

June 13, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Antidumping Duty Investigation of Light-Walled Rectangular
Pipe and Tube from the People's Republic of China

SUMMARY

The Department of Commerce (the Department) has analyzed the case and rebuttal briefs submitted by interested parties in the above-referenced investigation. As a result of our analysis, we have made changes in the margin calculations for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether ZZPC's Dumping Margin Should be Based on Adverse Facts Available
- Comment 2: The Appropriate Surrogate Country
- Comment 3: The Appropriate Surrogate Financial Ratios
- Comment 4: The Appropriate Surrogate Values for Steel Inputs Used by Lets Win
- Comment 5: The Appropriate Surrogate Value for Hot-Rolled Steel
- Comment 6: The Appropriate Surrogate Value for Certain Packing Materials

Background

On January 30, 2008, the Department published its preliminary determination in the investigation of light-walled rectangular pipe and tube (LWR) from the People's Republic of China. See Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 5500 (January 30, 2008) (Preliminary Determination). We invited parties to comment on our Preliminary Determination. Case briefs were submitted on April 2, 2008, by the petitioners¹, and

¹ Petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California

by Kunshan Lets Win Steel Machinery Co., Ltd., (Lets Win) and Zhangjiagang Zhongyuan Pipemaking Co., Ltd. (ZZPC), the mandatory respondents in this investigation. Petitioners and ZZPC filed rebuttal briefs on April 7, 2008.

Margin Calculations

As discussed in Comment 1 below, we calculated ZZPC's margin based on total adverse facts available. For Lets Win, we calculated the export price and normal value (NV) using the same methodology described in the Preliminary Determination, except as follows:

1. We used different surrogates to value certain steel inputs and packing materials.
2. We averaged one additional surrogate company's data with those surrogate companies' data used in the Preliminary Determination to calculate the surrogate financial ratios.
3. Since the release of the preliminary determination, more recent labor data for the PRC has become available, which we have used in calculating Lets Win's final margin.

For a detailed analysis of ZZPC and Lets Win's margin calculations, see "Final Determination in the Investigation of Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Analysis Memorandum for Kunshan Lets Win Steel Machinery Co., Ltd.," dated June 13, 2008.

Discussion of the Issues

Comment 1: Whether ZZPC's Dumping Margin Should be Based on Adverse Facts Available

The petitioners urge the Department to base ZZPC's dumping margin on total adverse facts available (AFA) because, at verification, the Department found that ZZPC misrepresented the type of steel that it used to produce more than a quarter of the subject merchandise it sold during the POI.

As background, the petitioners note that after the Preliminary Determination, ZZPC reclassified a significant portion of its steel inputs from cold-rolled steel strip to lower priced hot-rolled steel (a revision that lowers normal value). However, the petitioners note that, at verification, the Department's verifiers examined all of the sales invoices and purchase orders related to the revisions from cold-rolled to hot-rolled steel and found several instances where the steel input was identified as cold-rolled steel. Additionally, the petitioners note that during verification the Department's verifiers examined records for 18 production runs that relate to the revisions from cold-rolled to hot-rolled steel and found that 17 of the 18 production run records identified the steel input as cold-rolled steel. When asked to explain these discrepancies, the petitioners state that ZZPC's officials continued to maintain, without providing supporting evidence, that their

Steel and Tube, EXLTUBE, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit.

revisions from cold-rolled to hot-rolled steel are correct and that subject pipes exceeding a certain wall thickness (the exact thickness is proprietary) were, in fact, made from hot-rolled steel. Further, the petitioners remark that the Department's verifiers asked for copies of certain documents that identified the steel input as cold-rolled steel but ZZPC's officials refused to provide the verifiers with the requested copies.

Additionally, the petitioners state that the Department determined at verification that ZZPC misreported the quantity of steel consumed in producing subject merchandise. Specifically, the petitioners point out that the Department found that "for certain control numbers the weight of the steel input was less than the weight of the pipe produced." See Petitioners' April 2, 2008, Case Brief (Petitioners' Case Brief) at 6 (citing the Memoranda from Jeff Pedersen and Hallie Zink, through Howard Smith, to the file regarding Verification of the Questionnaire Responses of Zhangjiagang Zhongyuan Pipemaking Co., Ltd., dated March 26, 2008 (ZZPC Verification Report) at 18). The petitioners go on to note that the Department also found that subtracting the per-unit steel scrap figure from the overall average per-unit steel consumption figure (which was calculated from ZZPC's section D database) resulted in a per-unit figure that is less than one – which indicates that the weight of the input is less than the weight of the output. The petitioners point out that ZZPC's officials acknowledged at verification "that the weight of the steel used in production always exceeds the weight of the pipe produced." See id.

Given the significant effect that steel has on the dumping margin, ZZPC's failure to report steel type in accordance with its records for more than a quarter of its U.S. sales, and its refusal to supply the Department with requested documents, the petitioners urge the Department to base ZZPC's dumping margin on total AFA. The petitioners recommend using ZZPC's preliminary dumping margin of 264.64 percent as the AFA rate. If, however, the Department does not base ZZPC's dumping margin on total AFA, the petitioners request that the Department: (1) ignore ZZPC's post Preliminary Determination reclassifications of the steel type from cold-rolled steel to hot-rolled steel and (2) adjust the CONNUM-specific steel consumption figures so that none are less than the weight of the finished subject merchandise plus the weight of the steel scrap offset. The petitioners note that the weight of the steel used in production must account for yield losses and therefore any reasonable measure of the steel input must result in more than one kilogram of steel input for each kilogram of finished subject merchandise. According to the petitioners, the Department has based input weights on facts available where the weight reported for the input was less than the weight of the output.

ZZPC disagrees with the petitioners' comments. First, ZZPC contends that the Department should not adjust its steel consumption figures as petitioners requested (i.e., should not adjust the CONNUM-specific steel consumption figures so that none are less than the weight of the finished subject merchandise plus the weight of the steel scrap offset). ZZPC acknowledges that, for some CONNUMs, the weight that it reported for the steel input is less than the weight of the subject merchandise plus the weight of the scrap, but notes that, for other CONNUMs, the weight that it reported for the steel input exceeds the weight of the subject merchandise plus scrap.² However, according to ZZPC, the overall total per-unit steel consumption quantity that it

2 According to ZZPC, this occurred because of "weight tolerances of the steel input drawing," the daily production

reported for all CONNUMs reflects its actual production situation. In fact, ZZPC notes that at verification, the Department calculated and verified a per-unit steel consumption figure for all pipe, both subject and non-subject merchandise, which shows that overall, the total quantity of steel consumed exceeds the total quantity of pipe produced. Moreover, ZZPC contends that if the Department adjusts its steel consumption figures as petitioners requested, it would unfairly overstate the dumping margin for those CONNUMs for which the reported weight of the steel input exceeds the weight of the subject merchandise plus the steel scrap. According to ZZPC, the methodology it used to report steel is the most practicable and accurate methodology and should be used in the final determination.

Second, contrary to the Department's verification findings, ZZPC claims that it properly reported the type of steel used to produce subject merchandise. ZZPC notes that in its production records, it does not use the terms cold-rolled and hot-rolled but uses the terms "bright steel," "black steel," and "bright and black steel." ZZPC claims that it explained at verification that "bright steel" refers to cold-rolled steel, "black steel" refers to hot-rolled steel, and "bright and black steel" refers to a type of "black steel" with a high surface quality which should not be treated as cold-rolled steel. According to ZZPC, the Department's verifiers misinterpreted the term "bright and black" steel as cold-rolled steel. ZZPC notes that when the production manager presented the production run records that identified the type of steel input used to make subject merchandise, its lawyer was busy performing other tasks regarding verification and that the Department's verifier reviewing the production run records failed to tell ZZPC's lawyer of the discrepancy. Thus, ZZPC contends that it was not aware of the misinterpretation until the very end of the verification when the verifiers mentioned the discrepancy with respect to steel type. At that time, ZZPC claims that it again explained the nature of its steel inputs, noted that wall thickness also indicates the type of steel used, and explained that the verifiers had misinterpreted the phrase "bright and black." ZZPC contends that if this misinterpretation is corrected, then all of the production records it provided during verification (which are the only records that show the actual type of steel used) support its factors of production submission. Moreover, ZZPC notes that the total quantity of its POI purchases of cold-rolled steel supports the cold-rolled steel consumption quantities that it reported in its factors of production database.

ZZPC also takes issue with the internet search that the Department conducted at verification. ZZPC notes that the verification report states the following:

During verification, we conducted an Internet search for the phrase "bright and black," steel. We found numerous references to Chinese companies selling cold-rolled steel that was black annealed and referred to as "bright and black." We found no references to bright and black hot-rolled steel.

See ZZPC Verification Report at 22.

reporting system used, and variations in the steel consumption rates for different pipes. Regarding its daily production reporting system, ZZPC indicates that at times the total amount of steel used in a day to produce pipe includes steel left on the production line from the previous day which is not recorded in the daily consumption figure. ZZPC notes that this results in a daily steel consumption quantity that is less than the quantity of pipe produced. See ZZPC's April 7 Case Brief at 4.

Although ZZPC states that it is unable to offer specific comments on the results of the internet search because the results were not included in the verification report, it believes that Chinese steel producers do not use the phrase “bright and black” to refer to a single product, but use these terms separately to refer to two different types of steel, “bright steel” and “black steel.” Thus, ZZPC argues that the verifiers wrongly treated the two types of steel as one type of steel and incorrectly linked the phrase “bright and black” to cold-rolled steel. ZZPC also believes that the Department should have conducted the internet search in Chinese rather than English to avoid using incorrect translations.

Third, ZZPC strongly disagrees with the claim that it failed to provide requested documents. ZZPC maintains that it provided the verifiers with all of the documents requested during verification but recounts an incident that occurred after verification which led to the claim that it failed to provide requested documents. Specifically, ZZPC notes that after the verification ended, the Department’s verifiers returned to its facilities, with ZZPC’s counsel, to make copies of documents that they had forgotten to copy during the verification. ZZPC states that it believed that the verification was over and that the Department’s verifiers were not entitled to the requested copies. Additionally, ZZPC notes that the personnel who prepared the documents that the verifiers wanted to copy were not present when the verifiers returned, and the employees who were present were not familiar with the documents and unable to determine whether the documents were “the real documents at issue.” See ZZPC’s April 2 Rebuttal Brief at 8. Despite the foregoing, ZZPC states that its officials did offer to provide copies of documents which the company officials selected, but even though the verifiers agreed to this, the verifiers then refused to take those copies because they contained no references to cold-rolled steel. Thus, ZZPC believes that it fully and completely cooperated with the Department and “the verifiers went far beyond the normal practice of the Department and beyond the common understandings of the counsels and ZZPC.” See Id. Based on the above, ZZPC contends that there is no reason to use adverse facts available with respect to its factors of production or reject its revision to steel type.

The petitioners disagree with ZZPC, and urge the Department to reject the revisions to steel type in light of verification findings and the lack of evidence supporting ZZPC’s claims. First, the petitioners note that the Department found sales invoices and purchase orders at verification that contradict the steel type reported by ZZPC. According to the petitioners, this verification failure provides more than sufficient reason to reject the revisions to steel type. Moreover, the petitioners contend that ZZPC never satisfactorily explained its claim at verification that it used hot-rolled steel to produce certain pipes despite the references to cold-rolled steel in invoices. Second, the petitioners contend that ZZPC’s explanations of the terms “bright steel,” “black steel,” and “bright and black steel” differ from the Department’s verification findings. The petitioners note that the verification report states the following:

We asked company officials to comment on our understanding that cold-rolled steel is referred to as “bright” steel and only cold-rolled that has been annealed would be considered “bright and black” steel. ZZPC did not address this statement.

See Petitioners’ Case Brief at 3, and ZZPC Verification Report at 21.

Third, the petitioners point out that the Department's internet search confirmed the explanation given by ZZPC's production manager that cold-rolled steel that has been annealed would be considered "bright and black" steel, an explanation which differs from that in ZZPC's case brief. What is more, the petitioners point out that even though ZZPC's officials continued to maintain at verification that the company correctly reported its inputs, the Department noted in its verification report that "{o}fficials, however, presented no documentary evidence contradicting the information {(i.e., the results of the internet search)} indicating that the steel inputs in question were cold-rolled steel." See Petitioners' April 2, 2008, Case Brief at 4, and ZZPC Verification Report at 22-23.

Additionally, the petitioners contend that the Department should not reward ZZPC's behavior of revising its explanation of how it identified steel type once earlier explanations are disproven. Specifically, the petitioners state that ZZPC first explained that it determined whether hot-rolled or cold-rolled steel was used in production based on the wall thickness of the pipe produced. However, after the discrepancies involving steel type were discovered at verification, the petitioners note that, in its case brief, ZZPC now focuses on the phrase "bright and black," asserting that bright steel, regardless of wall thickness is cold-rolled steel, black steel is hot-rolled steel, and "bright and black" steel can be hot-rolled steel depending on the wall thickness. According to the petitioners, there is no reason to reward ZZPC by accepting its latest explanation regarding steel type. Thus, the petitioners conclude that the Department should reject ZZPC's revisions to steel type.

Department's Position:

We disagree with ZZPC. Record evidence calls into question the steel consumption figures reported by ZZPC both on a control number (CONNUM)-specific basis, and an aggregate basis. Specifically, at verification, the Department's verifiers noted that, for a significant number of control numbers (CONNUMs), ZZPC reported that the weight of the steel input was less than the weight of the steel pipe produced. ZZPC's officials acknowledged that this situation is impossible.³ The Department's verifiers further noted that for a majority of CONNUMs, ZZPC reported that the weight of the steel input is less than the weight of the steel pipe produced plus the weight of scrap. ZZPC has likewise acknowledged that this situation should not occur.⁴ In addition, the Department's verifiers found that the overall weighted average per-unit steel consumption is less than the per-unit weight of the pipe produced (i.e., one kg for each CONNUM) plus the per-unit weight of the steel scrap (which is the same for all CONNUMs). ZZPC officials acknowledged at verification that they did not reconcile the total steel consumption that they reported for subject merchandise to the total steel consumption reported in ZZPC's financial accounting records.⁵ Thus, the record does not support ZZPC's claim that "the

3 See ZZPC's verification report at 18 ("However, company officials acknowledged that the weight of the steel used in production always exceeds the weight of the pipe produced").

4 See ZZPC's April 7, 2008 rebuttal brief at 4 ("the weight of the steel input should be ideally equal to the weight of the subject merchandise plus steel scrap").

5 See ZZPC's verification report at 19. Moreover, ZZPC failed to reconcile its reported consumption to the cost reconciliation submitted to the Department prior to verification. See ZZPC's November 19, 2007, submission at

total per-unit consumption quantity of all control numbers reflects the actual production situation of ZZPC”⁶ Moreover, the per-unit steel consumption figure that the Department’s verifiers calculated from ZZPC’s accounting records is also less than the weight of the pipe produced plus the weight of the steel scrap.⁷ The purpose of verification is to establish that the reported figures are reliable, but, in this case, as explained above, ZZPC failed to demonstrate that either its reported consumption quantities or consumption based on its accounting records is reliable.

Likewise, the results of verification demonstrate that the Department cannot rely on ZZPC’s description of the type of steel used to produce subject merchandise. The Department’s verifiers examined production run records for 18 line items listed in various invoices for which ZZPC changed the reported type of steel used to produce subject merchandise from cold-rolled steel to hot-rolled steel. Seventeen of the 18 production run records identified the steel used as “bright and black” steel, which, according to ZZPC’s production manager, indicates that the steel is annealed cold-rolled steel.⁸ The internet search that the verifiers conducted at verification confirmed the production manager’s statement regarding the meaning of the phrase “bright and black.”⁹ In addition, the verifiers found sales invoices, purchase orders and other sales documents indicating that cold-rolled steel was used for certain line items on eleven sales invoices; however ZZPC reported the input for these line items as hot-rolled steel. Based on these tests, it is reasonable to conclude that ZZPC did not accurately report the type of steel that it consumed to produce subject merchandise.¹⁰

While ZZPC continues to claim that it correctly reported the type of steel used, it failed to provide any evidence at verification to support such claims. Specifically, ZZPC did not provide any documentary evidence at verification demonstrating that the phrase “bright and black” describes hot-rolled steel. Nor has ZZPC disputed the Department’s finding that the sales documents for the eleven aforementioned sales identified the steel used as cold-rolled steel. Moreover, contrary to ZZPC’s claim that its purchase records support the reported type of steel used to produce subject merchandise, at verification ZZPC officials stated that there was no way to link the type of steel purchased to the type of steel used to make subject merchandise.¹¹ Further, despite ZZPC’s claim that it was prevented from commenting on the Department’s

Annex 21.

6 See ZZPC’s April 7, 2008 rebuttal brief at 4.

7 When the originally reported consumption figures (which were based on inventory withdrawal slips) were found to be unreliable, the Department’s verifiers calculated, with ZZPC’s officials, consumption based on ZZPC’s accounting records. See ZZPC’s verification report at 18.

8 See ZZPC’s verification report at 21 (“{t}he production manager stated that annealed cold-rolled steel was identified on the production run records as “bright and black” and that hot-rolled steel was identified variously as “black strip” and “hot strip.”).

9 See ZZPC’s verification report at 22.

10 See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy, 64 FR 30750, 30759 (June 8, 1999) (where, after citing Monsanto Company v. United States, 698 F. Supp. 275, 281 (CIT 1998) (“{v}erification is a spot check and is not intended to be an exhaustive examination of a respondent’s business”) the Department noted that “{i}t has been the Department’s long-standing practice that ... if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted. This is especially so if, as here, the errors prove to be systemic in nature.”).

11 See ZZPC’s verification report at 3 and 16.

internet search because the results of the search are not on the record, the Department's verifiers did provide ZZPC with an opportunity to challenge the results of the internet search. The verification report states that the verifiers "informed company officials of our findings {(i.e., the results of the internet search)}," and "asked company officials whether the type of steel was correctly reported ... Officials, however, presented no documentary evidence contradicting the information indicating that the steel inputs in question were cold-rolled steel."¹² Additionally, while ZZPC implies that it was disadvantaged by not being made aware of the Department's "misinterpretation" of the phrase "bright and black" until the very end of verification, the verification report states that the verifiers "asked company officials to comment on our understanding that cold-rolled steel is referred to as 'bright' steel and only cold-rolled {steel} that has been annealed would be considered 'bright and black' steel." Thus, ZZPC was given the opportunity to clarify any misinterpretation on the Department's part at the verification; however, as noted above, ZZPC failed to provide any documents supporting its claims regarding the type of steel used. Therefore, we have determined that we cannot rely upon the steel type reported by ZZPC.

When information submitted by a respondent cannot be verified, section 776(a)(2)(D) the Tariff Act of 1930, as amended (the Act), provides that the Department shall, subject to section 782(d)¹³ of the Act, use facts otherwise available in reaching its determination. As explained above, there are no reliable steel consumption figures on the record. Also, we were unable to verify the type of steel that ZZPC reportedly used to produce subject merchandise. In this case, the steel input alone accounts for nearly all of the cost of manufacturing. Since we could not verify the reported steel consumption quantities, or the type of steel used by ZZPC, we have determined that the record lacks the information necessary to calculate an accurate dumping margin for, and cannot serve as a reliable basis for reaching a determination with respect to, ZZPC. Section 782(d) of the Act is not applicable in this instance because the Department was not aware when analyzing ZZPC's submissions that ZZPC failed to provide any reliable steel consumption figures. Further, ZZPC submitted its sales and FOP databases in which it revised the type of steel input on February 12, 2008, which was only six days prior to the beginning of verification.¹⁴ Therefore, pursuant to section 776(a)(2)(D) of the Act, we find that it is appropriate to base ZZPC's dumping margin on the facts otherwise available.

Once the Department determines that the use of facts available is warranted, section 776(b) of the Act permits the Department to apply an adverse inference if it makes the additional finding that "an interested party has failed to cooperate by not acting to the best of its ability to comply

12 See ZZPC's verification report at 22.

13 Section 782(d) of the Act states that the Department must provide a party the opportunity to remedy or explain a deficient submission, but may, subject to section 782(e) of the Act, disregard the submission if it remains deficient. Section 782(e) of the Act requires the Department to consider information the remains deficient if it meets a number of criteria, one of which is that the information can be verified.

14 ZZPC's revised sales and FOP database were received at the close of business, Tuesday, February 12, 2008. The Department's verifiers departed for verification Friday morning to begin verification Monday morning (February 18, 2008). Thus, there was insufficient time to analyze ZZPC's submission and formulate a supplemental questionnaire for which ZZPC could then provide a response by the first day of verification.

with a request for information.” To examine whether the respondent “cooperated” by “acting to the best of its ability” under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819-20 (October 16, 1997). In determining whether a party has cooperated to the best of its ability, “Commerce must necessarily draw some inferences from a pattern of behavior.” See Borden, Inc. v. United States, 1998 WL 895890, at *1 (CIT 1998). See also SAA at 870. The Court of Appeals for the Federal Circuit (CAFC), in Nippon Steel Corporation v. United States, 337 F.3d 1373, 1380 (Fed. Cir. 2003) (Nippon Steel), provided an explanation of the “failure to act to the best of its ability” standard. Specifically, the CAFC held that the Department need not show intentional conduct existed on the part of the respondent, but merely that a “failure to cooperate to the best of a respondent’s ability” existed (*i.e.*, information was not provided “under circumstances in which it is reasonable to conclude that less than full cooperation has been shown”). See id. The CAFC also noted that the test is “the degree to which the respondent cooperates in investigating {its} records and in providing Commerce with the requested information.” See Nippon Steel, 337 F.3d 1373 at 1383.

We have determined that the use of adverse inferences is warranted because ZZPC did not act to the best of its ability in reporting the quantity and type of steel consumed. ZZPC acknowledges that it reported certain quantities for steel consumption that do not make sense. Moreover, ZZPC acknowledges that it did not reconcile the total steel consumption reported for subject merchandise to the total steel consumption reported in its financial accounting records. ZZPC’s statement that for certain CONNUMs the reported steel consumption is higher than for others fails to address the Department’s overriding concern that the overall, weighted-average per unit consumption reported by ZZPC is less than the sum of the weight of the steel pipe produced and the weight of the steel scrap. In fact, ZZPC has yet to directly address this discrepancy except to state that reported consumption “should be ideally equal to the weight of subject merchandise plus steel scrap.” Further, ZZPC had in its possession records indicating that, for some sales, it used cold-rolled steel to produce subject merchandise, and yet after issuance of its preliminary dumping margin, ZZPC changed the reported steel type for these sales from cold-rolled to hot-rolled steel. All of the above demonstrate that ZZPC failed to do “the maximum it is able to do” in meeting the Department’s requests and, therefore, it has not acted to the best of its ability.¹⁵ Additionally, ZZPC refused to provide copies of certain documents that were requested by the Department. Although ZZPC stated that it believed the Department’s verifiers were not entitled to the copies because verification had ended, it is important to note that in response to the verifier’s request, ZZPC’s officials were willing to provide copies of certain documents that did not undermine the information that they had reported, but refused to provide the requested copies.¹⁶ While ZZPC also justifies its refusal to provide copies by stating that the personnel who prepared the documents were not present when the verifiers returned for the copies, we note

¹⁵ See China Steel Corp. v. United States, 306 F. Supp 2d 1291, 1303-04 (CIT 2004) (citing Nippon Steel, 337 F.3d at 1383).

¹⁶ See ZZPC’s verification report at 22 (“ZZPC refused to provide us with all of the sales documentation. We noticed that the documentation ZZPC offered contained no mention of cold-rolled steel as an input, but that the documentation ZZPC was not willing to provide identified cold-rolled steel as the input.”).

that the verifiers were merely requesting copies of documents that knowledgeable personnel had presented to them earlier in the verification. Also, ZZPC's claim that the verifiers permitted company officials to provide copies of whichever documents officials selected is incorrect.¹⁷ Thus, the record shows a pattern of behavior on the part of ZZPC which indicates that it did not cooperate to the best of its ability within the meaning of section 776(b) of the Act.

Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination from the investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate for any respondent in the investigation. See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at the "Adverse Facts Available" section. In this case, ZZPC's preliminary dumping margin of 264.64% is higher than the highest margin alleged in the petition, and higher than the highest rate calculated for any other respondent in this investigation. Accordingly, as total AFA, we have assigned ZZPC a dumping margin of 264.64%. This approach is consistent with Stainless Steel Bar from India: Final Results of Antidumping Duty New Shipper Review, 72 FR 72671 (December 21, 2007). Corroboration of this rate is not required because this rate is based on, and calculated from, information submitted by ZZPC in the course of this investigation, i.e., it is not secondary information. See 19 CFR 351.308(c) and (d) and section 776(c) of the Act.

Comment 2: The Appropriate Surrogate Country

ZZPC requests that the Department use Philippine data to value its factors of production. In support of its request, ZZPC notes that the Indian surrogate values used in the Preliminary Determination appear aberrantly high (specifically pointing to the difference between the surrogate values used for hot and cold-rolled steel). ZZPC also notes that the Department chose the Philippines as the surrogate country in the second administrative review of wooden bedroom furniture from the PRC.

The petitioners contend that it would be inappropriate to value ZZPC's factors of production using Philippine data. As an initial matter, the petitioners state that ZZPC did not provide evidence that the Philippines is a significant producer of comparable merchandise, and thus it failed to meet the statutory requirement established by section 773(c)(4) of the Act. Furthermore, the petitioners note that the Department's practice, where possible, is to value

¹⁷ See ZZPC's verification report at 22 ("{w}e requested that ZZPC make copies of the sales documentation for these sales.").

factors using prices from a single surrogate country, which in this case is India.¹⁸ Petitioners further state that the Department has a longstanding practice of using Indian import data to value factors of production.¹⁹ Moreover, the petitioners assert that the Indian World Trade Atlas (WTA)²⁰ data are an appropriate source of surrogate data in this case because they satisfy the Department's established criteria for selecting surrogate values (*i.e.*, they represent non-export average values; are reasonably contemporaneous with the period of investigation (POI); are generally product specific, and are tax exclusive).²¹ Accordingly, petitioners argue that there is no reason to use Philippine surrogate values in this investigation.

Lets Win did not comment on this issue.

Department's Position:

We disagree with ZZPC. Section 773(c)(4) of the Act requires that surrogate values be based on prices in one or more market economy countries that are: (1) at a level of economic development comparable to that of the non-market economy country; and (2) significant producers of comparable merchandise. Although the Department found the Philippines to be comparable to the PRC in terms of economic development,²² the record does not indicate that the Philippines is a significant producer of merchandise that is comparable to subject merchandise. In fact, in selecting the surrogate country for the instant investigation, the Department found that all of the potential surrogate countries for this investigation (See Policy Memorandum) had exports of subject merchandise except the Philippines.²³

Furthermore, ZZPC failed to provide any reason for valuing factors using Philippine, rather than Indian data, other than an unsupported assertion that the Indian data are aberrantly high.²⁴ While the Indian factor values may exceed the Philippine import values, it is impossible to determine which value is aberrant when comparing only two data points.²⁵ Thus, in determining whether

18 See Petitioners' April 7, 2008, rebuttal brief (Petitioners' Rebuttal Brief) at 7 (citing Luoyang Bearing Corp., v. United States, 358 F. Supp. 2d 1269, 1299 (CIT 2005) (Commerce explains that when calculating surrogate values it generally relies on data from its primary surrogate country, which in the case at bar is India).

19 See Petitioners' Rebuttal Brief at 7 (citing Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262, 1277 (CIT 2006)).

20 The WTA is an electronic database based upon the publication Monthly Statistics the Foreign Trade of India Volume II: Imports which is published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India," available at <http://www.gtis.com/wta.htm>.

21 See Petitioners' Rebuttal Brief at 7 (citing Polyethylene Retail Carrier Bags Comm. v. United States, Slip-Op. 2005-157, 65 (CIT 2005)).

22 See Memorandum to Howard Smith, Program Manager, from Ron Lorentzen, Director, Office of Policy, regarding "Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube ("Pipe") from the People's Republic of China (PRC): Request for a List of Surrogate Countries," dated August 22, 2007 (Policy Memorandum).

23 See Memorandum to Abdelali Elouaradia, Director, from Drew Jackson, International Trade Analyst regarding: "Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube ("Pipe") from the People's Republic of China (PRC): Selection of a Surrogate Country," dated November 13, 2007.

24 Additionally, other than the surrogate values for steel, ZZPC never identified which of the Indian surrogate values it considered to be aberrantly high. See ZZPC's April 2, 2008, Case Brief.

25 See Certain Cut-To-Length Carbon Steel Plate from Romania: Final Results of Antidumping Duty

surrogate values are aberrational, the Department has found it appropriate to benchmark the values against values from the other surrogate countries.²⁶ ZZPC has not conducted such an analysis here.

Given the above, and the fact that the Indian WTA data satisfy the Department's preference for valuing factors in a single surrogate country (see 19 CFR 351.408 (c)(2)) using a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POI, we have continued to base the surrogate values on Indian WTA data.²⁷

Comment 3: The Appropriate Surrogate Financial Ratios

ZZPC requests that the Department use the financial statements of Rama Steel Tubes Ltd. (Rama), an Indian pipe and tube producer, in valuing overhead ratios.²⁸

Neither the petitioners nor Lets Win commented on this issue.

Department's Position:

We agree with ZZPC and have revised the surrogate values for factory overhead, selling, general, and administrative (SG&A) expenses, and profit to include the financial information of Rama. Section 351.408(c)(4) of the Department's regulations states that the Department will normally value manufacturing overhead, general expenses, and profit using "nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country."²⁹ In addition, when selecting surrogate companies for the purpose of calculating financial ratios, the Department will consider the availability of public financial statements covering a period contemporaneous with the period under consideration, and the comparability of the respondents' and the surrogate companies' production experience.³⁰ The Department has

Administrative Review, 66 FR 2879 (January 12, 2001) and accompanying Issues and Decision memorandum at Comment 3, stating "it is impossible to determine which figure is 'aberrational' when choosing between only two data points."

²⁶ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision memorandum at Comment 5, noting that "the Department's current practice has been to benchmark surrogate values against imports from the list of potential surrogate countries for a given case" (citing Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at Comment 2).

²⁷ See Polyethylene Retail Carrier Bags Comm. v. United States, 2005 WL 3555812, at *21-22 (CIT 2005).

²⁸ ZZPC did not offer specific reasons as to why the Department should use the financial statements of Rama in valuing overhead ratios.

²⁹ See also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) (Persulfates) and accompanying Issues and Decisions Memorandum at Comment 1 ("normally, it is the Department's practice in NME proceedings to use, whenever possible, surrogate-country producers of identical merchandise for surrogate-value data, provided that the surrogate data is not distorted or otherwise unreliable.").

³⁰ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004) and accompanying

an established practice of rejecting financial statements of surrogate producers whose production process is not sufficiently comparable to the respondent's production process,³¹ whose financial statements are incomplete,³² and who are officially designated as "sick companies" by the Indian government.³³ The Department may also choose not to select a potential surrogate company when the company's financial statement indicates that it may have received a benefit found to be countervailable in a countervailing duty proceeding involving the surrogate country.

We have reviewed Rama's financial statement in light of the Department's established practice for selecting surrogate data to calculate financial and profit ratios and find that it is appropriate for use as a surrogate in this case. As with the statements of Zenith Birla (India) Limited and Bihar Tubes Limited, the two companies used in the Preliminary Determination to calculate surrogate financial ratios, Rama's financial statement is publicly available, covers a period contemporaneous with the POI, is sufficiently detailed to permit a calculation of the required financial ratios, and indicates that Rama is operationally similar to the mandatory respondents. Moreover, we find no evidence that Rama's financial statement is distorted by subsidies found to be countervailable in a countervailing duty proceeding covering India. While we have decided to base ZZPC's dumping margin on total adverse facts available (See Comment 1 above), we may use financial information ZZPC has placed on the record. In other cases the Department has applied financial ratios to all companies sharing a similar production experience. See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758 (June 4, 2007) (unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China 72 FR 60632 (October 25, 2007)). Accordingly, we find that Rama's financial statements are an appropriate source of surrogate financial information that should be applied to all companies sharing a similar production experience. Therefore, we have revised our calculation of the surrogate financial ratios to include financial information from Rama in calculating Lets Win's dumping margin. See Final Analysis Memorandum.

Issues and Decision Memorandum, at Comment 9F.

31 See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 22183, 22193 (May 3, 2001) (unchanged in the final determination); Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001) and accompanying Issues and Decisions Memorandum at Comment 4 (rejecting the surrogate financial statements of a producer because it may be less representative of the financial experience of the Indian integrated steel industry).

32 See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decisions Memorandum at Comment 1 (Department used surrogate producer's financial statement after pages that were initially missing were supplied by an interested party); Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus, 66 FR 33528 (June 22, 2001) and accompanying Issues and Decisions Memorandum at Comment 2 (Department chose not to use a financial statement because "financial statement on the record appears incomplete").

33 See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum, at Comment 14 ("It is the Department's practice to exclude the data of 'sick' companies from its surrogate financial ratios.").

Comment 4: The Appropriate Surrogate Values for Steel Inputs Used by Lets Win

Lets Win reported using two types of steel to produce subject merchandise, cold-rolled steel strip, which it called “narrow strip,” and cold-rolled steel sheet, which it referred to as “slit coil.”³⁴ In the Preliminary Determination, the Department valued narrow strip and slit coil using WTA data from the Indian HTS subcategories “strip” and “sheets,” respectively, found under the Indian Harmonized Tariff Schedule (Indian HTS) category for flat-rolled products of iron or non alloy steel – not further worked than cold-rolled – of a width of less than 600 mm. Lets Win contends that these WTA data should not have been used to value the narrow strip and slit coil that it used because: (1) the WTA value for flat-rolled strip overstates the value of its narrow strip which is produced from low quality steel; (2) its slit coil is produced from coil sheets greater than 600 mm in width; and (3) the Indian tariff system does not define the subcategories “strip” and “sheets.” Specifically, Lets Win notes that the “strip” and “sheet” subcategories are listed under Indian HTS categories for flat rolled products 600 mm in width or wider, and flat rolled products less than 600 mm in width. Thus, Lets Win maintains that it is unclear what types and sizes of products are classified under these subcategories.

According to Lets Win, the record supports its position. Specifically, Lets Win asserts that the Department verified that its “narrow strip” is inferior in quality to the “slit coil” and that material samples presented at verification demonstrated that, unlike the “slit coil,” the “narrow strip” contained surface blemishes.³⁵ Despite this fact, Lets Win notes that the preliminary surrogate value selected for narrow strip is more than double the preliminary surrogate value for slit coil and more than double the import values derived from any of the other Indian HTS subcategories for flat-rolled, cold-rolled products (e.g., plate, sheets, other, etc.). Lets Win further states that the Department verified that Lets Win purchased “slit coil” in widths of approximately 1250 mm, which was then slit to narrow widths by a third party.³⁶ Accordingly, argues Lets Win, the surrogate value applied to the “slit coil” that was purchased in widths of approximately 1250 mm is inappropriate because it reflects the value of flat rolled steel that is no wider than 600 mm.

Thus, Lets Win urges the Department to reject the WTA data in favor of Indian import prices reported by the Indian Joint Planning Committee (JPC).³⁷ Specifically, Lets Win requests that the Department value narrow strip and slit coil using JPC import data for second quality/defective cold-rolled coils/sheet and prime quality cold-rolled coils/sheets, respectively. According to Lets Win, the JPC data are contemporaneous, tax-exclusive prices for imports of steel through major Indian ports and the Department has relied on JPC data in other

34 See Memorandum to the File from Jeff Pedersen, Case Analyst, Office 4, through Howard Smith, Program Manager, Office 4, concerning, “Investigation of Light-Walled Rectangular Pipe and Tube from the People’s Republic of China: Surrogate Values for the Preliminary Determination,” at 1, dated January 23, 2008 (Surrogate Value Memorandum).

35 See Lets Win’s April 2, 2008 Case Brief at 2 (citing Memorandum to the File, from Drew Jackson and Juanita H. Chen, International Trade Compliance Specialists, through Howard Smith, Program Manager, Office 4, concerning, “Antidumping Duty Investigation of Light-Walled Rectangular Pipe (LWR) from the Peoples’ Republic of China, Verification of the Questionnaire Responses of Kunshan Lets Win Steel Machinery Co., Ltd.,” dated March 26, 2008 (Lets Win Verification Report)).

36 See id.

37 The JPC is a joint industry/government board that monitors Indian steel prices.

proceedings.³⁸ Further, Lets Win argues, the JPC import data for second quality cold-rolled coils/sheet are the only record information that specifically reflect the low quality “narrow strip” steel that it used to produce subject merchandise.

Alternatively, Lets Win argues that if the Department continues to prefer using WTA data to value narrow strip and slit coil, then it should use WTA data from different Indian HTS categories than those used in the Preliminary Determination. Specifically, Lets Win argues that the Department should value “slit coil” using the six-digit Indian HTS category for flat-rolled products of iron or non alloy steel, cold-rolled, of a width of 600 mm or more and a thickness exceeding 1 mm but less than 3mm. Although there are eight-digit subcategories under the suggested six-digit category (i.e., subcategories for plates, sheets, strip, and other), Lets Win does not recommend using these subcategories because the subcategory descriptions do not identify product widths that would allow one to match the subcategory to its slit coil. Since the narrow strip is of a lesser quality than slit coil, but all of the Indian HTS values for flat, cold-rolled products less than 600 mm in width are greater than its suggested Indian HTS value for slit coil, Lets Win suggests valuing narrow strip using a subcategory under the Indian HTS category that it suggested for slit coil. Namely, Lets Win suggests valuing narrow strip using the eight-digit subcategory “flat-rolled products of iron or non alloy steel, cold-rolled, of a width of 600 mm or more and a thickness exceeding 1 mm but less than 3mm - Other.” At a minimum, Lets Win argues, the Department should assign the same value to “narrow strip” that it assigns to “slit coil.”

Petitioners, however, argue that the WTA Indian HTS categories used by the Department in the Preliminary Determination properly reflect the steel inputs used by Lets Win. First, the petitioners point out that the Indian HTS categories used by the Department are for cold-rolled steel, the type of steel that Lets Win reported using in producing subject merchandise. Second, according to petitioners, record evidence indicates that the widths of the flat-rolled steel that Lets Win entered into production fall within the width range of the Indian HTS category used by the Department (i.e., less than 600 mm in width). Although Lets Win may have purchased some slit coil that was 1250 mm wide, the petitioners note that before the steel was used in production it was cut into narrower widths that are covered by the Indian HTS category used by the Department (Lets Win itself reported *consuming* steel which falls under the Indian HTS category used by the Department).³⁹ Thus, the petitioners claim that the Department properly valued the steel used by Lets Win because it valued the input used rather than the input purchased. Third, the petitioners claim there is no evidence indicating that the use of the terms “strip” and “sheets” in the WTA data is inaccurate or unreasonable. Fourth, the petitioners claim there is no evidence that the WTA value for flat-rolled strip overstates the value of Lets Win’s narrow strip. Petitioners argue that a higher value for cold-rolled steel strip is not surprising when one considers that cold-rolled steel requires more processing than hot-rolled steel and steel strip requires more processing than steel plates and steel sheet.

38 See Certain Steel Nails from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination, 73 FR 3928, 3937 (January 23, 2008); see also Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People’s Republic of China, 73 FR 15726, 15734 (March 25, 2008).

39 See the Department’s Surrogate Value Memorandum at 3.

Additionally, the petitioners claim that there are a number of problems with Lets Win's arguments for using JPC import data to value the steel inputs. Although Lets Win claimed that the JPC data are the only record information that reflects the low quality "narrow strip" steel that it used, the petitioners contend that there is no evidence that Lets Win used secondary or defective narrow strip that is lower in quality than its slit coil. According to the petitioners, officials' claims at verification that Lets Win used a lower quality narrow strip are just characterizations without any evidence. Moreover, although Lets Win claimed there were surface blemishes on the "narrow strip" samples presented at verification, the petitioners point out that this fact is not in the verification report. Even if it were, the petitioners maintain that these pre-selected, self-serving steel samples do not necessarily represent the quality of inputs typically used in production. Furthermore, the petitioners state that Lets Win reported that all of the products that it produced are prime merchandise. Thus, according to the petitioners, the claim that Lets Win used secondary or defective narrow strip is not only unverified but contradicted by Lets Win's statements. While the Department has used JPC data to value low quality steel wire rod in other cases, the petitioners argue that it is inappropriate to use that data here, given the lack of evidence that Lets Win's narrow strip is anything other than prime quality. Lastly, the petitioners argue against using JPC data to value steel because it is tax inclusive and not as specific to the input as the WTA data (*i.e.*, the JPC data does not identify the width or thickness of the steel).⁴⁰

In contrast, the petitioners note that the WTA data used by the Department meet all of the established criteria for selection of a surrogate value in the instant investigation (*i.e.*, the data are based upon non-export average values, contemporaneous with the POI, specific to the input, and exclusive of taxes). Thus, the petitioners urge the Department to follow its longstanding practice of using the Monthly Statistics of Foreign Trade in India to derive the surrogate values for steel.⁴¹ However, the petitioners argue against using the alternative Indian HTS categories suggested by Lets Win because these categories are for flat-rolled steel wider than 600 mm and the record indicates that all of the steel that Lets Win used to produce subject merchandise is less than 600 mm wide. Also, the petitioners add that if the Department were to accept Lets Win's repeated indications that it only used cold-rolled strip in production, the most appropriate surrogate value for all of Let Win's steel inputs would be based on the WTA Indian HTS category for flat-rolled, cold-rolled steel strips of a width of less than 600 mm.

Although ZZPC believes that it produced subject merchandise from the same type of narrow steel that was used by Lets Win, it disagrees with Lets Win's view that steel should be valued using Indian data. ZZPC argues against using Indian surrogates for steel because it claims that the PRC steel strip industry is market oriented and the Department's NME methodology does not work in this case. For example, ZZPC notes that in this case the Department's surrogate value for cold-rolled steel is twice the price of galvanized steel even though galvanized steel should

40 See Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008).

41 See Petitioners' Rebuttal Brief at 7 (citing Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262, 1277 (CIT 2006)).

have a higher price since it is cold-rolled steel coated with zinc. As another example, ZZPC notes that the Department's surrogate value for cold-rolled steel is nearly 1,000 USD more than the value for hot rolled steel. According to ZZPC, there should not be such a significant price difference between hot- and cold-rolled steel since cold-rolled steel is produced from hot-rolled steel. Furthermore, after referencing the PRC steel strip industry, ZZPC notes that the Indian surrogate value data reflect imports of steel strip that has been slit from sheet or coil. Additionally, ZZPC points out that the JPC price for hot-rolled steel exceeds the JPC price for cold-rolled steel, which it claims makes no sense. In fact, ZZPC contends that the surrogate value of cold-rolled steel should be ten percent greater than the surrogate value of hot-rolled steel given that the Department verified that hot-rolled steel is generally less expensive than cold-rolled steel by approximately ten percent.⁴² Therefore, ZZPC contends that Indian data, including the JPC data submitted by Lets Win, should not be used to value the factors of production.⁴³

Department's Position:

In valuing factors of production (FOP), section 773(c)(1)(B) of the Act instructs the Department to use "the best available information regarding the values of such factors" in an appropriate market-economy country. In selecting which available information is the best information for valuing FOP, the Department considers a number of factors including the quality of the information and whether the information satisfies the Department's preference for publicly available values, which are (1) non-export values; (2) representative of a range of prices within the POI or within a period that is closest in time to the POI; (3) product-specific; and (4) tax-exclusive.

While the JPC and WTA data both consist of non-export values that reflect a range of prices, for the reasons noted below, we have determined that the WTA data represent the best available information for valuing narrow strip and slit coil. First, the WTA data, which reflect all imports into India, are more complete than the JPC import data which only reflect imports through major Indian ports. Second, the WTA data are more specific to the steel used by Lets Win than the JPC data. The record contains WTA data for both sheets and strips of cold-rolled steel less than 600 mm in width and containing less than 0.20 % carbon. Though the terms "sheet" and "strip" are not defined in the WTA data, Lets Win used the term "strip" to describe its narrow strip and indicated that it used slit coil that had been slit to the same width ranges as the narrow strip⁴⁴ (both types of steel contained less than 0.20% carbon and were less than 600 mm in width when used in production). In contrast, it is not clear whether the JPC category for cold-rolled steel (*i.e.*, CR Coils/Sheets) covers strip steel. Third, the WTA data are POI-specific, whereas the JPC import data cover imports before and during the POI.

42 See ZZPC's rebuttal brief at 5 (citing ZZPC Verification Report at 10).

43 ZZPC also made affirmative arguments regarding the appropriate surrogate value for certain cold-rolled steel inputs and steel scrap. However, these arguments, which do not respond to parties' case briefs, were raised by ZZPC in its rebuttal brief. Section 351.309(d)(2) of the Department's regulations states that the "rebuttal brief may respond only to arguments raised in case briefs." Therefore, the two affirmative arguments in ZZPC's rebuttal brief are untimely and the Department has not addressed them in this final determination.

44 See Lets Win's Verification Report at 6-7.

Fourth, the record does not support using JPC import data for second quality/defective steel as a surrogate for Lets Win's narrow strip steel. Even though Lets Win's officials presented the Department's verifiers with "narrow strip" samples with surface blemishes, there are no documents on the record showing that these steel samples were in fact classified as second quality or defective because of the level of surface blemishes. In addition, there is no documentary evidence that Lets Win purchased or consumed second quality/defective steel during the POI. Furthermore, at verification, Lets Win demonstrated that it produced subject merchandise from "narrow strip" meeting PRC steel specification Q195. However, record information regarding this specification does not indicate that the specification could cover second quality or defective steel, or that the specification allows for a higher level of surface blemishes. See Lets Win Verification Report at Exhibit 6. Also, we note that Lets Win did not report sales of non-prime merchandise, nor is there any indication that the finished LWR sold by Lets Win was of second or defective quality.

What is more, there are no documents on the record supporting the narrow strip production process described by Lets Win's officials (a process which they claimed at verification demonstrates that the narrow strip is of an inferior quality). Despite Lets Win's claims that the Department verified the process used by its suppliers to produce narrow strip and slit coil (see page 2-3 of Lets Win's April 2, 2008, case brief), the Department's verifiers merely recorded company officials' descriptions of the production processes but did not verify those descriptions. In addition, the Q195 specification does not indicate the type of inputs (e.g., scrap steel or ore), or the production process that must be used to produce steel that meets the specification. See id. Also, officials' description of the "narrow strip" production process indicates that the "narrow strip" that Lets Win purchased is an intended end-product of a deliberate production process rather than a damaged product resulting from a flawed production run. Thus, the record does not support using the JPC price for defective steel as the surrogate value for Lets Win's narrow strip.

Fifth, the record does not support Lets Win's argument that the WTA surrogate value for narrow strip is aberrational. Lets Win based its argument on the fact that the preliminary surrogate value for its allegedly inferior quality narrow strip steel is more than double the preliminary surrogate value for slit coil and more than double the import values derived from any of the other Indian HTS subcategories for flat-rolled, cold-rolled products (e.g., plate, sheets, other, etc.). Lets Win's argument is premised, in part, on its contention that its "narrow strip" is of second quality or defective. However, as noted above, this assertion is not supported by the record. Additionally, there is no information on the record as to how prices typically vary for different forms and widths of flat-rolled cold-rolled products (e.g., how the prices of cold-rolled plate, sheets, and strip differ and how cold-rolled strip prices vary when the width of the product changes). Thus, the observed differences between the WTA prices for strip steel and other forms of steel do not conclusively demonstrate that the preliminary surrogate value for strip steel is aberrational. Also, Lets Win did not demonstrate that the preliminary surrogate value for strip steel is aberrational when compared to the value of this input in other potential surrogate countries nor did it demonstrate that the preliminary surrogate value was based on low quantity-high value imports into India. Both of these approaches have been used to identify aberrational

values in other antidumping cases.⁴⁵

Lastly, we have found the alternative WTA Indian HTS classifications proposed by Lets Win to be inappropriate surrogates for its steel inputs. The WTA Indian HTS classifications that Lets Win proposed for its narrow strip and slit coil are for flat-rolled products 600 mm or more in width. The record indicates that none of the narrow strip used by Lets Win exceeded 600 mm in width. See Lets Win Verification Report at 6-7. Although Lets Win purchased “slit coil” approximately 1250 mm wide, the record shows that the coils were slit by a third party in the PRC to widths not exceeding 600 mm before they were used in production. See id. Given the information on the record, it is appropriate to value the steel that entered into production (steel less than 600 mm in width). Neither of the WTA HTS categories proposed by Lets Win covers products less than 600 mm in width. Thus, we have not used these Indian HTS categories to value Lets Win’s steel inputs.

In light of the foregoing considerations, we have valued both “narrow strip” and “slit coil” using Indian WTA import data for strip steel less than 600 mm wide. These data were used in the preliminary determination to value Lets Win’s “narrow strip.”

Comment 5: The Appropriate Surrogate Value for Hot-Rolled Steel

ZZPC contends that the Department should value its hot-rolled steel strip using either the benchmark price or the publicly summarized market economy prices for hot-rolled steel that were reported in several recent proceedings. Specifically, ZZPC points to the 548 USD/MT benchmark price for hot-rolled steel that was used in the countervailing duty investigations of LWR and circular welded pipe from the PRC, and the market economy prices between 400 USD/MT and 407 USD/MT that were reported for hot-rolled steel in the antidumping duty investigation of circular welded pipe from the PRC. Given that the LWR countervailing duty investigation and the instant investigation cover the same product, ZZPC maintains that the Department should use the same hot-rolled steel price in both proceedings. Alternatively, ZZPC argues that if the prices of its own purchases of hot-rolled steel from privately owned PRC suppliers are used as benchmarks in the final determination in the companion countervailing duty investigation, this indicates that these are “market oriented” prices and thus they would be the most appropriate prices to use in the Department’s dumping margin calculation. If, however, the Department does not value steel using the benchmark price from the LWR countervailing duty investigation, ZZPC urges the Department to use the Philippine surrogate values that it

⁴⁵ See Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 159 (January 2, 2008) and accompanying Issues and Decision memorandum at Comment 1, stating “{t}o test the reliability of the surrogate values alleged to be aberrational, we compared the selected surrogate value for each FOP to the AUVs calculated for the same period using data from the other surrogate countries the Department designated for this review, to the extent that such data are available.” See also Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People’s Republic of China, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision memorandum at Comment 4, citing Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 59 F. Supp. 2d 1354, 1360 (CIT 1999) (“explaining that Commerce’s practice is to exclude ‘small-quantity data when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other countries’”).

submitted, rather than the aberrant Indian import prices.

While Lets Win advocated using JPC import data to value steel, ZZPC argues against using these data to value its hot-rolled steel because the JPC prices for hot-rolled steel illogically exceed the JPC prices for cold-rolled steel. ZZPC states that the Department verified that hot-rolled steel is generally less expensive than cold-rolled steel by approximately ten percent.⁴⁶

In rebuttal, petitioners argue that the Indian import price used to value hot-rolled steel in the Preliminary Determination is a more appropriate surrogate value than the benchmark price advocated by ZZPC. First, petitioners point out that section 773(c)(4) of the Act requires that surrogate values be based on prices in a market economy country at a level of economic development comparable to that of the non-market economy country. Citing this statutory provision, petitioners argue that the benchmark price suggested by ZZPC, which comes from “Steel Benchmarker,” is inappropriate because it is a world market price, rather than a price in a market economy country that is comparable to the PRC in terms of economic development. The petitioners note that in the Preliminary Determination, the Department found that India is at a level of economic development comparable to that of the PRC and, therefore, Indian import data fulfill the statutory requirement noted above, while the “Steel Benchmarker” price does not. Second, the petitioners claim that the “Steel Benchmarker” data for hot-rolled steel do not list dimensions whereas Indian import data list dimensions which allow the Department to select a surrogate that reflects the size of steel used by ZZPC. Third, the petitioners argue that, unlike Indian import data, the “Steel Benchmarker” data do not identify the quantity and value from which the reported per-unit values are derived. Therefore, petitioners assert, it is not possible for the Department to undertake its regular practice of excluding data when the quantity of imports is small or the value is obviously aberrant. For the foregoing reasons, petitioners advocate using Indian import data rather than “Steel Benchmarker” data to value the steel used by ZZPC.

Department’s Position:

We have not addressed this issue since only ZZPC used hot-rolled steel and we have decided to base ZZPC’s dumping margin on total adverse facts available. See Comment 1 above.

Comment 6: The Appropriate Surrogate Value for Certain Packing Materials

According to Lets Win, the Department’s verification findings support revising the preliminary surrogates used to value steel packing bands and polyester packing straps. Specifically, Lets Win asserts that the Department verified that the steel packing bands it used are made of the same lower quality “narrow strip” steel that it used to produce subject merchandise. See Let’s Win Verification Report at 19. Thus, Lets Win urges the Department to value steel packing bands using the surrogate value assigned to narrow strip steel. Additionally, Lets Win asserts that the Department verified that the polyester packing straps that it used are made of a type of synthetic textile material and thus it should be valued using the Indian HTS category for “other made up {textile} articles, other than cotton.” See Let’s Win Verification Report at 19.

⁴⁶ See ZZPC Verification Report at 10.

The petitioners did not comment on this issue.

Department’s Position:

We agree, in part, with Lets Win. As in the Preliminary Determination, we have used the same surrogate to value both steel packing bands and the “narrow strip” that Lets Win used to produce subject merchandise. However, as explained in Comment 4 of this memorandum, the record does not support Lets Win’s argument that its “narrow strip” is second quality or defective merchandise. Accordingly, we have continued to value Lets Win’s steel packing bands using Indian WTA import data for strip steel less than 600 mm wide, the same Indian HTS classification that we are using to value Lets Win’s “narrow strip” steel.

Additionally, although Lets Win originally indicated that its polyester packing straps were made of steel, during verification the Department found that the straps were actually made of a synthetic textile material (polyester). See Let’s Win Verification Report at 19. Accordingly, we have found the WTA data submitted by Lets Win for other made up textile articles, other than cotton, to be the best information on the record with which to value Lets Win’s polyester packing straps.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins for the investigated firms in the Federal Register.

Agree ____

Disagree ____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)