

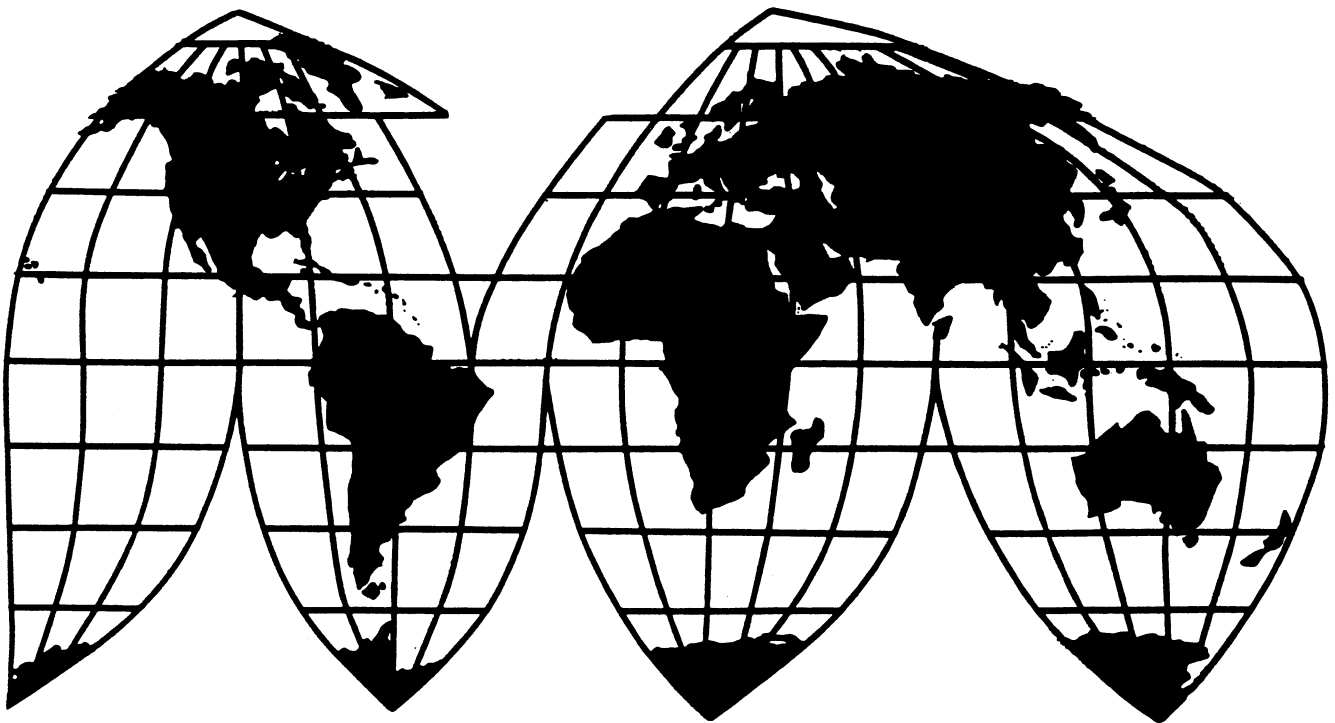
Certain Helical Spring Lockwashers From The People's Republic of China

Investigation No. 731-TA-624 (Final)

Publication 2684

October 1993

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

Don E. Newquist, Chairman
Peter S. Watson, Vice Chairman
David B. Rohr
Anne E. Brunsdale
Carol T. Crawford
Janet A. Nuzum

Robert A. Rogowsky
Director of Operations

Staff assigned:

Douglas Corkran, Office of Investigations
James Brandon, Office of Industries
Clark Workman, Office of Economics
James Stewart, Office of Investigations
Rachele Valente, Office of the General Counsel

Vera Libeau, Supervisory Investigator

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436

Certain Helical Spring Lockwashers From The People's Republic of China



Publication 2684

October 1993

CONTENTS

	Page
Part I: Determination and views of the Commission	I-1
Determination	I-3
Views of Chairman Don E. Newquist, Commissioner David B. Rohr and Commissioner Janet A. Nuzum	I-5
Views of Commissioner Anne E. Brunsdale	I-13
Concurring views of Commissioner Carol T. Crawford	I-17
Dissenting views of Vice Chairman Peter S. Watson	I-19
Part II: Information obtained in the investigation	II-1
Introduction	II-3
Nature and extent of sales at LTFV	II-4
Ability of foreign producers to generate exports and availability of export markets other than the United States	II-4
Appendixes	
A. <i>Federal Register</i> notice of the Department of Commerce	A-1
B. Import data from official statistics	B-1
Tables	
1. Certain helical spring lockwashers: China's capacity, production, inventories, capacity utilization, and shipments, 1990-92 and 1993-94 (projected)	II-5
B-1. Imports from China: Imports of all goods classified under HTS subheading 7318.21.00, by quantity and by month, January 1990-June 1993	B-3

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks. The extent of deletions is not reflected by the asterisks.

PART I

DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-624 (Final)

CERTAIN HELICAL SPRING LOCKWASHERS FROM
THE PEOPLE'S REPUBLIC OF CHINA

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured or threatened with material injury by reason of imports from the People's Republic of China of certain helical spring lockwashers, provided for in subheading 7318.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).²

Background

The Commission instituted this investigation effective April 27, 1993, following a preliminary determination by the Department of Commerce that imports of certain helical spring lockwashers from the People's Republic of China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of May 3, 1993 (58 F.R. 26347). The hearing was held in Washington, DC, on May 13, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Chairman Newquist, Commissioner Rohr, and Commissioner Nuzum determine that an industry in the United States is threatened with material injury; Commissioner Brunsdale and Commissioner Crawford determine that an industry in the United States is materially injured; and Vice Chairman Watson dissents.

VIEWS OF CHAIRMAN DON E. NEWQUIST, COMMISSIONER DAVID B. ROHR AND COMMISSIONER JANET A. NUZUM

Based on the record in this final investigation, we determine that the industry in the United States producing helical spring lockwashers is threatened with material injury by reason of imports of certain helical spring lockwashers from the People's Republic of China ("China") that the U.S. Department of Commerce has determined are being sold in the United States at less than fair value ("LTFV").^{1 2 3}

I. *Like Product and Domestic Industry*

In the preliminary investigations of *Certain Helical Spring Lockwashers from the People's Republic of China and Taiwan*,⁴ and in the final investigation of *Certain Helical Spring Lockwashers from Taiwan*,⁵ the Commission determined that there was a single like product consisting of helical spring lockwashers of all sizes, whether made from carbon steel, stainless steel, or other metals.⁶ As no new evidence was introduced in this final investigation to support a different determination, we incorporate by reference our like product discussion in *Certain Helical Spring Lockwashers from Taiwan*,⁷ and again define the like product to be all helical spring lockwashers.⁸ Based on our definition of the like product, we determine that the domestic industry consists of all domestic producers of helical spring lockwashers.

II. *Condition of the Domestic Industry*

In determining whether there is material injury to a domestic industry by reason of LTFV imports, the Commission considers all relevant economic factors that have a bearing on the state of the industry in the United States. These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash

¹ Commissioner Brunsdale and Commissioner Crawford determine that the domestic industry is materially injured by reason of the subject imports. See their Views, *infra*. Vice-Chairman Watson determines that the domestic industry is neither materially injured, nor threatened with material injury, by reason of the subject imports. See his Dissenting Views, *infra*.

² 19 U.S.C. § 1673b(a). Material retardation of the establishment of an industry is not an issue in this investigation.

³ 58 Fed. Reg. 48833 (September 20, 1993).

⁴ Invs. Nos. 731-TA-624 and 625 (Preliminary), USITC Pub. 2565 (October 1992).

⁵ Inv. No. 731-TA-625 (Final), USITC Pub. 2651 (June 1993).

⁶ Helical spring lockwashers are flattened, ring-shaped metal devices whose ends are cut in an off-line manner to provide spring or tension to assembled parts when used as a seat for bolts, nuts, screws, and similar fasteners. In addition to preventing movement or loss of tension between assembled parts, helical spring lockwashers are used to distribute load over an area greater than that provided by the fastener and to provide a hardened bearing surface that facilitates assembly and disassembly of fastened parts. USITC Pub. 2651 (June 1993) at 4-5.

⁷ Inv. No. 731-TA-625 (Final), USITC Pub. 2651 (June 1993) at 3-8.

⁸ The Commission may define the class of domestically-produced like products more broadly than the class of articles described by Commerce. See, e.g., *Torrington Co. v. United States*, 747 F. Supp. 744, 748 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). In its final determination, Commerce defined the class or kind of imported merchandise subject to investigation as "circular washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. . . . The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper." 58 Fed. Reg. 48833 (September 20, 1993).

flow, return on investment, ability to raise capital, and research and development. No single factor is determinative, and the Commission considers all relevant factors "within the business cycle and conditions of competition that are distinctive to the affected industry."⁹

One condition of competition that we have considered in examining the condition of the domestic industry is the substantial restructuring that the industry underwent during 1990 to 1992. This restructuring, in which petitioner played a large role, consolidated production in fewer producers. At the beginning of 1990, the domestic industry consisted of four firms; by 1992, the industry consisted of petitioner and one small producer.¹⁰ In evaluating the condition of the domestic industry, the Commission looks at the domestic industry as a whole.^{11 12}

The various indicators of the domestic industry's performance during the period of investigation were mixed. Domestic apparent consumption of helical spring lockwashers decreased slightly by volume and value from 1990 to 1991, then increased in 1992 to a level above that of 1990.¹³ The U.S. producers' share of consumption decreased by volume and value in each year from 1990 to 1992.¹⁴ Domestic capacity declined from 1990 to 1992.¹⁵ Capacity utilization decreased from 1990 to 1991, then increased in 1992 to a level slightly above that of 1990.¹⁶ Domestic production decreased overall from 1990 to 1992.¹⁷ U.S. shipments of helical spring lockwashers decreased overall by quantity, value and unit value from 1990 to 1992.¹⁸ End-of-period inventories held by U.S. producers increased each year from 1990 to 1992, both absolutely and relative to production and shipments.¹⁹

The average number of production and related workers producing all varieties of helical spring lockwashers, and the hours worked, declined from 1990 to 1992.²⁰ Hourly wages and total hourly compensation remained relatively stable from 1990 to 1991, then increased in 1992 to a level above that of 1990.²¹ Productivity rose, while unit labor costs fell slightly, from 1990 to 1992.²²

⁹ 19 U.S.C. § 1677(7)(C)(iii).

¹⁰ *Certain Helical Spring Lockwashers from Taiwan*, Inv. No. 731-TA-625 (Final), USITC Pub. 2651 (June 1993), Information Obtained in the Investigations (Invs. Nos. 731-TA-624 and 625) ("Report I") at I-12.

¹¹ *Welded Steel Pipe from Malaysia*, Inv. No. 731-TA-644 (Preliminary), USITC Pub. 2620 (April 1993) at 19-20 and n.79 ("The Commission may take into account the departures from an industry or the unique circumstances of individual companies, but ultimately must assess the condition of the industry as a whole, and not on a company-by-company basis.") (citing *Metallwerken Nederland*, 728 F. Supp. 730, 735 (Ct. Int'l Trade 1989)).

¹² Chairman Newquist and Commissioner Rohr refer to their more complete discussion of the condition of the domestic industry in their views in *Certain Helical Spring Lockwashers from Taiwan*, Inv. No. 731-TA-625 (Final), USITC Pub. 2651 (June 1993) at 9-13, which they incorporate here by reference. Commissioner Nuzum refers to her discussion of conditions of competition distinctive to the domestic industry contained in the Dissenting Views of Vice Chairman Peter S. Watson and Commissioner Janet A. Nuzum in *Certain Helical Spring Lockwashers from Taiwan*, USITC Pub. 2651 at 41-44, which she incorporates here by reference.

¹³ Report I at I-10, 11, Table 2.

¹⁴ Report I at I-31, Table 17.

¹⁵ Report I at I-16, Table 3.

¹⁶ Report I at I-16, Table 3.

¹⁷ Report I at I-16, Table 3.

¹⁸ Report I at I-17, Table 4.

¹⁹ Report I at I-18, Table 5.

²⁰ Report I at I-18, Table 6.

²¹ Report I at I-18, Table 6.

²² Report I at I-18, Table 6.

The net operating income of the domestic industry decreased from 1990 to 1991, before increasing significantly in 1992 to a level above that of 1990.²³ The ratio of net operating income to net sales declined sharply from 1990 to 1991, but increased overall from 1990 to 1992.²⁴ Net sales value and the ratio of cost of goods sold to net sales value decreased overall from 1990 to 1992.²⁵

Based upon examination of the relevant economic factors set forth in the statute, and consideration of the conditions of competition for this industry, we conclude that the industry is vulnerable to the adverse effects of unfair imports from China.^{26 27}

III. Cumulation

While it is appropriate to employ a formal cumulation analysis for the purpose of determining present material injury, the same is not necessarily true with regard to a threat analysis.²⁸ Nevertheless, under certain conditions, imports from two or more countries may have a collective impact on the domestic industry, and the Commission can exercise its discretion to cumulate imports in such circumstances.^{29 30} In this case, we have considered whether cumulation with helical spring lockwasher imports from Taiwan, subject to a recent order,³¹ is appropriate. Considerations relevant to a decision to cumulate may include whether imports are increasing at similar rates in the same markets and whether they exhibit similar pricing patterns.³²

²³ Report I at I-20, Table 8. In verifying the financial data as reported by domestic producers, Commission staff made adjustments to certain financial data to reflect acquisition costs incurred by petitioner. Report I at D-3. As adjusted, the financial data would not lead us to a contrary determination.

²⁴ Report I at I-20, Table 8.

²⁵ Report I at I-20, Tables 8 and 9.

²⁶ Commissioner Nuzum joins her colleagues in finding that the domestic industry is vulnerable to the adverse effects of unfair imports from China. Her finding in the instant investigation differs from her negative finding in the prior investigation of imports from Taiwan, in light of the significantly different facts posed by this investigation. In particular, she notes the large scale of the Chinese industry (in contrast to the small scale of the Taiwan industry); and, based on the largest sales and on average unit values for sales by importers to unrelated distributors, the increasing pattern of underselling by imports from China (in contrast to the general pattern of overselling by imports from Taiwan). Report I at I-35, 36, Tables 18-23; I-37, 38, Tables 24-29.

²⁷ Based on his examination of the economic factors, Commissioner Rohr determines that the domestic industry is not currently experiencing material injury.

²⁸ Commissioner Rohr notes a threat analysis involves the assessment by the Commission of the capabilities and intentions of foreign producers with regard to the domestic industry and domestic market. Formal cumulation, by ignoring differences in the trends in the various threat indicators, may raise the possibility that the capability or intentions of one set of foreign producers will be "assigned" to another set of foreign producers.

²⁹ Compare 19 U.S.C. § 1677(7)(C)(iv) (Commission "shall" cumulate for present injury analysis) with 19 U.S.C. § 1677(7)(F)(iv) (Commission "may" cumulate for threat analysis).

³⁰ Commissioner Rohr notes that he utilizes his discretion to consider the collective impact of imports from multiple countries as another demonstrable adverse trend, factor VII of the statutory threat factors, 19 U.S.C. § 1677(7)(F)(i) (VII). See Additional Views of David B. Rohr, *Sulfanilic Acid from the Republic of Hungary and India*, Inv. No. 701-TA-318 and Invs. Nos. 731-TA-560 and 561 (Preliminary), USITC Pub. 2526 (June 1992).

³¹ 58 Fed. Reg. 34567 (June 28, 1993)

³² While Chairman Newquist concurs with the views expressed in this paragraph, he finds, as in the Taiwan investigation, that imports from the subject country alone threaten the domestic industry with material injury. Therefore, a cumulation analysis is unnecessary. He notes, however, that absent this finding, it would, in his view, be within his discretion to cumulate imports from China with imports from Taiwan which are subject to a recent antidumping duty order.

In our threat analysis for this final investigation, we have assessed the price and volume effects of helical spring lockwasher imports from China alone. Our decision not to cumulate in our threat analysis is based on the numerous differences between the industries in China and Taiwan and their exports to the United States. For example, by volume and value, imports from China far exceeded those from Taiwan.³³ Further, the imports from China consisted entirely of carbon steel helical spring lockwashers, whereas carbon steel and stainless steel lockwashers accounted for nearly equal shares, by volume, of imports from Taiwan during the period of investigation.³⁴ Both the level and the trend in Taiwan's reported productive capacity differed from comparable data for the Chinese industry.³⁵ Prices in the U.S. market of subject products from the two countries also followed different trends, and there are far fewer instances of underselling by the Taiwan products.³⁶ In addition, the levels and trends in the ratio of importers' inventories-to-shipments were different for helical spring lockwashers from Taiwan and China.³⁷ Furthermore, as we discuss below, we conclude that the domestic industry is threatened with injury based on imports from China alone.³⁸

Based on these considerations, we have determined that cumulation is not appropriate in this investigation. Our discussion of threat of material injury to the domestic industry consequently focuses only on imports from China.

IV. *Threat of Material Injury by Reason of LTFV Imports*

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be based on mere conjecture or supposition."³⁹

The Commission must consider a number of factors in a threat analysis, including: (1) any increase in production capacity or existing unused or underutilized capacity in the exporting country likely to result in a significant increase in imports; (2) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level; (3) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices; (4) any substantial increase in inventories of the merchandise in the United States; and (5) any other demonstrable adverse trends that indicate the probability that importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will

³³ Report I at I-29, Table 16.

³⁴ *Id.* at I-30.

³⁵ Compare Report I at I-28, Table 15, with *Certain Helical Spring Lockwashers from the People's Republic of China*, Inv. No. 731-TA-624 (Final) USITC Pub. 2684 (October 1993), Information Obtained in the Investigation ("Report II") at II-5, Table 1.

³⁶ Report I at I-35, 36, Tables 18-23; *id.* at I-37, 38, Tables 24-29. With regard to pricing, we also note that the import unit values of carbon steel helical spring lockwashers from Taiwan remained well above those of carbon steel imports from China. *Id.* at I-29, Table 16.

³⁷ *Id.* at I-24, 25, Table 13.

³⁸ While Chairman Newquist does not disagree with the views discussed in this paragraph, for the reasons articulated in note 32, he does not join in this discussion.

³⁹ 19 U.S.C. § 1677(7)(F)(ii).

be the cause of actual injury.^{40 41} The presence or absence of any single threat factor is not necessarily dispositive.⁴²

The capacity to produce the subject helical spring lockwashers in China increased from 23.6 million pounds in 1990 to 36.8 million pounds in 1992, an increase of 56.1 percent.⁴³ The increase in actual production was even greater from 1990 to 1992, growing by 79.7 percent, from 18.3 million pounds to 32.9 million pounds; by 1992, actual production in China far exceeded total domestic consumption in the United States.⁴⁴ Moreover, both capacity and production in China are projected to climb by 1994 to nearly double the levels reported for 1990.⁴⁵ Unused capacity amounted to nearly 4 million pounds (10.6 percent of total capacity) in 1992 and is projected to reach nearly 10 million pounds (21.5 percent of total capacity) in 1994.⁴⁶

The impact of these trends in capacity and production is particularly meaningful to our threat finding in light of the strong export-orientation of the largest Chinese producer.⁴⁷ According to the Chinese industry, Chinese home market consumption was less than either capacity or actual production during 1990 to 1992, and is expected to continue to be less than either projected capacity or production in 1993 or 1994.⁴⁸ We find that such sizable increases in both Chinese capacity and production over the period of investigation, the considerable existing unused capacity, and the projected increases in capacity, production and unused capacity, are likely to result in increased exports of helical spring lockwashers from China.

More importantly, the record indicates that the United States is one of the primary markets for exports of helical spring lockwashers from China; a substantial portion of exports from China has been directed to the United States over the period of investigation.⁴⁹ We

⁴⁰ 19 U.S.C. § 1677(7)(F)(i)(I)-(X). Since this investigation does not involve either a subsidy or an agricultural product, 19 U.S.C. § 1677(7)(F)(i)(I) and (IX) are not applicable. 19 U.S.C. § 1677(7)(F)(i)(VIII), concerning the potential for product shifting by foreign manufacturers to products subject to antidumping or countervailing duty investigations or orders, is not applicable, since the helical spring lockwasher facilities of Chinese producers are not used to produce other products subject to final antidumping or countervailing duty orders.

⁴¹ In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. 19 U.S.C. § 1677(7)(F)(iii)(I). We received no information that there are any dumping findings or remedies against the subject products in foreign markets.

⁴² See, e.g., *Rhone Poulenc, S.A., v. United States*, 592 F. Supp. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

⁴³ Report II at II-5, Table 1.

⁴⁴ Report II at II-5; Report I at I-10, 11, Table 2.

⁴⁵ Report II at II-5, Table 1.

⁴⁶ Report II at II-5.

⁴⁷ Report I at I-27, Table 14; Report II at II-6 n.12. We note that Hangzhou Spring Washer Plant, China's largest producer of helical spring lockwashers for export, reportedly accounts for a substantial percentage of production and more than 80 percent of Chinese exports of the subject merchandise to the United States. Eight companies, including Hangzhou Spring Washer Plant, represent approximately 80 percent of production and virtually all Chinese exports of the subject merchandise to the United States. See Report II at II-4, 5; compare Report I at I-29, Table 16 with Report II at II-5, Table 1.

⁴⁸ Report II at II-5, Table 1. Despite anticipated growth in home market sales, see, e.g., Transcript of the Public Conference (September 30, 1992) ("Conference Transcript") at 115-16, the Chinese industry projects that shipments of helical spring lockwashers to the Chinese home market in 1993 and 1994 will account for only a minority share of capacity and substantially less than total production by volume. Report II at II-5, Table 1.

⁴⁹ See Report I at I-27, Table 14; I-29, Table 16; Report II at II-6 n.12.

find, therefore, that capacity and production at levels which exceed and are projected to exceed home market demand are likely to result in increased imports into the United States.

Total shipments of helical spring lockwashers by Chinese manufacturers increased from 18.8 million pounds in 1990 to 31.8 million pounds in 1992, an increase of 68.9 percent. Shipments are projected to climb by 1994 to 36.6 million pounds, double the level reported for 1990.⁵⁰ Imports of helical spring lockwashers from China in the United States rose each year from 1990 to 1992,⁵¹ while, on a month-to-month basis, the volume of imports rose and fell erratically.⁵² In the first six months of 1993, the volume of subject imports from China continued to fluctuate widely from month to month.⁵³ We note that this constant fluctuation in import level indicates an apparent ability of Chinese producers to increase rapidly their shipments of helical spring lockwashers to the U.S. market.

U.S. shipments of imports from China rose each year from 1990 to 1992, from 5.4 million pounds in 1990, to 6.7 million pounds in 1991, to 7.1 million pounds in 1992.⁵⁴ Market penetration by imports of helical spring lockwashers from China, already at a substantial level at the beginning of the period of investigation, increased rapidly from 1990 to 1991. Despite a very slight drop in market penetration from 1991 to 1992, U.S. shipments of imports from China increased in market penetration overall from 1990 to 1992.⁵⁵ We find that the rapid increase in U.S. market penetration by imports from China indicates a likelihood that penetration will increase to an injurious level.

End-of-period inventories of helical spring lockwashers from China in the United States rose each year from 1990 to 1992.⁵⁶ From 1991 to 1992, U.S. inventories of imports from China increased by over 25 percent by volume.⁵⁷ End-of-period inventories of helical spring lockwashers held in China rose in 1992 to a level 30.8 percent higher than that reported for 1990.⁵⁸

While pricing data provide mixed guidance on the likelihood that LTFV imports from China will have price depressing effects, the data provide clearer guidance that LTFV imports from China are likely to have price suppressing effects on domestic prices of helical spring lockwashers.⁵⁹ Data from importer questionnaire responses,⁶⁰ official Department of Commerce statistics,⁶¹ direct price comparisons by Commission staff,⁶² and the investigation of lost sales allegations⁶³ all indicate that Chinese imports enter the United States at much lower prices (ex-dock) than prices for petitioner's helical spring lockwashers.

Moreover, prices of Chinese imports of helical spring lockwashers sold in the United States at the first level of unrelated sales reveal significant underselling in recent periods. Prices of imports from China have been below prices of domestic products with increasing

⁵⁰ Report II at II-5, Table 1.

⁵¹ Report I at I-29, Table 16.

⁵² Report II at B-3, Table B-1.

⁵³ Report II at B-3, Table B-1.

⁵⁴ Report I at I-10, 11, Table 2.

⁵⁵ Report I at I-31, Table 17.

⁵⁶ Report I at I-24, 25, Table 13.

⁵⁷ Report I at I-24, 25, Table 13.

⁵⁸ Report II at II-5, Table 1.

⁵⁹ We note that price comparisons are complicated because petitioner's prices were usually based on larger transactions than those for imported merchandise; some importers could not provide data in the form requested by the Commission; and some purchasers could not determine the national origin of imports purchased. Report I at I-34-37.

⁶⁰ Report I at I-29, Table 16.

⁶¹ Report II at B-3, 4.

⁶² Report I at I-39, 40.

⁶³ Report I at I-42, 43.

frequency, whether measured by largest sales or by average unit value.⁶⁴ The prices and unit values of U.S. sales of helical spring lockwashers from China declined from 1990 to 1992,⁶⁵ while the record indicates that petitioner's products had no general price increases from 1990 to 1992.⁶⁶

Furthermore, there exists a sufficient degree of substitutability among the domestic and the imported products,⁶⁷ and comparable lead times and channels of distribution. This, combined with evidence of increasing volumes of imports, rising U.S. inventories of imports from China and the generally decreasing prices of imports, provides evidence of a likely adverse impact on domestic prices.

Finally, we note that the helical spring lockwashers produced in China and exported to the United States are concentrated in the highest-volume segment of the U.S. lockwasher market. Available data indicate that virtually all of the helical spring lockwashers produced in China, and all of the lockwashers imported in the United States from China, are made of carbon steel.⁶⁸ From 1990 to 1992, carbon steel helical spring lockwashers accounted for over 90 percent of total U.S. consumption.⁶⁹ U.S. shipments of carbon steel helical spring lockwashers from China rose 31.2 percent by volume and 13.0 percent by value from 1990 to 1992.⁷⁰ At the same time, however, a sizable and increasing majority of inventories stocked by the domestic industry were carbon steel helical spring lockwashers.⁷¹ Carbon steel helical spring lockwashers imported from China enter the U.S. market through a large, established network of importers and distributors.⁷² Thus, we find it likely that this vast network would facilitate further increases in imports in the highest-volume segment of the domestic market and indicates the probability that importation of helical spring lockwashers from China will cause actual injury.

The record, therefore, fully reflects that Chinese capacity and production, the volume of imports from China, U.S. shipments of imports and U.S. inventories all increased markedly during the period of investigation. The record further indicates that both capacity and production in China are projected to double by 1994; that existing unused or underutilized capacity in China, and any increases in that capacity, will likely result in an increase in both the volume and market penetration of imports; that domestic and imported products are substitutable; and that underselling by imports from China occurred in recent periods in the highest-volume market segment, providing evidence of a likely adverse impact

⁶⁴ In comparing U.S. manufacturer and Chinese importer prices of plain and plated 1/4" and 3/8" carbon steel helical spring lockwashers, instances of underselling by importers to their largest customers increased markedly from 1990 to 1991, and rose again in 1992. Instances of underselling by importers to their general customer base jumped in each year from 1990 to 1992. Report I at I-35, 36, Tables 18, 19, 21 and 22; Report I at I-37, 38, Tables 24, 25, 27 and 28.

⁶⁵ Report I at I-35, 36, Tables 18, 19, 21; I-37, 38, Tables 24, 25, 27 and 28; and C-3, Table 5.

⁶⁶ Conference Transcript at 19; Transcript of the Public Hearing (May 13, 1993) at 28.

⁶⁷ See Report I at I-7 and n.14 (fifty out of 53 responding importers noted that helical spring lockwashers from the United States, China and Taiwan are used interchangeably); see also Report I at I-32 and n.90 (petitioner and importers generally agree that helical spring lockwashers from China and Taiwan are comparable in quality with the domestic product and interchangeable in their end uses).

⁶⁸ Report II at II-6; Report I at I-29, Table 16, and I-30. We note, moreover, that a large share of petitioner's U.S. shipments of carbon steel helical spring lockwashers are concentrated in 40 sizes. We note that a larger share of the exports of helical spring lockwashers reported by the largest exporter of subject merchandise from China are concentrated in these sizes. Report I at I-5, 6, n.6 and n.7.

⁶⁹ Compare Report I at C-3, Table C-1 with Report I at C-3, Table C-5.

⁷⁰ Report I at I-10, 11, Table 2.

⁷¹ Report I at I-18, Table 5.

⁷² See Report I at I-15; Conference Transcript at 121-22; see also at 42, 76.

on domestic prices. Based on the evidence of record, we determine that unfair imports from China pose a real threat of imminent material injury.

In accordance with 19 U.S.C. § 1673d(b)(4)(B), we must make an additional finding as to whether material injury by reason of the subject imports would have been found but for the suspension of liquidation of entries of such imports.⁷³ This finding is required so that Commerce may impose dumping duties as of the appropriate date. Suspension of liquidation on subject imports from China became effective as of April 30, 1993, the date of Commerce's preliminary affirmative determination.⁷⁴ We find that during the relevant period the domestic industry's performance had not deteriorated to the point where imports from China would have resulted in material injury but for suspension of liquidation.

CONCLUSION

For the reasons set forth above, we determine that the domestic helical spring lockwasher industry is threatened with material injury by reason of the LTFV imports from China.

⁷³ The Department of Commerce determined, on the basis of best information available, that critical circumstances exist with respect to LTFV imports of subject helical spring lockwashers from China. 58 Fed. Reg. 48833, 48836 (September 20, 1993). If the Commission finds either threat of material injury or no material injury, it need not make a critical circumstances determination under 19 U.S.C. § 1673d(b)(4)(A)(i). See, e.g., *Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand*, Invs. Nos. 731-TA-520 and 521 (Final), USITC Pub. 2528 (June 1992) at 31. Since our affirmative determination is based upon threat of material injury by reason of LTFV imports, not on present injury, we do not reach the critical circumstances issue. Moreover, a finding that retroactive imposition of antidumping duties is necessary to prevent recurrence of material injury would be inconsistent with our finding that the industry is only threatened with material injury at this time. See 19 U.S.C. § 1673d(b)(4)(A); *Carbon Steel Butt-Weld Pipe Fittings from China and Thailand*, USITC Pub. 2528 at 31 n.114.

⁷⁴ 58 Fed. Reg. 26112 (April 30, 1993).

VIEWS OF COMMISSIONER ANNE E. BRUNSDALE

Certain Helical Spring Lockwashers from the People's Republic of China Inv. No. 731-TA-624 (Final)

Based on the record in this final investigation, I find that an industry in the United States is materially injured by reason of imports of certain helical spring lockwashers from the People's Republic of China ("China") that the Department of Commerce has determined are being sold at less than fair value. However, I do not find critical circumstances requiring the retroactive application of the antidumping order.

As in the earlier investigation involving lockwashers from Taiwan,¹ I agree with my colleagues that there is a single like product consisting of all helical spring lockwashers regardless of the metal of which they are made. I also agree that the domestic industry consists of all firms producing helical spring lockwashers.² I also accept as accurate the description of the condition of the industry presented in the Views of Chairman Newquist, Commissioner Rohr, and Commissioner Nuzum. However, while I find the discussion of the condition of the domestic industry helpful in determining whether any injury resulting from dumped imports is material, I do not make an independent determination as to whether the domestic industry is injured or vulnerable based on this information. Such a determination is neither required by the statute nor useful in determining whether a domestic industry is materially injured by reason of dumped imports.³

Here I set forth my views on the issue of cumulation, on the statutorily directed issue of whether "an industry in the United States is materially injured ... by reason of [the dumped] imports",⁴ and on whether critical circumstances exist.

Cumulation

In making my determination, I must decide whether to cumulate imports from China with those from Taiwan, which are subject to an antidumping order as a result of an affirmative Commission finding on June 21, 1993.⁵ In the Taiwan case, I found that imports from Taiwan do compete with imports from China and that therefore cumulation of imports from these two countries was appropriate.⁶

The only additional cumulation issue that arises in this investigation is whether cumulation is inappropriate because imports from Taiwan are covered by an existing order. In resolving this question, I am mindful of the Court of International Trade's direction in

¹ See *Certain Helical Spring Lockwashers from Taiwan*, Inv. No. 731-TA-625 (Final), USITC Pub. 2651 (June 1993) (Hereinafter "Lockwashers from Taiwan").

² See Views of Chairman Don E. Newquist, Commissioner David B. Rohr, and Commissioner Janet A. Nuzum, *supra*, and Lockwashers from Taiwan at 21-22 (Additional Views of Commissioner Anne E. Brunsdale).

³ See *Certain Light-Walled Rectangular Pipes and Tubes from Taiwan*, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) at 10-15 (Views of Chairman Brunsdale and Vice Chairman Cass).

⁴ 19 U.S.C. 1673d(b)(1).

⁵ See Report at II-3. Imports from China and Taiwan were both included in the petition that was filed by Shakeproof Industrial Products Division of Illinois Tool Works on September 8, 1992. On January 26, 1993, the Department of Commerce delayed its determination with respect to China based on a finding that the investigation was "extraordinarily complicated". (See 58 Fed. Reg. 6619 (February 1, 1993).) As a result, our decision as to whether imports of dumped lockwashers from China are causing material injury was delayed.

⁶ See Lockwashers from Taiwan at 22-24.

*Mitsubishi Materials Corp.*⁷ that in making such determinations the Commission must examine evidence on the record to determine whether the imports in question are still having an injurious effect on the domestic industry. It is not sufficient to note the limited amount of time that has passed since the imposition of the earlier order.

Importers held inventories of Taiwan lockwashers in the United States equal to slightly more than one-third of annual shipments of those lockwashers at the end of 1992.⁸ Since a period of only about three months has passed since the imports from Taiwan became subject to a final antidumping order, I cannot conclude that unfair Taiwan imports do not remain in U.S. importers' inventories. I therefore conclude that cumulation of imports from Taiwan with the subject imports from China is appropriate.

Material Injury by Reason of Dumped Helical Spring Lockwashers

The facts and reasoning behind my determination that unfair lockwasher imports are causing material injury to the domestic industry are virtually identical to those set forth in Lockwashers from Taiwan.⁹ In both investigations I cumulated imports from Taiwan and China. Furthermore, the record in the current investigation is virtually identical with the record before the Commission in its earlier determination. Thus, the market share of the subject imports is the same here as in the earlier investigation, as is the record evidence on the substitutability between subject imports and the domestic like product. I refer the reader to my earlier opinion for a discussion of the substantial level of imports and why the domestic and subject products are at least moderately good substitutes.

The only material change in the record is the availability of Commerce's final dumping margins. At the time of the Taiwan determination, I had to rely on Commerce's preliminary margins in determining the effect of the unfair Chinese lockwashers. That preliminary margin was 128.63 percent for all Chinese producers.¹⁰ In its final determination, Commerce established a dumping margin of 77.47 for one producer, Hangzhou Spring Washer Plant, on its self-managed exports and its exports through five market-economy trading companies.¹¹ For the remaining exports of Hangzhou, which are sold through state-controlled trading companies, and for exports from other Chinese producers the margin remained 128.63 percent.¹²

While the reduction in the margin on some of the Chinese exports reduces the impact of the unfairly traded imports somewhat, the large market share of the unfair imports from Taiwan and China and the fact that the unfair imports and the domestic like product are at least moderately substitutable are sufficient to lead to the finding that the unfair imports are causing material injury to the domestic industry.

Critical Circumstances

The Department of Commerce found that critical circumstances exist with respect to imports of certain helical spring lockwashers from China.¹³ When Commerce makes an affirmative critical circumstances determination and a Commissioner finds material injury, the

⁷ *Mitsubishi Material Corp. v. United States*, 820 F.Supp. 608 (Ct. Int'l Trade 1993).

⁸ Lockwashers from Taiwan at I-25, Table 13. While these inventories figures are for a period almost nine months prior to the vote in the present case, they are the most current data available in as much as the Commission conducted a single investigation for the imports from both countries.

⁹ See *Id.* at 24-34 (Additional Views of Commissioner Anne E. Brunsdale).

¹⁰ *Id.* at 27 (Additional Views of Commissioner Anne E. Brunsdale).

¹¹ Report at II-4.

¹² *Id.*

¹³ 58 Fed. Reg. 48833, 48836-37 (September 20, 1993).

statute directs a determination of "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."¹⁴ An affirmative critical circumstances determination is a finding that, absent retroactive application of the antidumping order, the surge of imports that occurred after the case was filed but within the 90-day period prior to Commerce's preliminary determination, will prolong or cause a recurrence of material injury to the domestic industry.¹⁵

In this case, Commerce's preliminary determination appeared in the *Federal Register* on April 30, 1993.¹⁶ Thus, a finding of critical circumstances would mean that duties would be applied to imports that entered the United States between January 30 and April 30, 1993, and the question I must answer is whether there was a surge of imports during this three-month period that would prolong or cause a recurrence of the material injury that I have found. The record evidence does not support the existence of such a surge.

The available monthly data show that imports from China during the period February-to-April 1993 were only about 40 percent of the average quantity of imports during the same months of 1990, 1991, and 1992. Furthermore, imports during these three months of 1993 accounted for a smaller percentage of annual Chinese imports than did imports in the same months of the two preceding years.^{17,18} Finally, while importers' inventories of subject imports from China were higher at the end of 1992 than at the end of 1990 or 1991, as a percent of U.S. shipments from imports they were lower than at the end of 1990.¹⁹

Based on this evidence, I find that retroactive application of the antidumping order is not necessary to avoid prolonging or to prevent a recurrence of the material injury being caused by imports of helical spring lockwashers from China.

Conclusion

I find that the domestic industry producing helical spring lockwashers is being materially injured by reason of imports from China that are being sold at less than fair value. The dumping margins found by the Department of Commerce are substantial, suggesting that the price of the subject imports is substantially below fair levels. Further, the subject imports account for a substantial share of U.S. consumption of helical spring lockwashers. Finally, the record shows that domestic and imported lockwashers are at least moderately good substitutes. Taken together, these three facts lead to a conclusion that the domestic industry is being materially injured by reason of subject imports. However, I do not find critical circumstances requiring the retroactive application of the antidumping order.

¹⁴ 19 U.S.C. 1673d(b)(4)(A)(i).

¹⁵ 19 U.S.C. 1673d(c)(4).

¹⁶ 58 Fed. Reg. 26112, 26115 (April 30, 1993).

¹⁷ Report at B-3, Table B-1. For purposes of this comparison, I measure annual imports on an April to April basis.

¹⁸ I note that these data include merchandise not subject to investigation in addition to subject helical spring lockwashers. The only monthly data available are the official Commerce Department import data. Subject imports are classified under subheading 7318.21.0000 of the Harmonized Tariff Schedule. (58 Fed. Reg. 11027 (February 23, 1993)) This heading includes other lockwashers in addition to spring lock washers. However, the vast majority of Chinese imports under HTS subheading 7318.21.0000 appear to have been subject helical spring lockwashers. (Compare Lockwashers from Taiwan at I-29, Table 16, with Report at B-3, Table B-1.)

¹⁹ Lockwashers from Taiwan at I-24 - I-25, Table 13.

CONCURRING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

Certain Helical Spring Lockwashers from the People's Republic of China Inv. No. 731-TA-624 (Final)

Based on the record in this final investigation, I find that an industry in the United States is materially injured by reason of imports of certain helical spring lockwashers from the People's Republic of China that the U.S. Department of Commerce has determined are being sold at less than fair value. I also determine that cumulation of imports from Taiwan with the subject imports is appropriate. I do not find that critical circumstances exist requiring the retroactive application of the antidumping order.

I concur with my colleagues with respect to the definitions of the like product and the domestic industry.¹ I also join in the discussion of the condition of the domestic industry contained in the Views of Chairman Newquist, Commissioner Rohr and Commissioner Nuzum, to the extent it reflects an accurate factual description of the condition of the domestic industry. I do not make a determination whether the domestic industry is materially injured or is vulnerable based solely on these data. I join in Commissioner Brunsdale's discussions regarding cumulation, material injury by reason of the dumped imports and critical circumstances.²

¹ See Views of Chairman Don E. Newquist, Commissioner David B. Rohr and Commissioner Janet A. Nuzum, *supra*.

² See Views of Commissioner Anne E. Brunsdale, *supra*.

DISSENTING VIEWS OF VICE CHAIRMAN PETER S. WATSON

Certain Helical Spring Lockwashers from the People's Republic of China

Investigation No. 731-TA-624 (Final)

Based on the record in this final investigation, I determine that the industry in the United States producing helical spring lockwashers is not materially injured by reason of the subject imports from the People's Republic of China ("China") that the U.S. Department of Commerce has found are being sold at less than fair value (LTFV) in the United States. I also determine that the industry in the United States producing helical spring lockwashers is not threatened with material injury by reason of the LTFV imports.¹

In the final investigation involving subject imports from Taiwan,² I found one like product consisting of all helical spring lockwashers. In this investigation, the Commission has received no new information on this issue. I incorporate by reference, therefore, my findings on like product from the final investigation on Taiwan.³ I also incorporate by reference the discussion of the legal standard, domestic industry⁴ and conditions of competition distinctive to the domestic industry from my final determination in the case involving Taiwan.⁵

In reaching our determination that the domestic helical spring lockwasher industry is not materially injured by the subject imports I find it appropriate, as I did in the investigation involving Taiwan, to cumulate the imports from both investigations. In doing so, I note that the record in this investigation establishes that the subject imports from both countries compete with each other and with the domestic product. In the Taiwan investigation, I found that the domestic lockwasher industry was not materially injured by cumulated imports from Taiwan and China. The record evidence regarding the volume of the subject imports, the effects of the imports on domestic prices and the impact of the imports on domestic producers has not changed since the closing of the record in the final Taiwanese investigation. As a result, I incorporate herein my material injury analysis in that investigation and conclude that the domestic lockwasher industry is not materially injured by reason of the subject imports from China.⁶

No Threat of Material Injury

Section 771(7)(F) of the Act directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."⁷ The statute specifically states, "Such a determination may not be made on the basis of mere

¹ Whether the establishment of an industry in the United States is materially retarded by reason of the subject imports is not an issue in this investigation and will not be discussed further.

² *Certain Helical Spring Lockwashers From Taiwan*, USITC Pub. 2651, Information Obtained in the Investigations (Invs. Nos. 731-TA-624 and 625) (Final) ("Report I").

³ In doing so, I adopt the views expressed by Chairman Newquist and Commissioner Rohr on like product in their final determination in Inv. No. 731-TA-625 (Final).

⁴ In doing so, I note that I do not find the domestic industry particularly vulnerable to the effects of the subject imports.

⁵ See Report I at 39-44.

⁶ Report I at 45-55.

⁷ 19 U.S.C. § 1677(7)(F)(ii).

conjecture or supposition".⁸ It is consideration of precisely this statutory guidance which has led me to dissent from my colleagues. In reaching my conclusion that the domestic industry is not threatened with material injury by reason of the subject imports, I have considered all of the statutory factors as are relevant to the facts of this particular case as well as any other relevant economic factors.⁹

In this final investigation, the Ministry of Foreign Trade and Economic Cooperation provided data for seven Chinese companies producing helical spring lockwashers to the Commission. In addition, counsel for Hangzhou provided data to the Commission.¹⁰ These combined data indicate that production is projected to remain flat in 1993 and to rise by approximately 10 percent between 1993 and 1994. Capacity, however, is expected to rise steadily during both 1993 and 1994, resulting in an overall decrease of capacity utilization. This rise in production and capacity, and the corresponding decline in capacity utilization, do not appear likely to result in a significant increase in imports of the subject merchandise to the United States. As they have done throughout the period 1990-92, shipments of helical spring lockwashers to the Chinese home market are projected to increase rapidly in the short term. In fact, the Chinese home market grew at a faster rate than the export market (Asia, Europe, and North America) between 1990 and 1992, and is projected to continue to outperform the export market in 1993 and 1994. In addition to increases in the absolute level of sales to the home market, the share of shipments of helical spring lockwashers produced and sold in China rose between 1990 and 1992, and is projected to continue rising into 1994. Shipments of Chinese helical spring lockwashers to foreign markets are projected to decline *** and relative to shipments to the home market in 1993 and 1994.^{11 12} Official import statistics for the first six months of 1993 indicate a substantial decline in shipments of the subject imports from China to the United States.¹³ Although the data indicate that the subject import's market penetration has increased during the period of investigation,¹⁴ I do not find any evidence indicating a likelihood that the subject imports from China will continue to increase their share of the market to injurious levels in the imminent future. In reaching this conclusion I have also considered the improved financial health of the domestic industry and the conditions of competition under which it operates.

The record in this investigation indicates predominate overselling by the subject imports,¹⁵ and does not suggest a probability that imports will depress or suppress domestic prices in the imminent future.

⁸ *Id.* See *Metallwerken B.V. v. United States*, 744 F. Supp. 281, 287 (CIT 1990).

⁹ 19 U.S.C. § 1677 (7)(F)(i). For the reasons expressed in my views in the final investigation on imports from Taiwan at 55-56, I decline to cumulate imports from Taiwan with the subject imports from China for purposes of my threat analysis.

¹⁰ *Certain Helical Spring Lockwashers From The People's Republic of China*, USITC Pub. 2684, Information Obtained in the Investigation (Inv. No. 731-TA-624) (Final) ("Report II") at II-4-5. Hangzhou reportedly accounts for *** percent of production and more than 80 percent of Chinese exports to the United States of the subject imports.

¹¹ See Report I at I-27-28, Tables 14 and 15; Report II at II-5, Table 1. ***.

¹² ***. See Report I at I-27, Table 14.

¹³ Report II at B-3.

¹⁴ Report I at I-31, Table 17.

¹⁵ Report I at I-34-36. Although the pricing comparisons indicate that in regard to some of the compared products there are *** by the subject imports towards the end of the period of investigation, I find no evidence of price suppression or depression caused by the subject imports. In fact, the record indicates that for 5 out of 6 of the products for which prices were compared, the sole domestic producer has been able to *** its price levels overall during the period for which data was collected despite the fact that Chinese prices have generally ***.

Chinese producers' inventory levels have also declined during the period of investigation and are projected to decline further in 1993 and 1994.¹⁶ Finally, I have not identified any other adverse trends that would suggest a real and imminent threat of material injury by the subject imports.

¹⁶ Report II at II-5, Table 1.

PART II
INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

On September 8, 1992, counsel for the Shakeproof Industrial Products Division, Illinois Tool Works (Shakeproof), Milwaukee, WI, filed a petition with the U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (Commerce), alleging that imports of certain helical spring lockwashers¹ from the People's Republic of China (China) and Taiwan are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is being materially injured and is threatened with further material injury by reason of such imports. Accordingly, effective September 8, 1992, the Commission instituted investigations Nos. 731-TA-624-625 (Preliminary) under section 733 of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States. On October 23, 1992, the Commission determined that there was a reasonable indication of material injury.

Subsequently, Commerce made a preliminary determination that imports of certain helical spring lockwashers from Taiwan are being, or are likely to be, sold in the United States at LTFV (58 F.R. 11027, February 23, 1993). Accordingly, the Commission instituted investigation No. 731-TA-625 (Final), concerning imports of certain helical spring lockwashers from Taiwan (58 F.R. 13280, March 10, 1993). On April 27, 1993, the Commission received notice of a preliminary determination by Commerce that certain helical spring lockwashers from China are being, or are likely to be, sold in the United States at LTFV (58 F.R. 26112, April 30, 1993). Accordingly, the Commission instituted investigation No. 731-TA-624 (Final) concerning imports of certain helical spring lockwashers from China (58 F.R. 26347, May 3, 1993). The hearing for both investigations was held in Washington, DC, on May 13, 1993, at which time all interested parties were allowed to present information and data for consideration by the Commission.

Commerce made its final affirmative LTFV determination with respect to Taiwan on May 3, 1993 (58 F.R. 27709, May 11, 1993). The applicable statute directed that the Commission make its final injury determination within 45 days after the final determination by Commerce. Accordingly, effective June 21, 1993, on the basis of the record² developed in the subject investigation, the Commission determined, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured or threatened with material injury by reason of imports from Taiwan of certain helical spring lockwashers.³ Following an extension granted by Commerce (58 F.R. 36392, July 7, 1993), a final affirmative LTFV determination regarding imports of certain helical spring lockwashers from China was made on September 13, 1993 (58 F.R. 48833, September 20, 1993).

This report contains information related specifically to Commerce's final LTFV determination concerning certain helical spring lockwashers from China and additional information regarding the

¹ For purposes of this investigation, "certain helical spring lockwashers" are circular washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. Such helical spring lockwashers are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lockwashers made of other metals, such as copper. Certain helical spring lockwashers are provided for in subheading 7318.21.00 of the Harmonized Tariff Schedule of the United States (HTS).

² The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

³ Chairman Newquist and Commissioner Rohr determined that an industry in the United States is threatened with material injury; Commissioner Brunsdale determined that an industry in the United States is materially injured; Vice Chairman Watson and Commissioner Nuzum dissented; and Commissioner Crawford did not participate in the determination.

industry in China and imports of helical spring lockwashers from China. All other information collected in the investigation is contained in the Commission's report on Taiwan (*Certain Helical Spring Lockwashers From Taiwan*, investigation No. 731-TA-625 (Final), USITC publication 2651, June 1993). The Commission voted on the investigation concerning certain helical spring lockwashers from China on September 30, 1993, and transmitted its determination to Commerce on October 8, 1993.

NATURE AND EXTENT OF SALES AT LTFV

In its final affirmative LTFV determination,⁴ Commerce stated that it received a questionnaire response from Hangzhou Spring Washer Plant (Hangzhou), a locally owned collective enterprise, but did not receive from the Government of China a consolidated response for other producers and exporters of certain helical spring lockwashers. Accordingly, Commerce made its final determination regarding LTFV sales by Hangzhou by comparing purchase prices for sales made directly to unrelated parties prior to importation to the United States with the constructed value of the subject merchandise, based on the value of factors of production in two surrogate (market-economy) countries, India and Pakistan.⁵ Commerce based its final determination for all other producers and exporters on "best information available" as provided by the petitioner. Commerce further determined for all producers and exporters that knowledge of dumping of helical spring lockwashers from China existed; that imports of helical spring lockwashers from China were massive over a relatively short period of time;⁶ and that critical circumstances exist for imports of helical spring lockwashers from China.

Commerce estimated dumping margins of 77.47 percent for Hangzhou's self-managed exports and its exports through five market-economy trading companies.⁷ For all other producers and exporters of helical spring lockwashers, Commerce selected the highest margin alleged by the petitioner, 128.63 percent.

ABILITY OF FOREIGN PRODUCERS TO GENERATE EXPORTS AND AVAILABILITY OF EXPORT MARKETS OTHER THAN THE UNITED STATES

The Chinese Embassy identified 16 producers of helical spring lockwashers in China,⁸ none of which reportedly maintains direct relationships with the Chinese trading companies exporting the subject merchandise to the United States.⁹ One producer, Hangzhou, in Zhejiang, China, is represented by counsel. Hangzhou reportedly accounts for *** percent of production and more than 80 percent of Chinese exports of the subject merchandise to the United States.¹⁰ Counsel for Hangzhou provided data presented in table 1 on behalf of its client, which noted that Chinese exports

⁴ A copy of Commerce's *Federal Register* notice is presented in app. A.

⁵ Commerce determined that Hangzhou met the criteria for separate rates of demonstrated *de jure* and *de facto* absence of central control.

⁶ Monthly import data compiled by Commerce are presented in app. B.

⁸ Letter from Mr. Wang Shi Bin, Second Secretary (Commercial), Embassy of the People's Republic of China, December 7, 1992.

⁹ The petitioner and counsel for Hangzhou believe that five Hong Kong firms named in the petition are also trading companies representing manufacturers located in China. Conference transcript, p. 63; prehearing brief, counsel for Hangzhou, pp. 18-19. The U.S. Consul in Hong Kong reported, on the basis of information from four of the five companies named in the petition, that those firms' activities are limited to re-exporting helical spring lockwashers manufactured in China by unrelated companies.

¹⁰ Posthearing brief, counsel for Hangzhou, pp. 10-11.

of helical spring lockwashers are not affected by nontariff barriers, such as antidumping findings, in countries other than the United States. The Ministry of Foreign Trade and Economic Cooperation (MOFTEC), in Beijing, China, also provided data presented in table 1 on behalf of seven other companies producing helical spring lockwashers. These companies are estimated to account for *** percent of Chinese production of the helical spring lockwashers subject to investigation.¹¹

Table 1

Certain helical spring lockwashers: China's capacity, production, inventories, capacity utilization, and shipments, 1990-92 and 1993-94 (projected)¹

Item	1990	1991	1992	Projected-- 1993	1994
Quantity (1,000 pounds)					
Capacity	23,589	27,558	36,817	41,446	46,297
Production	18,312	24,430	32,914	32,970	36,354
End-of-period inventories	2,241	1,833	2,932	2,524	2,233
Shipments:					
Home market	***	***	***	***	***
Foreign markets	***	***	***	***	***
Total shipments	18,836	24,839	31,815	33,378	36,645
Ratios and shares (percent)					
Capacity utilization	77.6	88.7	89.4	79.5	78.5
Inventories to production	12.2	7.5	8.9	7.7	6.1
Inventories to total shipments . .	11.9	7.4	9.2	7.6	6.1
Share of total quantity of shipments:					
Home market	***	***	***	***	***
Foreign markets	***	***	***	***	***

¹ Data presented are for eight reporting companies, estimated to account for approximately 80 percent of Chinese production of the subject helical spring lockwashers.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The capacity to produce the subject helical spring lockwashers in China grew by 56.1 percent between 1990 and 1992, while actual production grew by 79.7 percent. Both capacity and production are projected to rise to nearly double the levels reported for 1990 by 1994, although capacity utilization, which rose throughout 1990-92, is expected to decline to close to the level

¹¹ This estimate is based on the data and commentary provided by Hangzhou. MOFTEC was unable to provide export data for individual national markets.

reported for 1990. Total shipments of helical spring lockwashers increased throughout 1990-92, rising by 68.9 percent during the period, and are projected to rise to nearly double the level reported for 1990 by 1994. The Chinese home market grew at a much faster rate than the export market (Asia, Europe, and North America) between 1990 and 1992, a trend that is projected to continue in 1993 and 1994.¹² The share of shipments designated for the home market rose from *** percent in 1990 to *** percent in 1992, and is projected to rise to *** percent by 1994. End-of-period inventories of helical spring lockwashers held in China fluctuated, declining in 1991, then rising in 1992 to a level 30.8 percent higher than that reported for 1990. Such inventories are projected to decline in 1993 and 1994. Despite fluctuations in trends, inventories held as a ratio to production and total shipments remained well below the relatively high 1990 levels in 1991 and 1992, and are projected to continue to remain below 1990 levels in 1993 and 1994.

According to the information provided by the eight companies representing approximately 80 percent of Chinese helical spring lockwasher production, virtually all of the helical spring lockwashers produced in China are of carbon steel.¹³ Hangzhou, the only lockwasher company able to provide details on its production process, also manufactures small amounts of other products such as hex bolts, but does not do so on the same machinery used to produce helical spring lockwashers.¹⁴ Hangzhou's lockwasher production process, which utilizes equipment developed by Hangzhou itself, is similar to that employed by Shakeproof, except that the coiling process and cutting process are performed in separate steps.¹⁵

¹² Hangzhou, China's largest producer of helical spring lockwashers for export, was the only company able to break down its exports by national market. Hangzhou reported that the share of exports to the United States *** as a portion of its total shipments between 1990 and 1992, a trend that is projected to *** in 1993 and 1994. In absolute terms, Hangzhou's exports to the United States ***; its exports to other foreign markets ***. Hangzhou's exports of helical spring lockwashers to the United States are projected to *** by 1994; its exports to other markets are projected to ***.

¹³ ***.

¹⁴ Conference transcript, pp. 97, 117.

¹⁵ Conference transcript, p. 119; Joe Musuraca, Shakeproof, interview, September 16, 1992.

APPENDIX A

***FEDERAL REGISTER* NOTICE OF
THE DEPARTMENT OF COMMERCE**

[A-570-422]

Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 20, 1993.
FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 462-0116.

FINAL DETERMINATION: We determine that certain helical spring lock washers from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on April 26, 1993, (58 FR 26115, April 30, 1993), the following events have occurred:

On May 5, 1993, the Department of Commerce (the Department) sent respondent a verification agenda. On May 10, 1993, respondent, Hangzhou Spring Washer Plant (HSWP) requested a public hearing. The Department verified responses in China from May 19 through 27, 1993. The Department issued its verification reports on June 14, 1993. Petitioner, Shabproof Industrial Products Division of Illinois Tool Works, Inc., and respondent submitted case briefs on June 19 and 21, 1993, respectively. Because both of these submissions contained new information, we removed them from the record and instructed both parties to resubmit them. On June 22, 1993, HSWP requested a postponement of the final determination. On June 23, 1993, HSWP submitted a new computer diskette with corrections based on verification findings. On June 25, 1993, the Department postponed the final

determination until no later than September 13, 1993. Petitioner submitted a case brief in proper form dated July 2, 1993, and respondent submitted its case brief in proper form on July 6, 1993. Petitioner and respondent submitted rebuttal briefs on July 8 and 9, 1993, respectively. A public hearing was held on July 16, 1993; at that hearing the Department gave the interested parties an opportunity to comment on the recent final determination of sales at less than fair value in the investigation of Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the People's Republic of China (58 FR 37908, July 14, 1993) (CDIW).

On July 22, 1993, petitioner submitted comments on the Department's CDIW final determination. Respondent filed comments on CDIW on July 23, 1993. On July 30, 1993, respondent replied to certain comments made by petitioner in its July 22 submission. On August 3, 1993, petitioner countered respondent's remarks. On August 23, 1993, petitioner commented on the factor data contained in an August 3, 1993, cable from the American Consulate in Bombay. Respondent commented on this cable on August 24, 1993.

Scope of Investigation

For purposes of this investigation, certain helical spring lock washers (HSLWs) are circular washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screw or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper. The lock washers subject to this investigation are currently classifiable under subheading 7318.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1992, through September 30, 1992.

Separate Rates

At the preliminary determination, we did not calculate a separate rate for HSWP, but instead assigned one rate for

all producers/exporters in the PRC based on best information available (BIA). We needed this preliminary decision because we were concerned about the possibility of control exercised by the People's Congresses and their administrative boards over HSWP. We were also concerned about HSWP's sales to domestic trading companies, which constituted a substantial portion of HSWP's overall U.S. sales during the POI.

Until the final antidumping determination in *CDIW*, we had not distinguished exporters on the basis of ownership when applying a separate rates test. That is, ownership, *per se*, had not precluded an exporter from receiving a separate rate. In *CDIW*, we reconsidered this policy and determined that central government ownership provides the central government with the opportunity to manipulate prices, whether or not it has taken advantage of this opportunity during the period of investigation. Thus under *CDIW*, regardless of whether the separate rate criteria set forth in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20858, May 6, 1991) (*Sparklers*) have been met, entities owned by the central

government are not eligible for rates separate from each other. A corollary of the *CDIW* holding is that all potential respondents owned by the central government must reply to antidumping questionnaires so that we may calculate a weighted-average dumping margin for these, by definition, centrally-controlled entities. Thus, while *CDIW* rejects individual separate rates for centrally-owned enterprises under any conditions, and requires the use of best information available absent full cooperation from all centrally-owned entities, it is not directly applicable to enterprises owned by regional governments in the PRC or locally-owned collectives.

The mechanics of central government ownership establish the presumption of an opportunity for direct control by the government of the enterprise. The company in *CDIW*, for example, is owned by a government ministry. Because the opportunity for central government control over enterprises owned by regional governments, or collectively at a local level, is less than the opportunity for central government control over enterprises owned by the central government, we have concluded that there are situations in which a *Sparklers* test would be appropriate. We are not prepared, however, to accept that multiple enterprises are independent of each other when such

enterprises are owned by the same regional or local government (or collective). Thus, in order to qualify for the application of a *Sparklers* test, all relevant entities owned by a given governmental jurisdiction must cooperate in our investigation. If those enterprises cooperate, we will use the *Sparklers* criteria to establish if they, as a group, are entitled to a single weighted-average dumping margin different from the margin calculated for centrally-owned enterprises.

As stated in the *Sparklers* determination, we will issue separate rates if a respondent can demonstrate both a *de jure* and *de facto* absence of central control. Evidence supporting, though not requiring, a finding of *de jure* absence of central control would include: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments devolving central control of export trading companies. Evidence supporting a finding of *de facto* absence of central control with respect to exports would include: (1) Whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

Unlike the situation in the *CDIW*, investigation, HSWP is not, nor has ever been, a state-owned enterprise. Verification revealed no history of either central or provincial intervention in HSWP's business operations. We have determined to treat all collective enterprises owned by the same local residents as related parties. In this case, the only exporter owned by the residents of the locality, HSWP, is cooperating. Consequently, we have determined to apply the *Sparklers* criteria to HSWP in order to test its independence from the central government and from other exporters.

HSWP's legal status as outlined in the PRC regulations indicates that there is a *de jure* absence of central-government control. Our findings at verification indicate that HSWP operates in a manner which constitutes *de jure* absence of central government control, because: (1) There is an absence of restrictive stipulations associated with this individual exporter's business and export licenses; and, (2) HSWP has always operated as a decentralized company. According to the documentation submitted by respondent, the ownership of the collective enterprise is distinguished from state-owned enterprises. We found no evidence that HSWP is subject to the

central government's manipulation of prices.

The documentation of the internal election process and the examination of normal business relations with local government officials reveal that HSWP operates with a high degree of *de facto* autonomy. HSWP's charter article on government regulations is a standard element of PRC corporate documentation referring to the company's general legal obligations; we found no evidence that the charter language was used by the government to control HSWP's business operations. As with charters in most countries, the language of this article is merely a requirement that an enterprise abide by the laws and regulations of the PRC, not an instrument for direct administrative control of the company's business. We found no evidence contradicting HSWP's explanations that it operates with *de facto* absence of central government control with respect to its exports. Furthermore, we found no indication that the relationship between HSWP and the PRC trading companies were not at arm's-length. We have no evidence to contradict that HSWP had control over its financial resources, including the right to reinvest profits. While HSWP did not maintain a hard currency bank account for its foreign earnings during the POI, our findings at verification indicated that it did have access to foreign exchange based on its earnings through a foreign exchange reserve fund held by the Bank of China in HSWP's name. The existence of some bank restrictions on hard currency earnings are not unusual in many banking systems, including those of market economies. Convertibility of a nation's currency as an indicator of NME status does not translate into a factor for considering the use of separate rates.

We therefore determine that HSWP meets the *Sparklers* criteria. HSWP is the sole producer/exporter of HSLWs for Xinjie Township. We are therefore calculating a margin for the entire township based on HSWP's response. This margin will apply to HSWP's self-managed exports to the United States and to sales of its merchandise which are exported by the non-PRC trading companies whose POI sales were examined at verification. For a detailed discussion of this decision, see the memorandum dated September 13, 1993, from Barbara R. Stafford to Joseph A. Spertini.

Best Information Available

The PRC government's only submission in this investigation was the limited discussion of the HSLW

industry submitted on December 7, 1992. The PRC government did not supply the consolidated questionnaire response requested for all producers/exporters other than Hangzhou.

Therefore, we are using BIA to calculate the margin for all other exporters from the PRC. As BIA, we are using the highest single margin calculated in the petition, a margin of 128.63 percent.

Fair Value Comparisons

To determine whether sales of HSLW from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price for sales made directly to unrelated parties prior to the date of importation into the United States, in accordance with section 772(f) of the Act. We used purchase price as defined in section 772 of the Act, because the subject merchandise was sold to unrelated parties in the United States prior to importation into the United States, and because exporter's sales price methodology was not indicated by other circumstances.

We calculated purchase price based on pecked, CIF port or undelivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, and marine insurance. HSWP reported amounts for foreign inland freight based on services provided by PRC shipping firms. For foreign inland expenses from HSWP to port, we calculated a surrogate charge using a June 1992 cable from the U.S. Embassy in India from the Sulfamic Acid from the PRC investigation. HSWP reported amounts for ocean freight based, in part, on services provided by shipping companies based in the PRC. For the portion of the shipment expenses from Ningbo, PRC to Hong Kong provided by PRC state-owned transportation, we are calculating a separate charge using a rate schedule provided by the U.S. Consulate in Bombay on August 3, 1993. HSWP reported amounts for marine insurance charged by a state-owned PRC insurance company. Since the premiums charged are based on a percentage of the U.S. dollar value of the merchandise, in a schedule which is similar to those used in market economies, we are deducting this amount from the U.S. price. Since surrogate country information was not available for the marine insurance

expense, we used the reported U.S. dollar charges for this expense. (See Final Determination of Sales at Less Than Fair Value: Sulfamic Acid from the People's Republic of China (Sulfamic Acid from the PRC), 57 FR 29705, July 6, 1992). The premiums are based on the U.S. dollar value of the sales. The proprietary formula used to establish these insurance premiums (see the July 14, 1993, HSWP verification report at 22), is nearly identical to those used to set premiums by market-

economy insurance firms for commercial shipments to the United States (see for example, the August 8, 1991, UPM/Rapra Oy verification report in the antidumping duty investigation of Certain Groundwood Paper from Finland, at 26).

Section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if (1) the merchandise is exported from a nonmarket economy country (NME), and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a) of the Act. In every

antidumping duty investigation conducted by the Department to date involving the PRC, the PRC has been treated as an NME. (See, e.g., Final Determination of Sales at Less Than Fair Value: Chromo-Plated Lug Nuts from the People's Republic of China (Chromo-Plated Lug Nuts from the PRC), 56 FR 46153 (September 10, 1991). In this case, none of the parties to the proceeding has suggested that the PRC is no longer an NME. We have determined that the PRC HSLW industry is not a market-oriented industry (MOI) and have determined that the inputs used by the HSLW producers which are sourced in the PRC are not purchased at market prices (See General Issues Comment 1). Therefore, in accordance with section 773(c) of the Act, the Department is required to determine FMV on the basis of factors of production utilized in producing the subject merchandise, as valued in a surrogate country.

At verification, HSWP demonstrated that a portion of its self-managed sales inadvertently had been omitted from the U.S. sales listing reported to the Department. As BIA, we are applying the highest margin calculated for a single sale, based on the correctly-reported transactions, to the quantity of unreported sales and weighting that margin into the total margin calculation.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the factors of

production, to the extent possible, in one or more market economy countries that are at a level of economic

development comparable to that of the NME country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are most comparable to the PRC in terms of overall economic development, based on per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP. India is a significant producer of comparable merchandise and has been selected as the preferred surrogate country for purposes of calculating the factors of production used in producing the subject merchandise. (See the Department of Commerce's October 16, 1992, Office of Policy memorandum to David Binder.)

We valued the factors of production in accordance with the hierarchy for preferred input values set forth in the notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992). We stated that we would first use factor values based on publicly available published

information (P1) concerning our first choice surrogate country, second we would use unpublished information (e.g., information provided by the U.S. Embassy) from the first choice surrogate, third, we would use P1 from second choice surrogates, and so on until we had found appropriate values for each input. We have used Pakistani values when necessary, as discussed below. In this investigation, encountered factor value information from preferred surrogate countries the accuracy of which is obviously questionable. In addition, we have found that values from our preferred sources are not always available for each factor.

Accordingly, we have developed a practice of collecting information on factor values from different sources to use as a check on, and supplement to, our preferred factor values.

In this investigation, we considered several elements in selecting the public information used to value the factors of production, including, but not limited to: (1) whether the source was a published document, (2) whether the source contained the most current information available, (3) the degree of similarity between NME producers and surrogate country producers, and (4) the degree of similarity between the NME factor's physical characteristics and those of the surrogate commodities as described in the source literature.

In evaluating the reliability of P1 from India and the other surrogates, we

considered, among other things: information supplied by the U.S. Embassy in India and Pakistan, information available from the public records of other investigations of products from the PRC, and information from relevant periodicals (e.g., Monthly Statistics of the Foreign Trade of India). In some instances where the range of Indian factor values indicated that some or all of the values were questionable, we used supplemental sources as an external reference point to help us select the appropriate value. If we were able to obtain more current PI than was submitted by the parties, we relied on the more current information.

We calculated FPA/V based on factors of production reported by respondent. The factors used to produce HS/LWs include materials, labor, and energy.

To value the production materials, green carbon steel wire rod and zinc used in plating, we used imported prices obtained from the Monthly Statistics of the Foreign Trade of India, Volume II—Imports, December 1991 (1991 Indian Import Statistics). We adjusted the factor values to the POI using wholesale prices indices of India (WPI) as published in the International Financial Statistics by the International Monetary Fund (IMF) to account for inflation.

To value the chemicals used in HS/LW manufacture, hydrochloric acid, caustic soda solution and sodium nitrate, we used the 1991 Indian Import Statistics. We then adjusted the factor values to the POI using WPI published by the IMF to account for inflation.

To value the plating chemicals, potassium chromate, potassium aluminum, barium carbonate, hydrogen fluoride, nitric acid, caustic soda solution, hydrogen chloride, 4-Methylamine, sodium sulfide, and sodium carbonate, we used the 1991 Indian Import Statistics. To value sodium hydroxide, we used all the import values for solid sodium hydroxide (at or near 100 percent) contained in the 1991 Indian Import Statistics, and adjusted the value to represent the 70.75 percent purity which respondent reported as a factor of production. For sulfuric acid, we used a December 1991 cable from the U.S. Embassy in Pakistan. To value unsodium phosphates, we used the Monthly Statistics of the Foreign Trade of India, December 1987 (1987 Indian Import Statistics). For all plating chemical values, we adjusted the factors to the POI using WPI published by the IMF to account for inflation.

To value the packing materials, paper cartons, plastic bags, adhesive tape, wood brackets, wood pellets, packing

strips, and iron nails, we used import statistics obtained from the 1991 Indian Import Statistics. We then adjusted the factor values to the POI using WPI published by the IMF to account for inflation.

To value lubricating oil, we used the 1991 Indian Import Statistics. We then adjusted the factor value to the POI using WPI published by the IMF to account for inflation.

To value the energy inputs, steam coal and electricity (for both the manufacture of HS/LWs and the plating process), and fuel oil (for the manufacture of HS/LWs only), we used the third quarter 1992 edition of Energy Prices and Taxes, published by the International Energy Agency. To value waste (for both the manufacture of HS/LWs and the plating process), we used the December 1991 cable from the U.S. Embassy in Pakistan, because we required factor data that corresponded to the measure in which waste was reported. We adjusted the energy factor values to the POI using WPI published by the IMF to account for inflation.

To value foreign inland freight-rail, we used a December 1990 cable from the U.S. Embassy in India from the 1987-1990 Administrative Review of Cotton Shop Towels from the PRC (Final Report, 56 FR 4040, February 1, 1991). To value foreign inland freight-trucking, we used the June 1992 cable from the U.S. Embassy in India from the Sulfuric Acid from the PRC investigation. We adjusted the rail foreign inland freight values to the POI using WPI published by the IMF to account for inflation. The cable containing the trucking rate was contemporaneous with the POI. To value foreign inland freight-shipping, we used an August 3, 1993, cable from the U.S. Consulate in Bombay, India (the August 3, 1993, cable), using WPI published by the IMF to account for inflation.

To value labor costs, we used the International Labor Office's 1992 Yearbook of Labor Statistics. To determine the number of hours in a workday in India, we used the Country Reports: Human Rights Practices for 1990. We then adjusted the labor values to the POI using WPI published by the IMF to account for inflation.

To value factory overhead, we used the August 3, 1993, cable. To value selling, general and administrative expenses, and profit, we used the statutory minima of 10 percent and 6 percent, respectively.

Verification

As provided in section 776(b) of the Act, we verified the information used in

reaching our final determination in Hangehou PRC, from May 19 through May 25, 1993.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from the PRC. Section 751(a)(3) of the Act provides that the Department will determine that critical circumstances exist if:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or
(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and
(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 751(a)(3)(A)(ii) for exporters sales prices sales, and margins of 25 percent or more for purchase prices sales. (See, e.g., Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Since the final margin for HS/LWs from HSWP is above 25 percent, we determine in accordance with section 751(a)(3)(A)(ii) of the Act that knowledge of dumping existed for HS/LWs from the PRC.

Under 19 CFR 353.16(f)(1), we normally consider the following factors in determining whether imports have been massive: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. In order to determine whether imports have been massive over a relatively short period of time, we examined the shipments of HSWP's self-managed U.S. sales made in the month the petition was filed and the five following months, to the six-month period immediately prior to the filing of the petition, in accordance with 19 CFR 353.16(g). Our analysis of the imports of HS/LWs from HSWP showed that the volume of imports from the base period to the comparison period increased by more than 15 percent. (See 19 CFR 353.16(f)(2).) Based on this analysis, we determine that imports of HS/LWs from HSWP were massive over a relatively short period of time. Based on our analysis, therefore, we determine that

critical circumstances exist for imports of HSLW's from HSWP.

Because the BIA margin for all other PRC producers and exporters of HSLW's is greater than 25 percent, we are imputing knowledge of dumping for all other producers and exporters of HSLW's. Because the Department did not receive responses to its questionnaire from the PRC government on behalf of all producers and exporters, we have relied upon BIA for determining whether there have been massive imports of HSLW's from all other producers and exporters in the PRC. As BIA we are making the adverse assumption that such imports were massive over a relatively short period of time in accordance with section 735(e)(3)(B) of the Act. There is no evidence on the record that seasonal trends apply to the subject merchandise. Therefore, based on our analysis, we determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of HSLW's from all other producers and exporters of HSLW's in the PRC.

Interested Party Comments

General Issues

Comment 1. Petitioner argues that the PRC is an NME and that the PRC HSLW industry is not a MOI. Petitioner contends that since the Department did not find a MOI in its preliminary determination and no subsequent information was submitted, there is no new information to illustrate that the HSLW industry is a MOI. Petitioner maintains that the PRC HSLW industry is not a MOI because: (1) HSWP provided no evidence to illustrate that there is no government involvement in setting prices or amounts to be produced; (2) the PRC HSLW industry has a significant proportion of state-owned enterprises; (3) during the POI, HSWP purchased and used exclusively PRC steel and purchased water and electricity from government-owned and operated utility companies; and (4) HSWP provided no evidence that its labor costs were based on market forces and are, therefore, unaffected by PRC government subsidies.

Respondent does not agree with the Department's decision that the HSLW industry in the PRC is not a MOI. Respondent maintains that there is substantial evidence that the HSLW industry in the PRC operates in a market economy, not the least of which is the fact that HSWP has for some time purchased its predominant raw material, steel wire rod, solely from market country suppliers. Respondent also argues that it, the largest PRC

HSLW manufacturer, purchases its other raw materials, such as chemicals and supplies, from independent collectively-owned, or foreign source. However, HSWP maintains that it has neither the resources nor the relationships to compile such information from all other HSLW manufacturers, and is therefore unable to demonstrate such facts with respect to those manufacturers. Respondent maintains that the Department is deciding that the lockwasher industry is a non-market industry when the members of the industry and the government exhibit an absence of centralized communication and information. According to HSWP, the absence of such centralized information-sharing is a hallmark of a market-oriented industry.

DOC Position. We agree with

petitioner. As outlined in the amended final determination in the investigation of Chrome-Plated Lug Nuts from the PRC, the Department considers three criteria in establishing whether an industry in a non-market economy should be classified as market-oriented: (1) for merchandise under investigation, there must be virtually no government involvement in setting prices or amount to be produced (e.g., state-required production or allocation of production of the merchandise, whether for export or domestic consumption in the non-market economy, would be an almost insuperable barrier to finding a market-oriented industry); (2) the industry producing the merchandise under investigation should be characterized by private or collective ownership (there may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry); and (3) market-determined prices must be paid for all significant inputs, whether material or non-material (e.g., labor and overhead), and for an all but insignificant proportion of all inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production in the industry producing the input must be insignificant.

As recorded in a January 19, 1993, memorandum from David Binder to Richard Moreland, the Department has determined that the PRC lock washer industry does not have MOI status. Regarding the first criterion, the record is not sufficient to determine the degree

and nature of control exercised in the entire lock washer industry by the central and regional government bodies of the PRC. Regarding the second criterion, the December 7, 1992, PRC Embassy submission indicated that a significant portion of total PRC production comes from state-owned factories, a factor indicating "substantial state ownership." Regarding the third criterion, the PRC submissions neither stated nor documented that market-determined prices are paid for all significant inputs.

While HSWP may now be purchasing its supply of wire rod solely from market-economy countries, the Department verified that this was not the case during the POI; in fact, purchases from market-economy countries were the rare exception, not the rule. Without the full cooperation of the PRC government, HSWP's comments regarding the independence of its domestic sources and its characterization of industry relationships cannot be examined, let alone affirmed.

Comment 2. Petitioner argues that HSWP does not meet the *de jure* and *de facto* criteria enunciated in *Speakers*, and therefore, HSWP does not warrant a separate rate. Petitioner asserts that there is no factual information on the record to support HSWP's assertion that it sets its own prices. Petitioner maintains that no price lists or any other forms of written confirmation were offered at verification to establish that the prices for HSWP's exports sold to PRC trading companies were different from the prices of other producers to trading companies. Furthermore, petitioner maintains that the statements that the prices are market-driven mean nothing more than prices are adjusted to reflect factor costs and other changes. Petitioner contends that HSWP should have reported U.S. sales to PRC trading companies jointly with those trading companies reporting their sales to the U.S. customers. Petitioner maintains that, absent such new reporting, the only U.S. sales information completely verified was that which HSWP supplied for self-managed sales to the United States and that such limited reporting does not prove that HSWP's prices are independently set from those of other producers.

Petitioner argues that the fact that HSWP did not have its own bank account demonstrated in hard currency "alone limits the independence of a company." Petitioner also maintains that the lack of a hard currency bank account restricted HSWP's ability to import factor inputs and to otherwise conduct its business affairs. According

to petitioner, because the convertibility of currency is a primary factor which the Department considers in determining NME status of a country, convertibility of currency should also be significant in determining the independence of a company for separate rates.

In addition, without the reporting of U.S. sales by PRC trading companies to their U.S. customers and by the other producers and exporters of the subject merchandise, petitioner argues that the Department cannot determine whether HSWP sets its own export prices independent of the government and other exporters. HSWP is the only producer or exporter in the PRC that cooperated with the Department in this investigation.

Petitioner maintains that the policy set forth in the final determination of *CDW* directly relates to the separate rates issue in this investigation. Petitioner argues that HSWP's status as a locally-owned collective enterprise represents a situation which the Department has not considered before, but which reflects the presence of state control. Petitioner maintains that the PRC government, by not cooperating on behalf of the many other producers and exporters of HSWP, has determined the scope of the investigation by limiting the coverage to only one respondent. Petitioner goes further to suggest a four-step model for determining the appropriateness of separate rates in any NME investigation where there is significant state ownership of either producers or exporters.

First, the petitioner suggests that the Department should consider the extent of state ownership of enterprises in the industry. Significant state ownership should act as a presumption against using separate rates. Second, petitioner suggests that the Department should consider the extent of cooperation by the PRC government to demonstrate how the industry operates and that full government cooperation on behalf of the industry is necessary to determine whether there is *de jure* and *de facto* independence by any given exporter. Third, petitioner suggests that the Department should consider the extent to which the enterprises under investigation should show that they are importing significant amounts of raw materials instead of employing state-controlled or state-influenced inputs. Fourth, petitioner states that the Department should consider the extent to which the enterprise is free to set prices both for direct export sales and domestic sales which are subsequently exported. Petitioner maintains that absolute control of foreign exchange

proceeds is an integral element of this fourth criteria. Petitioner maintains that HSWP has not met any of these suggested criteria and, therefore, does not warrant a calculated separate rate.

Respondent argues that it has met the *de jure* and *de facto* criteria enumerated in *Sparklet*, and therefore warrants a separate rate. Respondent maintains that its detailed verified documentation and interviews regarding actual business operations demonstrate how it operates in a manner which constitutes *de jure* absence of central government control, because: (1) There is an absence of restrictive stipulations associated with an individual exporter's business and export license; and (2) it has always operated as a decentralized company.

Respondent maintains that the relationship examined at verification demonstrates that it operates with *de facto* absence of central government control with respect to its exports because: (1) Each exporter sets its own export prices independently of the government and other exporters; and, (2) it can keep the proceeds from its sales. Respondent contends that the practices examined at verification indicate that PRC trading companies do not exercise direct control over its pricing or marketing decisions.

Respondent maintains that it is able to demonstrate the absence of central government interference which petitioner believes can be ensured through coordinated pricing of merchandise between it and state-owned manufacturers or state-owned trading companies, because it has provided at verification the prices charged by it to domestic trading companies. Respondent maintains that this and other internal documents, such as company journals, or the record can be reviewed to confirm that it does not coordinate its pricing with or through PRC trading companies, and thus is not indirectly centrally controlled.

Respondent argues that it has always had access to the foreign funds it earned through a foreign exchange reserve fund maintained on behalf of it. Respondent states that it was able to make any foreign purchases it wished using funds it has acquired from exporting its products. Respondent explains that the foreign exchange used for the purchase of imported materials is normally taken from reserves which it has acquired from its export revenue. Additional foreign currency is purchased from the foreign exchange swap center.

Respondent maintains that a change in PRC law in May 1988, permits it to maintain a hard currency bank account for their earnings on foreign sales, and that this new provision merely changes

the status of the bank account from a reserve fund held in the name of HSWP to a bank account held by HSWP.

Respondent maintains that it is an independent legal and economic entity which is responsible for its own profits and losses. Respondent maintains that its license and charter are similar to articles of incorporation in the United States. Respondent identified only two occasions under PRC corporate law where a license can be revoked: (1) For violations of the business laws; and (2) if an enterprise declares bankruptcy. License renewal is accomplished by filling out a form and paying "a small fee." Respondent maintains that the remaining profits are distributed according to the determinations of its management. Additionally, it contends that it is free to determine what to produce, where to sell, and what prices to charge for its products. Specifically, respondent states that both short- and long-term management and business decisions are made by the director, and that these decisions are not subject to review by any other entity or organization.

Respondent maintains that because, from its inception, it has never been a state-owned entity, no decentralizing legislative enactments were ever required. Respondent contends that under the governing corporation law, the 22,000 members of the Xingfa village own it, and that the management and employees of the plant are given control of the plant's operations through the local corporation law approval process.

Respondent maintains that each PRC trading company is responsible for its own financial performance and is accountable specifically for profits and losses, each deciding if and when to sell lockwashers and other products. Respondent maintains that the only relationship between itself and the PRC trading companies consists of arm's-length sales contracts, negotiated for profitable business. Respondent maintains that no information

concerning the independent pricing decisions made by the PRC trading companies is available to it, and therefore, it cannot report information concerning the disposition of trading companies' sales proceeds, the trading companies' profit calculations, the disposition of such profits, the trading companies' exportation decisions, or their relationships with customers.

Respondent maintains that the policy enacted in *CDW* should have no effect on the separate rates issue in this investigation. It argues that it has never been a state-owned or centrally-controlled enterprise. Respondent argues that the regulations provided to

the Department under which it is governed in the PRC provide only for corporate and tax laws which govern the operations of the enterprise in its day-to-day operations, but that such regulations cannot be construed to evidence central government control.

DOC Position. We agree with respondent. We have determined that the exact circumstances underlying the policy enunciated in *CDW* regarding state-owned companies do not apply to HSWP, and therefore, have applied the Sparklers test in determining whether to grant HSWP a separate rate. Based on the application of the Sparklers criteria to the facts concerning HSWP, we have decided to calculate a rate based on HSWP's reported data separate from other PRC exporters. Please see the "Separate Rates" section above for a discussion of this decision and the September 13, 1993, memorandum from Barbara R. Stafford to Joseph A. Spetrini.

Comment 3. Petitioner argues that the Department should use the highest margin rate, as BIA, for HSWP sales through PRC trading companies which have not participated in the investigation. Petitioner maintains that HSWP has two types of export sales: Self-managed sales (which were verified), and sales to domestic trading companies. Petitioner further argues that the PRC trading companies would continue to sell HSLWs produced by HSWP using the separate rate and that there would be no penalty for non-cooperation.

Respondent argues that it has shown in its verified submissions that it has no control over sales by PRC trading companies. Respondent contends that officials from its largest trading company purchaser have stated that sales transactions are at arm's-length and that it has no knowledge of the ultimate destination of sales of subject merchandise to trading companies. Respondent argues that it should not be penalized for the non-cooperativeness of the trading companies because it has no control over the exports of HSLWs by trading companies. Respondent maintains that if HSWP is granted a separate rate, only exports by HSWP will be afforded that rate and that PRC trading companies will be assigned the "all other" rate.

DOC Position. We agree with respondent. HSWP was not informed of the final destination of the majority of its sales to PRC trading companies. Even for those sales where the final destination was known, the price between HSWP and the domestic trading company cannot be used to calculate a margin. These sales were

denominated in Renminbi (RMB), and are therefore not considered to be market prices by the Department. Because we are not required to examine all sales to the United States pursuant to 19 CFR 353.42(h), we have excluded these sales from our analysis. HSWP reported that it could not force PRC trading companies to report their sales to the United States, but did report the aggregate volume of their sales to domestic trading companies. It was the responsibility of the trading companies to report their U.S. sales. No PRC trading company appeared before the Department either individually or under the auspices of the PRC government's consolidated response to the Department's questionnaire. Therefore, we are applying the petition rate as BIA to all other producers and exporters, including the PRC trading companies to which HSWP sells its merchandise.

Comment 4. Petitioner argues that because HSWP reported no direct or indirect credit expenses on its U.S. sales, the Department should make an adjustment for imputed credit based on HSWP's average interest rates on its loans. Petitioner maintains that HSWP reports no payment data for some of its U.S. sales and that these sales should be treated as having a zero price.

Petitioner argues that the Department should calculate a warehousing expense for the period after the packing since it was discovered at verification that HSWP packs HSLWs seven days prior to shipment.

Petitioner further argues that, because the production of HSLWs is capital intensive, a reasonable surrogate value of the capital costs must be included in the Department's margin calculations which do not represent PRC costs (i.e., cost estimates that were provided in the petition or comparable costs in the surrogate country). Petitioner maintains that the expense for factory equipment and depreciation that HSWP reported in U.S. dollars is based on PRC costs and not based on surrogate country values. Petitioner contends that HSWP's G&A expenses do not include depreciation of capital equipment.

Respondent argues that the Department should not consider petitioner's suggested additional expenses for credit, warehousing and depreciation because these expenses would be double counted. Respondent maintains that the Department did not make any adjustments for warehousing, commission or credit expenses in past cases because surrogate selling, general and administrative (SG&A) expenses was used. Furthermore, respondent maintains that a surrogate factory overhead, under standard accounting

practices, includes depreciation expenses. Respondent argues that because the Department uses an overall surrogate factory overhead amount, the actual values of components of its factory overhead are irrelevant.

DOC Position. We agree with respondent. First, the Department does not make circumstance of sale adjustments in the margin calculations using a NME factors of production analysis. Second, we are calculating aggregate SG&A expenses based on Indian factory SG&A expenses which are a percentage of all costs, inclusive of any factory depreciation. It would be redundant to separately calculate and apply depreciation expenses for capital equipment.

Comment 5. Petitioner argues that the Department should use the highest margin rate for those U.S. sales which have uncorrected errors.

Respondent argues that the clerical errors found in the sales fields reported in the U.S. sales database should be corrected. Respondent maintains that the Department should accept the clerical corrections because the Department was notified of these corrections prior to the commencement of verification.

DOC Position. We disagree with petitioner. All of the transaction-specific errors discovered at verification are of such a nature that they can be easily corrected by the Department based on the information provided by respondent at verification, as these are primarily clerical errors, not errors of substantial omission or obfuscation.

Comment 6. Respondent argues that the Department should accept those U.S. sales that were discovered prior to the commencement of verification and resubmit the sales documents for the record of this investigation.

Petitioner argues that the Department should not accept any more sales documentation and must use the margin in the petition, as BIA, for all sales that were not reported timely to the Department.

DOC Position. We agree, in part, with petitioner. However, we are not using the BIA methodology suggested by petitioner. Because respondent identified its omissions at the outset of verification, we are applying instead, the highest non-aberrational margin calculated for a single sale based on the correctly reported transactions to the quantity of unreported sales and weighting that margin into the total margin calculation.

Comment 7. Petitioner argues that the Department should use BIA to value steel wire rod. Petitioner contends that HSWP reported production on only

green rod, and that at verification it was discovered that HSWP was using both steel wire and green rod. Petitioner further argues that the Department should use BIA based on the petition because HSWP's wire rod information was not submitted timely and there is no other information on record to value the difference between wire and green rod. Petitioner suggests that the Department use the petition to determine the cost differential between processed wire and green rod, and to increase FMV by that amount to account for the inclusion of processed wire as a factor. Petitioner recommends allocating this increased cost using the most adverse assumption that the higher priced processed wire was consumed in manufacturing HSLW's for only the "self-managed" U.S. sales.

Respondent argues that steel wire cannot be used in the production of HSLW's which have a section width which is greater than the wire.

Respondent maintains that the steel wire is only purchased to produce the smallest sizes of HSLW's and that if the Department should choose to include steel wire as a factor of production, it should only be used for the smallest sizes (i.e., sizes No. 4, No. 6, No. 8, and No. 10). Furthermore, respondent argues that any steel wire factor included in the FMV calculation should be adjusted to reflect the fact that the processed wire does not need to undergo all of the processing steps outlined for green wire rod. Respondent maintains that the acid treatment through annealing steps are unnecessary when steel wire is used and the Department should remove all factors relating to the annealing steps (i.e., factory overhead, labor, profit, and any associated raw material charges).

DOC Position. We disagree, in part, with petitioner. We noted at verification during the inspection of the current inventory that almost all of the raw steel was green wire rod. This indicates that the processed wire purchased for production during the POI is no longer being purchased. We are making the adverse assumption that this is a result of HSWP's verified declining sales and shipments to the United States resulting from this investigation.

We are not making the most adverse assumption that all of the POI processed wire consumption should be allocated to the "self-managed" U.S. sales alone. Because this element was not reported to the Department, there is no way to trace which steel input was used for the production of specific merchandise sold to the United States during the POI. However, because we found at verification that steel had been used to produce the subject merchandise and

because HSWP failed to report this in a timely fashion, we are increasing FMV by the cost differential contained in the petition. Since both "self-managed" and trading company sales were of the same standards and specifications, we are allocating the increased cost over all sales to the United States during the POI.

Comment 8. Petitioner argues that the Department should use BIA to value plating plant results. Petitioner maintains that several issues were not addressed regarding the plating plant data. These issues are: (1) There was no discussion of rejects; (2) there was no indication of the number of workers used for quality control or labor used in packing and transporting; and (3) the distance between the plating plant and HSWP was not provided. Petitioner states that it was concerned about the Department selecting one plating company to determine the factor inputs used. Petitioner contends that even though the data from one plant was verified, the Department should use data for all the plating plants, and when there is not complete data the Department should use information contained in the petition as BIA. Petitioner asserts that in order to account for rejects, which should be subtracted from total HSLW plated, the Department should use a factor of one percent, as reported in petition, as BIA. Petitioner maintains that this figure should be used to increase

proportionally the factor inputs per MT (or per kilogram) of finished HSLW's.

Respondent argues that the Department should accept the verified plating company's factors as representative of plating factors for all plated HSLW's sold by HSWP.

Respondent contends that the verified plating company is its largest plating subcontractor and, because of this, it obtained information from that company. Furthermore, respondent maintains that the distance between it and the plating plant was provided in its April 6, 1993, submission.

DOC Position. We disagree with petitioner. Because the plating contractor verified was the primary plant for HSWP, we consider it representative of the total plating subcontracted by HSWP to unrelated third parties. Reporting an even larger set of data for all plating activities would have been burdensome for both the respondent and the Department.

Comment 9. Petitioner argues that the Department should use BIA to value the packing factors. Petitioner maintains that because HSWP officials admitted that many of the values, for both units and weight of the packing factors

reported to the Department, were incorrect, the Department should use the higher of the BIA rate in the petition (i.e., two percent of the total manufacturing cost) or the highest packing rate based on verification.

Petitioner states that HSWP did not make uniform corrections for packing expenses. Petitioner maintains that at verification, Department officials made specific calculations of packing costs for each type of HSLW, and that these changes (e.g., adhesive tape, packing strips, etc.) were not included in the corrections.

Respondent argues that the Department should use its factors of production in valuing packing costs for its margin calculations. Respondent states that the Department's verification report does not find it to have incorrectly reported its packing factors; rather, the report states that the errors were not in the numerical weights of the factors, but only clerical errors in the description of the factors. Respondent contends that the verified weights to value the factors were correct.

Respondent maintains that petitioner is incorrect in stating that there are uniform corrections to be made because:

(1) The Department stated in the verification report that it might use a size-specific carton weight to create size-specific packing factors; and, (2) the Department did not find the 22 Kg per carton weight to be incorrect.

DOC Position. We disagree with petitioner. The errors found at verification were the results of a miscommunication regarding the number of inputs and the weight of those inputs, which were confused by respondent in its reporting of packing costs. We are accepting the reported 22 kilogram per box median value used to allocate packing costs as "representative" because the segregation and allocation of size-specific values would have been unduly burdensome to respondent considering the relatively small portion of total production cost which packing factors represent.

Comment 10. Petitioner argues that critical circumstances should be found for imports of the subject merchandise. Petitioner states that the quantities shipped during the three months immediately preceding the filing of the petition (i.e., June through August) were massive (greater than 15 percent) as compared with the three months following the filing (i.e., October through December). Petitioner maintains that shipments during the October through December period were more than 15 percent greater than for the June through August period. Petitioner maintains that a three month period is

not an appropriate period and that a longer period should be used because in December 1991 there was a threat of retaliation by the U.S. Trade

Representative against the PRC under section 301 of the Trade Act of 1974 as possible retaliation and HSLW were specifically included in the target list. Petitioner also concludes that import data from late 1991 and early 1992 was distorted because of the initial mid-February 1993 timing of the possible preliminary determination in this case; because shipments after December were potentially subject to suspensions of liquidation, imports and exporters acted accordingly. Petitioner concludes that the "safe period" was only October through December 1992 and that there is no seasonality to the HSLW business.

DOC Position. We used a six-month comparison base period from March through August 1992 to compare with shipment data for the period from September 1992 through February 1993. Please see "Critical Circumstance" section above.

Factors of Production

Comment 1. Respondent argues that there are problems with the public information which had been proposed in the preliminary determination were concurrence memorandum (TCM) for valuing green wire rod as a factor of production. Respondent maintains in the case brief that the Department should use the average unit value of HTSUS subcategories 7213.41, 7213.48, and 7213.50 of the Indian import statistics, stating that these wires most similar to the steel types used by HSWP in the production of lockwashers.

Petitioner in its case brief maintains that subcategory 7213.50 covers wire rod "comparable to the wire rod used by HSWP." This subcategory covers bars and rods containing greater than 0.6 percent carbon, hot-rolled in wound coils. In the rebuttal brief, petitioner amends its recommendation to agree with respondent's use of subcategories 7213.41, 7213.48 and 7213.50, but then also recommends the possible inclusion of subcategories 7314.50 and 7314.60.

DOC Position. With the exception of petitioner's request to include subcategories 7314.50 and 7314.60, petitioner's and respondent's latest positions are the same. The subcategories 7314.50 and 7314.60, however, are for wires and which is not coiled. We verified that the inputs used for HSWP's production lines were in coils. Since the product experts of both petitioner and respondent are now in general agreement on which 7213 subcategories are most similar to the subject merchandise, we are using

subcategories 7213.41, 7213.48 and 7213.50 to value the steel wire rod used by HSWP.

Comment 2. Respondent maintains that the Department may wish to consider the propriety of using import figures from individual countries listed in the Indian import statistics as sources countries for steel wire rod because the Department in past cases has refused to include pricing information from any country which has been found to be selling in the United States at prices below fair market value. Respondent notes that antidumping duty investigations have recently been filed against steel wire rod from Brazil, Canada, Japan, and Thailand and Tobago.

Petitioner also argues that the Department should not use the statistics for steel wire rod imports into India from countries which are currently under investigation for dumping.

DOC Position. We disagree with petitioner and respondent. First, the International Trade Commission (ITC) has already ruled in its preliminary determination, that no injury or threat of injury is presented by imports of wire rod from Thailand and Tobago; therefore, the investigation of wire rod from Thailand and Tobago has been terminated. Second, as regards the remaining named countries, no order has been issued, therefore, there is no basis for examining whether imports from those countries should be excluded.

Comment 3. Petitioner argues that the Department should not consider the value of steel wire rod imports into India because India has been found to have an International Price Reimbursement Scheme (IPRS). Petitioner maintains that this is a form of subsidization for domestic production of steel wire rod. (See Final Affirmative Countervailing Duty Determination: Steel Wire Rope from India, 56 FR 46285 (September 17, 1991)). Petitioner maintains that since it provided a quotation for green wire rod produced in India in its December 14, 1992, submission, that price should be used in determining FAV.

Respondent maintains that if the Department decides that it must reject the Indian steel import prices, then the only information remaining on the record is the actual prices paid by HSWP for imported steel wire rod, and the unprocessed green wire rod price reported in the petition. Respondent maintains that the price quote from an Indian steel mill which petitioner reported in its December 14, 1992, submission, is neither information relating to an actual sale, nor is it FV,

and that the Department must therefore disregard this quote.

DOC Position. We disagree with petitioner. Petitioner's argument makes the most because the IPRS scheme is paid on purchases of domestically produced wire rod, and we are using the prices of imported wire rod to value this factor. Therefore, we are continuing to use Indian import statistics.

Comment 4. Petitioner maintains that the Indian import statistics undervalue the price of domestic Indian steel, claiming that the prices of Indian steel has traditionally been above world market prices.

Petitioner maintains that the value of domestic Indian steel is comparable to the combined value of the import, i.e., the total of import CIF value plus the Indian duties. Petitioner maintains that if Indian values were lower than this combined cost, there would be free, if any, imports. Since the country appears to be the case, petitioner argues that the Department should add the import duties listed by Indian Customs to the CIF values reported in the Monthly Statistics of the Foreign Trade of India, Volume II-Imports, published by the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce. Petitioner recommends using as a source the CBI-CIS publication of Indian duties.

Respondent maintains that petitioner's claim of undervaluation of the steel wire rod factor by using Indian import statistics is incorrect. It maintains that the theory that import prices must be undervalued, otherwise the product would not be imported into India, is based on faulty logic, because petitioner would like the Department to believe that an import is always less expensive than its domestic competition. Respondent maintains that there are many reasons for trading a product besides price, including a buyer's desire to have multiple sources, advantages of domestic like product, geographic market location within the country, company tradition, quality considerations, and non-price considerations such as service and business development.

Respondent agrees with petitioner that, based on the Indian import statistics under review, Indian steel prices are well above world market prices, including those of the PRC and the United States. Respondent maintains that if the Department decides not to use Indian import statistics to value green steel wire rod, it should rely either on the actual prices for such inputs purchased by HSWP from market economy producers or on

the price quote contained in the petition.

DOC Position. We disagree with petitioner. Consistent with our past practice, we recommend not adding the Indian import duties to the values reported in the published Indian import statistics. We are not adding duties to the imported prices because those duties would have been rebated upon export of the finished product (i.e. HSLW). (See, for example, June 22, 1992, concurrence memorandum for the final determination in the investigation of Sulfanilic Acid from the PRC, at 9.)

Comment 5. Respondent maintains that the Department should value the steel wire rod factor using the prices paid by HSWP for imports of the factor from market economies, particularly South Korea.

Petitioner quotes the Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271, (October 25, 1991), to maintain that "where the Department stated that '[w]here an input was sourced from a market economy country and paid for in a market economy currency' it was consistent with Section 731(c)(4) of the Act to use 'the actual price paid for the input in calculating FMV.'" Petitioner, however, did not address further the use of HSWP's imported steel prices in its case or rebuttal brief.

DOC Position. We disagree with respondent. As noted in the June 14, 1993, verification report at pages 27 and 28, the amount of South Korean steel wire rod purchased during the POI was "very small Also, since the South Korean steel was inventoried in 9/92, it is unlikely that it would have been used in POI production."

Therefore, we have used the cost differential contained in the petition to increase FMV. (See General Issues Comment 7).

Comment 6. Petitioner maintains that the technology of PRC steel mills is so different from that of some the countries whose wire rod imports into India form the statistical basis for evaluating the wire rod factor that the Department should not use the 1991 Indian import statistics from Japan or Brazil. Petitioner cites to the Conference Report, Omnibus Trade and Competitiveness Act of 1988, Rpt. at 591 (100th Cong., 2nd Sess.), which states that:

Commerce should seek to use, if possible, data based on production of the same general class or kind of merchandise using similar levels of technology and at similar levels of volume as the producers subject to investigation.

Respondent contends that petitioner's quotation from the Conference Report is discretionary in its terms and applicable to the subject merchandise, not to raw material factors. Therefore, respondent contends that it is difficult to discern how the quotation from the Conference Report relates to PRC, Japanese or Brazilian steel mills.

DOC Position. We agree with respondent. We are not in a position to analyze the technology employed by all possible sources of imports of raw materials used to produce merchandise subject to an antidumping duty investigation. Petitioner has not argued that the subject merchandise produced in India is of a different class or kind of merchandise than that produced in the PRC, and that the Indians produce it using a different level of technology.

Moreover, we have already determined that India is the appropriate surrogate, based, in part, on the fact that India is a significant producer of HSLW. (See Factors of Production Comment 7).

Therefore, we have used the 1991 Indian import statistics to value wire rod.

Comment 7. Petitioner maintains that because U.S. imports of the subject merchandise from India have declined over the past several years, we should not accept India as a "Significant Exporter" of HSLW. Petitioner cites from the legislative history of the statute, H.R. Rep. No. 576, 100th Cong., 2d Sess. 590 (1988), which states that "[t]he term 'significant producer' includes any country that is a significant net exporter and, if appropriate, Commerce may use a significant net exporting country in valuing factors."

Respondent maintains that petitioner misinterprets the legislative history concerning this issue and that petitioner is applying the statute to the wrong type of merchandise. Respondent argues that the statute in no way requires the Department to use only significant net export countries because: (1) The term "include" is not one of exclusion and therefore, does not limit the Department in any way; (2) the language of the final clause "may use a significant net exporting country makes clear the Congressional intent that the use of a net exporting country is discretionary, not mandatory; and, (3) there is no requirement that the surrogate country must be a significant net exporter to the United States.

DOC Position. We disagree with petitioner. We are continuing to use India as the primary surrogate country and Pakistan as the secondary surrogate country in evaluating factors for HSLW. As stated in the Department of

Commerce's October 16, 1992, Office of Policy memorandum to David Binder, India is a significant producer of the subject merchandise. Production, rather than exportation, is a determinative criterion for surrogate selection.

Comment 8. Petitioner argued that the Department should not consider the value of steel wire rod imports into India from countries such as the former Czechoslovakia which it considers to be an NME.

DOC Position. We agree with petitioner. Since section 773(c) of the Act requires the factors of production to be valued in a market economy country, we are not using NME prices for inputs. Therefore, we have not included Indian imports of steel wire rod from the former Czechoslovakia in calculating FMV.

Comment 9. Petitioner argues that the Department should not consider the value of steel wire rod imports into India from Canada, because the low value of these imports suggests that these are lower quality merchandise which may not meet the specifications for steel wire rod used in manufacturing HSLW.

DOC Position. We are continuing to use imports of steel wire rod into India from Canada in determining the surrogate value. A lower price range alone does not indicate whether the merchandise is in or out of specifications. The prices from the different market economies from which India imported steel wire rod vary greatly. If we were to eliminate the lowest prices, we would also need to remove the highest prices, such as those for imports from the UK. We note that petitioner objected to respondent's requests that the Department reconsider use of Indian import statistics for certain chemicals (see Comment 16, below) when the resulting values were too high in the respondent's view. Petitioner states that the use of one set of PI was "to provide consistency and predictability." According to petitioner, "[t]o pick and choose the lowest price each time based on previous case documents and from different countries defeats the essential rationale of the approach." We believe that to pick and choose the highest price, or to ignore the lowest prices, also would defeat the essential rationale of the surrogate value approach.

Comment 10. Petitioner argues that purchase power parity (PPP) comparisons show India to be less comparable to China than other potential surrogate countries. Petitioner maintains that the Department should use PPP measured by per capita gross domestic product (GDP) to adjust labor

rates to reflect comparable purchasing power for the most comparable surrogate country.

Respondent argues that such a PPP adjustment runs counter to present Department policy. Respondent also maintains that it is illogical. Respondent maintains that since purchasing power relates to local prices, adjusting wage rates or GDP to reflect variances in purchasing power, would require the acceptance of domestic PRC prices. Respondent therefore maintains that, since the Department has deemed PRC prices to be unusable for valuing factors, such an adjustment cannot be made.

DOC Position. We disagree with petitioner. Because petitioner did not submit the documentation necessary for us even to consider calculating a PPP adjustment in a timely matter, this issue is moot. We will use Indian surrogate values and adjust for inflation.

Comment 11. Petitioner maintains that the value of an input as priced in the NME, when converted to a dollar value, should be the "benchmark" value; i.e., the NME value should function as a price floor. When the values from surrogate countries are below the value as priced with the NME, then the NME prices should be used to value the factors of production. Petitioner therefore questions the use of Indian surrogate values for steel wire rod and for electricity rates.

Respondent states that it finds petitioner's argument rather intriguing. Respondent states, however, that the statute does not provide for choosing only those surrogate prices which are higher than respondent's actual prices. According to respondent, it would be more than happy to have all of its factors valued at HSWP's actual costs. Respondent states that the Department should disregard petitioner's request to use only those surrogate prices which are higher than its actual costs of purchasing an input in RMB in the PRC.

DOC Position. We disagree with petitioner. We are not using NME prices for inputs because the statutory requirement is to value the factor quantities using the prices in the surrogate market-oriented country.

Comment 12. Respondent maintains that the Department should not both use CIF import prices and calculate a separate transportation cost for PRC inland freight. Respondent maintains that the Department normally relies on FOB import values when using import statistics that if the Department continues to rely on CIF prices, it must either adjust those prices downward before calculating a surrogate transportation cost or it should use the CIF value

without then adding on a separately calculated surrogate transportation cost. Petitioner argues that the Department has already addressed and rejected the use of FOB prices. Petitioner maintains that because section 773(c) of the Act requires the factors of production to be valued in a surrogate country, the use of CIF import prices are necessary, together with transportation costs to make the full cost one delivered to the producer. Petitioner cites to the amended final determination in Chroma-Plated Lug Nuts from the PRC, to show that the Department values the good in the surrogate country, delivered to the customer, since movement charges would not be rebated upon exportation.

DOC Position. We disagree with respondent. We have used CIF values for import data and calculated the cost for transporting merchandise from port of entry to the factory. The CIF value of merchandise is the cost of the merchandise from the exporting country to the port of entry. This value does not include the cost of transporting the input to the factory. The CIF value represents the value of an input prior to inland delivery. Since the factor data we use represents the cost of an input delivered to HSWP's factory, we will calculate the transportation costs from HSWP's supplies to HSWP's factory. This is fully consistent with the Department's practice. See Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland, 58 FR 37205 (July 9, 1993).

Comment 13. Respondent, believing the Indian import statistics to contain Indian customs charges, maintains that the Department should adjust the prices of steel wire rod to remove any taxes, surcharges, or duties paid upon importation into India. Respondent maintains this is similar to the treatment of surrogate values in the Amendment to Final Determination of Sales at Less than Fair Value: Chroma-Plated Lug Nuts from the PRC, 57 FR 15052, 15054 (April 24, 1993).

Petitioner asserts that respondent's argument for adjusting the price of steel wire rod to remove taxes, surcharges, or duties is vague. Petitioner maintains that by using import statistics, no taxes, duties, or surcharges would be included.

DOC Position. We agree with petitioner. Item 3 on page 4 of the introductory notes of the Monthly Statistics of the Foreign Trade of India, Volume II—Imports, published by the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce, states that "[t]he

statistics are based on declarations made by Importers in bills of entry as subsequently checked by customs authorities."

The Indian import statistics which we are using consist of CIF values as declared on the bill of entry, and not on delivered, duty-inclusive prices. Thus, there is no need to remove taxes or duties from the values reported in the published Indian import statistics, as these do not reflect the addition of taxes, surcharges or duties.

Comment 14. Respondent maintains that the Department should not adjust the 1991 Indian import statistics for steel wire rod to account for inflation. It argues that the lag time between purchase and production means that the wire rod used during the POI to make HSLW was acquired "well before the POI."

Petitioner asserts that even assuming the lead times argued by respondent are correct, the import figures for steel and all other import items involve similar time from purchase to delivery. Petitioner argues that the Department must presume that any steel imported into India was ordered four to six months before the date of entry.

According to petitioner, respondent has given no reason why the international purchase takes less time than its own domestic purchase; petitioner argues it should take even longer.

DOC Position. We disagree with respondent. We are continuing to adjust the 1991 steel wire rod value to account for inflation. It is the Department's consistent practice to value factors at the time of the POI. Since the value we used are from 1991, we inflated them to the POI. Cost considerations during the POI are considered the crux of a responding company's decision making, including the pricing of its merchandise.

Comment 15. Petitioner maintains that the Department should follow the following hierarchy in applying PI to value factors: (1) First priority should be given to prices paid by the NME manufacturer for items imported from a market economy country; (2) second priority should be given to prices in the primary surrogate country of domestically produced or imported materials; (3) third priority should be given to prices in one or more secondary surrogate countries reported by the industry producing subject merchandise in the secondary country or countries; and (4) fourth priority should be given to prices in one or more secondary surrogate countries from sources other than the industry producing the subject merchandise. Petitioner states that this ranking of sources reflects the

Department's desire to use, to the greatest extent possible, factor prices in a single surrogate country.

Petitioner argues that applying these priorities would have six results. First, it argues that the priorities result in selecting India as the only surrogate country at a comparable level of economic development which is a producer of the subject merchandise. Although petitioner keeps open the possibility of determining that India is not a significant net exporter, it notes that no other potential surrogate country exported HSLW's to the United States since 1989.

Second, it argues that a result would be the inclusion of duty and taxes when using import values. Third, it maintains that the priorities result in the use of CIF import values into the surrogate country. Fourth, it argues that surrogate values are intended to reflect a mill price, not a price delivered to a customer. Fifth, it argues that the priorities should result in using Indian import values whenever these are available. It states that respondent has no basis for rejecting certain Indian import values simply because those are "too high." Sixth, it maintains that all prices should be adjusted for inflation. Where prices are "dated," which petitioner defines as more than five years old, petitioner urges rejecting the values.

DOC Position. We disagree, in part, with petitioner's conclusionary arguments. First, the selection of surrogate countries for factors analysis and the selection of specific public information to value factors of production are two separate issues. We have articulated a rationale for our public information hierarchy in the notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992).

Second, as regards petitioner's conclusions, we believe that any analysis should result in selecting India as the primary surrogate country at a comparable level of economic

development which is a producer of the subject merchandise. We are continuing to use India as the primary surrogate country and Pakistan as the secondary surrogate country in evaluating factors for HSLW's. As stated in the October 16, 1992, Department of Commerce's Office of Policy memorandum to David Binder, India is a significant producer of the subject merchandise. Production, rather than exportation, is a determinative criterion for surrogate selection.

We disagree that a result would be the inclusion of duty and taxes when using

import values. (See Factors of Production Comment 4). We do agree that any system of priorities should result in the use of CIF import values into the surrogate country. We have determined that the price should be the price to the customer inclusive of delivery from the source (Indian factory if domestically produced, port if imported) to the Indian producer of HSLW's.

We agree that any system of priorities should result in using Indian import values whenever these are available, as these values are in a contemporary PI source. We agree that rejecting certain Indian import values simply because those are "too high" is potentially overly subjective; but would add that so is rejecting certain values simply because they are "too low." Last, we agree that all prices should be adjusted for inflation, but we do not agree that prices are "dated." If more than five years old, if five year old PI is the only PI available, we must use it. (See Sulfuric Acid from the PRC at Comment 2). When we used PI values attributable to a period prior to the POI, we have inflated the values to the POI. (See Factors of Production Comment 14).

Comment 16. Petitioner argues in its case brief that the data from the Official Directory of the State Exchange of India should be the source for estimating SC&A expenses; specifically petitioner recommends relying on one of the companies profiled in the Directory, Guest Keen Williams. On August 23, 1993, petitioner amended its argument based on the data transmitted to the Department by the U.S. consulate in Bombay. Petitioner states that it believes that since the SC&A expenses reported for Forbes Cokak Ltd. contained in the cable are greater than the statutory minimum of 10 percent used in determining constructed value, pursuant to section 773(e)(1)(B) of the Act, the Department should rely on Forbes Cokak Ltd.'s rate in determining FAV.

Respondent argues in its case brief that the Department should use the industry averages from the Reserve Bank of India Bulletin to determine SC&A expenses in determining FAV both for HSWP and for the processing done at HSWP's unrelated plating.

Respondent argues that the Department should not use the average of the data from the two companies outlined in the Official Directory of the State Exchange of India because one of those firms, Guest Keen Williams, Ltd. produces merchandise not comparable to HSLW's; has a

completely different set of technology, and is a company beset with problems

On August 24, 1993, respondent submitted its reaction to the possible use of data transmitted to the Department by the U.S. consulate in Bombay. Respondent states that it believes that the SC&A expenses reported for Forbes Cokak Ltd. are clearly out of line with the industry-wide SC&A expense figure derived from the data in the Reserve Bank of India Bulletin. Respondent maintains that using the data from a single firm can skew the margin. Respondent maintains that since Forbes Cokak Ltd. is an affiliate of the largest conglomerate in India, and its reported profit is one percent, there is a strong suggestion that financial transfers to the corporate parent are included in SC&A expenses rather than reported as profits and then transferred to the corporate parent. Respondent also asserts that the fact that Forbes Cokak Ltd.'s SC&A expenses are twice the size of its overhead figure is a anomaly when compared to the data in the Reserve Bank of India Bulletin. Finally, respondent argues that the figures reported by Forbes Cokak Ltd. appear to be nothing more than rough estimates given as anecdotal information in a telephone conversation.

DOC Position. We agree in part with petitioner's August 23, 1993, comments. Neither the Reserve Bank of India Bulletin data nor the company-specific data from the Official Directory of the State Exchange of India which we considered at the preliminary determination are definitively tied to the production of India HSLW's. The cable data from the U.S. consulate in Bombay indicates that Forbes Cokak is the only major producer of HSLW's in India. As such, its data is the best surrogate to apply in constructing the factor value for HSWP's FAV.

In determining the SC&A expenses for the plating plant, the Department is using the statutory minimum of 10 percent, because the most accurate data from the Reserve Bank of India Bulletin which represents the Indian metal and chemical industry results in a percentage less than the statutory minimum of 10 percent.

Comment 17. Respondent argues in its case brief that the Department should use the industry averages from the Reserve Bank of India Bulletin to determine overhead expenses in calculating FAV both for HSWP and for the processing done at HSWP's unrelated plating subcontractor. Respondent argues that the Department should not use the average of the data from the two companies outlined in the

Official Directory of the State Exchange of India because one of those firms, Guest Keen Williams, Ltd., produces merchandise not comparable to HSLW; has a completely different set of technology, and is a company beset with problems.

On August 24, 1993, respondent submitted its reaction to the possible use of data transmitted to the Department by the U.S. consulate in Bombay regarding overhead expenses. Respondent herein states that it believes that since the overhead expenses reported for Forbes Cokak Ltd. are clearly in line with the industry-wide S&A expense figure derived from the data in the Reserve Bank of India Bulletin, the use of Forbes Cokak's overhead rate seems reasonable.

On August 23, 1993, petitioner submitted its reaction to the possible use of data transmitted to the Department by the U.S. consulate in Bombay. Petitioner states that it believes that since no detailed information on comparable equipment costs in a market economy country has been provided in the investigation, the rate of depreciation and the ratio of depreciation transmitted by the cable from the U.S. consulate in Bombay are not applicable. Petitioner maintains that the overhead rate reported for Forbes Cokak Ltd. should be applied to the total materials, labor and energy costs.

DOC Position. We agree in part with petitioner's August 23, 1993, comments and respondent's August 24, 1993, comments. Neither the Reserve Bank of India Bulletin data nor the company-specific data from the Official Directory of the State Exchange of India which we considered at the preliminary determination are definitively tied to the production of India HSLW's. The cable data from the U.S. consulate in Bombay indicates that Forbes Cokak is the only major producer of HSLW in India. As such, its data is the best surrogate to apply in constructing the factor value for HSWP's FNAV.

In determining the overhead for the plating plant, the Department is relying on the data from the Reserve Bank of India Bulletin, since the industry includes chemical production, and the plating plant deals almost exclusively with chemical processing.

Comment 18. On August 23, 1993, petitioner submitted its comments on the possible use of data transmitted to the Department by the U.S. consulate in Bombay regarding profit. Petitioner herein states that because the percent of profit reported by the Indian producer is less than the statutory minimum, the statutory minimum of eight percent must be applied to the sum of general

expenses and cost, pursuant to section 773(c)(1)(B)(ii) of the Act.

DOC Position. We agree with petitioner and will calculate profit of eight percent of total production cost for HSWP and of total plating cost for the plating subcontracting.

Comment 19. On August 23, 1993, petitioner submitted its reaction to the possible use of data transmitted to the Department by the U.S. consulate in Bombay regarding transportation costs. Petitioner herein states that it believes that the transportation costs appear to be a composite of freight rates for truck, rail, ship and/or barge. Petitioner states that since these rates do not appear to apply to export costs, the Department should use the cable schedule to value the domestic transportation costs of HSWP in the PRC, but not to determine ocean freight and handling costs on exports. Petitioner assumes that the exchange rate for the PRC will be used and that no other adjustments are required since the rates are "representative rates" which petitioner interprets to mean not related to a specific period of time.

On August 24, 1993, respondent submitted its reaction to the possible use of data transmitted to the Department by the U.S. consulate in Bombay. Respondent herein states its understanding that the transportation rates supplied in the latest cable will be used only for transportation types which do not have specific rates on the record in this investigation, and that if any type of transportation already has specific rates, then those specific rates will be used for the final determination.

DOC Position. We agree in part with petitioner's August 23, 1993, comments and respondent's August 24, 1993, comments. We are using the aggregate rates supplied in the August 3, 1993, cable from our consulate in Bombay. India for those values for which no specific rate exists on the record, such as transportation by river of steel inputs from domestic plants in the PRC to HSWP. We are also calculating a separate charge using a rate schedule provided by the U.S. consulate in Bombay on August 3, 1993, for the portion of the shipment from Ningbo to Hong Kong by PRC state-owned transportation. We will adjust these rates downward to account for inflation since the POC.

Comment 20. Before the preliminary determination, we were considering 1991 Indian import subcategory 2806 with a value of Indian rupees (Rs) 53,064/Kg to value hydrochloric acid. Adjusted for inflation, the value was Rs 58,061/kg. During the briefing process, respondent questioned the use of Indian

import statistics for this factor.

Respondent believes that this import price is extraordinarily high.

Respondent urges the Department to use the value reported in March 1991 cable in the investigation of Chrome-plated Lug Nuts from the PRC. Respondent also refers the Department to the Chemical Marketing Reporter, a U.S. weekly newspaper, which reports hydrochloric acid on the U.S. spot market during the POC at prices much closer to the value reported in the investigation of Chrome-plated Lug Nuts from the PRC.

Respondent cites the Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the Republic of Hungary (Sulfanilic Acid from the Republic of Hungary), 57 FR 44293, 44296 (Oct. 22, 1992) to argue that in those instances where one possible surrogate value was obviously questionable by virtue of being very different from an alternative surrogate value, the Department should use "supplemental sources to determine which of these two numbers (is) the most reasonable."

Respondent also maintains that the plating chemical "hydrogen chloride" refers to the same industrial hydrochloric acid used in the production process. Respondent asserts that the Department classify both the production and plating chemical as "hydrochloric acid" and apply a surrogate price specifically based on quotes for "hydrochloric acid."

Petitioner maintains that issues such as purity and concentration have not been properly addressed in distinguishing between the Indian import value and the Pakistani data relayed by cable. Petitioner objects to mixing values from different surrogate countries in general and objects specifically to respondent's argument here because petitioner asserts that the respondent has not indicated any reason for the questionable nature of the Indian import value other than comparing it with a lower available factor value.

Petitioner asserts that if the Department determines that it is appropriate to use Indian import values, then it should stay with India, particularly as petitioner maintains Pakistan has not been shown to be a producer of HSLW's. Petitioner asserts that the Department should use prices for items with the nomenclature "hydrochloric acid" and "hydrogen chloride" and use the average of the two prices.

DOC Position. We have examined the prices in this cable from our consulate in Pakistan, which shows the prices in Pakistani Rupees per kilogram (PRs/kg). We have also examined the recommended source for contemporary

U.S. spot market prices. The value derived from the India import statistics is not over 1000 percent higher than the values reported in either alternative source, because the value must first be multiplied by 31 percent, the concentration of hydrochloric acid in the solution actually employed in making HSWP's lock washers. This step had not been clearly indicated in the TCM for the preliminary determination, and respondent may have overlooked this aspect of the calculation. We believe that in this particular instance, the divergence of the Indian import value is not so significantly different from other indicators, both contemporary world market prices and Indian domestic prices, that we would have no other choice but to rely on the data reported in the investigation of Chrome-plated Lug Nuts from the PRC, adjusted for inflation. We agree with respondent that the type of industrial application of a solution of hydrogen chloride is more closely reflected in the pricing of "hydrochloric acid," and are using the import values under the nomenclature "hydrochloric acid."

Comment 21. At the preliminary determination, we considered using 1991 Indian import subcategory 2815.12.00 to evaluate "caustic soda;" these import statistics are for Soda Lye (NaOH in aqueous solution), adjusted for inflation. We also considered using 1991 Indian import subcategory 2815.11, which is for solid sodium hydroxide (NaOH) where HSWP reported "sodium hydroxide" *per se*. We considered using the value for all solid NaOH (*i.e.*, at or near 100 percent) adjusted for inflation. In its April 6, 1993, submission, Hangzhou reported that the Sodium Hydroxide it was reporting was only 70.75 percent pure; we considered multiplying the import value by this percentage before applying it to the factor quantity.

In its case brief, respondent states that as reported in its March 16, 1993, submission the concentration of caustic soda for lockwasher production is 30 percent and for plating is 15 percent.

Respondent suggests using a weighted average of the one liquid and two solid forms listed in the Indian import statistics as the basis for both "caustic soda" and "sodium hydroxide."

Petitioner does not object to using Indian import statistics for subcategory 2815.12 for caustic soda in aqueous solution. Petitioner states that because this is for the chemical in solution and no concentration levels are shown in the Indian data, no further adjustments should be made to the import value.

DOC Position. We note that both the HSLW plaintiffs and the India Import

statistics specifically refer to NaOH by the two terms "soda lye" and "sodium hydroxide." The differences between the soda lye used in the production process and in the plating process, and the highly concentrated sodium hydroxide formula also used for a different plating step, include such elements as purity, form, and consistency. We believe using the two specific import categories reflects any such outstanding differences in physical characteristics. We are using category 2815.12.00 specifically for caustic soda solution, so that the dilution reported is reflected in the lower price. Where a 15 percent solution of caustic soda is used, the price reported for category 2815.12.00 is used; where a 30 percent solution of caustic soda is used, the per-unit value for category 2815.12.00 is doubled. Where HSWP reported "sodium hydroxide" *per se*, we are using subcategory 2815.11.01, which is for solid sodium hydroxide (at or near 100% NaOH), where a 70.75 percent concentration has a value of Rs 98.546/kg, adjusted for inflation.

Comment 22. Respondent believes that the Department should have requested a spot price from the U.S. embassies in India and Pakistan to value potassium chromate, since U.S. spot prices were less than a third of the Indian import statistics for subcategory 2841.50.08 for "other dichromates."

Petitioner disagrees with respondent, stating that respondent's arguments are lacking any specific reasons for disqualifying the values suggested in the preliminary TCM.

DOC Position. We agree with petitioner. First, we did cable our Embassy in India to request all possible surrogate values for material inputs on March 17, 1993. However, the U.S. Embassy did not supply us with the chemical prices in India. Moreover, the Indian import statistics we considered at the preliminary determination, and which we are using in this final determination, are both public and published information. Respondent did not submit alternative public information until well after the deadline established by the Department in the record of this investigation.

Comment 23. For sodium nitrate, potassium aluminum, and barium chromate, respondent states that it was unable to obtain other information on prices other than the Indian import statistics the Department had considered at the preliminary determination. Furthermore, for 4-methylamine, sodium sulfide, and sodium carbonate, respondent states that it believes that the Indian import values the Department was considering

to use at the preliminary determination are an accurate reflection of the price ranges of the chemicals on the international market.

DOC Position. We agree with respondent. We have used the 1991 Indian import statistics to value sodium nitrate, potassium aluminum, barium chromate, 4-methylamine, sodium sulfide, and sodium carbonate, as it was the only PI source.

Comment 24. Respondent objects to the Department's earlier consideration of Indian import subcategory 2826.19.09 for "other fluorides" to value hydrogen fluoride. Respondent points out that the Indian import statistics break out hydrogen fluoride under subcategory 2811.11.00. The resulting value, adjusted for inflation, is Rs 58.63/kg.

Petitioner states that it defers to the Department's determination over which 1991 Indian import category is proper.

DOC Position. We agree with respondent and have used subcategory 2811.11.00 to value hydrogen fluoride.

Comment 25. At the preliminary determination, we considered using 1991 Indian import subcategory 2808.00.01 with a value, adjusted for inflation, of Rs 40.462/kg to value nitric acid. Respondent maintains that the Department should use the price of nitric acid as contained in the March 1991 cable from Pakistan in the Chrome-Plated Lug Nuts from the PRC investigation.

Petitioner disagrees with respondent's objections, stating that respondent's arguments are lacking any specific reasons for disqualifying the values suggested in the preliminary TCM.

DOC Position. We disagree with respondent. We afforded all interested parties sufficient time to submit PI for the record. No such information was offered in a timely manner. The Indian import statistics are a primary source of published public information, while cables are a secondary source of public information. We therefore are using the 1991 Indian import value, adjusted for inflation in accordance with our preferred PI hierarchy.

Comment 26. Respondent argues that the Department should not use the 1991 Indian Import Statistics to value sulfuric acid. Respondent suggests that the Department instead use the December 1991 cable from Pakistan. Respondent believes that this import price is extraordinarily high. Respondent urges the Department to use the value reported in the December 1991 cable in the investigation of Sulfamic Acid from the PRC. Respondent also refers the Department to the Chemical Marketing Reporter, a U.S. weekly newspaper, which reports sulfuric acid on the U.S.

spot market during the POI at prices much closer to the value reported in the investigation of Sulfanilic Acid from the PRC.

Petitioner disagrees with respondent's objections, stating that respondent's arguments are lacking any specific reasons for disqualifying the values suggested in the preliminary TCM.

DOC Position. The Sulfanilic Acid from the Republic of Hungary determination indicates that, in those instances where one possible surrogate value was obviously questionable by virtue of being very different from an alternative surrogate value, the Department should use "supplemental sources to determine which of these two numbers (is) the most reasonable." We have examined the prices in this cable from our consulate in Pakistan, which shows the price no higher than 4.00 PRs/kg; adjusting for inflation, the price would be 4.90 PRs/kg. We have also examined the recommended source for contemporary U.S. spot market prices. The value derived from the India import statistics is over 1000 percent higher than the values reported in either alternative source. We believe that in this particular instance, the divergence of the Indian import value is so significantly different from both contemporary world market prices and Indian domestic prices that we will rely on the data reported in the investigation of Sulfanilic Acid from the PRC, adjusted for inflation.

Comment 27. At the preliminary determination, the closest 1991 Indian import category we could find under phosphates was "sodium triphosphate," (subcategory 2835.31.00) in order to value trisodium phosphate. In its case brief, respondent maintains that trisodium phosphate is a totally different chemical compound which is imported under subcategory 2835.23. Because no imports were recorded in the 1991 Indian Import Statistics for this subcategory, respondents maintain that we should use the value reported in the March 1991 Pakistani cable in the Chrome-Plated Lug Nuts from the PRC investigation.

Petitioner maintains that the Department should first seek to obtain a domestic value in India. According to petitioner, only if Indian values are not available should a non-HSLW producer, surrogate country value be used.

DOC Position. We examined earlier Indian import statistics. We found that in December 1987, India imported trisodium phosphate under subcategory 2835.23. First, the contemplated use of 1991 Indian subcategory 2835.31 at the preliminary determination was in error, as this category is for sodium

triphosphate and the chemical we must value is trisodium phosphate. However, respondent did not submit any PI on this chemical prior to the briefing process. In addition, the source which respondent would have us use is not a published document. We therefore are using the 1987 Indian import category 2835.23, adjusted for inflation.

Comment 28. At the preliminary determination, we considered using subcategory 4819.10 for "cartons and cases of corrugated paper and paperboard," and adjusting for inflation. Respondent maintains that the price that was used for corrugated cardboard boxes in the investigation of Chrome-Plated Lug Nuts from the PRC is a better value to use in establishing FMV for HSWP. Respondent maintains that the value using 1991 Indian import statistics is more than 600 percent larger than the value used for the largest box in the Chrome-Plated Lug Nuts from the PRC investigation.

Petitioner disagrees with respondent's objections, stating that respondent's arguments are lacking any specific reasons for disqualifying the values suggested in the preliminary TCM. Petitioner notes that in the Chrome-Plated Lug Nuts from the PRC investigation, while different types of cartons were used, the one most comparable to those used to pack HSLWs were the largest sizes.

DOC Position. We disagree with respondent. We are using 1991 Indian import statistics, category 2806, adjusted for inflation. First, respondent did not submit any PI on this chemical prior to the briefing process. Second, the source which respondent would have us use is not a published document. Lastly, we believe that in this particular instance, the divergence of the Indian import value from the one other indicator is not so significant that we must rely on the other source.

Comment 29. For plastic bags, respondent states that it believes that the Indian import value the Department was considering to use at the preliminary determination is representative of what an Indian producer of HSLWs would pay. Respondent states that an alternative source listed in the preliminary TCM, a cable used in the investigation of Sulfanilic Acid from the PRC, is for bags of a size and use not appropriate for valuing the bags used by HSWP to pack lockwashers.

DOC Position. We agree with respondent and have valued plastic bags using the 1991 Indian Import Statistics.

Comment 30. Respondent notes that the Department should consider the consumption of adhesive tape noted at

verification in determining the cost of tape per metric ton of lockwashers produced in the POI in establishing FMV.

DOC Position. We agree with respondent and have valued adhesive tape using the correct amount verified.

Comment 31. For wood pallets and wood brackets, respondent states that it believes that the Indian import value the Department was considering to use at the preliminary determination is representative of what an Indian producer of HSLWs would pay.

DOC Position. We agree with respondent and have used the 1991 Indian Import Statistics to value wood pallets and wood brackets.

Comment 32. For lubricating oil, respondent states that it believes that the Indian import value the Department was considering to use at the preliminary determination is representative of what an Indian producer of HSLWs would pay.

DOC Position. We agree with respondent and have used the 1991 Indian Import Statistics to value lubricating oil.

Comment 33. For light fuel oil, respondent states that it believes that the value the Department was considering to use at the preliminary determination, taken from the third quarter 1992 edition of Energy Prices and Taxes, published by the International Energy Agency, is representative of fuel oil prices in India.

DOC Position. We agree with respondent and have used the 1992 Energy Prices and Taxes to value light fuel oil.

Comment 34. For electricity and coal, respondent states that it believes that the values the Department was considering to use at the preliminary determination, taken from the third quarter 1992 edition of Energy Prices and Taxes, published by the International Energy Agency, appear to be an average of electricity rates and coal prices and therefore are more reliable than a single price quotes for electricity and coal.

Petitioner believes that it is inappropriate to use the 1985 value reported in the third quarter 1992 edition of Energy Prices and Taxes, and then adjusting it upward to account for inflation. Petitioner argues that more current published public information be used, and if this is not available, the more recent alternative sources noted in the preliminary TCM should be used. These alternatives were cables from the U.S. Embassy in India sent for the Cotton Shoptowns from the PRC and the Sulfanilic Acid from the PRC investigations.

DOC Position. We agree with respondent that the prices from the publication *Energy Prices and Taxes* are the correct prices to use for coal and electricity, adjusted for inflation. The source is the most recent PI of the information which the Department could obtain. The Department notes that neither petitioner nor respondent timely placed public, published alternatives on the record for consideration.

Comment 35. For water, respondent states that it believes that the price transmitted by cable from the U.S. Embassy in Pakistan which the Department was considering to use at the preliminary determination is representative of water prices in Pakistan.

DOC Position. We agree with respondent. Recent cables from the first choice surrogate country, India, show a monthly charge for water, rather than a per unit value. The December 1991, cable from Pakistan, the second choice surrogate country in this investigation, shows a per unit value of in PRs per 1000 gallons. We can therefore use this as basis for valuing the consumption in units reported in this investigation.

Comment 36. For train freight rates, respondent states that it believes that the value the Department was considering to use at the preliminary determination, taken from 1989 cable from the U.S. Embassy in India sent for the Cotton Shop Towels from the PRC investigation, has been used consistently by the Department in subsequent cases, and concurs that this rate should be used unless the U.S. Embassy in India responds with an updated rate.

DOC Position. We agree with respondent; the rates reported in the August 3, 1993, cable from India appear to be an aggregate of various rates: trucking, shipping and rail. Therefore, we have used them and have adjusted them for inflation.

Comment 37. For trucking rates, respondent states that it believes that the Department was considering an incorrect method for applying the rates taken from the June 1992 cable from the U.S. Embassy sent for the Sulfanilic Acid from the PRC investigation. Respondent believes that the cable information shows a rate formula which takes into account the distance as a percentage of 1000 kilometers, so that the flat rate of 750 Rs per metric ton is pro-rated for distances less than the full 1000 kilometers up to which the rate applies.

Petitioner disagrees with respondent's objections. It believes that the cable refers not to a rate formula by actual distance, but a flat rate of 750 Rs per

metric ton for all distances up to 1000 kilometers. Petitioner states that the rate applied should be the same whether respondent is reporting the use of its own, or hired, trucks. Petitioner also suggests that hauling chemicals warrants a higher rate than in the Sulfanilic Acid from the PRC cable.

DOC Position. We agree with respondent. The cable states that the rate is Rs 0.75 per kilogram for a distance up to 1000 kilometers; it then states that for one kilogram trucked 800 kilometers, the rate would be 0.083 Rs per kilogram per kilometer. This in effect means the total tonnage should be multiplied by 750 Rs/Mt multiplied by the distance trucked divided by 1000 kilometers. This is the formula we are using in applying trucking rates for purposes of the final calculation. We note that in the cable, the rate schedule was quoted for the transport from New Delhi of a chemical, namely sulfanilic acid.

Comment 38. Respondent states that it does not believe that any transportation charges should be used in calculating FMV to represent the cost of transporting HSLWs to and from the plating plant. According to respondent, expenses relating to the vehicles owned by the plating plants are included in the plating plant overhead figures calculated by the Department, and are therefore already included in the plating plant surrogate costs calculated for FMV.

Petitioner disagrees with respondent's objections. Petitioner states that some cost should be added for transporting the HSLWs between the production and plating sites, particularly since the Department only verified one of three plating facilities subcontracted by HSWP. Petitioner states that if the Department uses BIA for the other two plants, adding freight costs separately would not be appropriate.

DOC Position. We agree with respondent. We should not calculate a separate transportation cost for bringing the HSLWs to and from the plating plants because the cost is already included in factory overhead.

Comment 39. Respondent states that it believes that the rates in the Yearbook of Labour Statistics (1992) and the Country Report on Human Rights Practices for 1990 are representative of the wage rates of workers at an Indian lockwasher production facility.

Respondent asserts, however, that the Department should only apply skilled and unskilled labor rates to HSWP's workers. According to respondent, neither HSWP nor the plating company maintain records in the normal course of business which classify workers as

semi-skilled. According to respondent, neither company identified any difference between the workers which they reported to the Department as "semi-skilled" and those which they reported as "unskilled."

Petitioner disagrees with respondent's objections. Petitioner states that the Department should use three classifications but adds that the Department should adjust the values using a PPP variable.

DOC Position. We disagree with respondent. HSWP reported both its and the plating companies' labor costs using the three categories "skilled, unskilled and semi-skilled." As outlined in the HSWP verification report, in dividing their HSLW workshop employees into these categories, the company first created classification standards for the labor categories as follows: Skilled workers—those who have extensive production experience and produce high quality products; supervisors—those with extensive management experience, capable of production supervision, and compiling production statistics; technician—those who have earned a technical certificate in some skill from the local labor department; semi-skilled—those with average production experience and produce average quality product; unskilled—little experience, untrained skills. As the next step in the process, the company divided its HSLWs workshop workers into these specific categories. Supervisors and technicians were reported as skilled. Any worker not specifically fitting "skilled" or "unskilled" was considered semi-skilled.

In its normal business operations, the plating plant we examined at verification uses three worker classifications. These classifications are not based on skill level but rather on years of service. The plant also included a description on how it based its reported classification of workers. The manager made a description of what skills would place a worker in a specific category and used his knowledge to classify each HSLW's plating worker as skilled, semi-skilled or unskilled. Since labor was reported broken into three categories, and since we verified these categories, we will continue to evaluate three levels of labor costs.

Continuation of Suspension of Liquidation

In accordance with sections 735(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of certain helical spring lock washers from the PRC that are entered, or withdrawn from warehouse, for

consumption on or after January 30, 1993, which is 90 days prior to the date of publication of the preliminary determination in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to 77.47 percent on all entries of certain HSLWs from Hangzhou Spring Washer plant and market-economy trading companies (e.g., Hong Kong companies) which sold HSWP's HSLWs to the United States during the POL. Between now and the antidumping duty order, if one is issued, we will seek the respondent's permission to release the names of the non-PRC trading companies to the public, in order to publish the most accurate duty instructions possible. If respondent does not permit the release of the trading companies' identities to the public, by the time of the order, we will apply the BIA margin of 128.63 percent to the aforementioned market trading companies. The Customs Service shall require a cash deposit or posting of a bond equal to 128.63 percent on entries of certain HSLWs from the PRC from all other producers and exporters. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufactures/producers/exporter	Margin percentage
Hangzhou Spring Washer Plant (HSWP)	77.47
HSWP via Foreign Trading Company 1	77.47
HSWP via Foreign Trading Company 2	77.47
HSWP via Foreign Trading Company 3	77.47
HSWP via Foreign Trading Company 4	77.47
HSWP via Foreign Trading Company 5	77.47
All Other PRC Manufacturers, Producers and Exporters	128.63

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 13, 1993.

Joseph A. Spetrini,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 93-22958 Filed 9-17-93; 8:45 am]
BILLING CODE 3510-06-P

APPENDIX B

IMPORT DATA FROM OFFICIAL STATISTICS

Table B-1

Imports from China: Imports of all goods classified under HTS subheading 7318.21.00, by quantity and by month, January 1990-June 1993

(1,000 pounds)				
Month	1990	1991	1992	1993
January	493	417	856	807
February	241	400	585	463
March	702	127	628	3
April	909	533	259	123
May	827	586	497	117
June	513	532	567	16
July	600	698	790	-
August	821	509	493	-
September	404	558	506	-
October	442	603	772	-
November	313	920	724	-
December	494	1,083	1,283	-
Total	6,759	6,966	7,959	1,528

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce.

According to the official import statistics compiled by Commerce,¹ imports of product under HTS subheading 7318.21.00 from China rose from 6.8 million pounds in 1990 to 7.0 million pounds in 1991 and 8.0 million pounds in 1992, an increase of 3.1 percent between 1990 and 1991, 14.3 percent between 1991 and 1992, and 17.8 percent over the period 1990-92.² Imports from China declined markedly between January and June 1993, totaling only 1.5 million pounds for the first six months of the year. The value of imports of product under HTS subheading 7318.21.00 from China, as recorded by official statistics, declined from \$2.8 million in 1990 to \$2.7 million in 1991, then rose to \$3.3 million in 1992. The value of such imports declined steeply between January and June 1993, totaling only \$0.7 million for the first six months of the year.³

¹ Official import statistics do not separate imports of carbon steel and stainless steel helical spring lockwashers. Also, official statistics include such non-subject merchandise as tooth lockwashers and non-helical spring washers. However, a comparison of the data collected by the Commission through its questionnaires and the data collected by Commerce indicates that virtually all of the imports from China which are classified under HTS subheading 7318.21.00 are carbon steel helical spring lockwashers.

² Imports of product classified under HTS subheading 7318.21.00 from China entered the United States through 25 different customs districts. The top 7 customs districts, accounting for 90.3 percent of imports by weight of such product from China during 1990-92, were, in descending order by weight, Los Angeles, CA; Chicago, IL; Baltimore, MD; Savannah, GA; Philadelphia, PA; New York, NY; and Houston-Galveston, TX.

³ At the Commission's hearing, counsel for Hangzhou stated that "We believe that anything that is recorded as coming from Hong Kong is likely coming from China. We still submit that you ought to rely on the data you have on importers' (U.S.) shipments of imported product...But if you use import data, you should include Hong Kong." Hearing transcript, p. 161.

(continued...)

Counsel on behalf of Hangzhou and the American Association of Fastener Importers argues that the sharp rise in imports of helical spring lockwashers from China in late 1991 and early 1992 "reflects the uncertainty in the market concerning the possibility of effectively embargoed shipments of fasteners and washers."⁴ In April 1991, the United States Trade Representative (USTR) identified India, China, and Thailand as priority foreign countries⁵ under section 182 of the Trade Act of 1974, as amended (56 F.R. 20060, May 1, 1991), and on May 26, 1991, pursuant to section 302(b)(A), initiated an investigation regarding deficiencies in China's patent law, deficient copyright protection, inadequate trade secret protection, and inadequate protection of intellectual property rights. In December 1991, the *Federal Register* published the USTR's list from which products to be subject to increased tariffs would be drawn, failing a satisfactory conclusion to negotiations on the deficiencies and inadequacies noted above. Spring washers and other lockwashers (including the subject helical spring lockwashers) were not to be subject to the increased duties (56 F.R. 61278, December 2, 1991).

In October 1991, at the direction of the President, the USTR initiated an investigation pursuant to section 302(b) of the Trade Act of 1974, as amended, to determine whether specific market access barriers in China are unreasonable or discriminatory and burden or restrict U.S. commerce. As an effort "to take all appropriate and feasible action to obtain the elimination of the unreasonable or discriminatory act, policy, or practice," the USTR proposed increasing duties up to 100 percent ad valorem on certain products from China. In August 1992, the *Federal Register* published the USTR's list from which the products to be subject to the increased tariffs would be drawn. Spring washers and other lockwashers (including the subject helical spring lockwashers) were not to be subject to the increased duties (57 F.R. 38912, August 27, 1992).

³ (...continued)

According to the official statistics compiled by Commerce, U.S. imports from Hong Kong of all spring washers and lockwashers classified in HTS subheading 7318.21.00 declined from 371,000 pounds in 1990 (\$199,000) to 354,000 pounds in 1991 (\$166,000) and to 185,000 pounds in 1992 (\$103,000). Such imports totaled 33,000 pounds (\$17,000) during January-June 1993.

⁴ Posthearing brief, p. 15.

⁵ Priority foreign countries are those countries {1} whose acts, policies, and practices are the most onerous and egregious and have the greatest adverse impact (actual or potential) on relevant U.S. products, and {2} that are not entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective intellectual property protection.