplier and did not address the situation where a respondent factory sources from multiple suppliers. Ames contends that for the Final Results, as well as in prior reviews, the Department applied the Sigma cap after it weight-averaged the supplier distances, which creates an imputed distance representing what the distance would have been had there been a single supplier for that input.

Ames argues that the methodology used in the Final Results, rather than the Draft Redetermination methodology, is in alignment with the single supplier situation present in Sigma.

Ames also contends that there is an underlying assumption in the Department's draft remand redetermination methodology that the price before freight was the same from every possible supplier, and each respondent, in an attempt to minimize transportation costs, would always choose a supplier that is closest to its factory. Ames continues, stating that the idea behind this assumption is that companies are presumed to behave in a manner that minimizes expenses and maximizes profits. Ames contends that there is no evidence on the record to suggest that the price before freight was the same from every supplier. Ames argues that, in this case, the fact that Huarong purchased from different suppliers (each with a different distance to its factory) is itself evidence that prices charged were different, or that transportation cost was not the only variable considered in selecting a supplier. Otherwise, Ames contends that Huarong would have purchased from one single supplier. In the case of multiple suppliers, pricing before freight cannot be the sole concern of the respondent. By choosing a methodology with an underlying assumption of identical pricing, Ames contends that the Department is adopting a methodology that does not correspond to the reality of this case. Ames states that the rationale of Sigma breaks down in a scenario involving multiple suppliers, and the Department should not force upon itself a methodology that does not speak to reality. Ames contends that its proposed methodology, where the "capping" occurs after the calculation of the weighted-average distance, solves this problem because it acknowledges that the respondent would go to different suppliers for different reasons, including pricing, and conforms to the Sigma reasoning by comparing a weighted-average distance to the distance cap.

Huarong did not provide any rebuttal comments on this topic.

Department Position:

The Department disagrees with Ames. While the Court did not reject the methodology used in the Final Results, it did direct the Department to adjust its methodology if it could not explain why the methodology satisfies the reasoning found in Sigma and Lasko. As instructed, the Department examined the rationale of Sigma, reviewed the methodology employed in the Final Results, and found that calculating the weighted-average supplier distance with individual distances greater than the "cap" does not yield the most accurate result, as required by Lasko. For these reasons, it was appropriate for the Department to adjust its methodology, as instructed by the Court. See Shandong Huarong at 8. Thus, the Department fully complied with the Court's direction.

Further, although Sigma involved one supplier, nothing in Sigma indicates that the Court's approach in that case is only valid when a producer uses one supplier. Producers who have purchased an input from only one supplier (which is the situation described in Sigma) may have considered many factors, other than price, in selecting that supplier (e.g., history with the supplier, input availability, supplier dependability, quality concerns, etc.). Yet, the Court solely focused its analysis on a producer's desire to minimize freight costs. Thus, the use of multiple suppliers, which may indicate that prices before freight costs were not the producers' only concern in selecting a supplier, is not a basis for distinguishing the approach outlined in Sigma.

Moreover, the fact that Huarong may have purchased an input from various domestic suppliers at different prices is irrelevant. The analysis in Sigma is based on surrogate prices, not actual prices. In the underlying review, the Department used a single average import price in the surrogate country as the surrogate price of all of the steel that Huarong purchased from its

various domestic suppliers. If Huarong were faced with the same import and domestic prices for an input, Sigma concludes that it would attempt to minimize freight costs by purchasing the input from the closest source. Thus, in deciding whether to use its existing suppliers or begin importing the input, the producer would compare the distance to each of its suppliers with the distance to the port. Comparing a weighted-average of the distances to its suppliers with the distance to the port would not be as meaningful a comparison under Sigma since there is, in fact, no supplier at the weighted-average distance from which the producer could purchase the input.

Comment 4 - Whether the B & H Surrogate Value Accounts for All Port Expenses

Ames argues that the Department has again relied on its experience in second-guessing whether certain expenses were included in B & H. Ames states that, instead of finding evidence that Viraj actually incurred certain expenses, the Department simply made an inference based on the process of elimination. In order to conclude that the surrogate value from Viraj (the respondent in Stainless Steel Wire Rod from India) included certain movement-related port expenses (including containerization) that Huarong incurred in the underlying review, Ames states that the Department relied upon the fact that Viraj's terms of delivery were CIF, thereby indicating to the Department that Viraj had to pay all costs incurred at the port of export. Moreover, Ames notes that the Department also stated that since port costs were not reported by Viraj in other categories of expenses, they must be included in foreign B & H. Ames states that, although it is possible that B & H had included the movement-related port expenses, there are too many other possible explanations for this scenario. Ames contends that (1) Viraj might not have incurred such expenses at all; (2) Viraj may have incurred such expenses only to a partial extent compared to Huarong; (3) Viraj might have included such expenses under other categories but failed to acknowledge it; or (4) Viraj failed to report such expenses at all. Ames argues that

the Department must find affirmative evidence that Viraj had incurred expenses and that such expenses were included in the surrogate value, or in the alternative, deduct such expenses from Huarong's U.S. pricing.

Huarong did not provide any rebuttal comments on this topic.

Department Position:

The Department disagrees with Ames. Contrary to Ames' assertions, the Department is not relying on its "experience" in finding that it is reasonable to conclude that the surrogate value for B & H accounts for all of Huarong's B & H costs. Rather, our decision is based upon record evidence from Stainless Steel Wire Rod from India and the underlying review. The Department examined the record evidence from Stainless Steel Wire Rod from India and the underlying review, and made fact-based conclusions. See Draft Redetermination at 15-18. As the Court recognized, it is entirely appropriate for the Department to make "reasonable inferences" from the record evidence. Shandong, Slip Op. at 23. Ames' contention that the Department must find affirmative evidence that Viraj incurred these specific expenses, and that such expenses were reported by Viraj in its B & H, would prevent the Department from making any logical inference based upon record evidence. Furthermore, Ames' assertion that the Department must deduct these expenses from U.S. price absent affirmative evidence from the Stainless Steel Wire Rod from India record is itself based upon an inference, as there is no affirmative evidence on the record of the underlying review that Huarong incurred these port expenses.

Moreover, the record of Stainless Steel Wire Rod from India is closed. Since the Department is unable to obtain any additional information from Viraj regarding its port expenses, the existing evidence is the best available information to value B & H. In Stainless

Steel Wire Rod from India, the Department was satisfied that Viraj fully reported its B & H expenses, and did not require Viraj to provide an itemized list of its specific port expenses as no one maintained Viraj's reporting was incomplete. It is therefore reasonable to conclude that Viraj's reported B & H expenses encompass all of Viraj's port expenses. Moreover, it is also reasonable to find that, given the product similarity, the expenses incurred by Viraj are the same as those incurred by Huarong at the time of export.

The Court has already sustained the Department's finding that Viraj's B & H is an appropriate surrogate value for Huarong due to the similarity of the merchandise shipped and the method by which it is shipped. See Shandong Huarong at 16. The Court therefore has found to be reasonable the Department's logical inference that Viraj and Huarong would have incurred similar expenses for B & H. It is within the Department's discretion to make such logical, fact-based inferences. The fact that Ames can draw inconsistent conclusions from the evidence contained in the record does not render Commerce's findings unsupported by substantial evidence. See Consolo v. Federal Maritime Comm'n, 383 U.S. 607, 620 (1966).

Comment 5 - Whether U.S. Trade Data Should be Removed from Indian Import Statistics

Huarong argues that the Department's decision to not exclude U.S. exports from the Indian import statistics is incorrect. Huarong argues that the Department should reconsider its decision and calculate surrogate values exclusive of Indian imports from the United States because such imports are subsidized. Huarong argues that the Department's explanation of its reasoning fails to (1) account for how the Department can use any subsidized price; (2) explain how selecting one surrogate value versus another surrogate value represents an adjustment to NV; and (3) address whether the Department applies this same rationale to each subsidized price in calculating a surrogate value or only to subsidized import prices from the United States. With

respect to this last point, Huarong contends that the Department has selectively adopted the "insignificant adjustment" rationale only for Indian imports from the United States. Moreover, Huarong asserts that the Department has not applied this approach in any other proceeding.

Ames did not provide any rebuttal comments on this topic.

Department's Position:

We disagree with Huarong. As an initial matter, we note that all three of Huarong's comments go beyond the scope of the Court's remand instructions. The Court ordered the Department to explain our decision to disregard the effect of subsidies from the United States as an insignificant adjustment to NV, in light of Fuyao I and Fuyao II. The Court did not order the Department to explain its subsidy suspicion policy, explain how selecting one surrogate value versus another surrogate value represents an adjustment to NV, or explain whether the Department applies this same rational to each "subsidized price" in calculating a surrogate value or only to import prices from the United States. However, to address Huarong's comments, we provide the following discussion.

With respect to Huarong's first argument, we note that our decision to determine whether U.S. exports have a significant effect on Huarong's NV has in no way undercut the Department's subsidy suspicion policy. In the underlying review, we followed our practice and removed from the Indian import statistics exports from countries that have been shown to maintain broadly available, non-industry specific export subsidies. We also evaluated Huarong's argument that the Department should exclude imports from all countries that have "any" subsidy. In the Final Results, we disagreed with Huarong's contention by stating:

> Contrary to Huarong's assertions, however, the Department does not have a policy of excluding all surrogate country import prices for factors of production that are exported by countries that may have generally-available subsidies,

> whether for domestic production or export sales. ... Moreover, the legislative history instructs the Department only to reject prices of those factor values that it has a reason to believe or suspect are distorted by subsidies. Evidence of generally-available subsidies throughout an entire economy does not provide a sufficient basis to reach that conclusion.

Final Results at Comment 2. Indeed, the CIT has found that the "reason to believe or suspect standard" requires "particular, specific, and objective." See China National Machinery v. United States of America, 264 F.Supp. 2d 1229 (CIT 2003), quoting Al Tech Specialty Steel Corp. v. United States of America, 575 F. Supp. 1277, 1280 (1983). Since we followed our subsidy suspicion policy in the underlying review and addressed Huarong's argument that the existence of "any" subsidy should trigger the exclusion of such trade from the surrogate country import statistics, we have already addressed Huarong's concerns on this topic.

Further, the statutory provision allowing the Department to ignore insignificant adjustments is not limited to price adjustments in market economy cases. This provision (section 777A(a)(2) of the Act) simply notes that the Department may decline to take into account insignificant adjustments when determining, among other things, NV. Pursuant to section 773(c)(1) of the Act, the Department determines NV in NME cases using surrogate values and FOPs. Thus, if the Department recalculates a surrogate, it will result in an adjustment to NV. In this instance, the Department measured the change in NV that resulted from recalculating surrogate values after excluding imports of U.S. goods from Indian import data. We found the change in NV to be insignificant under 19 C.F.R. § 351.413.

With respect to Huarong's third argument, we note that it is the Department's consistent practice that, where agency or third-country countervailing duty determinations find the existence of broadly available, non-industry specific export subsidies, it is reasonable to infer that exports from the investigated country may be subsidized. The Department has repeatedly

found, and the courts have sustained, reason to believe or suspect that prices of inputs from Indonesia, Korea, and Thailand may have been subsidized. See China National Machinery Import & Export Corporation v. United States, 293 F.Supp. 2d 1334 (CIT 2003), aff'd, 2004 U.S. App. Lexis 14566 (Fed. Cir. 2004); and Louyang Bearing Factory v. United States, 288 F.Supp. 2d 1369 (CIT 2003). Since no party alleged that these countries had ceased their subsidy programs, and the Department has already found to its satisfaction that these programs constitute a reason to believe or suspect subsidized prices, there was no need to conduct additional analysis of the impact the exports from these countries had on Huarong's NV. The underlying review, however, is the first time that a party has questioned whether U.S. exports may be subsidized due to the FSC tax program and should be excluded from the surrogate country import statistics. Accordingly, the Department conducted an analysis of whether U.S. exports to India had any significant effect on Huarong's NV. We found that they had none. Because U.S. exports had no significant effect on NV, any further analysis of whether U.S. exports to India may be subsidized is unnecessary. See 19 U.S.C. § 1677f-1(a)(2); 19 C.F.R. § 351.413.

Comment 6 - Whether Ames Has Attempted to Relitigate Issues

Huarong argues that Ames, in its comments on the Draft Redetermination, has attempted to relitigate issues that have already been addressed, or should have been addressed, prior to this remand. Huarong states that Ames has had many opportunities to address its concerns, and the issues raised in Ames' comments do not address the Department's Draft Redetermination.

Department's Position:

We disagree with Huarong that Ames' comments do not address the Department's draft remand redetermination. The Department has addressed each issue raised by Ames. As

Huarong has not specifically identified the issues it considers to be a relitigation of previous issues that have already been addressed, the Department cannot specifically address Huarong's argument.

RESULTS OF REMAND DETERMINATION

As a result of this remand redetermination, Huarong's dumping margin for the period February 1, 2001, through January 31, 2002, is 31.00 percent. This rate is changed from the rate announced in the Final Results.

_____
Stephen J. Claeys
Acting Assistant Secretary
for Import Administration

_____
Date